

from denying the right to vote in Federal elections to former criminal offenders who have not been convicted of any offense related to voting or elections and who are not confined in a correctional institution; to the Committee on the Judiciary.

By Mr. NELSEN (for himself and Mr. McMILLAN):

H.R. 15050. A bill to eliminate the tax on premiums paid on annuities in the District of Columbia; to the Committee on the District of Columbia.

By Mr. PRYOR of Arkansas (for himself, Mr. DUNCAN, Mr. HALPERN, Mr. COLLINS of Illinois, Mr. ANDERSON of Tennessee, Mr. EILBERG, Mr. STRATTON, Mr. LINK, Mr. ROSENTHAL, Mr. HECHLER of West Virginia, Mr. FORSYTHE, Mr. RYAN, Mr. SARBANES, Mrs. ABZUG, Mr. DAVIS of South Carolina, Mr. NIX, and Mr. McCORMACK):

H.R. 15051. A bill to provide new and improved transportation programs for older persons; to the Committee on Banking and Currency.

By Mr. PRYOR of Arkansas (for himself, Mr. KEMP, Mr. STOKES, Mr. BURTON, Mrs. HICKS of Massachusetts, Mr. GUDE, Mr. BURKE of Massachusetts, Mr. PEYSER, Mr. BYRNE of Pennsylvania, Mr. CHARLES H. WILSON, Mr. PODELL, Mr. CORMAN, Mr. BINGHAM, Mr. GIALMO, Mr. RANGEL, Mr. STEELE, and Mr. MOLLOHAN):

H.R. 15052. A bill to provide new and improved transportation programs for older persons; to the Committee on Banking and Currency.

By Mr. SCHMITZ:

H.R. 15053. A bill to prohibit manufacturing or publishing altered flag designs of

the United States; to the Committee on the Judiciary.

By Mr. STAGGERS (for himself and Mr. SPRINGER):

H.R. 15054. A bill to amend the Transportation Act of 1940, as amended, to facilitate the payment of transportation charges; to the Committee on Interstate and Foreign Commerce.

By Mr. ZWACH:

H.R. 15055. A bill to amend the Internal Revenue Code of 1954 to allow a credit against the individual income tax for tuition paid for the elementary or secondary education of dependents; to the Committee on Ways and Means.

By Mr. DANIELSON:

H.J. Res. 1202. Joint resolution to authorize the President to proclaim the last Friday of April of each year as "National Arbor Day"; to the Committee on the Judiciary.

By Mr. PEPPER:

H.J. Res. 1203. Joint resolution authorizing the President to issue a proclamation designating the 7-day period beginning August 28, 1972, as "All-American Family Week"; to the Committee on the Judiciary.

By Mr. THOMPSON of Georgia:

H.J. Res. 1204. Joint resolution proposing an amendment to the Constitution of the United States to modify the appointment and tenure of Federal judges; to the Committee on the Judiciary.

By Mr. CHAMBERLAIN:

H. Con. Res. 617. Concurrent resolution expressing the sense of the Congress with respect to the withdrawal of all American forces from Vietnam; to the Committee on Foreign Affairs.

By Mr. BOGGS:

H. Res. 985. Resolution authorizing additional investigative authority to the Com-

mittee on Public Works; to the Committee on Rules.

By Mr. GERALD R. FORD (for himself and Mr. SAYLOR):

H. Res. 986. Resolution authorizing the Speaker to administer the oath of office to William S. Conover II, and referring the question of his final right to a seat in the 92d Congress to the Committee on House Administration; to the Committee on House Administration.

By Mr. LENT:

H. Res. 987. Resolution urging supplemental appropriations to implement the President's message of March 17, 1972, calling for equal educational opportunities; to the Committee on Education and Labor.

## PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred to as follows:

By Mr. BURTON:

H.R. 15056. A bill for the relief of Leona B. Labatinos; to the Committee on the Judiciary.

By Mr. DONOHUE:

H.R. 15057. A bill for the relief of Domingos Afonso; to the Committee on the Judiciary.

By Mrs. MINK:

H.R. 15058. A bill for the relief of Takehito Kobayashi; to the Committee on the Judiciary.

By Mr. PEPPER:

H.R. 15059. A bill for the relief of Edward M. Fleming Construction Co. Inc., a corporation in the process of liquidation represented by its surviving board of directors; to the Committee on the Judiciary.

## EXTENSIONS OF REMARKS

### NEIGHBORHOOD YOUTH CORPS— EXPANSION AND CHANGES

#### HON. HERMAN BADILLO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. BADILLO. Mr. Speaker, although the House and Senate Conferees have agreed on appropriations that increase the number of available slots for the Neighborhood Youth Corps by some 140,700 slots, we are still falling dismally short of what we must do if we are to make meaningful commitments in this area and extend to our youth genuine opportunities for training and developing their potential. The yearly replay of dashed hopes and barebones offerings, which in the final analysis are viewed by the disappointed youth and communities as establishment's efforts to cool the summers, must cease. It is essential that instead we proceed with legislative remedies that will genuinely improve the employment chances of our youth—an approach, incidentally, which would in the long run do much more to deplete the welfare rolls than any so-called work incentive provisions presently advocated in conjunction with welfare reform.

In February of this year I submitted testimony urging substantial supplemental appropriations to ease the plight of our cities. As we all know, the effort to meaningfully increase appropriation levels failed in effect. The amount of sup-

plemental funds which New York City, for instance, stands to receive under the present budget provisions will not even begin to make a dent in the city's desperate needs.

Last year the city had jurisdiction over 48,000 summer job slots. At the same time it had 143,000 youngsters from families receiving public assistance for whom a summer job was considered an absolute necessity. This year there are over 350,000 youth in New York City who are eligible for the program. Their eligibility avails them little, however, since New York will be unable to reach even 2 out of every 10 of those who should and need to participate in the program.

Recreation support funds have also not been substantially increased over last year's level. This means that large numbers of 6- to 12-year-olds will once again roam the hot city streets with nothing to do and nowhere to go.

Dismal as these statistics are, they do not begin to reflect the true picture. My consultation with city officials and other experts indicates that our problem is not limited to a lack of adequate funding—catastrophic as that is—but involves also an underutilization of the potentials of the program.

The Neighborhood Youth Corps, as it is presently funded, is primarily a summer program. Because of its existing built-in restrictions it is often viewed by the community as a riot prevention program, designed to keep youth under control. This impression is fortified by the

fact that over 90 percent of the youth reached during the summer months, limited as their numbers are, do not have access to part-time employment during the school years.

Thus, the program cannot incorporate into its design an effective career ladder for the youth served. To meet minimum needs, the summer program should be substantially increased—probably tripled, with appropriate additions provided in the year-round out-of-school and in-school portions of the program. Such a setup would allow communities to develop year-round Neighborhood Youth Corps experiences for youth served who need them. Special emphasis could be placed on school dropouts and high school juniors and seniors who, because of academic or educational reasons are considering dropping out of school.

With the allocation of additional slots, a series of demonstration programs aimed at restructuring the basic mandate of the present Neighborhood Youth Corps could be undertaken. New York City is particularly concerned with the fact that present legislation does not allow officials to utilize resources of the private sector, and that there is a lack of experimentation involving both public and private institutions that could result in the development of strategies utilizing the basic Neighborhood Youth Corps concept. Consequently, the city is presently working on experimental approaches that would go a long way to rectify the situation. I find these ap-

proaches very promising and, utilizing the data and experiences developed through them and existing related programs, I intend to introduce legislation to incorporate their approach into our nationwide program. Some of the programs and proposals that do have national significance, in my estimation, include the following:

#### THE ALLIANCE WITH INDUSTRY PROGRAM

This is designed to create job opportunities for Neighborhood Youth Corps enrollees in the industry and business sector. The initial proposal, as it is being prepared for submission to the Department of Labor, will set up an experimental approach for the summer, in-school, and out-of-school programs. Staff will develop job slots in a cross section of business firms that were selected because of their size, industry, and occupational groupings. Enrollees' stipends for the first cycle would be paid by the Federal Government, with the understanding that the firms would continue to employ and pay the wages of the youth for an equivalent period of time. Such a program would allow the Neighborhood Youth Corps to expand its job offerings, be the catalyst for the development of internship/career ladder programs for these youth, and develop a manpower system that is more attuned to the future employment of the youth of our Nation.

#### WORK RELEASE PROGRAM

The Bureau of Comparative Education, of the Board of Education, in conjunction with the public and private sector, has been running an effective work release program in 58 high schools. Students participating in the program work 1 week and go to school another and receive course credit for their work. They also receive a salary. Their courses in school are geared to supplement their work assignments. Preliminary evaluations show an improvement in grades and school attendance.

The program is also seen as an effective entry into the job market. The bulk of the participants are potential drop-outs, although students with good academic records who simply do not wish to go to college, also participate.

I believe that similar programs could be instituted nationwide using the Neighborhood Youth Corps slots. The programs could build upon and modify the criteria and procedures presently in effect in the New York City Bureau of Cooperative Education. Initially, to assure wider distribution of funds, the work arrangements could be on a once-every-3-weeks basis. Provisions would have to be developed to allow the cities and localities to proceed in developing Neighborhood Youth Corps funded jobs in the private sector.

#### WORK SCHOLARSHIP PROGRAMS

One reason for the overwhelming financial difficulties experienced by low-income college students is that the students during high school years are given little opportunity to work and save for college. I believe we should seriously explore the possibility of providing Neighborhood Youth Corps jobs for college bound youth that incorporate special built-in savings arrangements. I am col-

lecting data on this, and preliminary indications are that this is an idea worth looking into.

Finally, I believe we should work out provisions for funding recreation support programs on a year-round basis. This may be done in such a manner as to assure that the programs are carried on in conjunction with other supportive programs, such as remedial and social services. Youth gangs in the cities increase dramatically after the summer months. There are numerous indications that their numerical increase coincides with the discontinuance of the recreation programs. A year-round program may well help not only in reducing the numbers of the gangs, but also in providing a valuable and meaningful link with the troubled youth who make up their membership.

#### WEIRTON STEEL MAKING PROGRESS IN REUSE OF STEEL CANS—TASK FORCE FORMED TO HELP CITIES SALVAGE SCRAP

#### HON. JENNINGS RANDOLPH

OF WEST VIRGINIA

IN THE SENATE OF THE UNITED STATES  
Wednesday, May 17, 1972

Mr. RANDOLPH. Mr. President, it has long been my belief that our country's environmental problems cannot be resolved without the concern and involvement of all segments of our society. Neither government, nor industry, nor individual citizens can accomplish the task before us. Success in providing a clean world can be achieved only if all of us work together.

A major part of the environmental challenge relates to the collection and disposal or reuse of millions of tons of solid wastes. I am particularly interested in how we respond to the challenge presented by the billions of metal cans that Americans use. We realize that in addition to the litter problem caused by their careless disposal, cans should be recycled to alleviate some of the shortage of natural resources.

Mr. President, Weirton Steel, which is located in my home State, has been a leader in developing and implementing new ways to collect and reuse steel cans. Nearly 2 years ago the company conducted a demonstration of remelting scrap cans at its plant in Weirton, W. Va. At that time, 500,000 beer cans were remelted into a useable product. Today, billions of steel cans are being remelted routinely at more than a dozen plants of the parent, National Steel Corp. At one plant alone, National Steel's Great Lakes Division in Detroit, 37½ tons of discarded cans recently were melted in a single month.

To give added emphasis to the importance of recycled steel cans, Weirton Steel has sponsored programs to promote their collection, in the Weirton community. In the year since the community's can-salvage program was started in Weirton, approximately 1½ million cans have been collected and \$525 in proceeds have been distributed to the Boy Scouts, Girl Scouts, and the Camp Fire Girls.

In addition, National Steel has created a new solid waste task force to help cities develop effective systems for reclaiming steel scrap from municipal refuse.

President George A. Stinson of National Steel said:

Our motivation is simple. We produce the steel used to manufacture one can in four of the 65 billion this country consumes each year. That obligates us to help develop economical and effective systems to recycle that portion of the nation's solid waste.

Mr. Stinson said a growing interest in "mining municipal refuse piles by the simple and relatively inexpensive process of magnetic separation" is responsible for the new program.

This group, Mr. Stinson correctly said, will respond in various practical ways to the demands made on it. Its members will make technical and commercial information available.

They will attempt to relate their knowledge and experience to situations they are asked about. They will help inquirers avoid needless delay and difficulty. No charge will be made for any service.

Where it may be useful, the task force will assist in design, engineering or similar professional activities without fee.

Mr. President, we see here how one corporation is reacting responsibly to the environmental challenge.

#### THE PRAYER AMENDMENT

#### HON. FRED SCHWENGEL

OF IOWA

IN THE HOUSE OF REPRESENTATIVES  
Wednesday, May 17, 1972

Mr. SCHWENGEL. Mr. Speaker, last year I led the fight against the so-called prayer amendment. The amendment before the House last November would have promoted State-written, State-directed, and State-sponsored prayer in our public schools. Seeing it as a direct threat to freedom of religion and the separation of church and state, I undertook opposition to this amendment to protect religious liberty.

At that time, Evangelist Billy Graham, was quoted as having endorsed the amendment. Recently, however, Dr. Graham announced he no longer supports the proposed prayer amendments to the U.S. Constitution. In a news conference held at Charlotte, N.C., last month he said he is "against any type of forced prayer that the state draws up." Dr. Graham said he had studied the arguments before Congress and that he was convinced the Supreme Court had only struck down enforced prayer exercises, not voluntary ones.

This, of course, was the position I held during the debate on the amendment. It is gratifying to know that Dr. Graham, after having studied the issues, has come to support my position. It is clear that this is another indication of a rising feeling in the Nation that prayer amendments are not the real solutions to the problems raised by public education.

The news story follows:

[From the Charlotte (N.C.) Observer, Apr. 5, 1972]

**SCHOOL PRAYER NEEDS A SECOND LOOK, SAYS GRAHAM**

(By Sam R. Covington)

"I don't think we should ever force prayer," Billy Graham said in Charlotte Tuesday, revealing he had changed his mind on the controversial efforts to put a prayer amendment in the Constitution.

But there should be another court test of what many people believe to be a Supreme Court ban on prayers in the public schools, said the Charlotte-born evangelist.

Graham, speaking on the eve of the Charlotte area crusade, said he supported past attempts to amend the Constitution.

But studying arguments before Congress on the matter convinced him that the Supreme Court had only struck down enforced prayer exercises, not voluntary ones.

Graham said he felt teachers should feel free to teach the Bible and conduct religious exercises. A prayer amendment straw vote in the Florida primary revealed overwhelming support for school prayer, he said, and he's convinced people across the nation support it.

Graham, flanked by United Methodist Earl G. Hunt Jr., and Rev. Carl Bates, honorary co-chairmen of the crusade, declined comment on liquor by the drink in North Carolina and on a court suit growing out of the October Billy Graham Day in Charlotte.

He said he felt he shouldn't discuss the suit because it is still before the court, but emphasized that the crusade is open to all who want to attend, a reference to the suit, which alleges that several "hippie" persons were illegally kept out of the Coliseum where Billy Graham Day was held.

Graham said he feels campus unrest has declined because many student objectives were met, many students in recent years have to work to stay in school and because more students are turning to religion.

"I think there is a great spiritual force that has developed on many campuses, and thousands of students are turning to Jesus Christ. That doesn't mean they are turning to the organized church," said Graham.

On the matter of civic, social and moral problems, Graham said he would preach from the Bible on these problems every night.

"I would hope it (the crusade) would have some impact but of course no crusades have ever solved a social problem."

Graham said social reform requires government action as well as Christian concern.

Graham returned to the question of moral and social reform later in the day at a meeting of local ministers, crusade staffers and students of a school of evangelism held in conjunction with the crusade.

"I have a very peculiar and strange feeling about this crusade I've never had before," Graham told the Charlotte ministers.

"I have a feeling this crusade is something special in God's plan for this, my hometown."

Graham said he had no way of knowing what his feeling meant for the city, but suggested that there may be here a person designed for great religious service or a situation that could be altered. He cautioned that the results of a crusade can't be known for years afterwards.

"I don't know what it is, but something is going to happen in Charlotte. This meeting was not planned by accident, it was planned in God's providence."

**PEACE ALERT, USA**

**HON. ALAN CRANSTON**

OF CALIFORNIA

IN THE SENATE OF THE UNITED STATES

Wednesday, May 17, 1972

Mr. CRANSTON. Mr. President, the presidential elections are more than 150

days away, yet thousands of people all over America want to use their vote right now to show President Nixon and Congress that they want the Vietnam war ended.

Polls have been taken, of course, and they tell us that a great majority of the American people want the war ended. Yet the polls are samples of several thousand people—thus really involving only a very few citizens, and in no way effectively dramatizing the public's desire for peace.

I think we have come up with a possible solution. It is called Peace Alert, USA—launched on May 11 by the Senator from Iowa (Mr. HUGHES), San Francisco Representative PHILLIP BURTON, and myself.

Peace Alert, USA, features a straw vote on whether the public wants the war ended by a congressional cutoff of funds. It is simple and direct. It should be effective, for everyone in public office understands the power of the ballot.

On June 30 of this year, the current appropriations bill will expire. If the Vietnam war is to be continued, then it is Congress that must vote the funds. A massive outpouring of antiwar ballots received by June 30 should help convince Congress to end the war by cutting off the money that pays for it.

The Peace Alert, USA, plan has received support from such people as Louis Lundborg, former chairman of the board, Bank of America; Rear Adm. Gene La Rocque (ret.); Jesse Jackson; Gov. Pat Lucey of Wisconsin; Gov. Jack Gilligan of Ohio; Allard Lowenstein; Father Theodore Hesburgh, president, University of Notre Dame; William Myers, chairman, Fund for New Priorities in America; Harold Willens, national chairman, Business Education Funds; Donna Reed, cochairwoman, Another Mother for Peace; Leonard Woodcock, president, United Auto Workers; and many private citizens who have called to voice support.

Every person who cares about this issue is being asked to send in a postcard which reads:

Should Congress bring the war to an end by cutting off the funds?

A "yes" or "no" must be clearly indicated, as must the sender's name, address, and phone number. Names will help verify ballots, and help avoid ballot stuffing.

Cards should be sent to: Peace Alert, USIA, Box 1621, Washington, D.C. 20013

All cards will be counted—and the impact on Washington should be great.

I think this is currently the most direct and effective way the populace has of making its views known.

The vote is one of our Nation's most priceless heritages. I think we can all use it to try to end the war now.

**THE UNENDING BATTLE IN SOUTHEAST ASIA**

**HON. MICHAEL HARRINGTON**

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. HARRINGTON. Mr. Speaker, the recent offensive of the North Vietnamese

illustrates the failure of President Nixon's Vietnamization policy. It appears that Hanoi can force the Saigon Government onto the defensive at any time it desires.

The President's reaction to the offensive was dead wrong. Bombing and mining are serious acts of war. What is needed is not the further escalation of war; history tells us that it is futile and barbaric.

In a recent article, Robert Shaplen discusses the reasons for and the ramifications of the Communist offensive. He correctly observes:

Since it seems unlikely that such bombing will have the desired effect—getting Hanoi to call off the offensive and make major concessions in peace talks—the war, under the abysmal prevailing circumstances, could go on for another three, five, or even, as the Communists themselves have often said, ten or more years.

Vietnamization will not be completed by this June, as the President has promised; American air and naval support will be necessary if the South Vietnamese are to continue the battle. We must not let American involvement in this civil war continue. A definite date for the withdrawal of all American forces must be established.

The full text of Mr. Shaplen's article clarifying the Vietnam situation follows:

**LETTER FROM VIETNAM**

Whatever new responses President Nixon chooses to make to the current military crisis in Vietnam will serve to point up once again the precariousness of our position and the case with which Hanoi can seize the initiative and force the Saigon government onto the defensive. While achieving impressive elements of surprise, the Communists have uncovered serious weaknesses in South Vietnamese military leadership and morale and have moved into numerous strategic towns and areas without strong resistance. Meanwhile, throughout the country, there has been a vast new outpouring of refugees as people once more flee the battle zones and another agony begins for them. The war has never before presented so many complexities and imponderables, nor has it ever before been affected by so many external events. The North Vietnamese, unhappy about President Nixon's summitry in Peking and his projected summitry in Moscow, are more than ever determined to continue fighting, in what for them remains a supreme test of revolutionary will and endurance, even if they are unable to achieve the immediate and complete military conquest of Indo-China.

Hanoi's first objective, of course, has been to prove that Vietnamization and pacification, the twin pillars on which President Nixon's South Vietnamese policies rest, are failures—that the American-built South Vietnamese Army is incapable of fighting by itself, and that the fragile system of village and hamlet security, inspired by the Americans and advertised before the attack with computerized claims of more than ninety-five-per-cent success, is a sham and can be rendered a shambles. It will take a longer period of sustained military, political, and psychological pressure to put Vietnamization and pacification to the full test, but it is already clear that were it not for vast amounts of American air and sea power, much of it hastily brought into action from elsewhere, the first North Vietnamese assaults across the Demilitarized Zone and the Cambodian border would have led to the swift capture of both Huế in the north, and An Loc, a provincial capital only sixty miles north of Saigon. Now, slightly more than a month after the assault began, the

Communists can claim an impressive list of victories. They have taken one whole province—Quang Tri, in the far north, with its capital city of the same name—at least eight district capitals, and forty military bases around the country. The fall of Quang Tri and the ignominious flight of its defenders, the South Vietnamese 3rd Division, whose officers apparently exercised no real leadership and whose men fled south to Hue, where they looted and burned, was the most ominous portent for ARVN, the Army of the Republic of Vietnam. In the wake of this debacle, President Nguyen Van Thieu has fired both the 3rd Division commander, General Vu Van Gial, and the boss of I Corps, the whole northern military area, General Hoang Xuan Lam (who happens to be a close political associate of Thieu's). If the new I Corps commander, the well-regarded (and apolitical) General Ngo Quang Truong, cannot stabilize the situation and defend Hue, using the veteran 1st Division—by now battered and outnumbered—it could mark the beginning of the end for ARVN, especially if the troops of a couple of other divisions elsewhere decide to emulate those of the 3rd.

Farther south, in the Central Highlands, the provincial capitals of Kontum and Pleiku are momentarily threatened, with the likelihood that Communist victories at coastal cities to the east, notably Quang Ngai and Bong Son, will effectively cut the country in two. To the southwest, An Loc remains in immediate jeopardy. In time, these and other cities—or what is left of them after North Vietnamese shelling and American bombing—may change hands several times, but in this phase of the offensive the aim of the Communists has been not only the capture of cities but, even more important, the total engagement of ARVN, including all its reserve elements, as well as South Vietnam's Marines and Rangers, over as far-flung a front as possible. In this aim, the North Vietnamese, though they have made strategic and tactical errors of their own, have pretty much succeeded, and even the government's Regional and Popular Forces, which are ordinarily supposed to operate within smaller geographical areas as the backbone of the pacification-security structure, are being used as mobile troops to try to stem the Communist attacks. This has already created a military vacuum in some places and has led to re-infiltration by Communist agents and Vietcong armed bands into a good many rural areas, especially in the Mekong Delta, previously rated by the government as secure and pacified.

Although the Communist offensive was expected for at least two months and was known to have been planned since mid-1971, the timing and synchronization took the South Vietnamese by surprise—a thing that has happened so often that it, at least, is no longer a surprise. Hanoi, in turn, was undoubtedly surprised, though perhaps not to so great a degree, by the intensity with which Nixon responded—apparently against the judgment of some of his advisers—and by his seeming willingness to risk the domestic political consequences of greatly increased bombing throughout South Vietnam and fierce new air attacks on North Vietnam. Since it seems unlikely that such bombing will have the desired effect—getting Hanoi to call off the offensive and make major concessions in peace talks—the war, under the abysmal prevailing circumstances, could go on for another three, five, or even, as the Communists themselves have often said, ten or more years. There are, of course, a number of alternative possibilities, including Nixon's defeat in November and, subsequently, a fast termination of our effort by a Democratic President. It is worth noting that recently Hanoi has been talking about getting Nixon to change his policies, which may indicate resignation to the likeli-

hood of his reelection and a belief that he can be pressured into a less warlike and more diplomatically amenable position. At the moment, with our side's withdrawal from the Paris talks after fruitless dialogues between Henry Kissinger and Le Duc Tho, of North Vietnam, that possibility seems to have receded. Beyond this, the upcoming round of fighting may well be followed by a more useful round of talks.

If the offensive, or at least this phase of it, fails and the Communists cannot seize and hold certain key areas and cities, they will, as they have always been able to do, revert to small-unit and guerrilla warfare. To do this effectively, and at the same time regroup and be prepared to strike again in a few weeks or months in large-sized elements from newly established sanctuaries, the North Vietnamese will first try to re-create a stronger southern Vietcong force. Vietcong strength has been severely undermined in the last several years, and the main force at present is estimated to be only forty-two thousand, plus another twenty-five thousand regional guerrillas, thirty to forty thousand local forces operating within limited areas, and sixty to seventy thousand political and administrative cadres. Though these are still totals to be reckoned with in such areas as the Delta and the central coastal regions and their surrounding hills, the Vietcong's recruitment, prior to the new offensive, was down from a high of seven thousand a month a few years ago to less than a thousand a month, largely because of past failures and the effectiveness of pacification in many areas. To compensate for this drop, the North Vietnamese infiltration rate at the beginning of the year was double what it was in 1971, and higher than at any time since 1968—when, following the big Tet attack, which was primarily Vietcong-led, large May and August offensives were mainly conducted by the North Vietnamese.

The present strengths and dispositions of the Communist and South Vietnamese regular forces have been widely misrepresented. The North Vietnamese Regular Army today consists of four hundred and eighty thousand men (and there are two and a half million men between the ages of fifteen and forty-nine fit for military service, about a quarter of them with some training. Included in the Regular Army are fifteen divisions of approximately ten thousand men each, and a variety of autonomous regiments and battalions—engineer and artillery units, and so on. It is now reported that eleven of the fifteen divisions (including two partly made up of Vietcong) are fighting in South Vietnam, two are in Laos, one is in Cambodia, and only one remains in North Vietnam. Usually, the North Vietnamese employ half of their divisions at a time. At present, approximately a hundred and twenty thousand of their regular soldiers are fighting in South Vietnam, sixty thousand are fighting in Laos (where another twenty thousand guard the Ho Chi Minh Trail), and twenty thousand are fighting in Cambodia. Of the remaining two hundred and sixty thousand, an estimated half, many of them belonging to autonomous regiments and battalions, are in South Vietnam but have not yet been committed to action; the rest are still in North Vietnam. Since the offensive began, traffic down the Trail has dropped off sharply, but "volunteers" are still being signed up in North Vietnam—particularly urban youths, some of them only sixteen years old, who are being enlisted because they have been criticized for leading too easy lives; their dispatch down the Trail on the three-to-six-month journey southward is a kind of punishment, akin to the dispatch to the countryside of allegedly effete urban elements in China.

Much has been made of the one million one hundred thousand South Vietnamese men under arms today, but when the figures

are analyzed and broken down, of the four hundred and forty thousand men in ARVN—fifty thousand less than the actual number called for by Army planning tables—only a hundred and thirty-five thousand are actually engaged in daily combat. These are the men now fighting against the hundred and twenty thousand North Vietnamese, which means that the ratio of rifleman versus rifleman is just about one to one. Of South Vietnam's more than five hundred thousand Regional and Popular Forces, the great majority are guarding outposts, villages, and hamlets, where they come into contact primarily with the Vietcong or with combined North Vietnamese and Vietcong elements of battalion size or less. The government also has a hundred and thirty thousand armed police, many of them in and around Saigon, where they share the defense of the capital and the nearby provinces with some two hundred thousand Regional and Popular Forces. There are an additional half million armed local militia, known as People's Self-Defense Forces—volunteers whose total enrollment is more than a million but who are issued guns on a day-to-day basis and whose fighting ability is extremely uneven; in fact, whose ranks are frequently infiltrated by the Vietcong.

The chances of a powerful buildup of the Vietcong, including a new apparatus of both "secret" (or illegal) cadres, who stay underground, and legal cadres, who live ostensibly normal civilian lives and hold government or private jobs, will depend to a very large degree on how the morale of Saigon's forces holds up over the next few weeks and months. Indeed, what worries the Americans and the South Vietnamese government as much or more than how well the ARVN will stand up to the present assaults is the ability of the R.F. and P.F. and the P.S.D.F. to endure steady North Vietnamese and Vietcong pressure. Should these elements break in substantial numbers—and they are the objects of a particularly intensive Communist psychological campaign—it would demonstrate both their weakness and their lack of faith in their leaders and in the Thieu government. This could lead rapidly to what the Communists have been demanding in Paris and in their propaganda—the replacement of the Thieu government by a new, roughly tripartite government of "national concord," composed of representatives of the Communist-created Provisional Revolutionary Government, independent "peace-loving" citizens and groups, and unnamed representatives of the present Saigon government with whom the Communists feel they could cooperate. Once such a government was created, negotiations for a cease-fire and a political accommodation could take place, the Americans would withdraw by a specified date, and all prisoners of war on both sides would be returned. This would mean accommodation on Communist terms and the political defeat of the present Saigon regime and its American supporters.

It is possible, if the situation deteriorates further and moves to a sudden climax, that such a solution could be arrived at even before the scheduled buildup of a new Vietcong apparatus is completed. Conceivably, Hanoi might favor a slower schedule, for that would enable the North Vietnamese to continue their announced tactic of "fighting and talking at the same time," while restructuring the Vietcong for the long-haul political and, if necessary, military future of resumed civil war. In this connection, it is significant that both Hanoi and the National Liberation Front, which set up the Provisional Revolutionary Government in South Vietnam in 1969, are now resurrecting another organization, the Alliance of National, Democratic, and Peace Forces, which was formally established shortly after the 1968 Tet offensive. The Alliance, headed by a fugitive Saigon lawyer named Trinh Dinh Thao, was sup-

posed to organize urban intellectuals as a sort of sister group of the older N.L.F. Its leaders were a dozen or so Saigonese who had been living in the city longer than the members of the Front, which was formed in 1960, and who did not flee to the rural areas until shortly before or during the Tet offensive; a similar Alliance in Hue stayed in that city until the Communists gave it up after a bitter three weeks' fight. For a while, it appeared that the Alliance was in some competition with the N.L.F. (and later the P.R.G.) as a bridge-building group between the countryside and the city, and that it might play a more important role in future negotiations. But then it became apparent that although there may initially have been some purposeful or planned competition between the Alliance and the N.L.F., the latter was still supreme and the Alliance had been created primarily for propaganda and proselytizing purposes. For some time, the Alliance all but dropped out of sight, though it surfaced occasionally as a potential adjunct group.

Recently, on April 20th, the fourth anniversary of the founding of the Alliance, both the Front, through its chairman, Nguyen Huu Tho (also a former Saigon lawyer), and Hanoi, through President Ton Duc Thang personally, sent the Alliance laudatory anniversary messages. I have been told that this may be the first step in a plan to move the Alliance back into an important role as a would-be "caretaker government" in Saigon, or at least part of such a government. The Alliance would then fulfill what was supposed to be its original purpose back in 1968—to serve as an intermediate body, representing important elements of the Saigon community, in helping the P.R.G. to set up a provisional coalition preceding elections and the establishment of a permanent coalition government which the Communists would soon hope to dominate. What the Alliance would in effect do is widen the negotiating base for the Communists by including for example, some overseas sympathizers living in Paris and some of the better-known political and religious elements in Saigon. This does not mean that the Communists are willing to accept President Thieu's offer, included in President Nixon's eight-point proposal of last January 25th, to resign a month before new elections and let Senator Nguyen Van Huyen, the head of the South Vietnamese Senate, take over an interim administration. A caretaker regime, though, as the Communists and also some anti-government non-Communists see it, would ostensibly be more attractive to a wider spectrum of Saigonese and could better help establish a workable coalition. The Communists remain firm in their insistence that such a regime could not include "Thieu and his henchmen."

There is, of course, no indication at all that President Thieu is ready to step down in accordance with his offer unless the Communists agree to a cease-fire and show a willingness to negotiate with the understanding that all their forces are to be withdrawn and that there will be an election six months later. Thieu has said he would quit a month before the election but has never said he wouldn't be a candidate again. The Communists have denounced the eight-point proposal as a sham and a fraud that would leave Thieu's apparatus intact.

Actually, since the attacks, even Thieu's leading opponents in the Senate and the House of Representatives, as well as the An Quang Buddhist faction, have been supporting him in the battle against the Communists, though they make a subtle distinction between defense of the Second Republic and defense of the present regime. However, should the situation deteriorate badly Thieu's strength could wane, and a new solution, involving some sort of caretaker government, could be put together. While still fighting

and talking at the same time, the Communists could then simply move the Alliance of National, Democratic, and Peace Forces back into the forefront in a tactical maneuver to gain more time, seeking support among the millions of fence-sitting Vietnamese who are ready and willing, out of war-weariness alone, to get the accommodation process started.

If this dreadful war is to end sooner rather than later, such a development conceivably could also be stimulated by big-power intervention, notably on the parts of the United States and the Soviet Union to get the peace talks in Paris going again on a more productive basis. Hanoi would probably prefer to wait until after the American election and see if Nixon can be defeated or forced to back down; but if the fighting slackens, Hanoi may well opt for a resumption of serious private talks. Both Saigon and Hanoi have been aware of the possibility of the Moscow summit's being cancelled or, more likely, stalemated to the point where any possible agreement over mutual reduction of aid to the two fighting sides would be rendered impossible. Most observers here, however, feel that Moscow wants to talk with Washington about other subjects, including European stability, the Middle East, technological assistance, and strategic-arms limitation, far more than it wants to talk about Vietnam, and thus the Russians might be willing to make concessions on Vietnam in return for American concessions on other matters more important to them.

Vietnam, it must be sadly noted, has been just as much of a military testing, or proving, ground for the Russians as it has been for the Americans, with Soviet missiles and radar-guided anti-aircraft guns attacking high-flying B-52s, with MIG-21s jousting with Phantoms, and now with wire-controlled heat-seeking missiles used against tanks and low-flying aircraft. Moscow has promised Hanoi continued unlimited amounts of modern weaponry, including tanks—which have been used so recklessly in the current attacks that, as one American official has commented, "you'd think they were going out of style." Such promises were strongly reaffirmed last month, apparently, when Konstantin Katushev, a leading member of the Soviet Union's Party hierarchy, and Deputy Foreign Minister Nicolai Piryubin travelled to Hanoi. Moreover, whatever inclination the Russians might have to talk about mutual arms limitation in Vietnam is not likely to be enhanced by renewed American bombing of North Vietnam and our threats of blockading Haiphong Harbor. There is no reason to believe that Nixon can sway Hanoi any more than President Johnson did with more bombing over a longer period, and damage to Russian ships in Haiphong Harbor—one of which reportedly sank after our April 15th B-52 raid—assuredly strengthens, rather than weakens, Hanoi's position vis-a-vis Moscow. Although nothing has been said about it, after the first Haiphong attack in mid-April the Russians diverted several ships bound for North Vietnam, but then the voyages were resumed. (Incidentally, many Vietnamese civilians and foreigners have by now been evacuated from Hanoi and Haiphong.) If more Russian ships are hit, the propaganda value probably will bulk larger in Moscow's eyes than the prospect of a larger conflict.

Perhaps because this has been so obviously a North Vietnamese, rather than a Vietcong, offensive, Hanoi has sought less than before to pretend that the battle is being waged by the "liberation forces" in the South. As General Vo Nguyen Giap, the chief of the North Vietnamese Army and Hanoi's Defense Minister, told a National Assembly meeting a few days before the offensive, "Let the great rear, the Socialist North, give its best and fullest support to the front line to meet all

the latter's needs in manpower and materiel." This theme has been constantly repeated since the offensive began, in newspaper editorials and on the radio, with various Hanoi spokesmen lauding the "patriotic" turnout of soldiers and with Hanoi festooned with poster pictures of the "great victories" in the South.

Saigon has blossomed out, too, with hortatory banners calling for "the final struggle to victory" and with newspaper pictures of battlefield successes. But meanwhile the popular mood seems to have been almost one of relief at the idea that this may indeed be the beginning of the end of the war and that, whatever happens, peace may finally come, after twenty-seven years, through accommodation and compromise. There has been some, but not much, hoarding of rice, and the price of gold is stable. Some think this indicates an attitude of confidence, but most interpret it as resignation. There are perhaps three divisions' worth of headquarters troops and other such deskbound soldiers doing bureaucratic jobs in and around the city, and while the government talks of getting them away from their desks and out into the field, no one has yet done anything about it.

In the early months of the year, despite a vast amount of electronic intelligence showing, among other things, a tremendous influx of men and materiel down the Ho Chi Minh Trail, many American and South Vietnamese intelligence people expected no major offensive until May or June but probably a series of what are known as "high points," including more terrorist activities and localized attacks, in April. Actually, according to information from prisoners and other intelligence sources, it was known that an attack was initially planned for mid-February, but for some reason, probably a combination of American air interdiction and an inability to get enough supplies in place (and maybe even because Peking secretly intervened prior to President Nixon's China trip), the attack was postponed. Late in March, however, a number of prisoners captured in the Highlands area near the city of Kontum, not far from the point where Cambodia, Laos, and South Vietnam meet, gave the first explicit information that a major attack was scheduled for April. The prisoners indicated that the offensive would start in the Highlands region and that the overall objective was to achieve quick successes and seize and hold key strategic and populated areas. The "total victory" the Communists have spoken of publicly as well as in their captured documents—meaning both political and military victory and the defeat of pacification and Vietnamization—was to come later in 1972, these prisoners indicated.

Although an offensive across the D.M.Z. was mentioned in captured documents as part of a later phase, for some reason not yet known the North Vietnamese decided at the last moment to delay in the Highlands and to concentrate their main efforts across the D.M.Z. What could have changed their minds was the weather, which was bad at the end of March, with low-lying cloud cover making it extremely hard for the high-flying American bombers to attack. There has also been some speculation that a delegation of Russian high-ranking generals that visited Hanoi late in March may have had something to do with the shift in plans, but the more expert feeling is that while the Russians did nothing to restrain the North Vietnamese, they were in Hanoi mainly to talk about military aid and not push buttons for this attack. At any rate, the decision was made to strike across and around the D.M.Z. with elements of four divisions—including three of the same ones that made a similar attack in 1966, when it took most of two United States Marine divisions and more than one ARVN division some seven months to push them back into North Vietnam.

One of the most puzzling things is the apparent faulty intelligence about the size of the invading force—approximately fifteen thousand combat troops, plus two regiments employing a hundred and eighty Russian Second World War T-54 tanks. As one American officer said, "We were wrong about the enemy's specific intentions and wrong about his capabilities because we thought too much in broad terms about where and how he could hurt us." Following an extremely heavy forty-eight-hour artillery barrage, which began on March 30th, the invaders moved swiftly across the D.M.Z. in several places, using some of the same routes they had chosen back in 1966. Opposing them was the newest and least tested South Vietnamese division, the 3rd, about half of whose men came from the highly rated but oversized 1st Division and the rest of whom were inexperienced draftees and former members of the Regional Forces. One of its regiments cracked badly almost at once; many of its men deserted and fled, leaving behind some heavy artillery pieces at a firebase named Camp Carroll. This helped the Communists to overrun quickly about a dozen other firebases across a ten-mile strip below the D.M.Z. The remainder of the 3rd Division, together with most of a Marine division flown up from Saigon by the Vietnamese Air Force, part of a Ranger force flown up by the Americans, and perhaps most significant, an armored Vietnamese unit with M-48 tanks that were rushed up from nearby Phu Bai, where it had been engaged in a training exercise, established a new line running along the Cua Viet River, and this held until April 28th.

Military experts here are still puzzled about why the Communists didn't try harder with their tanks, of which they initially lost about half, to low-flying South Vietnamese planes, to American M-72 anti-tank weapons and bazookas that were quickly supplied to the ARVN, and—after the clouds lifted, three and a half days later—to the first big waves of American fighter-bombers and B-52s. The original Communist plan, according to our intelligence, was to push on and take Hue, the main target, in ten days. The best explanation of why the Communists stopped long enough for the South Vietnamese to send reinforcements was that they outran the range of their artillery, which was set up mostly in the D.M.Z., and, more important, their supplies; it takes between one and two truckloads of gasoline and ammunition a day to keep a T-54 tank in action. In any event, despite continued heavy expenditure of artillery and surface-to-air missiles, the Communists lost their chance to drive ahead quickly toward Hue, where another fight such as took place in 1968 remains imminent. Anticipating just such a thing, many of the city's inhabitants, as well as refugees who fled there from Quang Tri, have now joined a great exodus southward toward Danang, by car and truck, by whatever boats they can board, and on foot. Under these chaotic conditions, some sort of internal political blowup, triggered by the Communists, is fully likely in both Hue and Danang when the fighting gets serious there. As usual, it is the common people of the country who are suffering most, though the government, in the early stages of the conflict at least, has done a better job of taking care of refugees than before. The Communists, incidentally, persuaded or forced an estimated twenty-five thousand people from the northern Quang Tri area to go north with them, into the D.M.Z., or to North Vietnam, where they will probably be used as laborers.

The next Communist target turned out to be the III Corps area, north of Saigon, although some activity also began taking place in the Central Highlands. A week after the attack in the north, the North Vietnamese captured Loc Ninh, a district capital in Binh Long Province, north of Saigon, where in

1967 they lost more than a thousand men in repeated human-wave assaults. This time, they took it swiftly and immediately set up their own village committees and local rule, using some government people who didn't flee south and thus following their new approach of seeking to use willing rural officials. Then, still moving quickly, the Communists began the attack on An Loc, the provincial capital of Binh Long, closer to Saigon—which some Americans and Vietnamese believe remains the main target of this phase of the offensive, rather than the Highlands or the northern provinces of Quang Tri and Thua Thien, which President Thieu feels the Communists most want to seize and hold for purposes of future negotiation. As of this writing, the siege of An Loc has lasted a month, and the government forces, with the help of American airpower and their own, have so far managed to hold it, at the cost of large losses to themselves as well as to the Communists. The city is more than half destroyed, and whoever takes or retakes it will capture little but rubble. From the Delta, the 21st Division was sent up to help defend An Loc, but the unit bogged down south of the city on Route 13—now called Thunder Road, because of all the Communist mortar fire there—and other reinforcements had to be flown in by air. A new major battle that is shaping up along this road would directly threaten Saigon and probably be accompanied by sapper attacks in the capital, though it is doubtful whether at this juncture the Communists would call for a general uprising in the city, since one they called for in 1968 failed to materialize.

While the An Loc siege went on, the Communists were not inactive elsewhere. With the 21st Division gone from the Delta—two others are still there—they stepped up their small-unit assaults and fire attacks in about eight Delta provinces where there are only Regional and Popular Forces and Self-Defense elements left. Some territory has been lost in these provinces—where the main pacification effort has gone on, because the Delta is the most populous part of South Vietnam. At the same time, the long-heralded offensive in the Highlands picked up steam and the Communists seized several firebases and base camps north and west of Kontum, the capital of Kontum Province, and mounted their major attack on Kontum itself and on Pleiku.

With only five hundred Vietnamese-operated helicopters and less than nine hundred American ones still in South Vietnam, the whole helicopter-supported firebase concept, which General William C. Westmoreland, the former commander-in-chief of American forces, helped initiate but in recent months has criticized, is more than ever questionable. In the days when the Americans were doing most of the fighting, their enormous mobility, with more than four thousand operational helicopters, made the firebases militarily useful and defensible, but the South Vietnamese, left to defend the firebases with a handful of American advisers, are stuck with this concept, and the hard-hitting North Vietnamese are aiming to seize the bases in various parts of the country even at a heavy cost in lives—a factor that General Giap never seems to worry about. One wonders why the firebases are so important to either side, and why the Communists haven't simply bypassed them and struck sooner at their main objectives. But then so many things both sides have done in their ludicrous war haven't made sense.

In addition to hitting in the Highlands, the Communist have managed to cut the key roads leading in and out of them, including those running north and south from Kontum to Pleiku and beyond, and west and east across from Pleiku to the city of Qui Nhon, the capital of Binh Dinh Province, on the coast. They have also cut Highway 1, the

main national road running north and south along the entire length of the coast and then swinging west to Saigon and into Cambodia to Phnom Penh. These are the same tactics they followed during the French war, and the obvious effort is to keep the spread-out government troops from moving supplies by road as well as by air. Korean troops defending the Highlands Route 19 from Pleiku to Qui Nhon came in for severe criticism from the South Vietnamese for not trying very hard. (The story is that, having received excellent pay in their service here for a long time, they now want to go home, and they resent Nixon's efforts to keep them here.) Recently, they have been more active, and succeeded in reopening the road through the An Khe pass on Route 19.

The Communists' over-all strategy in the Highlands areas is to cut South Vietnam in two, as was done at the end of the French war and was almost done again in 1965, when President Johnson sent a huge American force in to prevent such a debacle. Important as Saigon is, South Vietnam's Central Highlands and the Bolovens Plateau in Laos adjacent to them remain, in the opinion of the most knowledgeable military experts, the key to the whole strategic situation. The coastal provinces to the east—Quang Nam, Quang Ngai, Binh Dinh, and Phu Yen—have always been strong Communist areas, and as the offensive has progressed, more and more local attacks began occurring there, coinciding with the cutting of the roads and the luring of ARVN divisions and reserves into the main battles. A number of firebases and district towns and villages have been hit and some have been captured in these coastal provinces, where Regional Force units are up against not only crack North Vietnamese troops but sizable Vietcong forces. Most of the Regional Forces are holding up satisfactorily, but there have been instances where they have cracked and run, and this is the sort of thing that has Saigon worried, for if it becomes more common the deterioration of morale is apt to worsen swiftly. The traditional Communist strength in the coastal region dates back to the early days of the Vietnam, before the French war began. When the Vietminh soldiers went north after the end of the French war in 1954, they left behind wives and girl friends, a lot of whom gave birth to sons who are now seventeen and eighteen years old. Many of them today are members of hard-core Vietcong units.

Ranking American officers privately admit that a number of ARVN regiments, as well as an appreciable number of Regional and Popular Force units, have fought poorly. Communist penetration of the local Self-Defense Forces has led in some cases to Communist victories, especially in the Delta, and to the creation of new local governments—often including former pro-Saigon hamlet council members—sympathetic to the Vietcong. In March, President Nixon quoted General Creighton W. Abrams, the commander-in-chief of American forces in Vietnam, as predicting that the South Vietnamese lines "may bend [but] they will not break," and this is becoming more uncertain day by day. The paramount question remains that of endurance—a quality that the North Vietnamese always seem to possess beyond comprehension but that remains to be tested among the majority of South Vietnamese.

Since all of the ARVN except the special reserve units, the Marines, and the Rangers are accustomed to living with their families and even traveling around the country with them, how well the 21st Division, for instance, which has long been based in the Delta, will conduct itself north of Saigon seems questionable. The other vital factor, which is equally difficult to gauge, is the extent of commitment of each side's total forces. The South Vietnamese have probably committed more of their regular units so far

than the North Vietnamese. About seventy or eighty per cent of ARVN elements are involved in defensive battles around the country, while no more than fifty or sixty per cent of Hanoi's forces in South Vietnam have been committed.

Hanoi's ability to keep so many men in reserve is all the more remarkable in view of the fact that the North Vietnamese are fighting in Laos and Cambodia as well as in South Vietnam, and that they have gained victories during recent weeks and months in both those countries. Herein lies another danger for South Vietnam—that its forces will be outflanked, which means that new sanctuaries can readily be reestablished and new invasion routes opened. Although the North Vietnamese control of the Bolovens Plateau and their drive eastward toward the China Sea coast make up the single most significant strategic factor in the present situation, second in importance is the stepped-up activity in Cambodia by both North Vietnamese and the Khmer Rouge, the indigenous Cambodian Communists, whose numbers have been estimated to be about twenty-five thousand but are now said to have doubled as a result of some recent hasty recruitment or impressment of Cambodian villagers. Siem Reap, northwest of Phnom Penh, is once more the scene of fighting, as are other areas of Phnom Penh.

The sections of Highway 1 cut between Saigon and Phnom Penh, amid heavy fighting on both sides, have placed the Cambodian capital under a new threat of being isolated and open to more rocket attacks, such as one on March 21st, when more than a hundred and twenty people were killed and more than two hundred wounded. Most of the province of Svay Rieng, in southeast Cambodia, has been occupied by the Communists, and the North Vietnamese 1st Division, which was occupying a corner of the country near the Gulf of Siam, has been moving back toward the Mekong Delta. In northern Laos, elements of two North Vietnamese divisions are still in control of the Plaine des Jarres, although the siege of the U.S. Central Intelligence Agency base at Long Cheng has been lifted after many weeks of fighting. The Communists still threaten the Mekong Valley to the west, however, between the royal capital of Luang Prabang and the administrative capital of Vientiane, and their dry-season offensive, now at an end, has left them in a stronger position than they have been in for many years, in southern as well as northern Laos. Inasmuch as they now control more territory in both Laos and Cambodia, and have probably cached more materiel in more places than in previous years, their position, as the wet season is about to begin, is much stronger than it was at this time last year or the year before. This, plus their manpower reserve and the fact that they have conserved their forces well so far during the current offensive, makes it almost certain that, if necessary, heavy fighting will continue throughout the wet season in all three countries, but especially in South Vietnam, where Giap will undoubtedly spare no effort to grind the ARVN forces down and keep them moving about.

The present offensive and the general developments in all of Indo-China can be said to have had their genesis in May, 1970, with the South Vietnamese-American invasion of Cambodia, and in February and March, 1971, when the South Vietnamese went into Laos with heavy American air cover. The Cambodian invasion was a partial military success, but, more important, it was a first step in widening the war, just as the far less effective and more costly Laos incursion was a second step. Both invasions forced the Communists to reevaluate their entire strategy and tactics, and it has taken them until now to respond to what they regard as a new American challenge in Indo-China. Following

the death of Ho Chi Minh in 1969, a series of debates began in the North Vietnamese Politburo and among the country's military. During a Central Committee meeting at the end of 1970, it was more or less decided to press the fight against the Americans as the primary objective and to build up a strong rear in North Vietnam. The Laos incursion, the secret negotiations in Paris, and the publication of President Nixon's eight-point proposal again forced the North Vietnamese to revamp their strategy. The debate raged during a four-day meeting of the Fatherland Front Congress in Hanoi in December, 1971. The Fatherland Front had been formed in 1955 as an all-inclusive organization replacing the earlier Vietminh and its successor organization, the Lien Viet Front, and after the opening congress only one other had been held, in 1961, prior to last December's. Several important North Vietnamese leaders made speeches, but the most significant one was made by Truong Chinh, a ranking member of the Politburo and the head of the Standing Committee of the National Assembly. Truong Chinh declared that "the spearhead of the world revolution must be directed at the U.S. imperialists and not at anyone else." Analyzing in detail Nixon policies, he took note of the dangers to the Communists inherent in them because of Nixon's willingness "to negotiate with a number of countries, especially the Soviet Union and China, with a view to blocking and threatening the two greatest Socialist countries; to take the fullest advantage of the contradictions between these two countries; to create contradictions among the Socialist countries, with a view to achieving conditions advantageous to the Americans; to seek a détente among the big powers of the world; and to continue to bully small countries."

The most seriously threatened countries, he said, were, of course, those in Indo-China. This theme has been constantly repeated, as it was in a joint communiqué issued in the first week of March by North Vietnam's Premier Pham Van Dong and Cambodia's exiled Prince Norodom Sihanouk, when he visited Hanoi from his new home in Peking. At the Fatherland Front Congress, there was revealed what some analysts believe was a difference between, on the one side, Truong Chinh and General Giap and, on the other, Le Duan, the head of the Laodong (Workers' Party. Le Duan was represented as wanting to move more carefully toward negotiations, to put more emphasis on building up the Socialist rear, and perhaps to allow the P.R.G. more latitude in dealing with the Saigon regime. Although political disputes in Hanoi have for the most part tended to be exaggerated by outside observers, it remains true that Truong Chinh has tended to maintain a pro-Peking line, while Le Duan is known for a pro-Moscow orientation. On Le Duan's birthday, early in April, the Soviet Union and other Eastern European nations went out of their way to send him special greetings, which can be taken as a sign not only of his position as first among equals in the Hanoi hierarchy as far as Moscow is concerned but as a reminder that, rift or no rift, it is Moscow's man who is running the Laodong Party and who helped negotiate the deal whereby the North Vietnamese obtained the vast amounts of materiel necessary for carrying out the current offensive.

In the matter of ideological undercurrents in North Vietnam, there has recently come to light a fascinating article published in the prestigious Laodong Party theoretical magazine *Hoc Tap* and written by Tran Quoc Hoan, who, as Minister of Public Security, is Hanoi's tough top policeman and a close associate of Le Duan and Premier Pham Van Dong. Inveighing against "counter-revolutionaries" and "rebels" in North Vietnam, Hoan's article—which is

specifically directed at Party leaders and not at the rank and file—seems to be not only a warning that the war-weary peasant and small shopkeeper must be made to toe the economic line but, beyond this, an alert against real ideological strife. Such conflict, he seems to imply, could be a reflection of the continued Moscow-Peking split and could be fostered by the Fatherland Front, as Chinh's (and, by implication, Peking's) instrument.

The Chinese, who at the outset played down this spring's offensive, both as believers in "protracted warfare" and because it was backed by the Russians, later, on April 10th, broadcast a Ministry of Foreign Affairs message in English protesting the resumption of American bombing in the North and adding, "The Vietnamese nation is a whole. It is fully legitimate and a matter of course for the Vietnamese compatriots in the northern and southern parts of the country to support each other and jointly combat the aggressors. . . ."

A whole series of captured notes and documents serve to show how meticulously the present attacks were planned for many months. In September, 1971, at a large conference of the Central Office for South Vietnam, or COSVN (the politico-military headquarters that, from various locations, runs the war in the South for Hanoi), the opening speaker, who was unidentified but whose remarks were broadcast a month later by Radio Liberation, said, "This congress is called for assault, urging our armed forces and people to surge forward in concert, with a tremendous stamina, to endure more hardships, to make all sacrifices, and, together with compatriots throughout the country, to realize President Ho's sacred testament [and] resolutely fight the U.S. aggressors until complete victory." Documents and prisoner interrogations have all emphasized that the long-range Communist objective has been to "seize and hold certain land and populated areas," and this is the script that has been followed, along with the one of "pinning down big [ARVN] units." This explains why the Communists have fought so long and hard for An Loc. There are those who have questioned the wisdom of the South Vietnamese government's stand there (Hué, as a symbol, is something else again), but President Thieu's orders have been to defend An Loc at all costs, possibly because of its proximity to Saigon and his fear that a victory for the Communists there would inspire them to strike with a sapper battalion or so at Saigon, which would serve both to frighten the population and to make Thieu's own position less secure.

The point stressed in everything the Communists broadcast and write is that the Saigon government's "human and economic resources" must be attacked, and this is why so much emphasis is being placed on a "ten-point amnesty program" promulgated by the P.R.G. and designed to make as many wavering troops and bureaucrats as possible desert to the Communists. The program, which is being widely publicized by radio and by means of a pamphlet signed by Mme. Nguyen Thi Binh, the head of the P.R.G. delegation at the Paris peace talks, carries the obvious message that those who switch allegiance now will spare themselves and their families trouble if and when the Communists take over. The pamphlet is full of such pronouncements as "Families which urge their members to desert the enemy ranks and return to their relatives and people will be given credit for their achievements . . ." and "Families which urge their members to revolt will be regarded as 'insurgent' families and will be praised and rewarded properly." Soldiers in all government ranks who resent being conscripted and refuse to fight "will be positively assisted by the people and revolutionary administration." Regional and Popular Force and Self-Defense Force troops "who have entertained

good relations with the people," allowing them to work and travel about freely, "will be recognized as patriotic by the people and the revolutionary administration." Even government "spies," the pamphlet says, will be forgiven, which seems unlikely. Special appeals are made to "high-school and college students, intellectuals, and civil servants" who have been conscripted, as well as to the police force, which has been used as "a tool for directly scraping up and pillaging our people's wealth and repressing and terrorizing their struggle movements." The fact that the Communists have laid so much stress on this program may be taken both as an admission that the Vietcong structure has been weakened and as underlining the importance of the antipacification drive. At the same time, if there are definite Communist victories, the amnesty appeal could have a telling effect.

Though the Communists have long prepared for this offensive, carrying and distributing arms and ammunition far more effectively, over a wider area, than the South Vietnamese and the Americans suspected, they still have transportation problems—moving materiel from rear to forward supply depots in bad weather and slipping it past government lines and roadblocks, and so on—and they have already expended astonishing amounts of materiel. However, the individual North Vietnamese soldier still travels a good deal lighter than his South Vietnamese counterpart, the South Vietnamese Army having been molded far too much in the American logistical image. How much Vietnamization is really Americanization has become apparent during the offensive and in the South Vietnamese reaction to it. It is already quite clear that, however many, or few, Americans remain here in the coming months or years—the Vietnamization of the ARVN is supposed to be finished this June, but the Vietnamization of the Air Force will take another year—those who remain will have to retain a major part of the responsibility for the management and movement of materiel. They will also have to continue steady air and naval support indefinitely if the South Vietnamese are to be kept going—certainly a questionable proposition as far as Congress and the American people are concerned—and they will have to continue working on the coordination of air and ground support and artillery fire.

During the recent fighting, American advisers have sometimes taken over the direction of action in a way they hadn't done since 1962 and 1963, when they weren't supposed to take charge but did so anyway. This doesn't mean that the South Vietnamese, in most instances, didn't conduct their own operations, but it was an American adviser, for instance, who blew a vital bridge at the Cua Viet River in the north, and, in the III Corps area around Saigon, Major General James A. Hollingsworth, the senior military adviser, has taken charge so much and used the personal pronoun so vociferously—threatening to kill as many North Vietnamese as he could all by himself—that he was taken to task by headquarters for his remarks, though he kept right on making them; "good old Holly," as his friends call him, has become something of a latter-day hero among Americans in the gung-ho set.

On the other hand, as has long been predicted, friction has cropped up between the Americans and the South Vietnamese during the dwindling days of the large American presence. At Camp Carroll, the firebase near the D.M.Z. that fell early in the offensive, there was resentment over an American helicopter's removal of two American advisers at the height of the action, while at Hoai An, a district capital in Binh Dinh captured by the Communists, the Vietnamese territorial forces ran off in civilian clothes and abandoned their advisers, who had to be

lifted out by helicopter under fire as the Communists were taking the place. At An Loc, the Americans remained to direct the defense of the city when it was under its strongest attack.

The coming weeks and months will not be easy ones for the advisers still in the field, especially those far out in the rural areas, which are bound to be regularly attacked; nor will they be easy for the six thousand American combat troops still in the country. Life will be a lot easier for the twenty-five thousand Americans in Saigon and for the twenty thousand at the main base of Long Binh, just to the north—unless, of course, both places come under strong attack. Meanwhile, these Americans lead luxurious, if fretful, lives. In Saigon, the work schedule is long and hard, but at Long Binh there is plenty of time for both soldiers and officers to enjoy the base's eleven swimming pools, including a newly completed Olympic-size one; a new three-hundred-and-five-thousand-dollar theatre, just opened; and tennis courts and massage parlors. Originally, the idea behind building such luxurious installations at the few remaining bases was to keep the Americans happy, so that they wouldn't go roaming around buying drugs. (At Long Binh, in fact, no one without official business is allowed off the base.) As usual, however, things seem to have been carried too far, and something approaching a combination of Disneyland and Beverly Hills has been created.

If the remaining Americans here are in ambivalent positions, with a relative hand-fail still taking a highly active role in the war, along with the land- and sea-based airmen, while the rest are in a bizarre Long Binh-like limbo, the Vietnamese are, to be sure, becoming more aware at last that their basic reliance on the Americans is about to end. Despite the continuing dependence on our air support, military hardware, and economic assistance, they now know that the gruelling ground war, which is what really counts, is theirs to win or lose. President Thieu, perhaps for that reason, and because he is fully aware that his overthrow is one of the Communists' principal objectives, has taken personal charge of the war in a way that has brought him both respect and criticism. Almost daily, Thieu makes a trip to one or another of the fronts, and on his orders troops have been shifted from one end of the country to the other. Though Thieu's military experience has been considerable, how good a strategist he is is open to question, especially when he is pitted against Giap. So far, Thieu has done just what Giap wants him to do by shuttling ARVN troops all over the place. The main criticism one hears is that he has too frequently bypassed his own Joint General Staff, headed by the able General Cao Van Vien, and has worked directly with the four corps commanders in the country and with those division commanders he feels he can trust because they are his personal friends—which doesn't mean they are competent, or even have sufficient combat experience, which several of them do not, having never commanded regiments, or even battalions, and having served only as province chiefs.

Nixon long ago let it be known that we were "not wedded" to the Thieu administration, even though we would not participate in its "overthrow." If the Communist offensive can be halted, Thieu will enhance his position politically. If it continues, as it seems bound to do, and the process of military erosion feared by many takes place, he will be in exactly the sort of trouble the Communists hope for. It is conceivable that Thieu, if he faces a critical situation, will appoint a new military directorate, such as existed before he became President in 1967.

He might thereby forestall such a move by dissatisfied generals and younger officers who are determined to fight to the end by any means necessary. Anyway, it is no accident that Thieu has kept units most loyal to him around the capital (which is what President Ngo Dinh Diem did back in 1963).

While most of Thieu's political opponents, including not only the Buddhists but a miscellaneous array of minority groups and individuals, have either come out in support of him or at least issued anti-Communist and save-the-nation declarations, an exception has been retired General Duong Van Minh, who entered and then quit the race for the Presidency last fall. Without mentioning Thieu by name, but making it implicit that he was not supporting the regime's policy, Minh, a few days after the offensive began, said in an interview with a foreign news agency that if the war continued he saw only "more suffering and mourning for innocent people," as well as "more dependence on foreigners for the Vietnamese people on both sides." He called for "a political solution based on the principles of national self-determination and national reconciliation by the Vietnamese people themselves" and for a return to negotiations. His indirect criticism of Thieu was most sharp in a passage in his statement saying that "in order to make the negotiation talks become successful, South Vietnam must have a government responsive to the wishes of the people, a government genuinely chosen by the people," that "all forms of oppression must be put to an end," and that "all the elements of the opposition, including students who have unlawfully been put under arrest, must be freed."

There have been no anti-war demonstrations, or any other kind, since the heavy fighting began, and orders have been given for the police to crack down harshly if any start. Though the situation could change overnight if the military situation worsens, there have been no Communist incidents in Saigon during the first month of the offensive. Although police security in the capital has vastly improved in the past year or so, the Communists surely have their agents underground in the city and probably some sapper teams either within it or nearby. The war right now, however, is still being determined in those areas where the main forces are engaged. The inroads by small Communist units in the Delta are increasing daily, and the situation there is not made better by the deteriorating one across the border in Cambodia, where the new government of President Lon Nol and Prime Minister Son Ngoc Thanh is shaky, despite the recent ratification of a new constitution. If the Communists should establish a liberation government in Cambodia (and Sihanouk recently sent his mother, who is still living in Phnom Penh, a message telling her he would soon see her in Siem Reap), the problems could swiftly multiply for Lon Nol and his South Vietnamese allies. Increasing Communist pressure to force Prime Minister Souvanna Phouma of Laos to compromise and form a new coalition government in accordance with the 1962 Geneva agreements has followed this year's military campaign there, and this, too, is scarcely conducive to feelings of confidence in Saigon.

One American who is in a position to know says, "The situation may be serious, but it's not hopeless." The reverse of that phrase has long been a popular piece of cynicism in Vietnam. Everyone from President Thieu and President Nixon down is ready, willing, and eager to negotiate, but the question remains how and when. The Vietnamese Communists like the Chinese, are convinced that politics comes out of the barrel of a gun, and this, at the moment, is the message of the new offensive.

—ROBERT SHAPLEN.

THE PRESIDENT'S NEW WAR  
STRATEGY

HON. JOHN. V. TUNNEY

OF CALIFORNIA

IN THE SENATE OF THE UNITED STATES  
Wednesday, May 17, 1972

Mr. TUNNEY. Mr. President, Philip W. Harry, chairman of the Santa Cruz, Calif., county board of supervisors recently presented me with resolution No. 153-72. The resolution reflects the thinking on the President's new war strategy of the members of the board as individuals and of more than 2,000 persons who attended a public hearing on Wednesday, May 10, 1972, in the Santa Cruz Civic Auditorium.

I ask unanimous consent that the resolution be printed in the RECORD.

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

RESOLUTION No. 153-72

Resolution supporting Southeast Asia Initiative opposing war in Southeast Asia

Whereas, we realize that we were not elected members of the Santa Cruz County Board of Supervisors to become involved in establishing or altering our nation's foreign policy, and

Whereas, there is no known legal precedent for our expressing a viewpoint in regard to said foreign policy, and neither is there any known legal impediment to our doing so, and

Whereas, we firmly believe that the President has exceeded his Constitutional authority in his announcement of a blockade of the harbors of North Viet Nam, and

Whereas, the effects of a war in Southeast Asia, or any other area on earth, are felt in all sections of our country, including Santa Cruz County, and are therefore of concern to the citizens of this county, and

Whereas, we do not presume that we necessarily represent the thinking of all the people of Santa Cruz County in regard to the aforementioned foreign policy as it affects the war in Southeast Asia, but reflect the thinking of ourselves as individuals and of more than 2,000 persons who attended a public hearing on Wednesday, May 10, 1972, in the Santa Cruz Civic Auditorium, and

Whereas, this thinking also has been reflected by many other persons in Santa Cruz County, and

Whereas, we share with concerned citizens in Santa Cruz County and all over the world the conviction that war in any form, by any people against any other people, is immoral, and

Whereas, we also deplore all acts of violence, disturbance and disruption at home and abroad;

Now, therefore, it is hereby resolved that the members of the Santa Cruz County Board of Supervisors, as individuals, deplore the war in Southeast Asia and urge the enactment of any legislation which will bring this war to a close and prevent repetition of such involvement in any other area.

It is further resolved that said members of the Santa Cruz County Board of Supervisors endorse the Southeast Asia War Initiative.

It is further resolved that the Chairman of this Board is authorized to deliver a copy of this resolution in person to the White House. The costs of such trip will not be a county charge.

It is further resolved that in making such presentation, the Chairman of this Board will be representing only those members of this Board who are listed below as approving this resolution.

It is further resolved that all citizens of Santa Cruz County are urged to send their own messages to the President and to members of Congress in order that the views of said citizens in this matter may be adequately expressed.

Passed and adopted by the Board of Supervisors of the County of Santa Cruz, State of California, this 10th day of May, 1972, by the following vote:

Ayes: Supervisors Mello, Sanson, Harry.  
Noes: Supervisors Forbus, Cress.

HON. PETER G. PETERSON SPEAKS  
AT ANNUAL MEETING OF THE  
AMERICAN RETAIL FEDERATION

HON. GERALD R. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES  
Wednesday, May 17, 1972

Mr. GERALD R. FORD. Mr. Speaker, the leaders of the retail industry recently gathered in Washington for the 37th annual meeting of the American Retail Federation. The highlight of this year's meeting was a banquet address by the Honorable Peter G. Peterson, Secretary of Commerce.

Secretary of Commerce Peterson warned his audience that passage of the Foreign Trade and Investment Act of 1972, commonly called the Hartke-Burke bill, would adversely affect all Americans, consumers and workers alike, as well as cause grave international trade repercussions. He said that passage of the legislation, "or anything like it would be a national disaster for the United States and an international disaster for the world in which we live."

I wholeheartedly concur. In my opinion, it would be catastrophic and disastrous for this country to retreat into a new round of isolationism which is represented by the Hartke-Burke bill.

Mr. Speaker, the American Retail Federation is to be commended for its longstanding leadership in opposing legislated import quotas. I hope that all of us who are concerned about America's position in the world community will pause and reflect on the Secretary of Commerce's excellent statement on a measure which, if enacted, could have serious consequences for us all.

At this point, I insert Secretary Peterson's speech in the RECORD and urge that my colleagues read it:

SECRETARY PETERSON SAYS U.S. CONSUMERS  
WOULD BE HURT BY PASSAGE OF HARTKE-  
BURKE BILL

Passage of the Foreign Trade and Investment Act of 1972, the Hartke-Burke Bill, would adversely affect all Americans, consumers and workers alike, as well as cause grave international trade repercussions, Secretary of Commerce Peter G. Peterson said today in a speech before the American Retail Federation in Washington, D.C.

Passage of the legislation "or anything like it, would be a national disaster for the U.S. and an international disaster for the world in which we live," Secretary Peterson declared.

Secretary Peterson joined President Nixon's cabinet earlier this year after serving as Assistant to the President for International Economic Affairs.

He predicted these effects should the Hartke-Burke Bill be enacted:

American consumers would be denied freedom of choice and be forced to pay higher prices for many products and commodities. "Some experts tell me it is probably safe to assume that the bill would raise the U.S. price level by at least \$10-15 billion, and probably much more," he said.

American workers would be the net losers—both as workers and consumers.

"I would repeat," Secretary Peterson said, "it is demonstrable that more U.S. jobs, and higher paying jobs at that, would be lost in the reduction in our exports than will be gained as domestic production substituted for imports, and that U.S. unemployment would rise as a result."

Domestic price rises pressured by this action would substantially erode the international competitiveness of the United States. In making this point, Secretary Peterson said, "We know that inflation of the mid and late 1960s had just such an effect. It made our dollars increasingly overvalued in exchange markets, retarded our exports and stimulated imports."

Foreign countries would retaliate, economically and politically, against such efforts to exclude them from our market.

Acknowledging that the U.S. has serious international problems, Secretary Peterson pointed out that "protectionism, and especially the Hartke-Burke Bill, would exacerbate every one of them. It would solve none of them. It would deepen the international economic problems for the 1970's and beyond."

Secretary Peterson outlined measures to take as positive alternatives to the Hartke-Burke Bill:

"We must effectively check inflation to stay competitive both at home and abroad. We must receive fair treatment in international trade from other countries. We must negotiate better rules and procedures to govern the international monetary and trading systems. These steps alone would go far to enable us to maintain a more open trade policy, as indeed they did in earlier periods," he said.

CONSUMERS AND THE HARTKE-BURKE BILL  
(Address by the Honorable Peter G. Peterson,  
U.S. Secretary of Commerce)

INTRODUCTION

It has often been said that this is the age of "consumerism," and that in the United States this trend has gone further than in other countries. And it is certainly true that Americans can choose freely, widely, handsomely—and I think—joyfully among an impressive array of consumer goods in virtually all product areas. Who among our consumers would deny that this freedom and richness of choice is an important part of our quality of life? The retail industry of the U.S. has played a major role in bringing about this result—no doubt by practicing the old but, timeless slogan "The Customer is Always Right."

But an anomalous development is now taking place—an organized effort to raise our cost of living, to divert our human and industrial resources from the things we do well and efficiently to the things we do less well and at higher cost, which would raise unemployment and wreak havoc on overall U.S. foreign policy at the same time.

I am referring to the "Foreign Trade and Investment Act of 1972"—otherwise known as the Hartke-Burke bill.

It has been said that there have always been many who would try to substitute their judgment for the market place—who would opt for a market autocracy (as long as their view was acceptable, of course) instead of a market democracy. These times are no exception.

What is behind this curious bill that would purport to make us richer by increasing inflation? That would increase unemployment in our most efficient industries?

That would set us on a course of economic isolationism yet anticipate no counter-measures from our customers abroad? That would trigger bitter political conflict with our major allies around the world?

The Hartke-Burke bill represents a protest vote against imports—What is behind it?

The contemporary debate over imports and investments is amply endowed with catch-phrases, the most familiar to us being the so-called "export of jobs" by U.S. investors—particularly the larger multinational firms. The U.S. is also said to be receiving a "flood" of imports, implying that imports are something bad and the country is in danger of drowning.

Historically, imports have always received "bad press." Today, imports continue to have a bad reputation—with nearly everyone, that is, as you know best of all, but the consumer. In part, concern about imports comes from one of those legacies of past economic thought, that of the 18th century "mercantilists."

National wealth then was considered the responsibility of the State and was to be accumulated by selling more in foreign commerce than was bought. Persistent payments surpluses were the goal of policy. Imports by definition ran counter to that national goal. Ultimately, of course, one country could end up with all the world's wealth but no trade, because the means of payment—gold—would be drained from its own customers.

The existing vocabulary of the world of trade has shifted from the characterization of "mercantilists" to the more modern formulation of "free traders" vs "protectionists." I hope tonight to avoid this kind of simplistic rhetoric than polarizes us all, i.e., "free traders" versus "protectionists."

The implicit overstatement hidden in this kind of talk is dangerous. A "free trader" is often thought of, at least by his adversaries, as a naive, theoretical, "do-gooder" who would give the country away on behalf of outworn economic theories that nobody else lives by. His critics would call him a softball player in an era of an international world series of hardball. The "protectionist", on the other hand, is stereotyped as an economic Neanderthal whose greed and narrow self-interest would plunge the country backward, if unintentionally, into the closed and retarded world of the Middle Ages.

As in nearly all stereotypes that persist, there is probably at least a touch of truth in each of these. But this is not time for name calling but for finding a balanced position that fits the modern realities.

I'm convinced that one can be for an open world—without, if you will forgive the expression in this group, giving the store away. That one can be for reviving the spirit of the Yankee Trader, whom we may have forgotten. He bargained hard, but also marketed hard—because he was for more, not less trade. Incidentally, Secretary Connally has demonstrated that you don't have to be from the north to be a Yankee Trader.

I would be one of the last to deny that we face serious international economic problems or that a passive, benign approach was (or is) appropriate.

The President's August 15 moves were far from passive or benign. They were obviously the bold steps of an activist—who at the same time moved in a way that was consistent with his vision of an open world. The U.S. trade balance has shifted from a surplus of about \$6 billion in the mid-1960's to a deficit of \$2 billion in 1971, a swing of about \$8 billion. This shift did cost U.S. jobs, and not all of them were offset elsewhere in our economy.

There were several reasons for this swing: U.S. inflation, the overvaluation of the dollar in the international exchanges, lagging U.S. productivity, and foreign barriers to U.S. exports. These are difficult and complex

problems, and we are, I think, addressing them with vigor. *But inward moving steps toward a closed world, and especially the Hartke-Burke bill, would exacerbate every one of them.*

*It would solve none.* Indeed, it would deepen the international economic problems of the U.S. for the 1970s and beyond.

#### FUELING INFLATION

What does the bill do? The Hartke-Burke bill proposes that most items imported by the U.S. from foreign countries, be rolled back to the 1965-69 level. They could then increase only in proportion with rising U.S. production. This would mean a cutback of about \$10.4 billion from our present level of imports, and more from future levels.

Now, many retailers have adopted the slogan, "Keep The Lid On" in cooperating with the President's wage-price program. The Hartke-Burke bill would "slap a lid" on imports at levels reflecting 1960's consumer demand and preferences but "take the lid off" a major restraint on inflation.

It is difficult to quantify precisely the overall price effects of these cutbacks. The Department of Commerce trade staff is trying to do that. We do know, however, that they would be very large. Fixed import quotas raise the price of the domestic products with which they compete both by reducing total supply of the product and, very importantly, by reducing the market pressures which force U.S. producers to maintain competitive prices.

One well known advertiser uses the now famous commercial line "Try it—You'll like it." While not attempting to improve on Madison Avenue, the Hartke-Burke bill could bring about a new jingle which said "Try it—You'll like it: If you can find it—and if you can afford it."

Under the Hartke-Burke proposal, imports of capital goods and industrial supplies needed by American manufacturers to stay abreast of foreign competition and domestic demand would be rolled back by 31% and 13% respectively, or \$1.3 billion and \$1.4 billion from 1971 levels.

Consumer goods would decline 34%, food 15%, and automotive vehicles a whopping 56%. Of course, certain imported items would be particularly hard hit. Imports of color television sets, for example, would be cut back by 64% (\$131 million). Imports of new passenger cars would drop by 54% (\$2.3 billion), and imports of 35 mm still cameras by 30% (\$10 million). Some experts tell me it is probably safe to assume that the bill would raise the US price level by at least \$10-\$15 billion, and probably much more.

Such a development would be tragic, both for our domestic economy and for our international competitive position. You are all well aware of the major effort launched by President Nixon last August to bring U.S. inflation under control. Phase II has as an interim goal reducing the rate of inflation by 1.5%-2%, down to 2%-3% by the end of the year. It is thus highly relevant to note that the Hartke-Burke quotas could raise prices by at least 1.5%-2%—as much as Phase II will reduce them! In short, such legislation could seriously undermine the anti-inflationary effects of the President's wage-price program!

For example, more than 600,000 Americans currently demonstrating a desire to buy an imported subcompact would be prevented from doing so. In fact, perhaps General Motors, if they supported this legislation which they certainly do not, could change their ad to run: "See the USA in your Chevrolet—it's the only way."

Would importers be content to simply sell half as many cars at the same price as before? They would have to lay off workers and cut expenses where they could, but their unit costs would also inevitably rise. Furthermore, they would find an oversupply of customers clamoring for each car allowed in. So they

could easily raise prices to minimize the reduction in their profits. Finally, U.S. import quotas of this severity would go far toward permitting U.S. manufacturers to simply charge much higher prices than their own costs or the marketplace would dictate. Think with me of the effect of quotas which virtually guarantees the domestic producers a fixed share of the market. How many of your suppliers have lowered prices as an offensive marketing weapon to hold on to their market share against foreign competition? I would guess a great many. What do you think would happen if that fear, or stimulus, were removed? They would have far less incentive to hold prices down.

In addition to lowering the level of imports, the quotas applied according to the bill's formula would freeze the product and country mix at the average ratios existing from 1965-1969. Think with me how often in your retailing lifetimes—demands or tastes have changed, and in turn the quality of foreign sources has changed.

For example, consumers have recently shown increasing preference for Japanese cars in relation to German cars. In 1971, four out of every ten purchasers of foreign cars bought a Toyota or Datsun. Under the proposed quotas, only about half as many new foreign cars would be allowed into the country and only one in seven of those could be a Japanese car.

Thus, any changes in consumer preferences would be ignored, along with the price increases. This is a way of saying that skirt lengths might be hemmed in forever.

#### REDUCING OUR COMPETITIVENESS

Those domestic price rises I have talked about would also substantially erode the international competitiveness of the US economy. We know that the inflation of the mid and late 1960s had just such an effort. It made our dollar increasingly over-valued in the exchange markets, retarded our exports and stimulated imports. It required us to devalue the dollar late last year.

The devaluation should improve our trade balance by about \$6 to \$8 billion over the next few years, according to our own estimates, those of the international economic organizations, and those of leading academic economists. It will thus restore much of our earlier trade surplus. In the process, it should create at least half a million additional jobs for US workers—precisely the number, incidentally, which the AFL-CIO claims were lost due to the changes in our trade balance in the late 1960s.

The recent devaluation, however, has only provided us with an opportunity. We could fritter it away if we fail to maintain the competitive improvement which it provides. I have already outlined how the Hartke-Burke bill would raise our prices, and thus reduce our competitiveness directly.

In addition, Hartke-Burke's sweeping import quotas would deny US producers some of the vital imports which they need to remain competitive, or at least raise substantially the costs of those imports. Our textile industry, for example, buys substantial amounts of European machinery in its drive to improve productivity.

Most importantly, however, a rigid regime of import quotas would affect the American competitive spirit. I don't even recall as a former businessman ever going to work thinking how glad I was to have competitors. I suspect none of us really enjoy our competition. And it is certainly easy to dislike foreign competition even more. And yet, we all know that competition from abroad has increasingly provided the US with a strong incentive to innovate, introduce new technology and to maximize quality and productivity.

There are a number of good illustrations of this traditional resilience of our system—when it is challenged. One is shown by the recent experience of US electronic calculator

manufacturers. Increased foreign competition and an eroding market share gave domestic producers a timely indication in the late 1960s that their technology was becoming outmoded. On the basis of this import-precipitated "early warning", American manufacturers initiated an intensive R&D effort which is now paying sizeable dividends in terms of increased sales of US calculators both at home and abroad. And one US manufacturer is close to producing a mini-calculator for under \$100—far under the price of similar Japanese versions.

It is highly doubtful that domestic producers would have responded as rapidly to changing market conditions had they been afforded the security of import quotas.

Another area is in knitted fabrics, where US manufacturer of double knits has opened up a whole new set of styles . . . In other words, not just a manufacturing innovation, but a product-marketing innovation.

Thus looking at the realities of managerial decision-making in America, it appears doubtful that our response would be as swift or as intensive in a situation where permanent quota protection was present. Many have asked. Would Detroit have developed the compact as soon without the pressure of Volkswagen in late 1950s, or the subcompact without the pressure of Toyota and Datsun in the late 1960s? Would the steel industry have adopted the oxygen process as soon except for its success abroad and resultant foreign penetration of the US market? Yet it is precisely such actions which are crucial if we are to maintain the leadtime necessary for the production of technologically superior products on which our international competitive position rests.

Numerous exercises comparing US R&D expenditures with those of the European Community and Japan indicate that the latter countries are now allocating a considerably larger share of their resources for this important task than does the United States. We simply must improve the US technological performance, which is why the President recently sent to the Congress the first Presidential message on technology and ways of stimulating industrial uses of technology. But in the event that Americans obtained additional protection from foreign competition through a system of import quotas, it is reasonable to assume that some US producers would give an even lower priority to R&D. The accompanying ossification could well prove extremely costly in terms of America's long term ability to maintain its prosperity and technological superiority in a rapidly changing world economy.

#### THE FOREIGN RESPONSE

What about the effect of Hartke-Burke on other countries? Can we expect others to acquiesce to quotas? Our major trading partners would stand to lose an average of nearly 30 percent of their exports to the U.S.

Imports from the European Economic Community would be cut back nearly 25 percent, or \$1.8 billion.

Canada would be hit with a 30 percent loss in its exports or \$3.6 billion—which would cut its entire Gross National Product by 4 percent!

The less developed countries, which literally depend on exports for their survival, would be dealt a further savage blow to their aspirations. And tragically, those that are the newest of the developing countries (and these are usually those with even greater poverty) would be hit the hardest since their 1965-1969 imports to the U.S. would be at lower levels.

Let's look closer at the case of Canada. About 70% of Canada's exports are shipped to the U.S. Hartke-Burke would roll back Canada's exports to the U.S. some 30%. This would displace about 326,000 Canadian jobs. If the U.S. were in Canada's shoes this would be equivalent to a whopping 3.4 million jobs.

Frankly, I don't know why the proponents

of Hartke-Burke think Canada, or Japan, or any of the other countries that would be severely impacted, would or could sit still in the face of this kind of economic disruption. Would the U.S. be able to do so? Or want to try? Would we not agree that the internal political repercussions of a jolt of this magnitude would force us into retaliation. Would other nations react differently? I think not.

Furthermore, it is a good bet that foreign retaliation would be carefully aimed at our major export items—often the strongest sectors of our industrial society.

Perhaps like all countries, we are a country of anecdotalists. This may explain why so many of us, when talking about trade will refer to one or two heavily impacted industries and draw massive generalizations about the state of U.S. manufacturing. For example, when I talk about the impact of this Bill on our export manufacturing industries, some will say . . . What export manufacturing industries are you talking about? It surprises them, and it may surprise you, when I tell you that the U.S., even in its first year of trade deficit since 1888, still exported over \$30 billion of manufactured goods, equal to what we imported.

Suppose, to take a specific example, the European Community retaliated against the U.S. aircraft industry. Sales of most current model U.S. aircraft to European airlines could virtually cease, with an annual loss of export sales of about \$400 million. Europe could not only supply most of its near term needs for aircraft from its current or planned production, but its response to U.S. quotas would also threaten future generations of U.S. aircraft. New projects either would be precluded, as the EEC produced competitive aircraft, or would have to be priced to yield a break-even point at a much lower level of sales. Economies of scale could not be realized as they have in the past. In turn, increased costs of future aircraft to U.S. airlines would be passed on to the consumer in higher air fares. Everyone would lose. The manufacturers would sell fewer airplanes. The airlines would pay higher prices for them. The consumer would get higher air fares. And many highly skilled, high paying jobs would be lost in the already troubled aero-space industry.

Despite the certainty of retaliation against our exports under the Hartke-Burke quotas, there are some who say "what of it?" They suggest that reducing both sides of our trade account by the same amount would provide a net increase in the number of jobs here at home. They assume that the job content of the domestic production which would replace imports is greater than the job content of our exported goods. This assumption is false.

Indeed, the reverse is true. When both direct and indirect labor requirements are considered—that is, the labor directly occupied in export and import-competing industries, and also the labor required to produce intermediate goods which support these industries—it turns out that our exported goods are actually more labor-intensive than our domestically produced goods which compete with imports.

Professor Leontief of Harvard demonstrated this point some twenty years ago, and the so-called Leontief Paradox recently has been given new and impressive empirical support. The net losers in any trade warfare ignited by the Hartke-Burke bill would be American workers—who are also, after all, American consumers, too!

Under the most favorable assumptions, retaliation and counter-retaliation would create only as many jobs as they would destroy, and society would be forced to pay not only substantially higher prices for its goods but the additional cost of moving workers out of export industries into import-competing industries. But I would repeat it is demonstrable that more U.S. jobs, and higher pay-

ing jobs at that, would be lost from the reduction in our exports than would be gained as domestic production substituted for imports, and the U.S. unemployment would rise as a result. Those who argue for protectionism are unintentionally, I believe, misrepresenting the true interest of American labor, both as workers and as consumers, except in the narrow and short term sense of a particular industry at a particular time.

But the foreign response to a U.S. Hartke-Burke bill would go far beyond these immediate trade and job effects, catastrophic as they would be. We would also forfeit some critically important opportunities to negotiate a more equitable and balanced international trading system—which we certainly need. Since last August, we have been working hard—and with some success—to reduce those foreign barriers to trade which hinder U.S. exports. The U.S. government wants to enter into major trade negotiations, beginning in 1973, to get at those barriers in a major way. We want to change those rules of the international trading system which we feel discriminate against the U.S. But a Hartke-Burke bill would send U.S. trade policy careening in the opposite direction, and I believe would destroy any chances for improving our access to foreign markets and improving the international rules.

Similarly, our government is seeking major reforms in the international monetary system. We must change those features of the system which contributed to the overvaluation of the dollar, so that we will never again lose jobs as a result. But our hopes in this area would also be shattered by the breakdown in international economic cooperation which would flow from U.S. adoption of anything like the Hartke-Burke bill.

And what of the effects of such a U.S. trade policy shift on our overall foreign policy? I have already indicated that the Hartke-Burke quotas would levy billions of dollars of losses on our major allies—in Western Europe, Japan, and Canada. The internal political effects of such U.S. action could be devastating to any efforts by the governments of these countries to maintain close ties to the U.S. Would we continue to advocate active cooperation with any country which unilaterally destroyed several percentage points of our GNP, and millions of U.S. jobs?

The longer term implications for our foreign policy are particularly critical as we move into a new era of international relationships in which we seek a more balanced partnership with our traditional allies and new channels of cooperation with our traditional adversaries. Partnership with allies would be impossible politics if the U.S. adopted isolationist economics. And increased cooperation with traditional adversaries would be undermined by cleavages with traditional allies, both by weakening our own strength and by encouraging our adversaries to seek to promote such disharmony rather than join us in new areas of activity together.

#### A POSITIVE ALTERNATIVE

I thus conclude that passage of the Hartke-Burke bill, or anything like it, would be a national disaster for the U.S. and an international disaster for the world in which we live. Indeed, it would intensify all of our domestic and international economic problems, and bring us new political problems in their wake.

But foreign trade, like all economic change, does cause real problems for certain individuals. Recognition that open and balanced trade helps the nation as a whole is no solace to the worker who does lose his job, or the firm which goes bankrupt, as a result of imports. We must have a clear and effective policy approach to deal with such problems.

I have already mentioned some elements of such an approach. Our economy must

grow rapidly, to achieve full employment and induce rapid rises in productivity. We must effectively check inflation, to stay competitive both at home and abroad. We must receive fair treatment in international trade from other countries. We must negotiate better rules and procedures to govern the international monetary and trading systems. These steps alone would go far to enable us to maintain open trade policy, as indeed they did in earlier periods. We must never forget that millions of workers in civilian work force of around 85 million shift jobs each year within our economy. Overwhelmingly due to purely domestic reasons, and that most of the dislocation caused by changing trade patterns can be readily absorbed in an expanding U.S. economy operating with a monetary system that keeps our balance of payments in equilibrium.

In addition, however, we must have an effective program which will provide assistance to those industries, firms, and especially workers, injured by imports. Such an "adjustment assistance" program was adopted by the Congress in principle in 1962. But it has been ineffective in practice due to a combination of excessively tight legislative requirements, excessively tight legal interpretations of those requirements—indeed, a failure on all our parts to attach sufficient priority to this very economic but also very human problem.

Also, since the adjustment process takes time—even when accelerated by a program of assistance—some have suggested that temporary orderly marketing instructions should be available. (And we are exploring possibilities of internationalizing its criteria for involving such mechanisms.)

An interagency group is hard at work devising a better adjustment assistance program. Access to adjustment help must be greatly eased. Assistance must become available much more quickly to those who need it; "early warning" must apply in this context as well. It must receive the highest priority from both the Administration and the Congress. The AFL-CIO has estimated that a viable program for workers would cost about \$500 million annually. Even if one accepts this figure without question, it strikes me as a very good buy if it preserves the billions of dollars of consumer benefits, the thousands of jobs, the unquantifiable, but nevertheless huge gains in terms of U.S. economic competitiveness and overall U.S. foreign policy, which derive from our maintaining an open and balanced trade policy for the United States.

#### THE ROLE OF RETAILERS

I would submit that retailers are among the major beneficiaries of such a policy within our society. And you stand to lose a great deal, too.

As our whole society gets more complicated, the task of governing can come to resemble an esoteric discipline in which the best practitioners are those who are capable of mastering the greatest volume of information and detail. Since everyone is not equally adept, it follows that some of us in Washington will rely on time honored ways of making their job easier. This means they will rely on lobbyists.

The trouble with relying too heavily on this system is that it implicitly assumes that all interests are organized when, in fact, the true picture is very different. What really exists is a situation in which only those who were directly affected in the short run and who have the resources to spend were exerting sustained pressure on Congress.

In the critical field of trade, I believe the great unorganized public—your customers—are hardly represented at all. It is possible therefore to pass misguided and harmful legislation because no one is able to put pressure on Congress in his capacity as a member of the unorganized public. The question "For whom do you speak?" could

only be answered "I speak for myself" and that is not good enough.

The harmful effect of this system of representation is illustrated in the current debate. Imports have—as I noted earlier—historically had a "bad press"; that is, they have had a bad reputation with everyone but the consumers. Even though the consumers were importantly affected by imports, their overall opinion has really counted for very little partly because the consumers were not informed and energized. Even though this situation is changing, particularly as our recent experience with rapid inflation has had the salutary effect of mobilizing this concern, the consumer still needs educators and advocates and what I am proposing is that you, the retailers, help to fill the gap.

You gain enormously from the preservation of consumer freedom and consumer rationality, from the ability of the consumer to enjoy his changing tastes at reasonable prices.

In a sense, Americans need the stimulus of trade and international competition even more than most people. For us, expansion, innovation and competition have always been a way of life and we have benefited greatly from our willingness to compete on equal terms with all comers, anywhere in the world. Frederick Jackson Turner, a noted historian, wrote that Americans need an outlet for their energies. He saw the closing of the frontier as a crucial turning point for this society which had until the early part of this century given itself wholly to the great task of settling a continent.

In many ways we see evidence today of the wisdom of Turner's assessment. Increasingly, the dynamism of our society is giving way to lassitude and a certain purposeless timeserving which not only harms us economically, but does great social harm as well. Given this situation, can we sanction a bill which would restrict our freedom of economic expansion still further, that would freeze us into a pattern of protection and economic reaction? I think not, and I hope that anyone who stops to consider the whole picture will agree.

You thus bear a major responsibility for the preservation of open trade and an open world, and for opposing such efforts to reverse it as the Hartke-Burke bill. I would like to close by suggesting some ways in which you could exercise that responsibility.

The first requirement is educational. Few consumers realize, even now, how international trade can either accelerate inflation or help combat it. Few realize how it can increase, or decrease our standard of living. To the extent the consumers' interest is misrepresented—it is likely his interests will be misrepresented.

Given your broad mission to serve the interests of your customers, given your enormous knowledge and given your impressive communications resources and abilities, I think you have a decisive role to play in a creative and different kind of "protectionism" . . . i.e., protecting the true interest of the consumer.

Longer term, the position of the retailer is just as likely to be damaged by import quotas as the consumer. Consumers and retailers, in fact, tend to share each other's fates in various ways. As the final link between the product and the consumer, the retailer is always closely identified in the mind of the purchaser with the goods which he happens to sell. This means that if the goods are "overpriced" it will be a reflection on the retailer and not, as might be more just, on the conditions which forced him to raise prices to their high level. You are the "omnipotent middlemen" and when times are hard you make a convenient target for those who have no other outlet for their anger. Retailers, in short, have a lot to lose by import quotas which force up consumer prices, restrict their choice of goods and, therefore,

reduce their creative contribution to a rising standard of living.

Retailers and consumers should also make their voices heard, directly, where it counts: with their elected representatives in the Congress and in the Executive Branch. Strong countervailing forces are needed to answer those who support economic isolationism if lawmakers in our democratic system are to adopt policies suited to the needs of all Americans, rather than to the needs of those few Americans which happen to speak most loudly. On trade, the American consumer has indeed been a "silent majority." He can no longer afford to be silent. The "majority," after all, is all of us.

A third possibility is active cooperation by retailers in a new adjustment assistance program. I noted earlier that we need "early warning" of changing production trends, to prevent job layoffs and to commence retraining programs in time to avoid hardships. Who better than retailers can spot these changing trends? You are the major purchasers of wide ranges of U.S. and foreign products. You are always planning months and even years ahead to meet—and sometimes help determine!—the buying desires of American consumers. Your guidance could thus be invaluable in helping industry, labor, and government.

The most important thing, though, is to recognize and communicate just what a restrictive philosophy such as Hartke-Burke contains would really mean.

It is analogous, I think, to the all too common if human attempt of an individual to isolate himself from experience that would challenge him . . . like Linus' desperate search for a security blanket.

The individual may achieve a certain security, but the cost of such security is very high. It is attained at the expense of the opportunity to grow and learn, and in the end the legacy can only be a complacent mediocrity which, never having been challenged, can never progress.

An individual depends even on his failures to help find the limitation of his own abilities. Nothing is more disastrous than to set ones own limits in anticipation of failures that may occur. This is no less true for a nation—especially one that is as great as ours.

WEST VIRGINIA ARTISANS WILL DISPLAY THEIR WORK AT MOUNTAIN HERITAGE ARTS AND CRAFTS FESTIVAL AT HARPERS FERRY, W. VA., JUNE 9-11, 1972

### HON. JENNINGS RANDOLPH

OF WEST VIRGINIA

IN THE SENATE OF THE UNITED STATES

Wednesday, May 17, 1972

Mr. RANDOLPH, Mr. President, mass production, standardization, and widespread availability, have enabled the American industrial complex to give our people the highest standard of living on earth. This is desirable, for it means that in our day-to-day lives we do not have to face the rigors of life in a relatively primitive wilderness that were endured by our ancestors.

While we daily enjoy the benefits of our advanced industrial society, I am gratified that there is increasing attention and respect for the methods of the past. Throughout our country there has been a reawakening of interest in individual skills. Our State of West Virginia has become a center for the practice of these skills and a significant num-

ber of people are producing handmade articles of high quality that are sold and used throughout the United States.

Some 400 artisans have joined together as the West Virginia Artists & Craftsmen Guild to further their work in our State. On June 9, 10, and 11, the guild will sponsor the West Virginia Mountain Heritage Arts and Crafts Festival at Harpers Ferry. In a historic location, only about 1 hour's drive from Washington, this gathering will provide a splendid opportunity for many thousands of people to examine handmade articles of great variety and high quality.

In addition, the Harpers Ferry area of West Virginia is one of historical significance. In the region where the Potomac and Shenandoah Rivers meet, the names of George Washington, Thomas Jefferson, and John Brown are prominent, for all of these men contributed to the region's past.

Mr. President, I invite attention to the Mountain Heritage Arts and Crafts Festival in the hope that many people, including Members of Congress, will avail themselves of an opportunity to renew their acquaintance with the pleasures that individually handcrafted products can bring.

#### VIP TOURS FOR DEFENSE

### HON. MICHAEL HARRINGTON

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. HARRINGTON. Mr. Speaker, the following article from the New York Times of last Sunday is interesting on several counts. It describes a continued close—one might say symbiotic—relationship between the Nation's largest industries and the Department of Defense, and while I have no evidence with which to refute the assertions that business interests are an important part of this relationship, it is interesting that the membership of the group is almost exclusively businessmen. And I say men deliberately, since the article reveals that this organization remains an all-male preserve. I commend the New York Times for discussing this situation, and I wish to insert it here so that it may get even wider circulation.

The article follows:

VIP TOURS FOR DEFENSE: GROUPS OF BUSINESS ALUMNI DEFEND THE MILITARY

(By Marilyn Bender)

FORT BENNING, GA.—Secretary of Defense Melvin R. Laird had to cancel his luncheon address here last Wednesday but the 20 DOCA's carried on, undaunted and with their usual good humor.

As members of the Defense Orientation Conference Association, one of America's least known and peculiarly exclusive groups of military-minded businessmen and professionals, DOCA's are used to having their gatherings punctuated by explosions of power politics.

Some of them reminisced how the day they arrived in Taiwan last fall on their Pacific Command tour, they learned that Nationalist China had been expelled from the United Nations. The group was in "Saigon having

dinner with General Abrams right after Secretary Rogers was there and just before Secretary Laird was due," recalled Martin Ceder, a construction equipment dealer from Louisville, Ky.

While elsewhere questions and violent reactions followed President Nixon's announcement Monday night of his decision to mine the North Vietnamese ports, here the DOCA's proceeded on their two-day inspection of the home of the United States Infantry, registering approval and relief that action had been taken at last.

Just before the reception at the Officers' Club Tuesday evening, Oscar Nelson Jr., a West Virginia cattle breeder whose family-owned carbon black company was bought by Ashland Oil, Inc., and Joseph Wells Jr., executive vice president of the Homer Laughlin China Company, paused to wonder how the stock market had behaved.

"Mr. Nixon isn't going to let this market go down," Mr. Wells asserted. That day it closed 13 points lower.

"I'm very proud of what President Nixon did," declared Rogers Hall, a cotton and soybean farmer from Cleveland, Miss. "I'm a hawk, I'm an American," said Mr. Hall. Many of the group proudly sported American flag emblems.

Asked to define themselves, most DOCA's respond in patriotic terms. They see themselves as opinion molders and public-spirited citizens.

The DOCA constitution discriminates neither on the basis of religion nor occupation. It does not mention sex, although a resolution of the board (aimed at wives) restricts tours to men. The dues are negligible, \$45 a year, but members must be able to pay their own way on inspections that range from \$27 plus transportation for this mini-tour to \$500 plus fare for the European Command Tour next fall.

Most of the members are top managers of giant industrial corporations, bankers or small regional tycoons, though there have been an occasional clergyman, educator or labor leader.

Nelson A. Rockefeller belongs and so do Stuart K. Hensley, chairman of the Warner-Lambert Company, Edwin H. Gott, chairman of the United States Steel Corporation, Joseph Gancie, vice president of IIT World Communications; Chim Ho, the Honolulu financier, and Daniel Parker of the Parker Pen Company, none of whom attended this tour.

Among DOCA's presidents—who must spend \$10,000 to \$15,000 a year of their own funds, mostly in travel expenses—have been the late John Jay Hopkins, president of the General Dynamics Corporation; William T. Taylor, retired chairman of ACF Industries, Inc., and D. W. Brosnan, retired chairman of the Southern Railway System.

What distinguishes membership in DOCA from other forms of corporate fraternalism is that one must have attended one of the Joint Civilian Orientation Conferences (JCOC) by invitation of the Secretary of Defense.

The late James V. Forrestal, the first Secretary of Defense, started such military briefing tours for influential civilians in 1948. JCOC's pay their own expenses except for transportation on the tour, whereas DOCA's accept no military airlifts. After one such tour (invitations are not repeated) JCOC's may join DOCA, founded in 1952 as a non-profit alumni organization.

In the early days, concedes Philip W. F. Jones, a retired Navy commander and DOCA's executive vice president, invitees of both JCOC and DOCA tended to have defense business axes to grind. But in recent years, DOCA has tried to stress the personal satisfaction of defending the military in an era when its image and strength have been under attack.

"It takes constant monitoring," Mr. Jones

said. "Some members call up, quite innocently, asking to have contacts made and we have to explain we don't do that."

Or as Mr. Taylor, the retired chairman of ACF Industries, once put it, "I can't conceive of anyone being crass enough to join for business. I'd spit in his eye if anyone thought I belonged in order to sell stuff to the department."

A few members like Edward R. Neumann, general manager of the government services division of the Fruehauf Corporation, admit DOCA "gets you a little closer, it's easier to talk to people you know."

But most derive less tangible business dividends such as stardom on the Kiwanis, Rotary and church circuit, "giving the facts and showing the slides," dropping names and obviously being informed. "You're very much in demand," Mr. Nelson, the West Virginia cattle breeder, said. DOCA members brief their own corporate boards and "straighten out" their peers' misconceptions in the locker room; of their clubs.

Some, like Benjamin Mates, a retired textile manufacturer from New Hampshire, and Roddey Dowd, a pipe and foundry executive from North Carolina, are military buffs. DOCA offers to Mr. Dowd "the camaraderie of a wonderful bunch of men" and appeases his "lingering wish for affiliation with the military." He says he has never found in his family-owned company "the challenge of commanding motivated men."

After the CBS-TV documentary "The Selling of the Pentagon" in February, 1971, focused attention on the Defense Department's extensive public relations efforts, JCOC was suspended for a year. Last week, it resumed again with an abbreviated six-day \$300 tour. For the first time, four women and two students were invited along with the usual five dozen influential citizens, like William Wrigley of the Chicago chewing gum Wrigleys and Robert McIntire, president of Sears, Roebuck-Peru.

The JCOC's and the DOCA's spent a day in tandem here. Awakened by cannon and bugle at dawn on Wednesday, they were briefed on the modern volunteer Army and saw classroom orientation for guerrilla warfare, such as in Vietnam.

They watched paratroop training demonstrations, rode in CH-47 helicopters (just like those used in Vietnam, except for red carpeting and slipcovered seats) and applauded as Rangers disarmed and dealt strategically disabling kicks and hand blows to each other.

The resumption of JCOC will affect DOCA's lagging membership, which shrank by 14 per cent last year to 694. If one of the female JCOC's elects to join, DOCA directors will have to amend its all-male resolution.

"I always said we'd cross that bridge when we came to it," Mr. Jones said.

#### NATIONAL INSTITUTE OF JUSTICE

### HON. HUGH SCOTT

OF PENNSYLVANIA

IN THE SENATE OF THE UNITED STATES

Wednesday, May 17, 1972

Mr. SCOTT. Mr. President, the Chief Justice of the United States, in remarks delivered to the opening session of the American Law Institute on May 16, advanced a proposal which I find particularly interesting and challenging. He urged the legal profession and the judiciary to conduct a searching inquiry into the concept of a National Institute of Justice which might pursue the coordination of and improvements in the operation of justice in the United States.

In advancing his proposal that a study of the Institute concept be undertaken,

the Chief Justice referred to a "timely and provocative article" written by Bert H. Early, executive director of the American Bar Association, and published in the April 1972 issue of the West Virginia Law Review. The article suggests that the National Institute of Justice "is a concept whose time has come."

I ask unanimous consent that the text of Chief Justice Burger's remarks and the Law Review article be printed in the RECORD.

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

**HAS THE TIME COME?**

(Remarks of Warren E. Burger, Chief Justice of the United States)

Forty-one years ago last week, the Institute met in Washington—probably in this very room—when the Mayflower was new and sparkling. Now the Mayflower has taken on the air of grace and patina that I like to think comes with age, but the problems you and I are concerned about are very much the same. I was in Law School when Chief Justice Hughes welcomed the members of the Institute that spring morning of 1931 when he spoke of the growing burdens on the Federal Courts, the need for more judges, and for better methods. He expressed his concern in terms of "the ultimate goal that ever recedes—even as we advance and press on."

Today I welcome you at a time when that "ultimate goal" Hughes spoke of seems to have receded even farther from our grasp than ever before.

A measure of the change in the dimensions of the problems can be seen in the statistic that when Chief Justice Hughes greeted the Institute 41 years ago there were 75,000 filings in the District Courts. This year we will have 140,000 comparable case filings. We now have more than double the number of District Judges but we also know that the trial of cases, particularly criminal cases and some others, have become more complex and protracted so that statistics do not tell the whole story. The Supreme Court filings in 1931 were 1,300 and in the 1971 Term, soon to end, we will have more than 4,000.

But it is not my purpose today to speak only of the problems of Federal Judges for, as we know, the problems of justice are indivisible, and the burdens and needs of State Courts, like federal checks, are far more critical than they were four decades ago. In that day the members of the Bar who regularly practiced in the Federal Courts were relatively few in number and often identified as "federal" practitioners. Whatever distinctions once prevailed are long gone.

Now everyone seems to have "discovered" the Federal Courts, and even the addition of 61 new judgeships in the past three years will not solve our problems.

It was 13 years ago—1959—that my distinguished predecessor, Earl Warren, as he welcomed you, pointed to some of the problems I now wish to speak of, and the Institute's significant *Study of the Division of Jurisdiction Between State and Federal Courts* was the result. That comprehensive Study has been before the Congress for three years and hearings are not yet completed.

The "upward trend" in the burdens of the Federal District Courts that he spoke of has accelerated. The total filings in the Federal District Courts in 1959 were 88,453 and the filings in the current fiscal year in the District Courts will exceed 140,000. The Introduction to the Institute's Study on Jurisdiction makes this statement:

"It is unwise to paralyze the federal courts by maintaining conditions that will generate constant and unending pressure for expansion of the federal judiciary. It is in-

tolerable that these delays and these pressures be produced by cases that have no proper place in the federal courts."

When we remember that these statements were addressed to the conditions of more than a dozen years ago, we are bound to look at what has happened since then. Since 1959, new federal statutes and decisions of the Supreme Court have added new burdens to the Federal District Courts. Whether those statutes and those decisions were wise or unwise does not alter the hard facts. Meanwhile, so far as I know, no statute and no decision of the courts has subtracted any significant burden from the avalanche which has fallen upon the Federal Courts.

The prime thrust of the Institute's Jurisdiction Study was to try to point the way for a fair allocation between the state and the Federal Courts, and it is no disparagement of the Institute's Study that the passage of time and events may well have overtaken some of the recommendations. Meanwhile, most of the same factors which placed inordinate burdens on the Federal trial courts have also created new problems for the state courts.

We must assume that, at some point, the Congress will reach its own conclusions on the Institute's Study and that action will be taken to control the input into the Federal District Courts. But we must also recognize that when, and if, this is done, the burdens on the state courts will be increased unless something is done to help their plight we will have merely transferred the illness from one part of the body to another. That can hardly be regarded as a solution.

What the Institute's Study was directed at was to achieve: "the proper jurisdictional balance between the federal and the state court systems, assigning to each system those cases most appropriate in the light of the basic principles of federalism."

We are all well aware, I think, that in the period since the Institute began its Jurisdiction Study in 1959, and the completion of that Study and the publication of the Report in 1969, a vast area of new kinds of cases has developed in terms of class actions, suits relating to environment and pollution control, consumer claims, and many others. Probably much of this was not anticipated in 1959 or even during the period when the Study was under way. For that reason even if all the recommendations of the Study were adopted by the Congress that would, at best, merely make way for the new waves of litigation coming into the Federal District Courts. Meanwhile, to achieve the "proper jurisdictional balance" will mean the elimination of some of the federal jurisdiction, particularly diversity cases, and those changes will increase the burdens of the state courts. Federal and State planning must be coordinated.

The creation in this past year of the National Center for State Courts is a highly significant step toward filling the vacuum with an agency qualified to define the problems and measure the needs, but realistically its leaders know that as yet it is in its infancy. With the best of good fortune it will take time for that Center to become a large force, and there are some things that will remain beyond its reach simply because of limited resources.

Indeed, the very creation of the National Center for State Courts has served to focus attention on how little has been done in this country to provide support for the systems of justice as a whole—particularly for the local and state courts.

It was in keeping with the great traditions of our profession that most of the forward steps in the law during this century have been largely the work product of private initiative, private effort, private leadership, and private funding. We need recall only a few of these advances—the monumental work of the Restatement of Law by this Institute, the development of the Federal

Rules—Civil, Criminal, and Appellate—by lawyers, judges and law professors, working under Congressional authority and cooperation.

A cursory glance at the Federal budget, whether this year, 10 years ago or 40 years ago, shows that literally billions of dollars have been allocated to a vast range of domestic needs of the American people—and I do not suggest for one moment that Congress should have done otherwise. Those budgets include research and direct assistance on such things as research and development and subsidies for transportation, protection of forests, improvement of agriculture, assistance to small business, research relating to natural resources, fish, game and wildlife and pollution control, to say nothing of the enormous expenditures for space research and technology, and a host of others. As we have increasingly emphasized federalism and the partnership aspect of the state and national governments, it has become more and more apparent that many of these vital programs must be initiated and funded by the Federal government or they will not be done at all. Today there are more than 1,000 distinct Federal programs of domestic assistance reacting to the state and local communities and administered by more than 60 Federal agencies and involving many billions of dollars.

You may have observed that I did not mention one of the programs of the Federal government that touches every individual in the country, and that is the program of the National Institutes of Health, for which the current annual appropriation is \$2,400 million.

The first small comparable step bearing even a faint resemblance to the National Institutes of Health and relating to the system of justice was the *Law Enforcement Assistance Administration*, which is a new but now familiar program. In the current fiscal year nearly \$700 million was appropriated for LEAA, but as the name indicates, the primary thrust of the program is on law enforcement and the bulk of its resources has been directed toward improving law enforcement at the state and local levels. Some funds have gone into programs for the improvement of state courts but it is a relatively small part of the whole. I want to emphasize that LEAA is a sound program; it is long overdue but it is not complete. Our American concepts of justice are basically sound—we like to think of them as equal to any in the world—but our "delivery" of justice, to borrow a term from our medical friends, is faltering and inadequate. The means of "delivery" of justice is an effective legal profession with procedures and methods in the courts that will accomplish the desired results. *Surely an effective system of justice is as important to the social, economic and political health of the country as an adequate system of medical care is to our physical health.*

I suspect that everyone in the room has heard of or taken part in discussions in recent years on the need for some kind of national facility primarily directed to help improve the operations of our judicial systems. It is of interest, I think, that the current issue of the West Virginia Law Review contains a timely and provocative article written by a distinguished member of the Institute, Mr. Bert Early, the Executive Director of the American Bar Association. In this article Mr. Early raises for discussion by our profession the need for such a facility. No one need agree with all details of the approach or the solutions advanced by Mr. Early, but I raise to you the question whether the time has not come to draw together, as he is trying to do, all the strands of this concept and subject it to the critical analysis of lawyers, judges, law professors, public administrators, political and social scientists, and of legislative leaders in the states and in the Congress. It is significant that the Committee for Economic

Development is about to recommend the creation of a new federal authority to ensure justice in a study entitled *Crime and Establishing Justice*, which is to be released late next month.

I have already referred to the tremendous accomplishments by private volunteer efforts within the legal profession, but in a nation of 210 million people spread from Maine to Alaska, now to Hawaii, Guam, and Key West, teeming with the life and industry of a dynamic and mobile people, there are some things which must be done on a national scale and with Federal sponsorship if they are to be done at all. Fundamental to our Federal system, and our federalism generally, is the idea that the national government will do, or will help do, what the states or private initiative cannot accomplish separately or alone.

Our basic system of justice, of course, lies within state power and it should remain so, with Federal courts should function as the Constitution intended they should, as courts of special and limited jurisdiction and that, of course, is the theme that runs through the study diction. Day-to-day justice, in short, is inherently a state function.

The developmental needs of Federal courts were recognized, in part at least, by the creation nearly five years ago of the *Federal Judicial Center*, charged with the primary mission of engaging in research and development and related steps to improve the Federal courts. But if we are to maintain the appropriate allocation of litigation responsibilities between state and Federal courts, there must be some additional effort conducted by the Institute and support given to both, federal and state, and particularly the state court. The Federal Judicial Center is a good start, but it is also a modest start when we see it in light of our needs. The development in this past year of the National Center for State Courts, to which I have alluded, is another important but small step—small partly because it was private and voluntary, in its genesis, although it has received substantial support from LEAA. Its leaders hope that in time the states will assume the burden of its support. But the overall problems of the states are hardly less than those of their large cities in terms of revenues and resources, and it is no easy task to develop the official cooperation of fifty states on a voluntary basis. Yet if the state courts are to maintain their proper role as the basic system of justice in this country, they must have help. It is for this reason that I mention Mr. Early's article to which, at his request, I wrote a brief Foreword. We should look at the Federal and state system as a stool, and we know the weakness of one leg of a stool impairs the stability and utility of the whole.

The total range of problems of the courts of this country in the 1970's is so vast and diverse that it would serve no purpose to try to catalog them. They embrace the conduct of private and public civil litigation and the whole spectrum of criminal justice. We should strongly oppose any idea that all the states be pressed into a single mold, however good the pattern might be, for we take pride, appropriately, in our diversity, and the states should always be free to innovate and experiment in order to achieve better and fairer administration of justice. Many of the problems, however, are common to all the states, and the state courts have much in common with the Federal courts. The development of a national facility need not supplant and should not supplant existing service functions such as the Federal Judicial Center, the National Center for State Courts, or the basic LEAA program. We must always be alert to avoiding overlapping and duplicating functions but we must also move to fill in the gaps.

I have no detailed program or blueprint in mind for such a facility, and at this stage it would be premature for anyone to be sure

that he could do more than suggest some of the needs and outline some of the objectives of such a national facility in the broadest terms. Let me mention however, just a few of the characteristics which might be appropriate if the basic concept of a national institute of justice is sound.

First, I have already suggested that if such a facility is to be created, it should be national in scope and created by the Congress; and even though the analogy is maybe limited, it may be useful to think of it at least broadly in terms of the National Institutes of Health that have contributed so much to the welfare of this country.

Second, since the problems of justice should be the concern of everyone, such a facility should not be under the exclusive control of judges and lawyers. To give it the appropriate broad base that its constituency would demand, it should be under the governance and direction of a broadly based representative body, including a substantial representation of the states. By way of illustration only, it might be—and I speak now of the governing body—composed of perhaps four members designated by the Congress, four by the Executive, and four by the Judiciary.

Third, it could appropriately include a staff of trained and qualified specialists who would, upon the request of a state, give technical assistance on a consulting basis working with the National Center for State Courts with reference to the problems of improving the states. By the very nature of the problems and the limited number of people who could qualify as specialists or experts, any staff of such an institute such as this would likely be quite small.

Fourth, it should appropriately have resources and authority to make grants for court improvement somewhat as LEAA now gives assistance for the improvement of the police function, of correctional systems, and for state courts.

Fifth, it should have research and development capabilities so that the best developments in the most efficient courts in the country can be translated swiftly into systems and programs to be adapted by such courts as desire them, building on what LEAA has begun in the way of aid to state courts.

Sixth, it is very important that such a program should be one to assist the states to do what they lack resources to do for themselves—it should definitely never, never be a program to "federalize" the state courts. Some of the state courts have developed programs and procedures that the Federal system has adopted. The use of court executives, now being updated being but one example. The collective experience of all the courts of the 50 states would be the prime resource from which standards could evolve.

I have suggested only a few basic characteristics that such a new facility might well possess. The essence of what I am suggesting today parallels in broad outline what Mr. Early has suggested in his provocative article and what others have probed at from time to time. A starting point is to develop, through some mechanism, a representative group or possibly several representative groups to canvass the entire subject. I would not undertake to say who should do this, but the leadership of our profession is rather obvious in the form of the American Bar Association, the American Law Institute, the American Judicature Society, the Institute of Judicial Administration, the National Center for State Courts and the Federal Judicial Center—and of course there are others—such as the Council of State Governments and the National Conference of State Legislative Leaders.

The development of such a facility cannot be dealt with as swiftly as the legal profession and the Judiciary, in cooperation, created the Institute for Court Management or the National Center for State Courts last

year, or as the Congress, on the urging of the Judicial Conference of the United States, created the Federal Judicial Center. The undertaking I speak of is too large, it has vast implications, and there are too many hard questions to be answered: Should there be such a facility? What should be its functions? Should it be a purely governmental facility? How should it be governed?

The proposal I advance, therefore—if it can be called a proposal—is not to create or establish a national institute of justice but to make a searching inquiry into the whole subject. When this study has been made—and that is in itself a large undertaking—the Congress would perhaps find it worthy of inquiry.

If, even tentatively, these ideas have merit, if they are feasible, I have no doubt that the leadership of the legal profession will see to it that such a study is commenced.

Of this I am sure: our profession cannot fulfill the promises implicit in the idea of the rule of law and equal justice under law if we content ourselves with being specialists in concepts but amateurs in execution.

[From the West Virginia Law Review,  
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NATIONAL INSTITUTE OF JUSTICE—A PROPOSAL  
(By Bert H. Early\*)

FOREWORD BY WARREN E. BURGER †

From his long experience and the vantage point of his unique position in the organized bar, Mr. Early has given voice to a great need—a great void—in our system. He correctly and carefully disclaims any thought of "homogenizing" the systems of justice, but rather presses for some central means to energize the valuable programs for improved justice now in being and to probe for new solutions. We spend more than two billion dollars annually through the National Institutes of Health and the country is better for it. But the social, economic and political health of the country must be fostered by a comparable facility to revitalize the faltering machinery of justice—and happily that can be done for a mere fraction of the NIH budget. Whether it is financed by private as well as public funds is not central to the proposal—the key is the function of such an institute.

Mr. Early's provocative article is advanced by him to stimulate debate. It deserves a wide audience and I sincerely hope it will be challenged and debated—vigorously—by the bar and the public.

I. THE PROPOSAL

The intent of this article is to advance a proposal for the creation of a new type of organization, national in scope and purpose, to marshal our resources and energies for an accelerated program of modernization of our system of law and justice to serve better the needs of over 200 million Americans.

Such an organization might be called *The National Institute of Justice*. At the outset, it should be clearly understood that the Institute would not conflict with or duplicate the Federal Judicial Center, the National Center for State Courts or other existing organizations. It would, rather, complement their activities and encourage a broader base of support. In broad perspective the concept may be stated simply: the establishment of a national public agency, governed by the most eminently qualified individuals available, and dedicated to the mission of giving national cohesion and increased public and private support to the now inadequate and piecemeal efforts directed toward improving the justice system at all levels. The National Institute must deal with the system of justice as a whole. That system consists of interlocking and interdependent components—substantive laws; procedures; legislative

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bodies; institutions for dispute settlement, such as courts and administrative agencies; law enforcement offices and agencies and corrections and rehabilitation facilities and services; and a host of individuals who work within the legal profession. The ultimate aim is to achieve a structure of civil and criminal justice that is more effective, expeditious and accessible to the present day needs of all our people.

The goal is unassailable. It was the dream of our founding fathers and it has been the aspiration of our nation's foremost leaders for nearly two centuries. And yet it has eluded us.

No less a figure in American jurisprudence than Roscoe Pound spoke prophetically of its elusiveness as early as 1906. In his historic paper, entitled *The Causes of Popular Dissatisfaction with the Administration of Justice*,<sup>1</sup> Dean Pound addressed the Annual Meeting of the American Bar Association with these words:

"I venture to say that our system of courts is archaic and our procedure behind the times.

"Uncertainty, delay and expense, and above all the injustice of deciding cases upon points of practice, which are the mere etiquette of justice, direct results of the organization of our courts and the backwardness of our procedure, have created a deep-seated desire to keep out of court, right or wrong, on the part of every sensible business man in the community. . . .

"But too much of the current dissatisfaction has a just origin in our judicial organization and procedure. The causes that lie here must be heeded. Our administration of justice is not decadent. It is simply behind the times. . . ."

Again in 1937, more than thirty years later, in *Law: A Century of Progress*,<sup>2</sup> Dean Pound tolled the same ominous bell:

"Looked at superficially, many features of the legal order of today may well give us pause. . . . The multitude of regulations required by an urban, industrial society encountering the pioneer habits of self-reliance and private judgment which have come down from the past make the time seem one of disrespect for law. . . . The inadequacy of the judicial organization and legal procedure of the past century to deal with the mass of litigation arising in our great urban centers leads to widespread complaint and popular dissatisfaction with the administration of justice. . . .

"Questions of law have ceased to be local. We are so unified economically that no question is limited by jurisdiction and venue as questions used to be. Questions of law today are likely to be questions of business as well. Creative work cannot be done under limitations of party and jurisdiction and venue.

"Even less may the work of reshaping the law be left to occasional legislative commissions or to the intermittent and hurried action of judiciary committees. In such matters as procedure the judicial councils which have been set up so generally in the past decade will do much. But the ministry of justice, which will take the functioning of the legal order as a whole for its province and give to the problems of peace the continuous study which is so generally given by governments to preparations for war, seems to be a long way off in the English-speaking world."

Progress in the administration of justice has been painfully slow. It has failed to keep pace with a burgeoning, automated, electronic society that is increasingly urban, impatient and demanding. Indeed, the situation has taken on crisis dimensions.

This is not to say or to imply that there has been no progress. Indeed, there has been much. However, its hallmarks too frequently have been a patchwork of effort lacking

focus, continuity and adequate funding. Notwithstanding accelerating efforts to improve the administration of justice, Chief Justice Burger, in his address on the State of the Judiciary in July, 1971, was compelled to observe that:

"Essentially the problems of the federal courts, in common with state courts and indeed much of the entire fabric of our national life, are suffering from an accumulated neglect. This disrepair became an acute problem as the load increased, and we cannot ignore it any longer."

It is not the purpose of this article to dwell on the obvious and profound inadequacies of our present system of justice. It is rather to suggest that the evolution of our legal system makes it clear that vital elements still are missing. Those elements are focus, continuity, innovation, experimentation, and research, all melded under capable direction and with adequate funding. The catalytic agency to synthesize these elements can, in this writer's judgment, be a National Institute of Justice.

This article is then a document of advocacy. The historical details of our failure to attain the noblest purposes of our founding fathers are left to the legal philosophers and historians. It is sufficient to accept the fact of that failure as a point of reference and to move on to more promising methods that offer brighter hope for future progress.

#### II. A NATIONAL INSTITUTE OF JUSTICE

It is proposed that the National Institute of Justice take the form of an independent, not-for-profit, federally chartered corporation designed to coordinate and support the machinery of justice. It would be governed by a board composed of the most eminently qualified and widely representative individuals available. Its mission would be to make the administration of justice more fully responsive to the needs of our contemporary society.

##### *Purposes of the institute*

The primary purposes of the Institute would be as follows:

First, to provide direction and leadership that would be both responsible and responsive. The Institute would serve as consultant and advisor to all components of the machinery of justice at both federal and state levels.

Second, the Institute would provide a permanent body charged with the development of an overview of the law, with the establishment of priorities, with responsibility for the coordination of educational resources, research activities and projects of the organized bar.

Third, the Institute would serve as a fiscal agent to receive and disburse public and private funds for research, evaluation and action.

There is today no single body or individual in the federal or state governments charged with these ongoing overall responsibilities. Cooperation has improved between states and the federal government, but cooperation is not enough. Although each government has certain officers in each branch responsible for specific areas of the administration of justice, each is limited by constitution or statute to only a part of the law's sweep. It seems clear that the three branches of government should have the benefit of the research, counsel, advice and recommendations of an agency that has the primary mission for and a continuing commitment to the improvement of the quality of the legal system as a whole.

##### *Functions of the Institute*

It is envisioned that the proposed Institute would perform the following functions:

1. Survey, Appraisal and Information Collection and Dissemination Function

It would be essential that the Institute undertake and maintain an ongoing survey and appraisal of the functioning of the legal system and of the principal efforts to mod-

ernize, reform and reconstitute legal processes and the administration of justice. The task of determining what has been and is being done by the federal, state and local governments, private foundations, law schools, interest groups, professional organizations and other educational institutions is a task of great magnitude, but is essential to any coordinated effort directed toward modernization and reform.

The collection and dissemination of information about the operation of our society—a law society—is presently conducted by a variety of federal, state and local government agencies, private foundations, the organized bar and private institutions. The present efforts are uncoordinated, frequently incomplete, redundant and permeated with frustrating, circular reference systems. The creation of a National Institute of Justice would, for the first time, provide a single source from which comprehensive and complete information might flow. The Institute could provide an invaluable national link among governmental, private and professional interest groups directly or tangentially concerned with the same or closely related problem areas. The use of modern computer technology makes the goal achievable within a reasonable time and within our economic means.

#### 2. Diagnostic function

The diagnostic function would have as its goal the discovery and evaluation of the principal bottlenecks in the flow of civil and criminal justice and the recognition of new problem areas as they arise. This function has never been assumed by any agency or organization in the country on a continuing and permanent basis. So little attention and money have been devoted historically to this function that the legal profession is constantly in the posture of reacting to certain issues only after they have developed to crisis proportions. With an effective diagnostic function, problem areas can be dealt with more expeditiously and effectively.

#### 3. Coordination function

Coordination would be one of the Institute's foremost roles. This necessarily includes the establishment of priorities, the development of long range goals and a continuing evaluation of the results of action and research programs of the various components of the law society, both public and private.

#### 4. Research catalyst function

The disorganized and proportionately insignificant allocation of resources for legal research is evidence of the crucial need for a catalytic function of the Institute in this area. Although lack of sufficient funding is certainly one of the most crippling aspects of the anemic state of legal research in the nation today, a solution does not involve solely the infusion of more dollars. Continual inquiry must be made as to the value and relevance of research undertakings. The Institute could perform a highly valuable service as a catalyst in the development of areas in which research has been long neglected.

Most legal research of the past has been doctrinal research *in law*. However, studies have begun to appear which shed new light on the operation of the processes of law in society—research *about law*.

#### 5. Advisory function

The Institute could play a significant and effective role as an advisor to all branches of government and to the profession. Its recommendation, based upon research and analysis, would certainly tend to carry great weight.

#### 6. Continuity function

Perhaps one of the critical roles which the Institute would assume is to provide functional continuity for the modernization ef-

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fort. History demonstrates clearly that continuity of direction and operation has been a principal weakness in the functioning of law and in the quest for more effective administration of justice.

#### 7. Neutrality function

A seventh function of the Institute would be its mandate to insure neutrality. It should remain, as much as possible, free from political control of the decision making. While the rule of law in theory knows no party, the nature of our representative government inevitably brings political influences into the operation of the system of justice. An Institute governed impartially is both possible and essential.

#### Funding

It is contemplated that the Institute would be funded from both public and private sources. It would be both a grantor and a grantee of funds.

In its role as grantee, the Institute would be authorized to receive funds for its general administration, under contract for specific projects and programs and under grants for either specified or unspecified uses. As grantor, the Institute might serve as a funding agency for investment of public or private funds in research or action programs.

It is this writer's view that the creation by Congress of this Institute would not eliminate the continuing need for funding from numerous other sources including individuals, organizations, foundations and state and local governments. On the other hand, it is perfectly apparent to all who have examined the problem that the costs involved in modernizing the justice system—after generations of neglect—will be so large that additional responsibility for making funds available must necessarily rest with the federal government. As the Institute progresses in its survey function, it will only then be able to project accurately financial needs in a realistic way.

It should also be understood clearly that the Institute is not intended to supplant or put out of business existing agencies performing valuable work in the various areas of law and justice. Its aim will be to do more, not less. The Institute will be in a posture to provide a common rallying point for concerned individuals and organizational efforts to obtain congressional and executive response for projected needs.

#### Staff

It is contemplated that the Institute would have an interdisciplinary, broadly experienced professional staff of modest size. The staff, as directed by the governing authority, would not assume the functions presently performed by other organizations; rather, it would undertake functions not now being performed or being performed on a very limited basis.

It is not anticipated, for example that the Institute would itself be a large research organization. It would contract with universities, law schools, bar associations, legal associations, bar foundations, other professional organizations, private corporations and governments to carry out evaluation and research projects.

The staff would be responsible to and serve under the direction of a governing body which might be constituted as a Board of Directors.

#### Governing authority

It does not seem desirable at this juncture to suggest the specific type, size, or constituency of a governing board. Suffice it to say that the governing body should be appointed for a term of years by the President with the advice and consent of the Senate. Ex-officio members might include the Chief Justice of the United States and other high government officers. In all events, members of the governing body should be selected with due regard to their experience, knowl-

edge and proven dedication to the mission of justice.

#### What the Institute should not be

In any attempt to define what the National Institute of Justice should be, it is critical to inquire as to what it should not be.

The Institute should not usurp functions of existing entities. On the scene today are a number of public and private organizations dedicated to the modernization and efficient functioning of the law society. These include the Federal Judicial Center, the National Center for State Courts, the Law Enforcement Assistance Administration, the American Judicature Society, the American Bar Foundation and other private foundations of research and action in the field of justice, bar-related organizations and research centers. In its coordination role, the Institute would utilize existing organizations, and indeed nurture their further development and usefulness.

The role of the Institute would most certainly not include any attempt to federalize the state courts. Such a statement hardly seems necessary except for the extreme fear of some that action at a national level that involves funding by the federal government may be so motivated. It is contemplated that the Institute would be as much the servant of the states as it would of the federal government. If the Institute were to be successful, its reputation would depend upon its even-handed administration, its thoroughness and its understanding of the broad spectrum of problems in the administration of justice on the local, state and national levels.

It was said long ago and repeated many times since that the law is too important to be left to lawyers. The work of the Institute would be much too pervasive and too important to be other than interdisciplinary in its governing body, its staff and its concept.

The institute is envisioned as a cooperating, coordinating, and consulting organization that would make its resources available for the investigation, analysis and solution of legal and law-related problems. Thus, its staff would primarily perform consulting services, as opposed to having direct responsibility for the implementation of reform movements. In short, the staff would provide insight into ways that modernization resources might be utilized most efficiently.

Because the Institute would not be possessed with coercive power, its effectiveness could only develop as a result of its creativity and its applied expertise in fulfilling its functions. Only if the Institute proves capable of performing that function would its services be in demand or its recommendations be heeded.

#### III. STRUCTURES OF RESPONSE IN OTHER DISCIPLINES

The concept proposed in this article is not entirely new. Almost precisely fifty years ago Mr. Justice Benjamin Cardozo urged the creation of a ministry of justice.<sup>6</sup> He envisioned that a ministry consisting of five members might observe the law in action, develop recommendations for reform in the civil law and report to Congress and the state legislatures where change was needed. In making his recommendations, Mr. Justice Cardozo observed that his thought was not novel, pointing to the prior proposals of Roscoe Pond. Lord Westbury, Lord Haldane and others.<sup>7</sup>

Other proposals have been made in Congress in more recent years. The late Senator Dirksen and Congressman Emanuel Celler proposed the creation of a national foundation of law in bills submitted in 1967.<sup>8</sup> These bills were offered in full cooperation with the American Bar Association, the Association of American Law Schools and the American Association of Law Libraries. In

both the 90th and 91st Congresses Senator Fred Harris submitted proposals for the creation of a National Foundation of the Social Sciences.<sup>9</sup> Senator Harris' proposal envisioned a foundation designed to support academic research, education and training in the fields of political science, economics, psychology, sociology, anthropology, history, law, social statistics, demography, geography, linguistics, communications, international relations, education and other social sciences. In presenting his bill, Senator Harris called particular attention to the fact that his proposed foundation would perform no in-house research, but would, in keeping with the precedents set by the National Science Foundation and the National Foundation for the Arts and Humanities, underwrite, fund and support academic research, education and training in the social science field.

Appropriate inquiry might be made as to whether a National Foundation for the Social Sciences could adequately perform the functions of the proposed National Institute of Justice. The argument can be made quite forcefully that the interdisciplinary atmosphere of an organization devoted to the social sciences might indeed have a statutory effect.

This proposition has been thoughtfully analyzed by Robert B. McKay, Dean of New York University Law School, when he made the following observation:<sup>10</sup>

"[S]ocial scientists do not regard law as a kindred discipline. Accordingly it seems likely that in a social sciences foundation the law would always be the poor relation and that the important tasks we believe should be undertaken would not be supported except where there was an interdisciplinary study to be made in which law could play a complementary, but secondary, role."

With respect to the Dirksen-Celler proposals of 1967, it should be made clear that the leadership of the American Bar Association played a very significant role. Indeed, the leadership of the ABA, the Association of American Law Schools and the American Association of Law Libraries actively solicited the support of Senator Dirksen, Congressman Celler and their colleagues in both the House and Senate in support of that proposal. Why then, it may be asked, after four years has the proposal not been more actively pursued by the association to the point that it might even today already be a reality. Such legislation commonly requires a germination period. At the time the Dirksen-Celler proposals were introduced it was assumed that it would take a number of years to bring about the adoption of them or similar legislation. Indeed, the history of the several models described above indicates that this has been the pattern in each case.

The present proposal is thus not reflective of any abandonment of the broad principles contained in the original Dirksen and Celler bills, but is rather reflective of the refinements in thought that have evolved during the past four years. Indeed, it is recognized that there may be other refinements of the concept suggested from many sources before any proposal becomes a reality.

Both the Dirksen and Celler bills and the Harris bills envisioned the creation of their proposed foundations as independent administrative agencies of the federal government—one of four general types of independent government or government funded entities. These are the independent administrative agency, the government owned corporation, the federally chartered not-for-profit corporation, and federally chartered profit making corporation. The National Institute of Justice is envisioned as a federally chartered not-for-profit corporation.

Existing models of independent administrative agencies are the National Science Foundation and the National Foundation of the Arts and Humanities. An example of a federally chartered not-for-profit corpora-

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tion is the Corporation for Public Broadcasting.

The National Science Foundation was created to strengthen both research and education in the natural sciences. It was brought into existence as the result of a report prepared at the request of the President describing how best to develop a national science policy and to support basic research and education in the natural sciences. The report was submitted in 1945 by Dr. Vannevar Bush, Director of the Office of Scientific Research and Development. It recommended the establishment of an independent federal agency composed of members to be selected by the President. The establishment of the National Science Foundation took some five years after submission of the Bush report. The Foundation is authorized to make grants to institutions and provide fellowship programs for individuals; it now receives about a half-billion dollars annually for its work.

The National Foundation of the Arts and Humanities was created to encourage and support the humanities and the arts through studies and grants. It was many years a-borning. In 1951 President Truman requested a report on the status of the arts with respect to government. Two years later a report was submitted to President Eisenhower and in 1962 President Kennedy urged approval of a measure establishing a federal advisory council on the arts. Proposals were made in the next two years for a national council on the arts and a national arts foundation. In 1964 the National Council on the Arts was created and in the following year the National Commission on the Humanities joined forces with the Council to bring about the creation of the National Foundation of the Arts and Humanities. The Foundation has certain unique qualities of organization that are not here relevant. Its importance lies in the fact that responsible individuals in the field envisioned an independent agency modeled along the lines of the National Science Foundation, which would provide general support for research and education in the humanities. There appeared to be no other logical place within the federal establishment to provide a home for the arts and humanities.

The Corporation for Public Broadcasting was created in 1967 following a study by the Carnegie Commission on Educational Television. While acknowledging the free speech dangers implicit in government participation in the communications media, the Commission recommended extensive federal funding for television program production. In terms of structure, it is significant that the Commission proposed the establishment of a federally chartered not-for-profit corporation which would be neither an agency nor an establishment of the United States Government. Under the enabling legislation the President of the United States, operating under certain guidelines, appoints the fifteen members of the Corporation's Board of Directors. The Corporation may receive funding from federal and other sources.

It was thought that the federally chartered not-for-profit corporate structure would most effectively provide the independence, continuity, funding and political insulation vitally needed for operation in this controversial and sensitive area.

Each of the foundations and corporations described above bears some similarities of purpose and function to the proposed National Institute of Justice. Each is designed to provide a home for a discipline or a profession with great public service commitment that will make possible a continuity of direction and leadership, will encourage development, research and education, will provide responsible funding grants and will insure competent, independent and neutral direction. Each of these provides an analogy

and insight for considering the creation of a National Institute of Justice.

#### IV. THE MANY PRESSURES OF MULTIPLE CHANGE

An overview of developments within the profession emphasizes the need for the creation of a National Institute of Justice.

In addition, inquiry is justified as to whether any existing institution, or a combination of institutions, including the organized bar, are presently capable of performing along the functions deemed necessary for effective and comprehensive modernization.

Accordingly, some of the major areas of evolution in the modernization process are considered, followed by an analysis of the role of the organized bar in this process.

During the Twentieth Century the components of our machinery of justice—the courts, the practicing profession, legal education, the methods of practice, law related research—have too frequently lagged in their response to the problems and challenges of our rapidly changing society. Indeed, the practice of law in this country has been described as the last cottage industry. It should be observed that this has not been for want of concern on the part of dedicated lawyers, judges and numerous organizations of the profession. Rather, problems concerning the administration of justice and the practice of law have for too long been considered primarily the provincial concern of judges, lawyers and their constituent organizations. As has been described, in areas such as medicine, the natural sciences, and the arts and humanities, it was deemed in the national interest to create national organizations to foster development, research and innovation.

In contrast, the failure of this nation, until recently, to view problems concerning the effective administration of justice with sufficient seriousness to warrant a commitment of substantial resources from the federal government, has meant that those struggling to modernize the legal profession, legal education, and our justice machinery, have had to work with minimal funding wholly inadequate to meet the magnitude of the problems. We have too often gone in separate ways without carefully evaluating the merits and effectiveness of our efforts and without resources to interrelate results with the over-all problems of judicial administration. The inescapable conclusion one draws from most of these past efforts is that the approach has been comparable to trying to construct a space vehicle by assigning a thousand engineers, each left in isolation, to design one specific component with little comprehension as to how the components would function together when assembled. It may, therefore, be helpful to look briefly at certain components of the justice system in terms of the recognized needs of an urban society.

#### How law is practiced

In comparison with other vital aspects of society, the practice of law today and the basic methodology of the courts have changed relatively little from the days of Thomas Jefferson and John Marshall.

For many early nineteenth century lawyers the primary and often sole source of legal research and knowledge and Blackstone's *Commentaries*. And between 1790 and 1840 our courts produced only about 50,000 reported decisions. The next fifty years produced about nine times as many—450,000. From 1890 to the present the courts have added almost two million published decisions to our legal storehouses of knowledge. And this does not include the hundreds of thousands of new regulations which have been issued by administrative agencies or the approximately 10,000 new statutes adopted by legislatures each year.

New tasks and few demands have been placed on today's lawyer. The call for equal access to the machinery of justice and to pro-

fessional legal counselling for the poor and for members of minority groups has created new demands to which the bar has responded. Increasingly, questions are being raised as to the adequacy of available legal services to middle income American families.

Inherent in the increased recognition and utilization of the courts as effective vehicles for social and political change has been the mounting pressure on the lawyers and his profession to promote and protect equally, due process, and the "public interest" for those who could not individually afford a lawyer's services. New opportunities for public service by younger attorneys have developed. Law firms and bar associations have been challenged to attain an even higher level of public service activity.

Unlike industry and government, lawyers have not been able to reduce appreciably the number of expensive man-hours they devote to routine legal tasks. With certain exceptions, which will be discussed later, the ideal of the profession has long been to provide custom-tailored services to each client. The sources of essential legal research—court decisions, statutes, and administrative regulations—have skyrocketed quantitatively. Lawyers' research has become increasingly costly, and it is the client who must pay for the straining shelves of law books and the expensive manpower necessary to extract needed materials in them.

Yet young associates and solo practitioners, still pore through indices, digests, cases, commentaries and looseleaf services in the same manner as their great-grandfathers. These laborious methods remain the primary information retrieval system of the profession.

To this day routine legal research remains largely untouched by computer technology. The reasons are probably less the limitations of the computer than the high capital cost of better legal indices for computer use and for programming millions of bits of information. This high initial cost has certainly been a major deterrent to extensive utilization of automated information retrieval.

Another characteristic of the legal profession today is its increasing specialization. The lawyer's image of himself as a generalist, fully proficient in the law as a whole, bears little relation to reality. New areas of legal practice and inquiry have been added steadily during this century, e.g., labor relations law, federal tax law, civil rights law, antitrust law, and securities regulation law. Numerous other examples could be cited. The practicing lawyer today is constantly confronted with the problem of how little of the "seamless web of the law" he can hope to practice with proficiency.

The growing national uniformity of laws harbors profound implications for the profession and its admissions procedures. This century has been particular witnesses to the growing influence of federal laws and agencies regulating both man and his industry, labor and finance. The portion of a lawyer's time spent on matters regulated solely by state law has declined steadily. Suffice it to say that many practitioners today devote most of their practice to federal matters which were unknown 75 years ago.

#### The move toward modernization: An unfinished saga

The American Bar Association and the legal profession as a whole have in recent years devoted increased time and resources to consideration of methods for modernization. There exists a growing awareness in the Bar that the profession as traditionally structured has not met many of the legal needs of individual citizens. Changes in society as a whole have exerted certain but incalculable pressure on the profession to change. They have been affected by the emphasis upon research and innovation and by the increasing demands first of the poor and now of the middle class to share in the

benefits of an affluent society, including quality professional services of the doctor and lawyer.

Issues with respect to the modernization of the profession have arisen in two broadly defined areas. First, issues concerned with the internal organization of the legal profession, including specialization, use of paraprofessionals and computer technology are increasingly being considered. Second, issues related to the delivery of legal services to individuals are undergoing intensive scrutiny. These include, *inter alia*, prepaid legal cost programs, group legal practice, legal aid and *judicare*, and lawyer referral services.

#### Specialization

Specialization in the legal profession is a fact of life. A proportionately smaller number of lawyers today practice alone or with one partner—the standard form in rural small town America—the America of the Nineteenth Century. Industrialization and urbanization brought the growth of large industrial, financial and governmental organizations. As these institutions grew, so did the law firms which provided them with legal services. As large law firms developed, the lawyers within them often began to specialize and to organize into departments in order to provide better services to the client. Large corporations promoted specialization in the legal profession by employing lawyers as corporate counsel to serve the highly specialized legal needs of the corporation. The growth of widely diversified and specialized government agencies resulted in the need for large numbers of attorneys to work in the agency's specialized area. Government has become a vast training ground for specialized legal practice. As a result of these changes in the structure of the profession, over twenty percent of the lawyers who practice in the United States today are "one client"—government or corporation—lawyers. The move toward specialization also has affected the single practitioner and small firm. Specialties such as personal injury litigation, criminal law, domestic relations, and labor law are increasingly areas of specialization for the single practitioner or small firm lawyer.

While the de facto growth of specialization has been recognized both within the profession and by its clients, the bar has only begun to cope with the implication, opportunities, and problems of the formal recognition of specialization. Much experimentation will be necessary concerning certification requirements, e.g., the roles of law school curriculum, "internship" or apprenticeship, continuing legal education and graduate law study in training for a specialty. The area of examinations in specialty certification is still largely unexplored. No state as yet has developed a comprehensive specialist certification procedure, although California presently is experimenting with a certification system for specialists in workmen's compensation, tax law and criminal law.

The implications of specialization also remain largely unexplored. Careful study and thought must be given to the role of the general practitioner in an era of increasing specialization. A determination must be made as to the appropriate mix of formal education and practice for training in various fields of specialization. For example, it may be reasonable to require a litigation specialist to have more courtroom experience than classroom experience. The mix of the practical and the formal education for a tax expert may be quite different. Heretofore, the resources for exploring these questions have been woefully lacking.

#### Paraprofessionals

The case for greater utilization of paraprofessional legal assistants was well stated by the ABA Special Committee on Availabil-

ity of Legal Services, which observed that: "freeing a lawyer from tedious and routine detail, thus conserving his time and energy for truly legal problems, will enable him to render his professional service to more people, thereby making legal services more fully available to the public."

Traditionally lawyers have used clerks and secretaries as assistants for handling administrative aspects of the practice of law such as filing papers, searching court records, preparing forms, and other routine tasks. As the profession strives to extend legal services to more and more individuals in lower and middle income groups, the occasions in which routine operations may be performed by trained lay assistants will be multiplied.

The ABA Special Committee on Lay Assistants for Lawyers recently conducted a pilot training program for legal assistants and is developing model curricula for training law office personnel. The future for the development of educational programs for such training in colleges and law schools and of certification standards and procedures for this new vocation are virtually unlimited.

#### New systems for delivering legal services to individuals

The profession is in a state of ferment with respect to the development of new systems for the delivery of legal services to persons of moderate means and to the disadvantaged. There are genuine considerations of professional standards concerned with independence of the attorney and with conflicts of interest. Serious questions have been raised as to whether the present pattern of providing legal services to individuals is adequate to enable the average person to know when a problem confronting him is one in which a lawyer can help; to know whether the lawyer's service is worth its cost; and to locate a lawyer he is confident can and will provide the expert legal assistance he needs, at a cost he can afford. The conclusion is unavoidable that the profession, as presently structured, does not adequately meet these criteria, to serve low and middle income people.

Pressures of change have come from several sources. In the 1960s the Legal Services Program of the Office of Economic Opportunity was created, as a result of the widespread recognition of the inadequacy of the then existing legal services delivery system for low income Americans. Today about 2,000 legal services attorneys are handling approximately two million cases each year for the poor. The same questions are being raised now of the adequacy of legal services available to individuals above the poverty line—those in the middle and lower-middle income groups.

Probably the greatest force today behind the development of new systems to make legal services more readily available to middle income groups is the trade union movement. Labor organizations have obtained, through collective bargaining, substantial medical coverage benefits for their members in the form of insurance and group practice programs. It was predictable that they would also turn their attention to legal services available to their members.

#### Group legal services

The term "group legal services" as discussed here connotes a plan in which a group or organization designates one or more lawyers to represent individual members of a group. Numerous group legal service plans are operating today, frequently under the sponsorship of unions.

These plans have created continuing controversy within the legal profession. However, the issue no longer primarily revolves around whether such plans may be allowed to exist. The United States Supreme Court, in a series of decisions, the most far-reaching of which was *United Mine Workers v. Illinois State*

*Bar Association*,<sup>12</sup> has shielded such arrangements against charges of unauthorized practice. One commentator has stated that the holding in the *Mine Workers* case makes it "difficult to conceive a practical and attractive group legal arrangement that would not be protected by the rule it announces."<sup>13</sup>

Group legal services have been around for some time. Certain forms of group practice have been accepted by the profession. Probably the most common group legal service arrangement is in the automobile insurance industry. Individuals protected by automobile casualty insurers must, in the event of a claim, accept counsel of the company's choice. In addition, the legal needs of the poor served through the OEO-funded Legal Services Program are primarily met by a group legal services structure. A substantial amount of additional study and analysis must be performed to determine the effectiveness of group legal services plans. But the need for new methods to better meet the legal services requirements of large numbers of people can be said to constitute one of the most pressing problems facing the profession today. The Bar can ill-afford to ignore the reality of group legal service programs; a brochure published by the ABA Standing Committee on Lawyer Referral Services has observed that "the time may well come when a majority of the general public will receive all needed legal services from lawyers provided by lay organizations."

#### PREPAID LEGAL COST INSURANCE

Another change in the structure, primarily in the funding of legal services for the middle class, has been embryonic development of prepaid legal cost programs. Examples of the growth and success of hospital and medical insurance plans have raised the question of the feasibility of financing legal services generally through pre-payment plans. The funding of "routine" legal services under this concept is, strictly speaking, a pre-payment or financing mechanism rather than a spreading of the risk. The automobile insurance industry has long had experience in calculating the cost of legal services as part of the insurance premium; but this has been primarily coverage for legal catastrophe. As yet we have had little experience with pre-payment mechanisms for routine legal services.

The American Bar Association Special Committee on Prepaid Legal Services is sponsoring a pilot program in Shreveport, Louisiana, in cooperation with the Shreveport and Louisiana State Bar Associations, which has been in operation since January, 1971, with Ford Foundation funding. The Committee is undertaking sponsorship of a pilot program in Los Angeles, California, which has not yet begun operation. Prepaid legal service programs are attractive to trade union, and other consumer groups, including teachers and municipal, state and federal employee associations. However, problems concerning such sponsorship are myriad. For example, employer contributions to such plans are presently not authorized under the Taft Hartley Act. Unlike health and medical service benefits, contributions to these plans are not tax deductible. Whether state insurance departments will consider prepayment plans as insurance for the purpose of state regulation is not presently known. These and other questions require further exploration.

Many members of the organized bar see prepaid legal cost programs as a vehicle for providing more effective legal services for individuals without placing a lay intermediary between the attorney and his client. Indeed, due in large part to efforts of the Association, twenty-three state bar committees have been established to explore the establishment of prepaid plans.

Footnotes at end of article.

## LAWYER REFERRAL SERVICES

Although lawyer referral systems have been in operation in the United States since 1937, there are today only 267 lawyer referral offices in operation, dealing with approximately 250,000 clients each year.

The present system bears some similarities to the legal aid system as it was constituted prior to the introduction of the OEO Legal Service Program. It is typically underfinanced, inadequately advertised, and underutilized. To be sure, the present system is making a substantial day-to-day contribution to the availability of legal services to the public, but those who have given the most penetrating consideration and study to the problem are generally dissatisfied with the capacity of the present system to meet the much wider unfulfilled needs of middle-income families. The ABA Standing Committee on Lawyer Referral Service has indicated that a major problem is to provide some assurance to the public that the quality of service which an individual will receive would be significantly better than could be accomplished by selecting a lawyer at random from the yellow pages of the telephone book.

*Judicare*

The OEO Legal Services Program has almost exclusively utilized the approach of funding offices staffed by attorneys employed to perform legal services for the poor. Only a few OEO-funded programs permit the client to select a private practitioner who is then reimbursed by the funded agency. This system is known in the profession as "Judicare," and its supporters argue with considerable logic that it is the only practical method of providing legal services in rural and sparsely settled areas.

*The need for evaluation of methods*

Thus, there is a pressing need to intensify the study of the effectiveness and relative cost of new and old systems for the delivery of legal services. The basic obligation of the profession is to provide legal services to the public, to make such services available to all members of society, and, in so doing, to insure that they are performed by qualified persons who have been adequately educated.

*Legal education—Law schools in lockstep*

Law schools are today in a period of profound soul searching and re-evaluation. With striking uniformity they have followed curriculum and teaching methods developed in the late Nineteenth Century. Most are now revising their curricula to introduce more effective methods of educating and training lawyers to deal with the problems of the late Twentieth Century.

Traditionally, the source of most law school teaching materials has been appellate court opinions. Of course, any practicing lawyer knows that the world of the appellate court opinion is often a considerable distance from the real world of most legal practice. Until recently there was little innovation in law school teaching methods and content. The case method of teaching long reigned supreme.

It has been suggested that the complete lawyer should receive three types of education which may or may not be subject to combination. He should be taught to analyze the legal significance of issues. He should be taught techniques of practice. He should learn the social, political and economic dynamics of our society inasmuch as the law is the basic regulator of these dynamics. Traditionally too, law schools have seen themselves as educating prospective lawyers to think like lawyers, leaving to others education in the technique of practice. Clinical teaching was relatively rare with legal writing reserved, in the main, for the law review editor.

Until recently little concern was evidenced over the failure of legal education to famil-

iarize prospective lawyers with how society works. But today, law schools are profoundly involved in a re-evaluation of their role and responsibility to themselves and to society as a whole. Law schools are increasingly concerned with the relevance of their curricula. This concern has produced new courses and orientation. There has been increasing concern with interdisciplinary aspects of legal education. Clinical training is increasingly supplementing the traditional classroom curriculum.

In the past a major limitation of experimentation with curricula and teaching methods was the view, perhaps accurate, that most law students were headed in the same direction, i.e., toward traditional private practice. Law schools today are faced with a far greater diversity of student interest. This is due in part to expanded opportunities for legal practice in government, legal aid, and other full-time public service activities, and to the increasing specialization of private practice. Teaching has been oriented to training legal generalists on the theory that even a specialist needs to know something about other areas of the law. However, the reality of specialization has raised questions about whether there is a role for law schools in the training of specialists. Moreover, continuing controversy revolves around the relevance and use of the third year of law school. Clinical training, interdisciplinary studies and specialization are all increasingly vying for that last year of the law student's education.

Increasingly, law schools are asking whether they should break the uniformity of past patterns and begin to develop specialties and particular emphasis, i.e., should urban law schools emphasize urban legal studies with perhaps a greater research and behavioral orientation.

Three major barriers have served to retard experimentation with new curricula: the conservatism inspired by the success of the case method in its time; bar examinations; and funding. The so-called "national" law schools are perhaps most affected by the first factor, because they have been most successful by traditional standards of legal education. On the other hand, although the national law schools have not oriented their course primarily toward bar examinations, the majority of schools have been sensitive to that practicality. Undoubtedly, tradition-bound bar examinations have discouraged innovation in law schools. Some experimentation with a national bar examination is now going forward under the auspices of the Association of American Law Schools and the National Conference of Bar Examiners. This effort is being widely applauded and carefully observed.

Formal education in the law is still a remarkably young idea in this country. In fact, it has only been in the last half century that the majority of practicing lawyers have been trained by law schools. Historically, young aspirants to a legal career "read law" in the office of a licensed practitioner, and the requirement of formal legal education as a prerequisite to taking a bar examination is a comparatively recent development.

Many law schools had their beginning in the basement of a YMCA and as night schools catering to the part-time student. A large number of schools were started as proprietary institutions and there remain a surprising number of such institutions, especially in the State of California. Among the low-budget proprietary operations large classes are the normal mode of operation. It is also true that even the law schools forming a part of universities are expected to produce a profit. The notion of a university law school receiving research and educational grants from its parent organization generally has been a foreign thought. As an inevitable result, curricular innovation, including greater clinical and research pro-

grams, which would require significant increases in law faculties, facilities and funding, have been slow to develop.

Research by law school faculties and students has, over the years, been minimal, especially as compared with other disciplines. That which has been undertaken has largely been of a doctrinal nature.

The history of the funding of legal education and research from private sources suggests that significant change in the foreseeable future is unlikely, unless new and substantial sources of income are made available.

*Continuing legal education*

Continuing legal education has in recent years become a significantly more important component of the lawyer's training.

This, too, reflects a recognition of the incompleteness of law school education as preparation for legal practice.

The early efforts of the Practising Law Institute and the Joint Committee on Continuing Legal Education of the American Law Institute and the American Bar Association paved the way for rapid growth of programs of continuing legal education. Such programs are now widespread. Today most state and some local bar associations, as well as many law schools, sponsor continuing legal education programs.

Increasingly, the profession sees continuing legal education as at least a partial answer to a number of its problems. It is seen as a way of minimizing the learning which a new attorney might otherwise experience at a client's expense. It is looked upon as a method by which specialists can increase their proficiency and general practitioners develop specialties. It is an avenue for bridging the knowledge gap created every time major new legislation is enacted.

Funding is and will continue to be a major problem in continuing legal education. It restricts the types of programs which can be offered; programs must appeal to significant numbers of attorneys in order to pay for themselves. To a limited extent profitable programs can support the unprofitable ones, but this places serious limitations on developing programs for less profitable specialties or in areas of public service. The result is that these areas are likely to be neglected.

Two illustrations of education in the area of court administration are worthy of note. Until 1964 there did not exist in this country a school for state trial court judges. It was only with the inspired leadership of Tom C. Clark, then Associate Justice of the U.S. Supreme Court, and the infusion of substantial funding by the Kellogg and Fleischmann Foundations that the American Bar Association's National College of the State Judiciary became a reality. More than 30 percent of the state trial judges of courts of general jurisdiction have since attended the college.

Until last year there was no institution in the United States for the education of court administrators and executives. Under the leadership of the Chief Justice, Warren Burger, and with a large grant from The Ford Foundation, the Institute for Court Management was created. It already has graduated two classes and has inspired some law schools to undertake the development of programs leading to a master's degree in Court Administration. It was a large factor in persuading Congress to enact the Court Executives Act creating "business managers" for each of the Federal Circuits.

*Regulating professional qualifications*

The state has conferred on the lawyer the exclusive right to provide legal services. Yet neither the profession nor the state has developed a procedure for admitting attorneys to the bar which assures the public that those who are licensed to practice have achieved a reasonable level of competency or

possess the necessary moral qualifications. It is fair to say that there is near consensus within the legal profession that state bar examinations do not truly test whether an applicant is competent to practice law. Indeed, no law firm would base its decision to employ an admittee on the strength of his passage of such a written examination. The plain fact is that no written test can measure the ability of an applicant to perform many of the facets of practice. Furthermore, while specialization is a growing reality in the legal profession, bar examinations do not reflect this fact, and at the present time there is no later certification procedure regulating such specialization.

Many are of the view that the regulation of professional qualifications is not the concern of the law school. Some suggest that it is the responsibility of the organized bar. Others lay the responsibility on the judicial branch of the state government. In any event, it is certainly the responsibility of some group within the profession, and the plain fact is that professional competency is not now receiving sufficient constructive attention.

#### *Research in and about law*

One of the hallmarks of today's society is its reliance upon research as an instrument of development and progress and for the solution of problems. One need look no further than his television set to observe the constant emphasis on research in the advertisements of program sponsors. Typically, one hears such slogan as "progress through research"; "Ford has a better idea"; "progress is our business"; etc.

Insofar as research in the law is concerned, it may be divided into two types: doctrinal and empirical. They have been described by professor David Cavers of the Harvard Law School as research in law and research about law. In the field of doctrinal research, or research in law, the legal profession has historically made important contributions. This kind of research required little money and could be traditionally performed in the library. This was pointed out by Dean Robert B. McKay of New York University Law School in his testimony before the Senate Subcommittee on Government Research<sup>23</sup> in which he observed that lawyers have made great progress in systematizing and unifying the law through their doctrinal research. This has been true despite the obstacles presented by a diverse federal system comprising more than fifty separate jurisdictions. By way of illustration, Dean McKay pointed to the substantial contributions of the American Law Institute and the Commissioners on Uniform State Laws as examples of what lawyers could do with modest sums of money.

However, it has been only in very recent years that the profession has come to realize the importance of empirical research and the responsibility of the profession for its conduct. This awakening concern for research about the law led to the establishment of the American Bar Foundation, the research arm of the American Bar Association. The work of the Foundation has been primarily limited by the funds available to it. Law schools evidence a growing commitment to research about the law, but here, too, financial resources are limited.

As Chairman of a Special Committee on Financial Resources of the Association of American Law Schools, Dean McKay conducted a study financed by the Walter E. Meyer Research Institute of Law, the purpose of which was to ascertain the level of private philanthropic contribution to legal education and legal research. The results of that study indicated that private foundation support has not been large. During the twelve-year period of the study most of

the funds were granted for construction, fellowships and individual research. Only a modest amount was made available for empirical research.

Of the funds granted to law schools, more than 60 percent was concentrated among five schools and nearly 80 percent was concentrated among ten. The Ford Foundation was the principal grantor, accounting for more than two-thirds of all foundation support. Grant money went primarily to international legal studies, graduate fellowships for law teachers and the administration of justice, particularly in the criminal field. In the final year of the period studied, only a little over one percent of all foundation grants allocated to the sciences and social sciences was directed to law.

In the same period, the government was providing only negligible support for legal research. At the time of Dean McKay's study, the National Science Foundation had made no grants for legal education or legal research. Likewise the National Endowment for the Humanities made no research grants to lawyers. Proposals introduced in Congress for a National Foundation for Social Sciences and a National Foundation of Law and Justice have not yet received wide support.

In contrast, research in support of the physical sciences has fared very well at the hands of both private and public agencies. Admittedly, the legal profession has been slow to awaken to its responsibilities and opportunities to improve the function of our law society through research about the law. But it has been demonstrated that lawyers working together and working in conjunction with other disciplines are quite capable of making the system work better. The obvious need today is to provide adequate funding, continuity and direction.

#### *The Crisis in the Administration of Justice*

The inadequacy of our nation's judicial machinery, which was designed to meet the needs of an agrarian society in the late Eighteenth Century, has produced a crisis in our judicial system. This crisis in the result of a multitude of long-neglected problems which, because of increasing demands being placed upon our court system, now threaten much of the system with virtual collapse. There is hardly an urban court which is not touched by the crisis. Interminable delays threaten to destroy the usefulness of our civil courts for the peaceful and orderly resolution of conflicts. Delays in the criminal courts too often mock both the concept of deterrence or the rights of accused. Many judges now must devote an inordinate amount of time to administrative details which could be better handled by others. At the same time, assembly line justice often prevails. Appellate courts are equally affected. In many state systems the average time required to process an appeal can consume in excess of eighteen months.

The task of resolving the problems which contribute to this crisis is not easy, for resort to simplistic solutions usually creates a high risk of destroying the very system which such solutions are intended to save. What is needed is reform within the context of our legal traditions.

The focal point of the machinery of justice in our country is, of course, the judge himself. Too frequently judges, especially in the minor courts that process the bulk of the civil and criminal litigation, receive little or no judicial training or orientation. There remain substantial problems with respect to insuring that judicial officers are competent and have the requisite temperament to adjudicate disputes in a courtroom setting.

On the positive side of the ledger, this is an area which is receiving substantial direction and attention from Chief Justice Burger. He, for example, has been instrumental in the creation of the new National Center

for State Courts. His predecessor, Chief Justice Warren, was the moving force in the establishment by Congress of the Federal Judicial Center. Under the broad mandate of Congress, one of the primary functions of the Federal Judicial Center is "to conduct research and study of the operation of the courts of the United States, and to stimulate and coordinate such research and study on the part of other public and private persons and agencies."

The new National Center for State Courts, together with the Federal Judicial Center, the National College of the State Judiciary under the sponsorship of the Section of Judicial Administration of the ABA, and the Institute for Court Management, all are recent examples of advances in strengthening judicial training and support.

#### V. TRANSLATING DESIRE INTO REALITY

Inherent in the efforts and most legal reformers, voluntary and professional, has been the assumption that if enough human energy were applied by enough dedicated groups existing machinery could be improved and the crisis in justice could be met. The piecemeal, uncoordinated nature of the various efforts seems not to have been regarded as a deterrent. At least they have been accepted as an inevitable fact of judicial life. But with it all, comprehensive, coordinated national planning is lacking and effective modernization of the system appears still to be an elusive and urgently needed element.

From the time of the creation of our constitutional government, the condition of justice has suffered almost directly in proportion to the increasing population and the increasing complexity of our society. The responsibility, although often the subject of partisan political debate, has fallen on the lawyer and ultimately the organized bar. Lawyers are educated to understand and deal with the application of the rule of law. Moreover, they are virtually the only professional group having complete access to the machinery of the administration of justice: the enforcement of societal mandates through law. In short, they are intermediaries between the theory of the law and its application to society.

Yet the very nature of the practice of law can be contradictory in terms of the interests of society and the interests of particular individuals, or organizational and governmental entities. They are paid advocates, ethically bound to consider the client's interest as paramount to virtually all other considerations. This obligation is to be juxtaposed with a commensurate obligation—also a matter of ethics—to work for the public good.

Efforts to accommodate these co-equal obligations have been pursued, in the past, mainly through the organized bar or through government. One has only to consider the makeup of the executive, judicial and legislative branches of government to note the intricate and pervasive involvement of the lawyer in the administration of justice. Chief Justice Burger aptly articulated this in his State of the Judiciary address at the 1971 ABA Annual Meeting several months ago:

"A strong, independent, competent legal profession is imperative to any free people. We live in a society that is diverse, mobile and dynamic, but its very pluralism and creativeness make it capable of both enormous progress or debilitating conflicts that can blunt all semblance of order. One role of the lawyer in a common law system is to be a balance wheel, a harmonizer, a reconciler. He must be more than simply a skilled legal mechanic. He must be that, but in a larger sense he must also be a legal architect, engineer, builder and, from time to time, inventor as well. This is the history of the lawyer

Footnotes at end of article.

in America, and in this respect he is unique among the lawyers of all societies."

While it cannot be said that kinship among lawyers is so great that one may find them huddled together under one roof, they are gregarious enough that the vast majority of them belong to state and local bar associations. More than half of them voluntarily belong to the American Bar Association, the national organization of the profession.

The movement to organize lawyers into bar associations on a national, state and local level is a little over a hundred years old. The organization started in metropolitan areas and the more populated states. The early associations were voluntary in nature and had modest budgets. Permanent staffs did not exist; association projects were carried on by volunteers. The Bar was not seen in those days as responsible for the discipline of members and certainly not as the harbinger of reform.

The passage of time brought many changes. As bar associations assumed larger roles in professional standards of conduct and practice, and a larger share of responsibility for the machinery of justice, the so-called integrated bar began to develop among practicing lawyer to belong to the professional organization of lawyers in a state, took place largely during the middle third of this century. Today, half the states have integrated bars and the trend in that direction is continuing. Even with this movement, inadequate funding has in most states prevented the mounting of effective programs of discipline, education and improvement of judicial machinery.

It may surprise some to realize that the American Bar Association had no permanent staff for the first half of its nearly one hundred years. Indeed, not until the middle of the 1950's did it have sufficient funds to staff a limited number of projects and activities. Membership in the American Bar Association has trebled in the past fifteen years, while its income has grown by more than 600 percent. In the last decade an even more significant development has taken place—the funding of public service and educational projects through foundation and government funds. About half of the Association's annual income now comes from such sources. It is this writer's belief that that percentage will grow in the decade ahead to between 65 percent and 75 percent of the Association's entire income.

Indeed, the progress of the organized bar in the past decade has been so marked that some believe that the crisis in the administration of justice can be met by the organized bar under the direction and leadership of the American Bar Association. While the forward strides of the last decade are a source of encouragement and even some pride, and while the leadership of the American Bar Association is dedicated to the proposition that this organization has the potential for even greater and more significant contributions to the cause of justice, it must be recognized that there are some inherent qualities of a voluntary organization that militate against its completely effective fulfillment of this lofty role.

On the one hand, the ABA House of Delegates includes the widest possible range of representation from all groups who constitute the legal profession today. The Association's present day structure is its strength when called upon to pass upon the conclusions or proposals of others. Nevertheless, because it is a voluntary organization and represents so many diverse and often irreconcilable views, it should not surprise or discourage us to note that the contribution of the organized bar to the solution of today's societal problems has been, of necessity, confined largely to the realm of ideas.

Time freely contributed by volunteers, projects financed by volunteers, machinery tuned to decision by consensus, cannot produce the kind of massive, venturesome, sustained and coordinated attack which is required in the field of justice today. Volunteer bar associations, the American Bar in particular, perform at their maximum efficiency in unfolding and debating a wide range of views. By their very nature, however, voluntary bar associations cannot, at the same time, be fearless in research, forceful in exposition and confident in criticism.

Even if the organized bar could, through reorganization or otherwise, build a sufficient structure from which to conduct far-reaching research programs and substantial pilot programs in our quest for a better society, an argument can well be made against proceeding in that direction. As long as bar associations remain voluntary, their ability to represent all lawyers is impeded. Should the day come when all lawyers speak with one voice, the rest of society may nonetheless readily question both our method and our motive.

The very size of life and society today minimizes the effectiveness which any voluntary group can now offer. Individual contractors alone cannot produce coordinated space programs. Individual railroads cannot serve a sprawling nation. Society today requires a National Institute of Justice.

#### VI. CONCLUSION

The late Reginald Heber Smith once observed that men can learn, if they must, to put up with physical imparity and economic inadequacy; but that a brooding sense of injustice makes them want to tear things down. We who bear the primary responsibility for the machinery of justice in this nation, if we are to be faithful to our oath, must be vigilant in our search to find new and better ways to make equal justice under the law a living reality. It is incumbent upon us to move forward with common purpose and high aspiration that is worthy of our heritage. The National Institute of Justice is a concept whose time has come.

#### FOOTNOTES

\*Executive Director, American Bar Association, Chicago, Illinois; A.B., Duke University, 1944 ('46); J.D., Harvard University, 1949. Mr. Early wishes to thank his associates, John W. Atwood and David C. Long, for their invaluable assistance in the preparation of this article, Mr. Early practiced law in Huntington, West Virginia from 1949 to 1962.

†The Chief Justice of the United States.

<sup>1</sup> Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 40 *A.M. L. Rev.* 729 (1906).

<sup>2</sup> *Id.* at 742, 749.

<sup>3</sup> Pound, *A Hundred Years of American Law*, in *LAW: A CENTURY OF PROGRESS 8* (A. Reppy, ed. 1937).

<sup>4</sup> *Id.* at 20, 23, 24.

<sup>5</sup> E.g. Laswell and McDougal, *Criteria for a Theory About Law*, 44 *S. CAL. L. REV.* 362 (1971).

<sup>6</sup> Cardoza, *A Ministry of Justice*, 35 *HARV. L. REV.* 113 (1921).

<sup>7</sup> *Id.* at 114.

<sup>8</sup> S. 2627 and H.R. 13584, 90th Cong., 1st Sess. (1967).

<sup>9</sup> S. 836, 90th Cong., 1st Sess. (1967), and S. 508, 91st Cong., 1st Sess. (1969).

<sup>10</sup> *Hearings on S. 836 Before the Senate Subcomm. on Government Research*, 90th Cong., 1st Sess. (1967).

<sup>11</sup> 389 U.S. 217 (1967).

<sup>12</sup> Schwartz, *Changing Patterns of Legal Services*, in *LAW IN A CHANGING AMERICA 117*, (G. Hazard, Jr., ed. 1968).

<sup>13</sup> *Hearings on S. 836 Before the Senate Subcomm. on Government Research*, 90th Cong., 1st Sess. (1967).

## THE DARKNESS AT THE END OF THE PIPELINE

HON. DAVID R. OBEY

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. OBEY. Mr. Speaker, last week Secretary of Interior Rogers Morton decided to give the go-ahead for the construction of the trans-Alaskan pipeline.

Many Members of Congress, from both political parties, had indicated to the Secretary their belief that before any final decision was made more attention ought to be given to a trans-Canadian route which would not only deliver the Alaskan oil to mid-west markets where it is badly needed, but would also eliminate the environmental damages from tanker oil spills and earthquakes which even the Department of Interior admits will almost certainly result if the Alaskan pipeline is built.

As I indicated in a letter to Secretary Morton, I agree with that position and I find it most unfortunate that the Secretary does not.

I ask that a copy of my letter to Secretary Morton appear below, along with a recent article from the Washington Post which clearly describes the environmental issues involved and an editorial from the Post on the Secretary's decision. The material follows:

APRIL 28, 1972.

HON. ROGERS C. B. MORTON,  
Secretary, Department of the Interior,  
Washington, D.C.

DEAR MR. SECRETARY: More than a month ago the Department of Interior sent to the Council on Environmental Quality a nine-volume, 3,500-page environmental impact statement on the proposed trans-Alaskan pipeline.

When that impact statement was first issued, many persons got the impression that a decision in favor of issuing a permit for the pipeline had already been made. We were told that was not true, and that a decision would be made in about 45 days.

Many of us in Congress have asked for public hearings on this important and massive impact statement. I would like to renew that request. Unfortunately, one official of the Department of Interior has been quoted as saying that further public hearings on the impact statement would be a "circus." I disagree. The decision on whether to build a pipeline is a matter of considerable public concern and it ought to be made with the fullest public participation.

I do realize that a great deal of work and effort by dedicated and competent people went into writing that final impact statement. But the statement on which hearings were held last year—a document of about 200 pages—is a far different impact statement from the one released on March 20th. This latter statement, for example, contains much material which has, to date, never been publicly discussed. If in fact a decision has not been made on whether to issue a permit for the construction of the trans-Alaskan pipeline, further public hearings would undoubtedly help to assure a skeptical public that the best possible decision with regard to the construction of a pipeline will be made.

Frankly, I would like hearings for another reason—to consider the possibility of withholding a decision on the construction of a trans-Alaskan pipeline until we receive fur-

ther indications from Canada on when a pipeline can or will be constructed through that country. This alternative was barely discussed in the environmental impact statement.

Some persons contend that we do not know the official position of the Canadian Government with regard to the pipeline. I don't think that is true. In February, 1972, the President of Canada's Treasury Board made it plain that Canada is concerned about the proposed trans-Alaskan pipeline and wants to discuss with us proposals for a pipeline through Canada. On March 30, 1972, their Minister of Energy, Mines and Resources, Donald Macdonald, indicated that the Canadian Government was preparing an application, to be completed by the end of this year or early next year, for the construction of a pipeline through Canada's northwest.

The advantages of a pipeline through Canada, including the fact that potential environmental damages from earthquakes and tanker spills will be minimized if not eliminated by the Canadian route, have been clear for some time. EPA Administrator William Ruckelshaus outlined those advantages in a letter to you over a year ago, when he asked that the pipeline be held up pending a review of the environmental advantages of the Canadian route. Those advantages were highlighted even more in the environmental impact statement issued by your Department.

Those of us on the House Appropriations Subcommittee on Interior were told a few months ago that "as much as 20%" of the trans-Alaskan pipeline will lie within a serious earthquake prone area. It was no surprise, therefore, when the impact statement concluded that it is "almost a certainty" that one or more large earthquakes will occur in the vicinity of the pipeline during its lifetime.

The impact statement calls oil spills from tankers transporting oil from Valdez to the west coast of the United States "unavoidable". So, we must assume that tanker spills in the future may even dwarf the Torrey Canyon spill of several years ago.

Mr. Secretary, no one questions the fact that Canada will be building a gas and oil pipeline through the Mackenzie Delta, and the impact statement concludes that "less environmental costs would result from a single transport corridor than from two separate corridors," one in Canada and one in Alaska. It would seem prudent, therefore, to look further into the possibility of a Canadian rather than a trans-Alaskan route.

Let me emphasize the fact that I fully realize that we need the oil which has been discovered on Alaska's North Slope. I am only concerned that we transport it in a way that presents the least potential harm to the environment. Since we can eliminate two of the main problems associated with the proposed trans-Alaskan route, earthquakes and oil spills, I think it would be wise to make our final choice only after giving more consideration to a trans-Canadian route.

In sum, I agree with the President of the Canadian Treasury Board, when he said recently: "In the resource management of the North American land mass, all the alternatives need to be thoroughly investigated before any unilateral actions are taken. That much seems clear no matter what national strategies are to be pursued by Canada and the United States in satisfying their respective requirements for oil and gas."

Sincerely,

DAVID R. OBEY,  
Member of Congress.

#### THE DARKNESS AT THE END OF THE PIPELINE (By C. Robert Zelnick)

Among those who care about such things, the conviction runs deep that the battle over the trans-Alaska pipeline has become the Interior Department's Vietnam. Ill-conceived from its inception, fraudulently purveyed, di-

visive in its political repercussions and disastrous in its consequences, the project has little to recommend itself other than the enormous quantity of resources already poured into its accomplishment.

Yet Interior continues to see light at the end of the pipeline. That it will issue the right-of-way needed by the Alyeska Pipeline Company—a consortium of seven oil industry giants—to cross federal lands in Alaska seems a foregone conclusion. On March 20, the day his department released its massive "final" impact statement—which conceded every significant ecological objection ever voiced against the 789-mile Prudhoe Bay-to-Valdez route, Interior Secretary Rogers C. B. Morton promised a decision "within about 45 days." Eight days later, after meeting with Morton, Peter Flanagan and other administration officials to express his country's desire "for the construction of a Mackenzie Valley pipeline." Donald S. Macdonald, Canada's Minister of Energy, Mines, and Resources, told reporters at a Washington news conference: ". . . I had the impression that, with so much effort and study invested in the trans-Alaska pipeline, that it rather looks as though they would be giving that priority in their consideration."

Actually, as Morton conceded in an appearance on the "Today" show the morning after Interior released its report, his department could not have decided anything with finality within 45 days. Since April, 1971, Interior has been blocked by an injunction issued by the federal district court in Washington from issuing the permit. Two weeks advance notice is required, during which time Judge George L. Hart Jr. will have to satisfy himself that Interior has complied with the National Environmental Policy Act of 1969. The act requires a complete statement of the consequences of any agency action "significantly affecting the quality of the human environment," plus a thorough examination of alternative courses.

Hart, a model of judicial self-restraint, is expected to rule for Interior. The Wilderness Society, Friends of the Earth, and the Environmental Defense Fund—the three environmental group plaintiffs—would then probably appeal to the more assertive U.S. Court of Appeals, with the loser, in all likelihood, taking the case to the Supreme Court. The ultimate result is almost certain to be a landmark decision in environmental—or, for that matter, administrative—law.

#### THE CHOICES

The nub of the social issue involved is not whether Alaskan oil should be brought to market. Rather, the choice is between an 1,800-mile overland route, 1,500 miles of which would traverse Canada's Mackenzie Valley, and a shorter land route from Prudhoe Bay to Valdez, with the oil then moving via tankers to ports on the U.S. West Coast. The nub of the legal issue is whether Interior has considered the Canadian alternative to the degree necessary to satisfy the environmental law, and whether, regardless of Interior's diligence, the evidence favoring the Canadian route is not so overwhelming as to make any right-of-way grant through Alaska a clear abuse of administrative discretion.

Environmentalists are convinced that the Mackenzie Valley route is superior, in part because it involves a single pipeline corridor rather than two, and that should Morton decide otherwise, they can beat him in court. They maintain that abundant support for their position can be found in Interior's own impact statement of March 20. The stakes are high. The pipeline project would be the largest undertaking in the history of private enterprise. The oil industry claims to have invested almost \$100 million to date in studying the Alaskan terrain and in procuring pipe and construction materials. That figure, even if exaggerated, is a mere pittance compared to the profits they expect to reap from the venture.

The known oil field in the Prudhoe Bay area—three giant pools running inland from a 40-mile stretch along the Beaufort Sea and covering an area the size of Massachusetts—exceeds 10 billion barrels. This, however, is only a fraction of what the industry eventually hopes to find. Forty billion barrels is a more realistic estimate. In September, 1969, an assortment of producers paid Alaska more than \$900 million for the privilege of looking for more North Slope oil. A barrel of oil sells for about \$3.25 on the West Coast, more in the Midwest and East.

#### NO "GOOD" WAY

Despite years of study and volumes of "stipulations" designed to project the environment, there remains no "good" way of running 2 million barrels of oil a day through 48 inches of pipe at a temperature of 145 degrees Fahrenheit over and under a vast stretch of Arctic wilderness. You have to begin by building gravel service roads and air strips large enough to accommodate the big Hercules aircraft. You must find more gravel for 12 camp sites and 6 pumping stations, each 50 acres; this means gouging about 50 million cubic feet of gravel out of riverbeds and off the tops of hillsides along the way. Stream siltation and land erosion are the inevitable results. Some 350 streams would be crossed by the route. Many are spawning grounds for salmon and grayling. Oil spills can be a problem there. They can be even more of a problem if the oil gets carried out to the Beaufort Sea and trapped under the ice. Then the oil becomes a permanent part of the marine ecology.

If you decide to bury the pipe all the way, its heat melts the permafrost, causing slides and differential settlement, eroding the support for the structure and eventually causing a break. When you are forced to build part of it on stilts, you erect a barrier that blocks caribou and other migrating animals and subjects the line to greater risks of surface damage. When you dig a ditch to catch expected oil spills, the ditch becomes a moat, entrapping other animals.

Your service road extends civilization where it has never reached before. The construction activity, the planes landing and taking off and the helicopters hovering overhead frighten bear and caribou, rare birds and sheep. When these move to other areas, they die or cause other animals to die. The ecological balance in the Arctic is fragile. In the winter, a caribou uses almost all its energy just staying alive. A single timberwolf can exhaust and kill the stoutest buck in the herd. So can a bulldozer.

What we get in return for the partial destruction of our nation's largest wilderness area is more oil, a lot of natural gas, the corresponding need to spend fewer U.S. dollars buying foreign sources of energy, and, arguably, a mild, temporary improvement in our national defense posture. This latter case has been stated so often and with such apparent conviction by both the Interior Department and the oil industry that one wonders how we would have survived had not the Prudhoe Bay field been discovered in 1968. Statistical projections provide a clue.

#### THE EARTHQUAKE PROBLEM

By 1980, the United States is expected to be using about 22 million barrels of oil daily and producing some 10.4 million barrels, excluding what is to be drawn from the North Slope. Part of our expected deficit can be made up by importing an estimated 4 million barrels a day from nations in the Western Hemisphere. The rest will have to come from Indonesia and the Middle East.

Alaska's 2 million barrels daily could reduce this dependency somewhat for about five years. After that, our demand is expected to so outstrip domestic production that North Slope oil will be of little strategic value. In the case of a minor outbreak in the Middle East, say between 1980 and 1985, the benefit

is obvious. But if the problem were big and with Russia, an exposed pipeline can offer small comfort to our military strategists. Prudhoe Bay is only 600 miles from Siberia.

While conservationists—at least those involved in the pipeline battle—accept the reality that 10 billion to 40 billion barrels of oil are going to find their way to market, they believe that even if oil was the only resource involved and even if big tankers weren't needed for the remainder of the Alaskan route, the Canadian route, while longer, is preferable. For one thing, the Alaskan area involved is renowned for its extreme seismic activity. In the past 70 years, some 23 major earthquakes have clobbered the terrain over and under which the Alaskan pipeline would go; any one of the quakes could have caused a catastrophic break in the pipe. Valdez itself, where a 900-acre, 510,000-barrel-capacity "tank farm" is planned, is a "new" city, about four miles northwest of its predecessor. The "old" Valdez was substantially washed into the sea as tidal waves of up to 170 feet rolled ashore following the great Alaskan earthquake of 1964.

The route through Canada poses no comparable seismic problems. It has fewer miles of unstable soil and more existing roads, even railroads. From Edmonton, the proposed Canadian terminus, existing pipelines now extend both to the Midwest (Chicago) and the West Coast (Seattle). Certainly less environmental damage is involved in expanding existing facilities or building parallel facilities than in constructing new ones.

#### THE GAS LINE

The relative merits of one land route versus another, however, are matters about which a court is unlikely to substitute its judgment for that of an administrative agency with admitted expertise in the field. But what about two land routes versus one land route? Environmentalists claim that this is the fatal legal weakness in Interior's position. Buried, almost lost in the department's six-volume statement, and totally lacking from its consideration of alternatives to the Alaska route, is the acknowledgment that "at some time during the operation of the proposed trans-Alaska pipeline, it would become necessary to transport to market the natural gas that would be produced with the Prudhoe oil."

Indeed it would. In fact, it is estimated that 26 trillion cubic feet of gas are under the Prudhoe Bay fields waiting to be developed with the oil. Moreover, Interior says, "route selection and construction procedures would be similar to those for an oil pipeline but with some simplifications resulting from reduced pipe weight and lower operating temperatures."

Yet logistics militate against the likelihood of a trans-Alaska gas pipeline. The gas would have to be liquefied at Valdez prior to shipment. Interior estimates that operational costs of a liquefaction plant would run to half a billion dollars a year. Additionally, there are only about a dozen liquefied natural gas tankers operating in the world, while some 20 to 40 would have to be built to handle the Valdez traffic alone. Thus, Interior concludes, "A gas pipeline across Alaska appears to be a remote possibility because of the problems involved in shipment from the southern terminus; a gas pipeline through Canada to the Midwest seems to be much more feasible."

Of the various Canadian possibilities, Interior leans toward the Mackenzie Valley, noting, "The Mackenzie River is a valuable artery for use in the construction of a trans-Canada gas pipeline. Good all-weather roads and some railway mileage also exist, and existing winter trails would be valuable at the right time of year." So much does Interior favor the Canadian route when it comes to natural gas—where neither oil industry prestige nor money is on the line—that in

March Secretary Morton set aside a 300-mile corridor on federal lands in northern Alaska along the route the natural gas would travel from Prudhoe Bay to Fort McPherson atop the Mackenzie Valley.

If Interior is a bit circumspect about confessing that, in effect, it plans to grant two rights-of-way instead of one, it is far less bashful in assessing the environmental impact of 41 oil-laden tankers as they steam between Valdez and West Coast ports. Here, in fact, the report takes on a quality of terrifying candor, much like Yukio Mishima standing on the balcony, coldly describing the act of harikari he is about to perform.

The sea journey poses exceptional hazards, particularly for the crews of oil tankers. Port Valdez is a 3-mile-wide, steep-walled glaciated fjord that extends east-west about 14 miles. It narrows to less than a mile before dumping out into the Valdez Arm section of the 2,500-square-mile Prince William Sound. The coastline is rocky and treacherous, not entirely free of icebergs and blasted by frequent gale-force winds. A special pilot must guide each vessel through the narrow neck of the port.

The area, moreover, is one of extreme seismic activity. Prince William Sound was the epicenter of the 1964 Alaskan earthquake during which, as Interior notes, "74 lives were lost mainly as a result of submarine landslides, sudden large-scale tectonic displacements, destructive waves, and, to a lesser extent, vibration of structures."

From Prince William Sound the tankers would run into the Gulf of Alaska and down the foggy northern Pacific coast. "During the cool months," Interior says, "the Gulf has the highest frequency of extratropical cyclones in the Northern Hemisphere." From October through February, it is rocked by waves of 12 feet or better about 20 per cent of the time. Moreover, "the 1964 Alaskan earthquake was but one of a large number of earthquakes of moderate and high intensity that have occurred in or near the Gulf of Alaska, and there is no geologic basis to assume that other equally devastating earthquakes will not occur in the near future."

#### "REHABILITATING" BIRDS

Plans call for about 10 per cent of the tankers to pass through the narrow Strait of Juan de Fuca—where again navigational hazards will require the assistance of a pilot—and into the 40 miles of beautiful waterway known as Puget Sound, a recreational haven for 2 million Americans and Canadians. The remaining vessels would head for San Francisco, Los Angeles and points further south.

Again, seismic dangers will be extreme. Interior recalls that "on April 13, 1949, an earthquake with an intensity of 7.1 on the Richter scale and an epicenter between Olympia and Tacoma resulted in approximately \$25 million damage to the Puget Sound area. More recently, on April 29, 1965, an earthquake of slightly less intensity (6.5) with an epicenter between Seattle and Tacoma caused an estimated \$12.5 million damage to the Seattle area. These are the two largest of the numerous earthquakes that have occurred in this region during the last hundred years; the level of seismic activity has increased substantially during the last few decades."

Interior estimates that if the performance of the oil tankers on the Valdez run was no better than the worldwide average, we can anticipate spills averaging 384 barrels a day, or about 140,000 barrels a year. Better vessels may reduce these numbers somewhat, but the damage per spill would likely exceed the world-wide average since "large spills in the area would be more difficult to contain, clean up and restore because of the distances from sources of ships and cleanup gear and the generally limited manpower in the region."

Interior details the impact all this filth would likely have on the huge salmon runs of the Northern Pacific, and how it would probably impede, and perhaps wipe out, fishing in the Port Valdez-Prince William Sound area, where the coastal waters are today as pristine as any on earth. On a cheerier note, while chronicling the devastating effect an oil spill might have on the many rare migratory bird species that inhabit Alaska-Canadian coastal areas during certain months, Interior records for posterity Alyeska's pledge to "rehabilitate" those birds belonging to endangered species. The term seems peculiarly appropriate. In this forgiving society we "rehabilitate" drunkards, junkies, whores and others who have gone astray. Clearly the murrets, murrelets, loons, grebes, albatrosses, gulls, terns, ducks, geese and shore birds who fall victim to the oil industry's determination to bring its goods to market along the route it deems best are out of step with the natural order of things and gravely in need of "rehabilitation." Unfortunately, only about one in seven of the poor creatures doused in the San Francisco Harbor spill a year ago lived long enough to profit from the experience.

#### SHOCKING OMISSIONS

If the six volumes of Interior's report dealing with the environmental impact of the combination overland-tanker route contain some shocking revelations, the three-volume economic analysis shocks by what it fails to disclose. Simply stated, a careful reading of Interior's economic analysis provides no clue as to why Alaskan crude should go to the West Coast in the first place, certainly none justifying an iota of increased environmental risk.

The West Coast is second only to the Southwest in the production of petroleum. It will not need any Alaskan crude for the next few years, will not be able to absorb 2 million barrels a day from the North Slope until well into the 1980s, and, if as expected, Alaskan production increases to 5 million barrels a day, the West Coast will not be able to absorb the surplus during the life of the pipeline.

Thus, even ignoring the greater hazard of the tanker route from Valdez, it is nonsense to say, as Secretary Morton did on his March 21 "Today" show appearance, that "if the pipeline went through Canada and if it ended up in the middle of the country, you would then have to bring oil into the West Coast by tanker. So the same amount of oil would be arriving by tanker."

The West Coast simply does not need as much oil as Alyeska wants to provide. And, if it did, the obvious source would be the Southwest or Canada, a fact Canadian minister Macdonald has been pressing upon his Washington counterparts without apparent success. On April 19, for example, Macdonald was questioned in the Ottawa House of Commons by David Anderson, a Vancouver MP active in the battle against Alaskan tanker traffic, as to whether Canada was willing to supply the United States with enough oil to compensate for the anticipated additional two years it would take to complete the trans-Canada route. Macdonald's reply:

"Both in my discussions with Secretary Morton and other officials of the United States administration in Washington and recently with Secretary Rogers last week, I made it perfectly clear that Canada was prepared to supply additional quantities of oil to the United States not only for a two-year period, but a longer period, and that this would be facilitated by their lifting their quota system."

Would Alyeska, assuming a right-of-way is granted for the trans-Alaska pipeline, then be stuck with a \$2 billion to \$4 billion Edsel, given the bearish West Coast market for Alaskan crude? A few energy economists believe so and have privately expressed sur-

prise that the oil industry has been able to maintain so united a front on the issue while both the East and Midwest hunger for additional crude oil. More probably, Arco and British Petroleum, the two companies with the biggest positions in the pipeline, would be able to trade their excess crude to Japan in exchange for Japanese rights to Middle East oil, rights purchased long in advance. The Middle East crude oil could then be sold at a good profit on the East Coast, bailing the two companies out of their predicament but making an utter shambles of any national defense arguments for trans-Alaska route.

#### WINNING IN THE COURTS?

There is a reasonable chance that the environmentalists will ultimately prevail in the courts. Perhaps they will persuade the courts that Interior's failure to consider adjacent oil and gas pipelines rendered its statement procedurally inadequate. Perhaps they will win an even more significant point by forcing Interior to abide by the results of its own research, thus introducing important substantive requirements, as well as procedural ones, into the environmental law.

Interior, meanwhile, hopes that its "final" impact statement on the trans-Alaska pipeline will at least get the environmental monkey off its back. From the outset it seems to have regarded the environment statute as an unwelcome encumbrance to a predetermined course.

Two years ago the department attempted to grant the oil consortium a right-of-way to build a service road adjacent to the pipeline, arguing, incredibly, that the road and the pipeline were unrelated. Its impact statement on 361 miles of gravel carved into the middle of Alaska's wilderness totaled four pages, and became the subject of the court injunction still in effect.

Interior's second attempt at compliance with the environmental law was a bit more sophisticated, but not much. Its multi-volume "draft" impact statement, produced in January, 1971, during the interregnum between the Hickel and Morton secretaryships, was basically a collection of data and arguments compiled by Alyeska itself. In that report, the department found it unnecessary either to consider the impact of tanker traffic from Port Valdez to the West Coast or to assess the feasibility of a trans-Canada pipeline route. Even today, Secretary Morton can be heard arguing from time to time that consideration of the Canadian alternative is superfluous because "no application for a Canadian route is pending." Since the 1965 *Scenic Hudson* case, however, federal courts have held that an administrative agency charged with protecting the environment has a duty to consider alternatives not placed before it by the parties. It cannot only "sit as an umpire blandly calling balls and strikes," the court found. In any event, Interior's 1971 statement was sufficiently derelict so that even the Corps of Engineers, in its formal comment, warned that the department had failed "fully to comply with the letter and spirit of the Environmental Policy Act."

#### SCARCE STATEMENT

The Justice Department, fighting the pipeline case for Interior in court, has also shown a greater zest for adversarial than guardianship of the public domain. Last summer, more than a year after the first lawsuit was filed, Justice tried unsuccessfully to remove the case from the District of Columbia to the friendlier confines of the U.S. District Court in Anchorage, Alaska. This past April, when MP Anderson and several Canadian residents of the Puget Sound area sought to intervene in the case, Justice opposed the motion.

Now we have Interior's third attempt at compliance with the environmental act. Legally, the department hopes that by confessing the devastating results of its proposed action, it can achieve what it failed to

get by denying those results in its two earlier efforts. Politically, it appears anxious to present the public with a *fait accompli*. In the weeks since March 20, only seven copies of the impact statement have been made available to the public without cost in six cities across the entire "lower 48" states. For others, the volumes cost \$42.50 a set. Faced with a demand for public hearings, Under Secretary William Pecora claimed that "a public hearing would be a circus" and would "interfere with a more thoughtful and rational analysis of this complex document."

"Clearly the department has not tried to encourage hearings or informed debate," complained the Christian Science Monitor on May 2, in what might pass as the editorial understatement of the year. The Monitor went on to wonder "how much 'thoughtful and rational analysis' the Interior Department has itself given to the study." Before too long the federal courts may themselves be wondering the same thing.

[From the Washington Post, May 16, 1972]

#### A SETBACK FOR THE ENVIRONMENT IN ALASKA

Secretary of Interior Morton may be confident, as he says he is, that his decision in favor of building the Trans-Alaskan pipeline now "is in the best interests of the nation and the American people." We remain far from convinced. As we read his statement, his decision rests solely on a finding that the United States must get the Northern Slope oil to this country's West Coast as quickly as possible in order to maintain a "secure and adequate supply" of oil. If he were right on that finding, there would be little to quarrel with in his decision; for environmental risks must be taken when there is an emergency threatening the country's legitimate, compelling energy needs. But the facts the Secretary musters to support finding of immediate national need seem shaky at best—and extremely dubious at worst.

This is not to say that we were surprised at the Secretary's decision. It was foreshadowed some weeks ago when Canadian officials left a conference with him convinced that his primary interest was getting that oil to the West Coast as soon as possible. The alternative the Canadians were discussing—a trans-Canada pipeline—was apparently brushed aside at that time and is being formerly brushed aside now on grounds that the United States will need all the oil coming out of the pipeline and will need it before the Canadian line could be built.

The basis for this finding is that the demand for oil in the United States in 1980 will range between 20 and 25 million barrels a day, which will be some 8 to 16 million barrels more than will be produced in the lower 48 states. The purpose of the pipeline is to reduce the gap, to ensure a steady supply of oil without relying on other nations, most notably the nations in the Middle East. But the maximum flow through the pipeline will be 2 million barrels, still leaving a gap of between 6 and 14 million barrels. At best, then, the pipeline would reduce American dependence on other nations for oil from 40 to 30 per cent of total needs and at worst from 64 to 56 per cent. The dependence will still be there and you can judge as well as we can from those figures just how much the pipeline will reduce it.

As we understand the situation, the real crisis, although it is already starting to build, will not come until the 1980s when domestic needs are projected to reach even higher levels. So, at most, rushing the Northern Slope's oil to the West Coast as quickly as possible merely slows the rate at which the crisis builds. When it finally reaches the critical point, the United States will undoubtedly have to press for development of Canadian oil reserves. It is this situation—the opportunity now to encourage the Canadian development we will need later—that led S. David Freeman, a former science aide

to President Nixon, to write Secretary Morton, "The notion that we can't afford to wait for the completion of the Canadian energy corridor is thus a false notion that is detrimental to obtaining a secure source of energy for the United States in the 1980s."

Nevertheless, it is the theme of a need for a quick fix that runs through Secretary Morton's explanation. If you accept that need as given, and there is some indication the Interior Department has accepted it as such all along, the ultimate outcome of this dispute was never in doubt and the whole affair has been largely a procedural sham. The two years of delay have produced many safeguards for the environment which the pipeline company would not otherwise have provided. But they have not produced, so far as we know, a convincing case that the nation's security will be substantially enhanced by getting the Northern Slope's oil to the West Coast rather than to the Midwest in 1980. And Secretary Morton has certainly not produced such a case. That was—and is—the real issue.

#### CORPORATE FARMING

### HON. FRED R. HARRIS

OF OKLAHOMA

IN THE SENATE OF THE UNITED STATES

Wednesday, May 17, 1972

Mr. HARRIS. Mr. President, in the near future, the Senate will be considering S. 2828, "the Family Farm Act of 1972." This legislation, as proposed, will limit vertical integration in the food production, processing, and marketing services in America.

Recently, in order to collect additional information about the rampant growth of the agribusiness giants and the subsequent and well-documented decline of rural America and the family farm, I held a public hearing in Salina, Kans., on the subject of "Corporate Farming." Mr. President, the testimony given at that hearing, substantiating the need for legislation such as the Family Farm Act of 1972, will be of interest to my colleagues. It is for that purpose that I offer a transcript of that hearing to be printed in the RECORD.

Mr. President, it is evident that the problems caused by agribusiness corporate giants in this country are reaching crisis proportions. All departments of Government bemoan the population crush of the urban areas and the mass migration from the farm to the cities. Secretary Butz would have the American people believe that the administration is for the family farmer. Yet not a single action has come from Mr. Butz limiting the present power of corporations, or more importantly, an attempt to arrest their insatiable appetite for land and an ever-increasing percentage of the food and fiber production.

Mr. Butz is out stumping the country, making hay with the farmers by telling only one side of the story. When he trumpets the price increase in farm commodities, he conveniently fails to mention that the agribusiness giant will gobble up the family farm at the first opportunity. The farmer has not heard a word from Mr. Butz, or the Nixon administration, telling the small farmer that while he pays more than his fair share of taxes, he is having to compete with the agribusiness big boys who write off their agri-

cultural losses as tax losses, and then bill the taxpayer again for billions of dollars in subsidies. The small farmer, the taxpayer, provides the giants with direct subsidies. If that is not enough, the taxpayer then gets to pick up the cost of alleviating the wretched social conditions in our cities caused, in a large part, by too many rural people pushed into urban areas.

The Nixon administration has an agricultural economic policy of sheer folly. If Nixon, Connally, and Butz are the economic managerial geniuses they would have us believe, then let us see some action and statistical data on the real cost of food produced by the agribusiness giants. I submit that we will find that the cost of food, the supermarket prices added to the social costs of meeting the problems of the urban area, will stagger the mind, and the pocketbooks, of the American taxpayer—especially the farmer.

With past actions as our guide, we can only fear the worst and believe that the Nixon administration is not going to make any fundamental changes of policy which will disturb their agribusiness corporate friends. The rush to destroy rural America and the lives of rural folks will continue pell-mell unless Congress takes some action to protect the family farm. I believe S. 2828, the Family Farm Act of 1972, will be a great step forward in returning rural America to rural people. We are compelled to take action, to pass this legislation to prevent the destruction of rural America.

Before entering the testimony in the RECORD, I want to acknowledge the work of Mr. Andrew Schuman, formerly of my staff, who organized the hearing, with assistance from Mr. John Harvey, a member of the National Farmers Union in Kansas, and Mr. Jim Ploger, the Kansas representative of the National Farmers Union. Additionally, I want to thank Mrs. Ruth Matthews of my staff who spent many long hours transcribing and preparing the testimony for publication.

I ask unanimous consent that the entire transcript of the hearing, as well as additional statements and letters, be printed in the RECORD.

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

**PUBLIC HEARING ON CORPORATE FARMING,  
SALINA, KANS., MARCH 16, 1972**

Senator HARRIS. I want to introduce one of my legislative assistants, Gary Dage, who is from Oklahoma. He has been for years my special adviser in agricultural matters. Any of you who would like to submit a statement, either now or later, other than oral—some folks have already said they would like to get a statement in the record now or send it to us later on—you can talk to Gary about that and we would be glad to have you do that.

This is an ad hoc public hearing on corporate farming, a subject I think is going to become increasingly important. I led the fight against Earl Butz to be Secretary of Agriculture primarily on the basis of (clapping) his connections with agribusiness, which I thought were exactly in the wrong direction.

I was asked down stairs awhile ago a question that I am continually asked, isn't it true that maybe these big corporations who are moving in and taking over a lot of farm-

ing and livestock industry, etc. are doing this because they are more efficient? The answer to that is "No." What they are more efficient at is getting federal tax money. They are fairly efficient at that, and it is not a natural thing that this has developed. It's an unnatural thing.

I want to tell you a little something I said when I testified against Earl Butz. I said my Dad . . . my Dad's a small farmer down in southwestern Oklahoma and makes his living from a farm. That's the only way he has to make a living, and he's a very small farmer . . . I said, and this is true, ten years ago my father said to me you do good liberals are about to run us poor fellows off the farm and get the rich richer and the poor poorer. And I kept saying, "Dad, you just don't know the good things I'm doing for you." Well, it turned out on that, as well as on a lot of other things, my father was a lot smarter than I thought he was. (Laughter) You can look around our home county and see that that's true. In many ways some of the programs haven't helped—in some ways have made them worse and in many ways we haven't gone at it in the right way.

These hearings will be transcribed. They are also being transcribed for public radio broadcast. The whole hearings will be broadcast on public radio nationally in the future, but in addition to that we will transcribe the writings and they will be published in the Congressional Record and presented to the relevant committees in the House and Senate. Any of you who would like to get a copy of the transcript once it is printed, if you will drop me a note in Washington, I'll see that you get a copy.

I'm forming an organization called the New Populist Institute, one of the principal purposes of which will be immediately to hold hearings on some of the issues that I think are fundamental, like corporate farming. I hope from that effort we might begin to get these issues more involved in the presidential campaigns of 1972.

The people will have to react to these issues and discuss them pro and con, especially the candidates for the presidency. I just came from California where I held hearings in Los Angeles. Before that, I visited some small, independent farmers around Fresno. My hearings out there were on the monopolization of water and land and natural resources in California.

I've got an opening statement here which I'll start with and then we have a representative from Governor Docking's office who will be our lead-off witness.

**OPENING STATEMENT OF SENATOR FRED R.  
HARRIS**

I have come to Kansas today to hold an open public hearing on the issue of corporate farming.

Since World War II, sweeping changes have taken place in American agricultural productivity, and much more is at stake than efficient food production.

In fact, the very shape and substance of the American countryside has been radically altered—there has been nothing short of a violent revolution in rural America. Consider these facts:

More than 70 percent of all American people are now packed onto less than 2 percent of the land. When you go to places like Los Angeles, as we were telling awhile ago, they'd sure like to buy a little of this wind to blow off that awful smog that they have there;

In 1970, for the first time since the nation was settled coast to coast, our farm population fell below 10 million;

There were more than six million farms in 1940—there are less than three million today, and USDA benignly predicts that at least another million farms will shut down during the next nine years;

Over the last three decades, 30 million rural Americans have had no economic alterna-

tives but to leave their land and their rural homes and to move into the alien environment of our urban concentrations—this forced migration—it was not a natural migration—continues today at the rate of 800,000 people a year;

14 million rural Americans are left behind in rural poverty, with millions more existing just on the edge of poverty;

47.1 percent of the farm families in this country have annual incomes that fall below the poverty level of \$3,000;

1.5 million farm workers averaged an income of \$1,083 in 1970; another one million farm workers raised their average income to \$2,461 in 1970 by also doing some non-farm work.

Why can't independent family farmers, farm workers and small town businessmen make a living in rural America?

There are two basic reasons. First, there has been a corporate invasion of American agriculture. Second, government has sided with agribusinessmen, turning its back on the little man who traditionally has been the strength of this country.

Food has become big business. In 1970, America's food tab came to \$114 billion. It is not the independent farmer and the farm workers who are bringing that food to market and pocketing those billions. It is agribusiness—corporations such as Tenneco, Del Monte, Bud Antle, Ralston-Purina, Green Giant, Safeway, Swift, Heinz, U. S. Sugar and General Foods. Also, a number of "brave new farmers" are trying to harvest those profits—these are major industrial giants such as Boeing Aircraft, Dow Chemical, Prudential Insurance, Coca Cola, Standard Oil, Goodyear Tire and Rubber, American Brands, and Purex—all of them moving into agriculture now.

If the tractor was the symbol of American agriculture thirty years ago, the corporate board room is its symbol today.

Increasingly, agribusinessmen are in control of the land, of agricultural production and of farm markets. As they have moved into rural America, the little man has been moved out:

While the number of farms has declined by half over the last 30 years, the average size of farms has doubled;

Small farms still constitute more than half of the number of farms, but they account for only 7.8 percent of farm sales;

During the past three decades, an average of almost 2,000 farms a week have folded;

For every six farms that fold, one small town businessman shuts his doors.

Yet why, if the corporate giants are so efficient, do they need the support of the American taxpayer in the form of billion dollar subsidies and other benefits? An investigation of tax returns of large scale corporate farmers would show many losing money. Of course, some intend to show a loss in order to get a tax break. Take Tenneco, it started out as a Tennessee Gas company. It's a huge conglomerate now, one of the biggest landowners in California and lots of other places. They make a loss in farming and charge that against the gain they make in other areas. Tenneco last year paid not one damn tax, which meant all of you paid a lot of tax that you shouldn't have had to pay and they ought to have paid. And for others, losses in production can be easily covered by huge profits in processing or marketing. The individual farmer doesn't have these options.

What is particularly galling to the independent farmer is that numerous USDA and university studies show that he possesses the needed acreage to farm efficiently. For example, maximum cost-saving production efficiency is reached at about 1,500 acres for cotton, less than 1,000 acres for corn and wheat, and 110 acres for peaches. You get as efficient as you are ever going to get at those kind of upward limits, for example.

The corporatization of American agriculture is not the inevitable result of any economic process. The decisions to create and administer a farm policy aiding the giant agribusiness are conscious ones; they are no more inevitable than a Communist nation's decision to create massive state farms. And the result for the independent farmer and farm worker is the same whether state or corporate interests control rural America: they have no power over their own lives.

We are at a crossroads, I think, in America today. That's why I am interested in these hearings now to take back this information to the Congress. We can decide that rural America should be a place in which people can live and work in dignity or that it will simply be a giant food factory to produce more corporate profits. This is a fundamental issue, and America has not faced up to it. We have no national rural policy. Instead, we have allowed vested economic interests, guided by nothing nobler than profit, to determine what will exist in the countryside and what will be the fate of millions of rural people.

Let me conclude by noting that this is an election year. It is also a year in which the people of the Midwest and Plains states will play a major role in determining who will be the Democratic nominee for President.

I think that each of the candidates who puts his or her name before the people of this region should give frank and unequivocal answers to the following questions:

What can be done to redistribute income and power in rural America from the giant absentee corporations to the people who live and work here?

What can be done to develop an effective antitrust law for agriculture, such as the Family Farm Act of 1972, to prevent giant conglomerates from taking control of rural America?

These are vital issues, fundamental to real change in America. They are a part of the New Populism that can turn the country around.

JOHN IVAN, ADMINISTRATIVE ASSISTANT TO  
GOV. ROBERT DOCKING

I'm very pleased that all of you are here and we'll proceed now with the agenda for the hearings, starting with Mr. John Ivan, Administrative Assistant to Governor Docking, who will present Governor Docking's statement.

Mr. Ivan, I'm glad you're here. Just have a chair there, and we'll be glad to hear from you. (Clapping)

JOHN IVAN. Thank you very much, Senator. First, in behalf of the Governor I would like to welcome you to the State of Kansas. I know that you and the Governor are very good friends and have had an opportunity to associate for a number of years in government together, and we appreciate it very much that you invited his office to be represented.

The Governor was in Salina earlier today but because of a tightness in schedule on a previous commitment in Pittsburg, Kansas, he was unable to stay long enough to present his statement in person. I know that he appreciates your indulgence in being allowed to present his statement through me as his Administrative Assistant.

This is a special pleasure for me because I grew up in Salina, Kansas, and graduated from Salina High School. My mother grew up on a family farm just northwest of Salina, and my great grandparents lived here for awhile. My great grandmother passed away when she was 105, but they kept the home place so the individual family farm, which is about 125 miles southeast of here—remained intact until the time of her death in 1969, and now my grandparents are carrying on the farming activities there. My father had a chance, for a few years at least,

to be raised on a farm which is just across the line in Oklahoma, although he was born in Kansas and spent his youth on a family farm.

So it is a pleasure and somewhat nostalgic, and certainly we commend you for being one of the cosponsors of a law which addresses the issue of the family farm and raises the issues relative to corporate farming. The Governor prepared this statement, as he has in the past, consistent with his general opposition to unrestricted corporate farming. If you will allow me, I will address our attention to his statement which he has asked me to deliver in his behalf.

STATEMENT BY GOV. ROBERT DOCKING DELIVERED IN THE GOVERNOR'S BEHALF BY JOHN IVAN, ADMINISTRATIVE ASSISTANT TO GOVERNOR DOCKING

Throughout the United States and in Kansas, agriculture and its related activities are a leading industry, providing jobs for two out of every five gainfully employed persons in the United States.

Agriculture turns the wheels of American industry; it is the greatest single factor in bolstering the entire financial structure of our nation.

Agricultural groups throughout America—and especially in Kansas—are composed primarily of family farmers who have been cooperative, industrious and dedicated to progressive enterprises which generate dynamic industries and business activities for our entire economy.

The strength of agriculture in Kansas is dependent on the family farm.

In Kansas today, more and more family farmers have found that they can retain operation of the farm land through a family-owned corporation.

But large corporations which take over our agricultural operations could deteriorate the concept of the family farm. Deterioration of family farms in Kansas could destroy the basis of our Kansas economy and the foundation of an American way of life.

Specific disadvantages of corporate farming include:

1. Corporate farming could seriously injure rural communities.

Though the corporation may be considered one legal person, there still is a major difference. A corporation may replace ten farm families who once lived and contributed to the prosperity and welfare of that rural community.

When ten farm families leave a rural area, the merchants of the community suffer from the loss of those families, their customers and the life-blood of that community. The merchants, in turn, could be forced out of business.

An article in Nation's Agriculture tells the story of a New York State dairyman. After incorporation, he now manages and operates more than 1,000 acres on what once was 15 individually owned farms southeast of Watertown, New York.

The majority of those farm families now have gone to the city where they are—for the most part—ill-equipped to make a living. The Watertown area is poorer because it has lost 15 families—or approximately 60 persons who previously contributed to the area's economy.

2. There is no evidence to support the need for corporate farming in Kansas. This is important.

Today, the efficiency and production of Kansas agriculture and its stimulus to the state's progress are at an all-time high. Production in the past ten years is from 25 to 50 per cent higher than any other ten-year period in history. This has been accomplished through the cooperative efforts, the dedication and the willingness on the part of the family farmer.

Corporate farms above family size farms are less efficient, not more efficient. In fact, in most cases—except for farming special-

ized crops—corporate farms have operated at a loss and have been disbanded.

3. Large corporation farming throws the family farm into competition against large corporations which are not dependent on farming for their existence.

Corporations can take advantage of economies of size, market power and specialized management, all of which are associated with large operations at the expense of family farmers.

4. Corporate farming takes the management of and the returns from farming out of the hands of farmers.

5. Corporate farming removes the liability from the stockholders for any action taken by the corporation that results in liability for negligence—resulting from personal injury or property damage. The shareholder could lose only his investment in stock unless he was the corporate employee who committed the alleged negligent act. Shareholders are not responsible for contracts and debts of the corporation.

6. Corporate reaction time to matters requiring policy change can be much slower than the optimum interval required for efficiency. The corporation's control by the majority stockholder can be adverse to profitable operation, especially if that individual is unfamiliar with farming and farm technology.

7. A corporation cannot act as responsibly as a good farmer citizen.

As an example, the Kansas Irrigation District Law requires that qualified voters for district election and persons eligible to hold a position as a director or other officer be both an elector and a landowner. For that reason, a corporation does not qualify as a voter under Kansas law. If a stockholder or officer of the corporation does not individually own land, the corporation ownership of land results in the stockholder or officer being denied the right to vote at a district election. The stockholder also is denied the right to be elected and to serve as a director or officer of an irrigation district. This illustration emphasizes a disadvantage which prevails when a farm family conveys all of the family real estate to a family corporation.

8. Corporate farming could result in a loss of tax revenues to the federal and state governments.

For instance, a farming corporation with a net income in the \$20,000 to \$25,000 range would be taxed at the 22 per cent federal tax level, while an individual farmer with the same net income range would be taxed in the 40 per cent bracket. Presumably, there would be a similar proportionate loss in state revenue.

9. If the corporate farm is used to pass on the ownership of a farm from one generation to another, an estate tax loss in federal and state revenues would result.

Beyond these nine reasons for maintaining our current method of providing Americans with ample food products, we should ask ourselves these questions about the kind of nation we are building:

Will it consist of teeming, troubled cities on the one hand, and a wasted rural landscape on the other? Will a citizen in the United States be able to find a decent, independent life in a small town or on their own farm land? Or will he be a nameless worker in a vast food processing combine, managed by a corporate owner?

Will rural America be dominated by its own citizens, or by absentees who care greatly about profits and little about the quality of our farm heritage?

We need to continue our efforts to improve rural towns and communities. We need to continue our efforts to improve our economic conditions and job opportunities in rural America. We should continue our efforts to enhance agriculture, so the farmer can do better and so his children will find opportunities in agriculture.

I recently sent to Secretary of Agriculture Earl Butz a program designed to enhance agriculture in Kansas.

Those points include:

1. Effective means must be found to halt the cost-price squeeze on farmers. The forward progress and development of our nation must include equitable prices and an equitable share of the national income for those engaged in agriculture.

2. Funds made available for farm programs should not be reduced. Programs which will make it possible for farmers to obtain a reasonable return on their investment and for their labor should be continued.

3. We should hold the line on importing farm commodities which could depress markets for the American farmer's produce.

4. Provisions should be made for supplying low interest rate loans in adequate amounts so farmers can compete in this highly competitive economic society.

5. To halt the migration from rural to urban centers, federal programs should be provided to rural areas with the same attention and concessions which have been made available to urban communities. Greater emphasis must be placed on rural medical health, rural housing, rural water and sewage systems and rural telephone services. These are vital to the health and well-being of our farm families and all other persons in rural areas.

6. Efforts should be focused on wholesomeness and quality of product and safe, attractive packaging. Search for new uses and new markets for agricultural products should be intensified—particularly in the area of international markets. I am enthusiastic about the potential of Great Plains Wheat, Inc. and of MIATCO, the Mid-America International Agri-Trade Council, organized, promoted and directed by agriculture departments in 12 midwestern states. These are progressive moves in an area vital to agriculture.

7. Careful attention should be given to transportation rate structures and their effect upon farm commodities and the products of agri-business in our area. This is an item of most urgent consideration.

8. Agriculture, as the nation's largest and most basic industry, merits recognition as a department of federal government. I repeatedly have expressed my concern regarding the proposal to fragment the United States Department of Agriculture, which is so important to the complex industry of nationwide production and distribution of agricultural commodities. I was pleased when President Nixon abandoned his earlier position and announced he no longer favored dissolving the United States Department of Agriculture. The American farmer deserves a department identified with his concerns at the cabinet level.

9. We must maintain research in areas of crippling plant and animal diseases and parasites which rob the profits from agriculture. Similarly, we must insist upon research to develop new and expanded uses of farm commodities—especially those which experience distressed markets.

I am convinced that the road to national prosperity starts on the farms and in the countryside of our nation. We cannot have a prosperous rural America without a strong farm economy.

The family farmer, not the corporation, is the answer to a better quality of life in our state and in agriculture.

Mr. IVAN (for himself). I might add one thing, that while we measure many of the great benefits and assets of the family farm in terms of economics, that for those who live in the Salina area or in the State of Kansas, who go back to the home places which no longer exist, those who drive through our countryside and recall the people that have worked hard there and who in

influence have passed many others—thousands, if not millions of other generations, in this generation who go not only to places in Kansas but around the world—who have the strength of character and inner self-discipline, willingness to work and to be constructive members of this society, is certainly something that while difficult to measure in economic terms cannot be discounted as far as its importance insofar as maintaining the family farm.

We are very happy that you chose Kansas and Salina as a site for your hearing, and we certainly welcome all those who come from around Kansas to our state. We hope that you'll enjoy everything but the March wind, and that that won't be too bad, and that you will have a chance to get around our state and see how beautiful it is. Just like the red dust of Oklahoma doesn't blow anymore, the dust of Kansas doesn't blow. We're now sort of a state of lakes and a great agriculture community, and we are pleased that you could gather information from those of us who are so concerned about it.

Thank you very much.

(Applause.)

Senator HARRIS. Thank you, I'm glad that you could be here to represent Governor Docking, who is indeed an old and highly respected friend of mine, for that participation. I appreciate your courtesy.

You said something about strength of communities. Thomas Jefferson had the idea, as you know, that the social and political institutions on which our form of government depends were probably best maintained and strengthened when people lived in small and rural communities, etc. A lot of people have come to think of that as kind of an old-fashioned notion. A study was made in California of two communities, one called Arvin and the other called Dinuba. Both communities are about exactly alike, except that in Arvin a big corporation owns most of the land and the people who live there are primarily workers, whereas in Dinuba the people are mostly independent farmers. It is amazing the difference as to breakdown in social and political institutions, particularly the one where an outside corporation owns everything. Anyone who would like to have a copy of that study, if you'll drop me a note I'll send it to you. I think it's right in line with what you've said, and I appreciate that very much.

Thank you.

ATTORNEY GENERAL VERN MILLER, STATE OF KANSAS

Senator HARRIS. Is Attorney General Vern Miller here yet? Oh yes, there you are. (Applause)

Attorney General MILLER. Senator, I want to apologize for being a little late.

Senator HARRIS. Not at all.

Attorney General MILLER. I was right on schedule until I came to a street that was blocked by a train. After seeing it sitting there for awhile, it finally dawned on me that it certainly was property in the form of corporations. (Laughter and applause)

Senator HARRIS. General, we'll be glad to hear from you and I certainly appreciate your coming.

Attorney General MILLER. Thank you. First, I want to make it clear that I have no prejudices in this area, but I wanted to state that, like John Ivan, I was raised on a small farm out of Wichita, Kansas—just to set the record straight.

I appreciate very much being asked to come and also to be given the opportunity to make this statement in regard to corporate farming in Kansas.

I am appearing here today because I am concerned about certain aspects of corporate farming in the state of Kansas. Recently several Kansas citizens who have small farming operations contacted my office to complain about what they feel is a violation of

certain Kansas statutes which place restrictions on corporations engaged in the business of managing, owning or controlling large tracts of lands and engaging in agricultural or horticultural business operations. In particular, they allege that certain out-of-state corporations are engaging in certain types of agricultural business in Kansas in violation of K.S.A. 1971 supplement 17-2701. They allege that these corporations own, control or manage more than five thousand acres in violation of the statute and that certain of these corporations are in the process of selling stock to more than ten stockholders which would also be a violation of the statute if it is true. They also question whether or not all the incorporators of these corporations are residents of the state of Kansas which they are required to be. Their general fear is that huge conglomerate farming operations will restrain trade, will have a tendency to set prices, and will in general be detrimental to the small farmer of this State who has been the backbone of this State throughout our history. We are deeply concerned about this situation and share their apprehensions that large corporations engaging in the business of farming operations and related activities may have a detrimental effect on the small farmer.

I have assigned personnel to investigate these complaints to determine if the allegations made by them are well founded, presently the investigation is underway, and I hope to have it concluded soon. Should we determine that any violations have taken place, we will bring whatever appropriate actions are indicated to prohibit any violations of Kansas law.

So that you will be more informed regarding the statutes dealing with this area of concern, I should like to point out that Kansas law states no domestic corporation shall be organized and no foreign corporation shall be given permission to do business in this State for the purpose of engaging in the agricultural or horticultural business of producing, planning, raising, harvesting, or gathering of wheat, corn, grain, sorghum, barley, oats, rye or potatoes or the milking of cows for dairy purposes except that a domestic corporation shall not be prohibited from engaging in the above-mentioned activities if the following circumstances prevail:

1. Such a domestic corporation does not have more than ten stockholders.

2. All of the stockholders of the corporation are individuals, trustees, natural or corporate, under trust instruments wherein individuals or classes of individuals are designated as primary or principal beneficiaries or guardians, conservators, executors or administrators of individuals.

3. All of the incorporators must be residents of this State.

4. Such corporation does not either directly or indirectly own, control, manage or supervise a total of more than five thousand acres of land.

5. None of the stockholders own stock in any other corporation authorized to engage in any agricultural or horticultural business of producing, planning, raising, harvesting or gathering of wheat, corn, grain, sorghum, barley, oats, rye or potatoes or the milking of cows for dairy purposes.

I should also like to point out that in the interest of conservation a corporation either foreign or domestic which is organized for coal mining purposes may engage in the agricultural or horticultural business on land owned by it which has been strip mined for coal.

It appears to us that there are no criminal sanctions set forth in the statute which would allow us to ask for criminal penalties after obtaining a conviction. However, the attorney general's office does have the power to bring a civil action to dissolve, oust and enjoin any corporation which is in vio-

lation of the above-mentioned sections. Should we determine from our investigation that any corporation either foreign or domestic is in violation of those sections, we will immediately proceed against them.

As mentioned above, presently we have several corporations under investigation, but since the investigations are pending and at this time inconclusive, I think it best not to mention the names of those corporations or any individuals associated with them. I might add that we are concerned about subtle maneuvers by individuals or corporations which tend to violate the legislative intent and produce a situation detrimental to the small farmer in this State.

I certainly appreciate the opportunity to address you and we thank Senator Harris for his efforts to aid the small farmers of this State.

JOHN STENCEL, PRESIDENT, ROCKY MOUNTAIN  
FARMER'S UNION

Senator HARRIS. Next I'll call on Mr. John Stencel, President of Rocky Mountain Farmers Union, and Mr. Madill Barnes, Legislative Director of Rocky Mountain Farmers Union.

But, first, I want to introduce some Oklahomans who are here. This is Rudolph Buckwald, who is on the Board of the Cotton Electric Cooperative down in my hometown of Walters. He is here visiting his son, Don, who lives up here. We're glad you're here. There are other Oklahomans in the audience and I would appreciate it if each of you would introduce yourself. (Introduction of guests)

JOHN STENCEL. Senator Harris, it is indeed a pleasure and a privilege for us to come from Colorado to be in Kansas to testify. I would also like to introduce Rocky Mountain Farmers Union's Legislative Director, Madill Barnes, who is seated here with me:

Senator Harris, members of the staff, ladies and gentlemen—My name is John Stencel. I am President of the Rocky Mountain Farmers Union and a member of the National Farmers Union Executive Board. I am appearing here this afternoon on behalf of that organization and also the National Farmers Union. Our National president Tony Dechant wishes me to relay his sincere apologies for not being here himself, but, unfortunately he was called to Washington, where hopefully he is figuring out some way to sneak some meaningful farm legislation by the administration. (laughter)

Senator, we of the Farmers Union want to thank you for affording us the opportunity to focus the country's attention upon a problem that you and I know is tearing at the heart of our way of life—that is the sinister entrance of the corporate conglomerate upon the rural community.

Because I am here in a double role, I would like to divide my remarks to first deal generally on a national level and then move into some specific problems that are peculiar to our Rocky Mountain area.

First, it should go without saying that the Farmers Union, being a family farm organization and proud of it, is philosophically absolutely, unequivocally, 100%, opposed to large corporations—whose interests are predominantly other than farming—encroaching in any way on farming. (I qualify the corporate definition because there are many bona fide family farms which are incorporated under Subchapter "S" of the Internal Revenue Service code, and I want to make clear that I am not speaking about these operations.)

The Farmers Union membership feels so strongly about this issue that our national convention held a couple of weeks ago repeated on the first page of our policy statement a special section called "The Family Farm" and, if I may, I would like to read it to you:

A "family farm" is a production unit where the family furnishes its own capital and management, takes the economic risk, and provides most of the labor (peak seasons excepted).

#### 1. Why Preserve the Family Farm:

The family farm is the keystone of our highly successful agricultural system. The interest and welfare of the nation is increasingly related to preservation of a family farm pattern of agriculture.

Studies indicate that large-scale (including corporate) farms are not more efficient than family farms. Competitive advantages that large-scale and corporate farms can have over family farms include access to adequate operating capital and the ability to shift earnings from non-farm business into farming to avoid payment of interest and to take tax losses on farming operations. On the other hand, when the management of a farm is taken away from those who supply the management, labor, and capital, there is loss of initiative, skill, and prudent judgment which have made possible the efficiency and abundant production of our family farm agriculture.

The efficiency criterion, moreover, is insufficient to judge which pattern of agriculture is most consistent with the over-all interests of America. A number of interests and groups suffer ill effects from corporate (non-family farm) agriculture and the migration to the cities of farm families: (1) Non-metropolitan communities lose families engaged in agriculture and their taxes which support schools, libraries, and other rural institutions; (2) main street businesses (banks, farm implement dealerships, etc.), dependent on the purchasing power of farm families, face bankruptcy due to volume out-of-state buying—a common practice of corporate farms; (3) consumers will experience higher, "administered" food prices due to the concentration of market power in corporate agriculture; (4) urban areas face increased demands for housing, sewage disposal, welfare, and other service programs due to overcrowding; and (5) environmental protection for the entire nation can best be maintained through the preservation of family-type farm operators.

Senator HARRIS. I want to comment on the migration of people from the farms and small towns to the cities. I was on the Kerner Commission, and one of the things that we came across in studying the problems in the cities in 1967 was exactly that. You can't keep up with the problems in these cities, if people continue to move on into them at the rate they have been doing in the past.

One thing I think we need to do is to convince people who live in cities how their interests are involved in these kinds of subjects and in a populous rural America. The second thing is something I alluded to awhile ago about environment. It just stands to reason that the more people you concentrate in a smaller space, the more difficult both your air and water pollution problems are going to be. There again, is a thing, I think, we need to bring to the attention more of people who live in the cities as to their stake in these kind of issues in rural America.

JOHN STENCEL. Very true. Those one million people who have moved to the cities in the last 20 years have greatly added to the problems that the cities have today. We should have kept those people in the rural areas to begin with.

#### 2. Why Public Policy Should be Used to Preserve Family-farm Agriculture:

Some of those points you were just making are mentioned right here. The United States in 1972 has a "mixed" economy, in which the market has been modified and circumvented in various ways by corporate structure for businesses, by tariffs and import restrictions, by laws for fair trade pricing and fair competition, by exclusive franchises and

an assured return on investment for the utilities, by restriction of entry into certain trades and professions, and by collective bargaining for workers. The independent family farmer stands virtually alone as the textbook example of free competition in the United States economy.

We reaffirm the National Farmers Union's position that federal governmental policies and programs are essential to protect family farmers against the hazards of the marketplace where almost everyone else, except the farmer, is protected. The power of public policy must be used to sustain the independent farmer in an economy which is otherwise strongly organized—in which most other production is planned, most marketings are rationed, and most prices and profits are administered.

Our former national president James Patton, as those who know him would suspect, stated the case more colorfully and aggressively when he keynoted our Rocky Mountain convention last year.

He said, "... I'm absolutely convinced that bigness does not mean efficiency. You ought to try and ride on the Penn-Central Railroad. The biggest one in the business is busted; it's broke, and you can't get anywhere on it. I wouldn't say that General Motors, the largest corporation in the world, is exactly efficient when they have to recall some 500 or 600 thousand cars. They can do it because they have no competition. I don't think that big farms and integrated Agribusiness is the answer. What people are really talking about when they want to eliminate the family farm and integrate everything is to gain a monopoly in agriculture so they can predetermine their prices by monopoly practices just the same as big business does, just the same as General Motors does and just the same as the steel industry did until World War Two."

I quote this particular statement of Jim's because it specifically challenges the thought that somehow corporate efficiencies will bring lower food prices. This is a bugaboo that came from the Benson years, and I think that we as a farm organization perhaps were remiss in not zeroing in on that point then.

America was in awe with the corporate producing power then and the new-found affluence of the mainstream American was indeed awesome. We were all moving into wall-to-wall carpeted, lawn-surrounded, suburban homes. We got TV's, two cars in every garage. Was it any wonder that Ralston Purina would seize upon the opportunity to be the one to put a chicken in every pot? Unfortunately, given that general frame of mind, it was accepted on face value that of course Ralston would do it more efficiently.

I am happy to say there are signs the tide is turning, though, but unfortunately it is only after many of those who cannot afford it have paid the price. To return to the chicken example, hundreds upon thousands of farms have been financially squashed out of business by the ruthless contract-purchasing practices of Ralston Purina and the side effects have been the slow strangling of towns and counties and a way of life. These practices are now getting more scrutiny by everyone... including the housewives who check the prices stamped on those checkerboard-square wrappers. Hearings such as this one are beginning to gain the attention of the press. And perhaps, the most heartening of all, the few farmers left are beginning to organize. Their struggle has been tough and because they don't receive the federal protection afforded other bargaining groups, their treatment has been rough. I hope that you, Senator, may be able to take your hearings to Arkansas and hear, first hand, the retaliatory treatment some of these farmers have received as a result of their organization efforts.

In short, Americans were duped into accepting at face value that conglomerate ac-

tivity in agriculture would necessarily bring more efficiency. And all too often, those who wanted to protect the family farm as a way of life were cowed into accepting, or at least not speaking out against, this assumption. They left it unchallenged and turned to other related problems, which I hasten to add were no less real. We all discussed the so-called side effects of the corporations buying from major suppliers or directly from the manufacturer, leaving the local merchant without customers. We discussed generally the decay of the rural way of life, and more recently we have been calling attention to the pressures the rural emigration has been placing on the cities. Environmentalists have of late been calling attention to the damage caused by the demands on the land of the heavily fertilized one-crop production of the corporate operations.

The point I want to make is that corporate entrance into agriculture has yet to show one instance of improved efficiency by their own corporate standards. To me, corporate efficiency would include such yardsticks as producing more of it better for less money.

But sticking to my poultry example (which is an example of a commodity market almost totally by so-called agribusiness), which of these criteria has been fulfilled? None. In short, they have flunked by their own rules. Ken Monfort, President of Monfort of Colorado—one of the nation's largest feedlot and slaughter operations, says simply that no other form of farming will ever out-produce the family farmer.

Yet, the corporate invasion continues like a cancer, and ironically just when much of the country is beginning to wake up to its real effect, the current administration gives us a Secretary of Agriculture who has long been the country's most prominent apologist for the Benson years. Earl Butz and his programs can best be described as an anachronism designed on those old corporate efficiency theories which thankfully seem on their way out the window.

I would like to suggest that an administration truly attuned to "where it is at", so to speak, would know what to do. For instance, it could be:

Trust-busting companies like Tenneco and Ralston Purina, instead of trading personnel with them.

Pushing such combined farm group efforts as the Coalition Farm Bill instead of killing them.

Pushing for farm marketing bills with teeth in them such as those offered by Senator Mondale and Congressman Bergland.

And reorganizing the Department of Agriculture into a force to improve rural life just as the Department of Housing and Urban Development is a force for the cities, instead of trying to do away with it.

These are not radical suggestions. They would simply help rural America regain a fair position in the give and take free enterprise system that is such a basic part of our ideals.

I realize that these remarks are not very specific, but I hope others might bring more specific information from their regions.

In my schizophrenic role, I would like to move on now to my regional role as president of Rocky Mountain Farmers Union and mention a couple of more specific points having to do with my area.

The corporate interest in the farm lands of my area (Colorado, Wyoming and New Mexico) is menacing, but for different reasons than elsewhere. Rather than buying up our farm and ranch lands in order to gain control of the farm industry, they come to our area for the land itself.

That is not to say that there have not been large conglomerate-operated ranching efforts. There are many corporate-owned sheep and cattle operations in all three states, and their operation brings all the attendant problems usually discussed.

I should add, parenthetically, that we are heartened by one noticeable withdrawal from the arena—Gates Rubber Company. In 1967, Gates, which had for years stuck to its P's and Q's and made only industrial rubber products such as tires and V-belts, suddenly got the diversification fever. It bought the Learjet Company located not far from here in Wichita and a startling amount of land in the northeastern part of Colorado.

The idea, as I understand it, was that Gates was going to saturate a previously dryland farming area with deep irrigation wells and grow wheat, pinto beans, sugar beets and experiment with truck farming. Cynical observers pointed out that Gates had experienced a terribly successful business year and had a lot of cash around dangerously within the grasp of Uncle Sam, and that was the cause of the diversification effort. The more cynical even suggested that if the well-drilling program was a success, the value of the land would soar from under 100 dollars per acre to over a thousand. The result, they said, would be that tax dollars would suddenly become equipment investment and wisked out of the government's hands on depreciation schedules. And, finally, the money spent would be multiplied geometrically in the stock portfolios on the assets column. The story has an unexpected ending, however; the Learjet operation ran into unexpected rough sledding, neatly taking care of Gates' excess cash problems, so Gates turned its back on the agribusiness operation.

I would like to repeat, before moving on, however, a conversation with a dryland wheat farmer from nearby Benkleman, Nebraska, by the name of Jim Sys. Jim is one of many sons of a Czech immigrant who homesteaded in that country. He and his brothers each own their own farms which have grown into reasonably profitable operations. They are subject to all the adversity that Mother Nature can serve up: wind, drought, hail and floods, but due to their hard work, each has made a go of it.

When Jim heard of the Gates' effort, he was impressed with the idea. Capitalization had always been his main problem and Gates obviously had that solved. He went to look, and was even going to apply for a foreman's job he had heard was open. His face clouds when he tells what he saw, though, and he never asked for the job. He said there was more equipment than he and his family could have used on ten such operations just strewn around the yard and decaying. He said nobody cared; there was no pride. He was totally repulsed by that kind of waste. Jim calls what he saw "un-American" and he is fond of equating it with his picture of farming behind the Iron Curtain. I am happy to say that last year was Jim's best year ever; so maybe there is hope.

The real problem with which I would like to deal is beyond this and is more complex and insidiously subtle. The problem involves the corporate role in the buying of farm lands for non-farm development purposes.

As I am sure you are aware, Senator, the Rockies which stretch the length of my area are now under severe pressures of land speculation and development, and the large corporate role in this is increasing. My old friend, Ralston Purina, is one of the culprits in this regard, having just bought out the faltering Keystone ski area near Dillon, Colorado. Others include LTV, which is involved in the development of Steamboat Springs, and Great Western United, which has spread from simple sugar manufacture to city development in Pueblo, Colorado, and Santa Fe, New Mexico.

Another category would include those corporate giants relocating in Colorado who have gotten into the land development business on the side. Included here would be the Eastman Kodak Company which is locating in

Windsor, Colorado, and most recently, the Johns-Manville Company which has announced it will move to an area south of Littleton, Colorado. Both companies have bought up large tracts of farm and ranch land far in excess of what they actually need for plant facilities. They are, in fact, building company towns like the Pullman Company at the turn of the century.

The result is that farmers and ranchers are turning their attention from the problems of staying in farming, such as getting a good price for their products, to making an almost immoral killing on their land. But again, the farmer finds himself at the mercy of forces over which he has little or no control. The companies I mentioned are friends of the state government, which has in recent years been preoccupied with development. Their arrival is greeted with accommodation and in the case of Johns-Manville and Kodak, they are wooed into coming. Those upon whose land they settle get out with a fat check and are happy. A few neighbors usually profit, too. However, the farmer who wants to stick it out is likely to be in for a rough time. As the development grows, he is faced with all sorts of added costs. His property mill levy, for instance, is based upon the estimated land value and skyrockets. The cost of all sorts of new government services, such as fire and police protection and schools, drives the mill levy up.

The increased speculative land value seemingly has a benefit, too, but it is a false one. The farmer is in a position to swallow the increased costs because he is able to borrow more on his land each year. When he does finally throw in the towel, however, he is faced with paying almost as large a debt as the hyperinflated selling price he receives.

A phenomena we are beginning to see now in Colorado is that these corporations, after having made their particular mess out of the countryside, suddenly become environment conscious. These same companies, having now gotten theirs, so to speak, start talking of greenbelts, zoning, and restricted land use. The farmer is then subjected to the most cruel political treacheries, for the farmer faced with that kind of "Pull up the ladder, Jack, I've got mine" zoning sees his land value plummet and faces certain mortgage foreclosure. That is why today, in our area at least, so many farmers and ranchers seem to support the most reckless of land abusers and rapists.

I sometimes suspect that the financial success of these large corporate entities comes only because they have squeezed it mercilessly out of some smaller being, and not because they have ever done anything better or more efficiently. In other words, they haven't managed to build anything more attractive or cheaper in our area. In the end, their developments will remain attractive only because they are surrounded by large open spaces created not by them, but by government, and totally at the expense of the farmer whom Fate put next door.

This is a problem that environmentalists and farmers must join together to resolve, and the corporate giants' role must be understood for what it is. I am convinced that it is not a problem that can be coped with totally at the state level because the corporate interests are simply too big for states to handle. The companies, too often, are bigger than the state financially and certainly with more resources to wage a legislative war than any responsible group within the state.

In Colorado, we got a rough example of this in 1969, when largely as a reaction to the prospect of Gates moving into the corporate farming arena, the Farmers Union and others rallied behind a bill to ban non-farm corporations from agricultural production. The bill died after a one-hour hearing by a legislative committee. One newspaper headlined the action "Visiting Farmers Cut Off by Corporation Capitol Scythe."

In our states, Senator, these corporations enjoy the Gates' approach—that is—buying the land, playing at ranching with all its attendant tax advantages, and biding their time until it is time to start development.

There must be a well thought-out, federally promoted land policy to resolve these inequities. This country has historically been free and easy with its land because in our formative years, it seemed that we would have an inexhaustible supply. As a result, we seem very sophisticated about governing ourselves in virtually any area except our land use. Toward land use, we seem to be zealous anarchists hell-bent toward our own self destruction.

I am well aware that, unchecked, corporations will endlessly seek those areas of the highest profit potential. That statement in its pure form seems to be the heart of the free enterprise system and unchallengeable. However, corporations whose diverse holdings give them the power to control the marketplace are theoretically, under the law, subject to anti-trust action.

In the Rocky Mountain region, they control the marketplace—not through the normal forms of monopolistic practices—but because of their size they can control the law-making bodies that are supposed to govern their activities. This includes legislatures, county commissioners and boards of various districts. Any new policies must on the one hand shore up the governmental agencies so that they may withstand the corporate pressures and secondly, attack the corporate financial incentives by creating attractive alternatives for those farmers and ranchers whom these corporate developers woo.

I would suggest that this policy include a land bank apparatus to bring reparation to those farmers caught in the financial eddies created by large development practices.

We should have strict environmental control of development activities through the Interstate Land Sales Act.

Finally, the maintenance of the family farm must be a fundamental part of this land program. In this category, I would mention again the proposals made earlier to bring strong financial support to the family farmer so that he can get a fair price for his work. This would probably do more than anything to end his preoccupation with converting his farm into homesites and helter-skelter development.

In this connection, I should like to call your attention to what is happening in Switzerland. The Swiss have long experienced the kind of development pressures being felt in our territory. I was interested to read an article in *World Agriculture* which made mention of the fact that one of the basic points keeping Switzerland out of the Common Market was its refusal to lower its agriculture prices to Common Market levels. The reason given is simply that Switzerland has found the best way to resist becoming totally inundated with resort development is to assure its farmers a fair price for their products. In this way, farm land gets sold generally to another farmer and not a land speculator.

Thank you very much, Senator Harris. I would be happy to answer any questions or supply any additional information I can. (Applause.)

Senator HARRIS. Thank you very much. I don't have any specific questions. I think your statement is very complete. I think the last note is really the important one that when people can make a living out of farming, naturally that's what they are going to be doing with land. That's a really basic kind of thing.

Mr. Stencel, I certainly appreciate your being here, and also Mr. Barnes.

JOHN STENCEL. We thank you again, Senator.

DALE LYON, LEGISLATIVE DIRECTOR, FARMERS UNION IN KANSAS

Senator HARRIS. I'm glad to see so many of you here today. We have a lot more than we had anticipated. We like that, but I hate for any of you to have to stand up.

It is a pleasure to have Mr. Lyon of the Farmers Union and others with us today, and I appreciate it very much. Mr. Lyon, we will be pleased to hear from you at this time.

DALE LYON. Senator Harris, we are privileged to have this opportunity to discuss the threat of corporate farming in agriculture, and we appreciate your invitation to us to testify today.

I do want to identify myself further. I am a farmer and I moonlight as a legislative agent—and most of it is done in the moonlight, I'll tell you that (laughter) . . .

I have chosen, Senator, to talk about Kansas, since I thought we would have probably a lot of testimony nationally.

We are privileged at this opportunity to discuss the threat of corporatism in agriculture and we appreciate your invitation to testify.

The Farmers Union in Kansas has long opposed corporate farming within this state, and currently is working to improve the Kansas statutes in relation to corporate farming. To this end, we have asked Attorney General Vern Miller to attempt to enforce the present laws; and we have caused a bill to be introduced in the Kansas Legislature to close the loopholes, which are many.

We have found our attorney general responsive as his testimony today undoubtedly will show.

The legislature is a different story, indeed, a matter to which I will address myself in a few moments.

It is said by those who oppose strong laws to regulate corporate farming that little or none exists in the state and that none is in the offing. This is not true.

Even were it true, however, that there are no corporate farms in Kansas and no corporate land ownership, the effects of the corporate philosophy from agriculture-related business, and in our land grant schools, have long since left their irreversible scars on the Great Plains of Kansas and the neighboring states.

The dying towns, the towns which have completely disappeared, the empty farm houses, the rubble of abandoned schools and churches, all these are just as much caused by the corporate economic philosophy as any other factor, even more so, we believe.

At what period in history this began is hard to say, but its ingredients are obvious. So-called production efficiency is a graveyard of one farm entity after another.

The aura of efficiency, taught and preached in our schools, is a cover for many economic sins against the family farmer. The idea of producing more and more without considering reasonable markets, the downgrading of diversification which was the best bank account the farmer ever had, the move to specialization, of using capital advantage to enlarge operations, the concentration of markets, all of these are a result of the creeping corporate economic philosophy.

These preachment and their acceptance turned many farmers away from the historic intent of the homestead act and turned increasing numbers of farmers into economic animals. Farms were no longer, first, a home, second, a way of life, and third, an economic unit to support a family as Thomas Jefferson idealized the family farm in this country. Those who try to remain that way are swallowed up by an all consuming desire by others whose only motive is profit . . . the true corporate philosophy.

All these things were accomplished through what is termed "education". I think a better word is propaganda.

This set the stage for the second course—the incorporation of agricultural processing and marketing. This destroyed the supply and demand relationship at the marketplace. Competition in pricing has disappeared. The marketing of all farm commodities that I am aware of is done to non-competitive buyers, price-wise. The intangible monopoly—the farm producers market—is an intangible monopoly not connected in the classic sense financially, but in the business of price-fixing in the classic sense. Nevertheless, the situation does exist. Farmers can't break it. The law is no protection from it.

Today in Kansas, the cattle feeding business is rapidly becoming corporate-owned. The hog business is becoming integrated. The chicken and egg business has virtually disappeared. Corporate ownership of land is rapidly increasing. Even the small meat cutter and packer are being legislated into oblivion.

In each of these moves, hundreds of farmers have been denied the right to farm, their only crime being that they could not compete with the superior position of corporate capital with the capital generated from their own farms. To be subject to such unfair exposure is a crime itself.

I am talking about Kansas where it is said we have no corporate farming of a serious nature.

For a state that is purported to have no large scale corporate farming because we have a law on the books which limits a domestic farming corporation to ten stockholders and 5,000 acres, strange things happen.

The Kansas Farm Bureau and the Kansas Livestock Association powered a bill through the Kansas Legislature to establish farm labor relations. Now anyone knows that family farm situations are not conducive to farm labor problems. Such laws are written only for the corporate agricultural employer. The defense of this act by these groups is that we are going to need such laws in the future.

This is a very cleverly driven nail into the coffin of the family farm. Organized labor will tend to equalize the cost of production of the family farmer with the corporate farm without giving him the same capital position to absorb it. It will tend to destroy the family farm.

Stock and non-stock land investment corporations are buying land and getting options to buy at this time. An interesting thing about this is that any stockholder of that corporation or multiple numbers in partnership can lease this land and farm it, and they completely bypass the Kansas Corporate Farming Law. The law does not apply in such a case.

Senator HARRIS. I noticed one thing out in California that struck me in that regard. They are using that kind of device—it's really a corporation in effect—but they are using it to get a tax advantage. They set up this partnership and go into land development, say, for example, you are going to put in almonds or grapes that's going to take maybe five years to develop. They buy into that thing as a partner for the purpose of taking a tax loss. A doctor or lawyer buys a piece of that and they are allowed under the tax laws, which is wrong, to write that off as an expense rather than capital investment. When everybody gets a tax loss out of the thing up to the time it starts to produce, then they sell out and get a whole new set of investors who have different interests. And that's what you are talking about. It looks like a partnership but operates like a corporation and winds up getting a lot of tax advantages. I'm sorry to interrupt you, but that made me think of . . .

JOHN STENCEL. I haven't got into it that far, Senator, but, actually, I've never found any advantages in corporate farming except

taxes. I don't know of any for a family corporation; I don't know of any other advantage. But then, I'm not an attorney and maybe you can help me out on that.

To continue where I left off here . . . There is no prohibition from corporate ownership of land and there is no restriction on leasing corporate land in which you have an interest.

Land investment corporations abound in the state. Foreign corporations sneak into Kansas under the guise of individual titles to tracts of land and farm the land in the name of a corporate agent.

Among these strange things occurring in Kansas, the state that pioneered the anti-farm corporation law in 1923 and is supposed to be free of corporate farming, there has been a recent occurrence which should be of special interest to you, Senator Harris, and I am sure to the people of Kansas.

An Associated Press story last September in the Salina Journal reported the following, which later investigation proved to be true: Senators Bob Dole and James Pearson announced in Logan County, Kansas, the approval of an F.H.A. loan of \$592,000 to the Smokey Valley Grazing Association Incorporated. This was a loan that Senators Dole and Pearson apparently helped secure, or, at least, wanted to claim credit for doing so.

These men represent a state which has a corporate farming law restricting farms to ten stockholders and 5,000 acres. This huge loan, nevertheless, was granted to buy 11,000 acres of land by a corporation which had thirteen incorporators and a reported sixteen stockholders. This loan represented approximately 12 percent of the F.H.A. guaranteed loans for an entire fiscal year for all of the United States. The average loan of this type is \$203,000.

The F.H.A. had a backlog of 63 applications which were passed over apparently in favor of this loan. Five of these applications were from Kansas.

On the other hand, Senator Bob Dole has announced repeatedly his support of the family farm. Senator James Pearson made a plea in behalf of the family farm and talked in opposition to corporate farming and vertical integration of farming on the floor of the United States Senate when he explained his vote for Dr. Earl Butz for Secretary of Agriculture. In a letter to me explaining his vote for Dr. Butz, Senator Pearson had this to say, "Let me assure you that I share your deep commitment to the family farm system, not only for economic but for social reasons as well."

It appears to us that Senator Pearson, who represents a state whose public policy by law is to limit corporate farms to 5,000 acres, is not keeping his faith with the citizens of this state when apparently he promoted a \$592,000 F.H.A. loan for an 11,000 acre corporate farm.

To say grazing is not farming is to say that one-third of all the acres harvested in the nation is not agriculture since it is done by grazing. How absurd.

Further, he is not being consistent with his personally stated philosophy in opposition to corporate farming. His actions belie his rhetoric. This whole loan episode should be investigated. There just may be some unfair use of government programs involved here.

Let me get back to the Kansas Legislature. Farmers Union was successful in getting a bill introduced which would have made the present law in Kansas meaningful except for the ownership of the land. In private conversation, a member of the legislature asked us not to press the issue and promised a study of corporate farming so that a realistic law would be written. I agreed this was acceptable. The resolution was drawn and has been on page 13 or 14 of the legislative cal-

endar every day since. Just one more of the strange occurrences in a state where the illusion is perpetuated that corporate farming is not a threat.

The power lobbies had their day on the farm labor bill and are having their day with the corporate farming study. The legislature has submitted to this pressure. It is a handmaiden of power politics.

Senator, you have suggested that I direct my remarks to the effect of corporate farming on the Plains States. This I have attempted to do. The Kansas situation is quite similar to that of neighboring states. I am more familiar with Kansas. It is an example. I think, however, in behalf of the Farmers Union members in Kansas, I should deal finally with the basic philosophy of private ownership of land versus corporate ownership.

Here is where the real key to the future of the family farm lies—the ownership of the land. Whoever owns the land controls its use. If the ownership of land passes from private title to corporate title, the natural recycling of land ownership from generation to generation ceases. Corporations are non-human entities, so they are not mortal. The more land owned by corporations, the less land there is available for private ownership and farming. Man's dependence on the corporate structure becomes ever more complete. The right to be a true capitalist is then denied the American farmer and the American people.

Not only must we deal with land ownership. We must eliminate vertical integration which is a means of destroying the independence of the family farm without owning the land. This control is established by monopolized markets and a monopoly on the source of capital. The Family Farm Act of 1972, of which you are a cosponsor, is a sound step toward solving this problem. We appreciate your efforts.

Another area in which we must work and endeavor to accomplish is to divorce the power to control the farm operation through the use of corporate capital loaned to farmers. The capital input in agriculture must not be a tentacle of power for corporation.

We must give the farmer the means to control his production, tailor it to demand—profitable demand only.

We must give the farmer the tools to reasonable control of the price of his product in the marketplace.

We must look at the possibility of passing federal legislation to restrict the power of the states to tax farm real estate and personal property. The states have long since shown they will not be fair to the farmer in this field. The farmer pays 28% of all the property tax for schools in Kansas today. He has 6% of the income.

Corporate farming is a cancerous growth which is destroying the basic tenets of American liberty. We must be surgeons. We must cut it out before it is too late. Farmers Union in Kansas proposes to do so.

Thank you.

CHRIS WALKER, NATIONAL DIRECTOR, NATIONAL FARMERS ORGANIZATION

Senator HARRIS. We have a representative from the National Farmers Organization, the NFO, here with us. Mr. Walker, we appreciate what you and your organization are doing, and we will be pleased to hear from you at this time.

CHRIS WALKER. Thank you Senator Harris and staff and friends of family-controlled agriculture. Sometimes it's real nice to be on the last part of a program, because you can say amen to what the others have said. Maybe I can add a little bit, but it certainly is our feeling that we would say amen to the statements that have already been made.

To divert a little, I had the pleasure of being in the Chambers of the Senate when Sen-

ator Harris led the team that made the strong appeal to get Dr. Butz kicked out. (Laughter) Senator HARRIS. Be careful, now. (Laughter)

CHRIS WALKER. I don't think the Senator will mind the remark I made, but it was disgusting that we would have those who aren't more concerned about agriculture. But there in the Senate Chamber were Senator Harris and his colleagues who were wanting to do something for farmers. Then over on the other side were Senator Dole and those who were wanting to put Dr. Butz in office. It seems you had about four hours, I believe, that morning; it was divided up equally between the two sides, you know. So Senator Harris was glad to start off because he had more Senators than he could put on the program. After two or three of them had talked, then Senator Dole and his colleagues were able to drag some more of them in—and I say this quite truthfully—from the halls outside the Senate Chambers and get them to talk. But after awhile they ran out of finding someone who would speak for Dr. Butz. (Laughter) And so Senator Harris very graciously offered Mr. Dole to take of his time because he had plenty of speakers who would like to comment against Dr. Butz. I was very amused at this, and it's great to have the Senator working for us from this angle.

Senator HARRIS. They finally, as you know, called a quorum call just to use up the time because they couldn't find anybody who wanted to speak. I said it seems a shame it appears that nobody wants to speak for Dr. Butz. But they wouldn't give me their time. I said, I've got a lot of speakers if you will give me your time, we can use it on the other side. (Laughter.)

CHRIS WALKER. You're right. It's kind of amusing, but it's disgusting too, but the Senator was well on top of the situation.

I am a farmer from northeast Kansas; Mayetta, Kansas.

I serve as National Director of NFO from Kansas, Vice-Chairman of Kansas NFO and National Treasurer working out of NFO's home office at Corning.

I appreciate the opportunity to participate in this inquiry into the alarming rise in corporate power and influence in this country, and its impact on people on farms and in small towns and cities, and the secrecy that shrouds corporate activities in Agriculture. I want to commend the chairman for the leadership he has shown in raising the issue of growing corporate power in states like Kansas and warning the people, farm and city alike, of the danger of destroying the family-size farms that have made American Agriculture the most efficient and productive in the world.

I am mystified by the claims of some that vertical integration and other corporate activity we hear so much about is not a threat. We view it in the NFO as Phase I of a corporate takeover of the food industry, which would involve acquiring or controlling all phases of production, processing, and retailing.

This takeover attempt is acknowledged by some of the largest corporations in this country. An example, Tenneco, Incorporated, a huge conglomerate, has 3.4 billion dollars in assets, has told its stockholders that it is developing a food system based on "Integration from seedling to supermarket."

Other well-known companies are pushing aggressively into farm production with direct or indirect approaches and with various kinds of contracts. Those companies include Safeway, Dow Chemical, Stokley-Van Camp, and Ralston Purina.

They signify the growing concentration of corporate power, this nation's unwillingness to curb bigness, and the nature of the threat to the individual producer in agriculture.

These companies, and others like them, are taking advantage of low farm prices, families

strapped by big farm investment and mortgages, and reluctance of many farmers to organize and fight for prices that would assure economic survival.

They also capitalize on cheap labor, credit at prime rates from big city banks, tax avoidance made easy by countless loopholes which give leeway to destroy competition.

Farm people feel helpless against the enormous power lined up against them. They also feel betrayed by Agri-business companies that grew powerful by profiting on sales to farmers, then turning around to exploit them into vertical integration and driving them off the land.

Bigness and efficiency are still the rages in agriculture. The farm economist will hit you, when you argue for better prices, with the suggestion that you ought to get bigger or get out. If you can't swing the credit, many will say maybe you should get into contractual setup where credit for expansion can come from the big integrator.

The big companies are in there in force, pushing vertical integration all across the country. Their objective is to get control of the production and to manipulate the marketing flow of the production to suit their own purposes. That enables them to avoid the heavy financial and managerial commitment that is necessary in buying land and equipment, hiring and supervising farm workers, and carrying out farm management responsibility—yet still remain in position to profit by reason of product control.

Take the rapid rise of vertical integration in the hog industry, for example. It is difficult even in his own neighborhood for a farmer to determine who is involved. Producers normally get into a contractual agreement with an integrator when they are in financial difficulty—lots of them did a year ago when hogs were down around \$15.00—and they do not want their neighbors knowing they are in this kind of trouble.

We know from our own survey, taken a year ago after several weeks of disastrous hog prices, that integrators have made serious inroads.

We surveyed our NFO meat committee chairman in more than 2,000 counties asking them to name counties where integrators had signed contracts or were promoting them in their areas. We also asked for details on whether integrators were supplying such inputs? As sows, feeder pigs, and credit.

The survey disclosed that feed companies and other integrators had contracts with thousands of independent hog producers. The names of more than 70 integrators, including several meat packers, showed up in the county by county survey. As many as a half-a-dozen integrators were active in some leading hog producing counties.

The survey also disclosed that integrators were either established or were pushing into more than 170 counties. These hog agreements were written much like those in the early days of the broiler contracts in the South.

The survey probably understates the real impact of vertical integration activity in hogs the past year. Farmers handling the survey at the county level reported difficulty obtaining information on the corporations involved, contract terms, the number of hogs in a setup and the number and identity of the producers signed up.

One answer to these problems is congressional action to stop the practice known as Tax Loss Farming. We must close these federal tax loopholes and eliminate this series of unfair competition faced by working people.

Government spokesmen have been contending that modification in the 1969 Tax Reform Act took care of this problem, but they do not square with the facts as we know them out in the farm states.

The National Planning Association's Agricultural Committee, for example, recently

issued a report that shows that this legislation had virtually no impact. It pointed out Oppenheimer Industries, a Kansas City firm that promotes tax farming plans for the rich, recently boasted that its clientele of Hollywood stars and others had doubled in the past 4 years to 400 persons.

Another answer is the Family Farm Act, an antitrust bill that would get conglomerates, integrators, and other big corporations out of farming.

The NFO has been fighting for a way to get State laws tough enough to keep processors, handlers, distributors, suppliers, and others out of farming. We have done this because we know that as we succeed in bargaining, and requiring fair treatment for farmers, that many of the big companies involved will decide to produce the commodities rather than deal with united farmers at a fair price.

The Family Farm Act, now under active consideration in both Houses of Congress, would prevent further movement into food production by these corporate giants and require them to divest themselves of their present production holdings.

Specifically, the bill provides that any corporations involved in processing or marketing which owns 3 million dollars or more in assets or any individual owning 1 million dollars of stock in such a corporation, cannot then become involved in producing food.

The bill is designed so it will not hurt farm cooperatives and certain charitable, educational, and research institutions. They are exempted as long as their farming activities are related to the work and are not for profit.

It provides Congress with the means to preserve free, private, and small business and prevent insidious monopolistic tendencies in Agriculture.

It is entirely consistent with our adopted antitrust, anti-monopoly policies to forbid integrating of food production from the soil to the grocery store shelves, and to require food processors and distributors to compete and keep their facilities open for production of the independent producer.

It is time to challenge those who contend eliminating farmers and moving people off the land is desirable and inevitable. It is time to get rid of those bureaucrats who respond in an attempt to get better farm prices by simply telling producers to get bigger or get out. It is time to put some teeth into anti-trust laws relating to Agriculture. It is time to fight for legislation to eliminate tax-loss-farming to join together and bargain collectively for fair prices that return cost of production plus a reasonable profit.

We need all these things to stop the re-development of a feudal system, based on corporate and economic arms or political power, and to make it possible for our sons and daughters to be something besides a corporate employee.

I hope, Mr. Chairman, that Congress will wake up and begin taking some action to bring about these badly needed changes.

And while we are all talking about it here, I have a statement that was made by a former President of the United States when he said, "Free speech does not live many hours after free industry and free commerce die." Corporate industry and corporations controlling commerce, I believe this is what he is talking about, and we don't want to see that happen.

Senator, it is a pleasure to have you as a team leader for farmers. We appreciate your efforts and appreciate your coming to Kansas to get testimony against corporate agriculture.

Thank you.  
(Applause.)

ROBERT SPEAR, PRESIDENT, NATIONAL FARMERS ORGANIZATION

Senator HARRIS. Next, we will hear from Mr. Robert Spear, President of the Kansas Farm-

ers Association. Mr. Spear, it was nice of you to come.

ROBERT SPEAR. Mr. Chairman, your aides and fellow family-farmers, I'm here as the State Chairman of NFO and also as a member of the National Board of Directors of the National Farmers Organization, and a farmer.

I came here today to give a personal testimony of what is happening in corporate agriculture and how it affected me. As a young farmer, starting in farming in 1953, I worked at several jobs in order to start farming. Then one day I looked at something that looked real profitable to me. It was sold to me with the idea that it would work; that it would make me a lot of money and make me prosperous, and all the things that I'd thought were wonderful at that time. This happened to be in about 1956-57, and the reason that I give this testimony today is to try to keep other farmers from falling into the same trap that I fell into.

I was approached by some people to set up what we call a cage-layer operation. I was working with two or three companies, but mainly Ralston-Purina Company. They were the ones who talked me into starting this, helped me finance it, and also got me in touch with the people to build the building, got me in touch with all the people in order to get the cages, and also got me in touch with the market, which was debtless and which is the Safeway Stores.

When I started in the deal, they promised me if I produced 20 cases a week that I would have a four cent a dozen premium for producing that volume. As time went on, two years later they said in order to get that four cent premium, you are going to have to produce 30 cases, so double your operations. At this point we didn't feel we wanted to, so we held with the 1680 hen operation. I was fast becoming an integrated farmer. I not only had chickens; I had hogs bought on a lease.

In 1962, I was taken to a meeting of a group of farmers that were organizing, and at this time I joined the NFO and at this time we had a brochure on vertical integration. I studied this thing, and then I saw where I was at. We were in debt. We were young, our family was small and we had a lot of expense. We worked that operation until we got it into a place where we figured the best thing to do was to shut it down.

When I got ready to shut it down I was approached by this company. They said, oh, you don't want to shut this system down, you got the house, you got the chickens, you've got everything set up. I'll tell you what we'll do, we'll give you seven cents a dozen. We'll furnish the chickens, we'll furnish the feed, you furnish the house, the utilities and you do the work and we'll give you seven cents a dozen. I knew my operation well enough to realize that a hundred dozen a day was about all I was going to get from those chickens, which meant that I would work for them for \$7.00. We belonged to Farm Management; we knew our cost also. It was going to cost us \$3.50 a day for utilities, depreciation and these things. So that meant I would work for them for \$3.50 a day.

But there was another trap put into this, and that was, well, if you get more efficient, you could make more than \$3.50 a day. This is a trap that I think every farmer has fallen into in the State of Kansas and also throughout the nation—this efficiency bit. They put this trap out, but we knew our cost and how it would work, and we said, "No, we're going to shut it out; we won't work for you for \$3.50 a day."

They said, well, if you don't want to work for \$3.50 a day, you could make an investment of another \$10,000 and put up another unit, you could make \$7.00 a day and that would make you more efficient. At this time, we went ahead and shut it down, completely. At that time I went to the road and started organizing out across Kansas, Oklahoma, Texas and Colorado. Then I began to see a

picture put together, and vertical integration, ladies and gentlemen, is very, very real. It is one of the worst types of corporations you'll ever see out here. It is a silent partner that takes over farmers and they don't realize it is going on. I watched this going on out across western Kansas and the high plains. I watched the feedlots develop.

Farmers would go together and put their capital together in feedlots. It wasn't long until they lost their money—their capital; they could not put the cattle in there themselves. So they had to look for outside investors to put them in. Today we see large corporations of oil companies, investors, putting cattle in these lots, and these people are only working for them, the same as I would have been in the chicken industry if I had gone ahead with their "so much a dozen" gain.

I visited feedlots all across the high plains area last winter and I found that these big corporations, when they get some thirty to forty percent of the cattle in that lot, they come out and run tests on the feed. They look at it and they say, "Now this feed is costing too much; you've got to lower your price." Then they put the squeeze on the feedlot operator at this point.

The same thing is going on out here on the hogs. The Clean Meat Program of Purina is nothing more than this. They squeezed all the money out of the chicken people and now they are out to get the people with the hogs. My neighbor sits down here putting out hogs at fourteen cents a pound gain. The farmers are writing contracts—two of these right next to me—that will run from anywhere from a thousand to ten thousand head and are raising these hogs on fourteen cents a pound gain. These things were written while farmers were down; they didn't have enough money to make their investment.

There are several others that I have seen go together, and to give you some examples—Sooner Beef. You may recognize the name. This is a feedlot that is 18 miles south of Rolla, Kansas. They work in the chutes and some feedlots. Vickers Oil to Petroleum Lutz, now is called Sooner Beef, which is subsidiary of Pro-Chemco. Pro-Chemco has over 150,000 head of cattle on feed right now. Their biggest feed lot is Randall County Feedlot, south of Amarillo, Texas. Another one, John Rockefeller. He leased 9,000 acres of corn from the XIT Ranch, which is in the high plains area, and he purchased interest in the Master Feedlot at Hooker, Oklahoma, and Guymon, Oklahoma, and leased Capo facilities feed yards.

There are many others that you can put together as you work over this part of Kansas. You can see investment companies buying land and renting out here. They rent it on a long-term basis and they have an option to buy. Kansas Beef Industry is now buying land in our area and is donating it to a bank to put together another corporation. This is happening all across the State of Kansas, even though we have laws to prevent it. It's happening all across the Great Plains.

I think we have to look to find why this is happening to agriculture. I think the very root of the whole thing is farm income, because if farmers had a fair income there wouldn't be a possibility of these big corporations taking the land away from us. Rural America wouldn't die.

Another thing is high interest. When we got into debt, they raised the interest and the interest just took that much more of our income. The investment requirements are high and they have locked our young people out of farming, unless dad can give them a start.

So we have to ask ourselves, why is vertical integration expanding? What is the root of the problem? Why are corporations expanding and how can we stop them?

I think Thomas Jefferson once said, "A country that expects to be ignorant and free

expects that which has not been and never will be." And we farmers have got to learn one thing, and that is when we started this country as a free enterprise and capitalistic system, farmers were the ones that started it. We learned that we had to have capital in order to operate; we learned that we had to produce something with that capital or we couldn't stay in there.

And then we learned to be efficient. But if you could find efficiency, you find that this is producing something for nothing—eventually something for nothing, and we've almost done that. The next thing you have to build a system to market your production, and farmers have done that.

But there was one thing that we forgot to do. All other businesses have done this same thing, but we as farmers never did do it. We never actually entered the capitalistic system. And that was, we forgot to price our product. We left it in the hands of the buyer to price our product, and that is the root of the evil causing corporations to come out here today. If we had priced our products the same as other people in other segments of this economy, we would not have the problem we have today.

So if this economy falls, if we lose this last free chance in this world for man to be free and own his own products, and all this, most of the blame is going to be shouldered by everyone of us who are farmers, because we did not rise up and set a price on our products. This is what is the matter in the United States today; this is the root of the whole thing.

We have tried to put together a system which will change this, and I'd like for you to have a copy of this, Senator. This is just a start and will give support to the Family Farm Act. This will give us more time—buy more time for farmers to find out what is wrong out here in agriculture, buy us time to get in a position to set a price which is equal and fair with the rest of the economy. When we do this then, Senator, we will not have to worry about corporation takeover.

I thank you very much.  
(Applause.)

Senator HARRIS. Thank you very much. That was very helpful, particularly to get that kind of personal experience and background. I think it gives a lot of weight to the statement and to the things that we've been saying.

I know some of you have given me statements to be printed in the record. If others now or later want to do that, if you'll send them to me or if you have them with you give them to Mr. Dage here with me when we close up.

We do have a brief time. If anybody else would like to say a word or two, just let us know and we'll be glad to hear from you at this time.

From the audience:

As a member of the Salina County Farmers Union and a Saline County farmer, I commend you for coming to Salina and Saline County, and I welcome all of you people. I'm real proud that you came here for this meeting. We in the Farmers Union and individual farmers in the county have worked for the past several years in opposition to corporate farming. I'm very happy to see the Senator and Governor Docking and Attorney General Miller, the gentleman from Rocky Mountain Farmers Union and from NFO, Mr. Dale Lyons. With members and friends of an organization like this, we got to be heading the stock out of the woods. (Laughter) We're going to go and we're going to be behind you, and we're going to fight.

Thank you again for coming to Salina, all of you.

Question. Are there hearings going on around the country in favor of corporate farming too, the same as against corporate farming?

Senator HARRIS. Well, I think the Secretary

is taking care of that end of it. (Laughter) A lot of people don't feel that their views are being properly represented by the present Secretary of Agriculture. May I say, we haven't done so well always as Democrats, either, so it's not so much a matter of partisanship, I think we all know that. But the idea of these contributions is to have ordinary people, who don't feel that they are being properly spoken for by the Department, or can't go to Washington to have their say.

Question. You mean the ones who are being represented by their lawyers in Washington—the ones who are for corporate farming, their interests are being represented in Washington?

Senator HARRIS. I think they do pretty well. What you find in all these kinds of situations is corporate power. They are not so much interested in new benefits; they've got the benefits. They just want to keep it the way it is.

That's all tied in with campaign financing, the way campaigns are financed, etc., and that makes it awfully tough. What I'm trying to do in these kinds of things, and others who are joining me in it in the future, is to try to get out in the country and get some feel about what folks like yourselves are thinking. Now, I start with some very strong biases, as I said to start with, but at least I know a little more about it than I did—how these issues affect people out in the Great Plains and out here in Kansas.

Now, I want you to think, too, about a couple of other things that I think are going to become important considerations. One is land reform. We haven't talked about land reform very much in this country for a long time, and I think we ought to begin to do that again.

Secondly, I think we ought to begin to talk about some kind of rural renewal. There is a program called Urban Renewal, but it doesn't work very well for a lot of different reasons. But the general principle of it is that government will go in and buy urban land, develop it if necessary, and sell it off in smaller tracts. I think that something like that, with some kind of capital investment assistance and proper kinds of financing at the proper rates, etc., could be a very important thing in this country, and I hope we may begin to develop both of those ideas as time goes on. They weren't the proper subjects of this hearing, but I think for the long pull they are very much involved in these issues.

May I just say again, I am very grateful that you are here and I'm awfully pleased with the kind of interest and attention there was. For those of you who have come in late, we will transcribe these hearings and they will be published in the Congressional Record and brought to the attention personally of those who can make decisions about these matters. We would be glad, if you'll write me in care of the United States Senate—just write me Senator Fred Harris, Washington, D.C., or in care of the U.S. Senate—to send you a copy of the transcribed hearing when it's finished.

Thank you all very much. I've enjoyed being here.

The following are statements and letters submitted to Senator HARRIS at the conclusion of the hearing:

STATEMENT SUBMITTED BY WAYNE WORTHINGTON, PRESIDENT, RENO COUNTY FARMERS UNION, BURRTON, KANSAS.

I am Wayne Worthington, Burrton, Kansas, President of Reno County Farmers Union. I would first like to express my appreciation for the opportunity to enter testimony at this important hearing on corporation farms. I would like to emphasize the importance of this hearing.

I strongly oppose Corporation type agriculture on the grounds of the adverse social conditions caused in areas where these conditions now exist. Example cases in point are the desolate areas of empty schools, churches,

and small town businesses in both California and Eastern Colorado where Tenneco Oil Company and Gates Rubber Company exploited previously prosperous communities. Residents were forced to other areas adding to the already climbing rolls of low income families.

A current investigation is in progress in Kansas by the Attorney General to determine the legality of the operations of several corporations.

It is a known fact tax breaks are an all important reason for the formation of corporate farms. For this reason, I urge your continued efforts to eliminate the advantages offered conglomerates through tax and financing advantages not allowed individual operators.

The best control of these economic giants can be enforced on a national basis.

STATEMENT SUBMITTED BY ALOYS P. BETZEN AND JOHN P. STRUNK, SEDGWICK COUNTY FARMERS UNION, COLWICH, KANS.

Conglomerative Corporation Farming will lead to:

1. The death of private owned farms.
1. Single ownership of millions of acres of farmland.
3. Complete control of raw agricultural grains, fibers, and meats to the processed product, with only profit or tax angle being considered. A recent survey of the largest U.S. firms by the Federal Reserve Bank of Philadelphia shows them estimating, on average, a 16 per cent rise in profit after taxes this year.
4. Complete elimination of small town businesses by bypassing local merchant to make supplies purchases.
5. A greater tax burden on general public with corporations employing a legal staff to figure all the tax angles.
6. Local grade school and high school districts will become obsolete.
7. It will take the pride of workmanship away from the individual making many of us slaves of the corporations. This can be found in many countries that are ruled by a few wealthy people.
8. Large concentration of livestock and use of medication, such as antibiotics etc., pollution will be hard to control.
9. Only one mishap in use of fertilizers, insecticides, and herbicides will involve large acreage.
10. Absentee ownership will have no knowledge or care of water or wind erosion. We favor saving the family farm and making our rural communities more attractive to our young people.

STATEMENT SUBMITTED BY MR. IVAN WYATT, LEGISLATIVE DIRECTOR OF THE CASE COUNTY FARMERS UNION, CLEMENTS, KANS.

I am Ivan Wyatt of Clements, Kansas, Legislative Director of the Chase County Farmers Union and a member of the Legislative Steering Committee of the Farmers Union in Kansas.

I think we here all agree that the ultimate goal of the movements of giant corporations, into the field of American agriculture, is to gain control of this nation's food supplies from field or feedlot to the dinner plate.

The approach to this complete control is being made from several angles. The most obvious is the attempts of several corporate giants to gain control of large blocks of this nation's more fertile lands, such as the San Joaquin Valley in California or the sugar beet areas of Kansas and Colorado.

In my statement I would like to bring to the attention of you gentlemen another, perhaps more subtle, approach being used to gain control of American agriculture by the giant conglomerate corporations.

In many ways I see the demise of the family farmer in America in a parallel with the

way the American Indian was driven from his land.

The family farmer, like the American Indian, can be a formidable foe to drive from the land if given a fair chance; but, like the Indian, the deck is stacked against the independent family farmer. One example is the unbelievably low parity ratio of less than 70% brought about by poor administration of farm policy on the national level. Even these low prices seem not to be driving the family farmers from the land fast enough.

Back to the American Indian, it seems the same tactic is being used against the American family farmer as was used against the Indian. As I am sure you all recall from your history classes, it was a slow, almost impossible, task to drive the Indian from the land in a frontal attack.

So another approach had to be devised. Even though the Indian was being kept on the move and couldn't produce an adequate living from the land, he was able to sustain himself and his family from another source, the wild game roaming the prairies, the giant herds of buffalo, elk, deer, etc. So in order to bring the Indian nations to their knees, his second source of livelihood had to be denied him; hence, the slaughter of the great herds of wild game that almost brought about the extinction of the buffalo.

To me this is very similar to the tactic being used against the family farmers of this nation.

While we see a policy of low prices to the producer of grains so low he can hardly survive, we see his second source of livelihood being denied him through the use of vertical integration into the production of meat and eggs and poultry by giant conglomerate corporations, including some conglomerate feed companies who got their start by doing business with the very farmer they are now forcing out of agriculture.

When we see farmers try to band together for the purpose of survival, we then see the powers of the already giant corporations band together to crush the independent producers. We witnessed this a few years ago in the area of Northwest Arkansas when the broiler producers rebelled against the low prices offered by three processors controlling the area. When the producers attempted to form co-ops to market their produce, they were immediately blacklisted. Without a market for their produce they were bankrupted and out of business in a short time, leaving the control of producing and processing in the hands of the integrators. As it has been said, "What a more perfect crime can there be than to destroy a man's means of livelihood, then go unpunished."

All this might be excusable if the ultimate end was higher quality of food at a lower price to the consumer. But the very opposite is the fact. This is just one example. We have seen virtually this country's entire production of eggs and broilers fall into the hands of a few corporations involved in the production of livestock and poultry feeds and non-farm corporations.

We see today the facilities and money of our Agriculture Colleges, supposedly established to benefit all people, being used to develop machines and varieties of crops, inferior in quality, but developed to withstand the rigors of a mechanical harvester which makes it possible for a few big corporations to operate larger acreages producing and flooding the market with an inferior product while crowding out the independent producer of a quality product.

There seems to be no great interest in the many poor Southern farmers' plight who have just begun to make a decent living by switching to the high labor intensive crops such as okra, tomatoes, cucumbers, etc., only to find that they will be deprived of yet another means of making a living through the combined efforts of their state universities and the giant conglomerate corporations.

What a marked contrast between the national concern over the economic problems of the Lockheed Corporation, Penn-Central Railroad, and those of the hundreds of thousands of farm families striving to earn a living.

These same corporations are now, because of low grain prices, beginning to make inroads into another segment of meat production. The production of pork from the sow to the consumer, again with the help of the agricultural colleges helping to develop systems favorable to operation of farrowing and fattening systems agreeable to a large corporate type operation.

As with all other corporate operations involved in the production of foods, it calls for a high concentration and use of drugs to make up for the lack of proper management and operation that can be found only with the combination of ownership and management. The lack of this combination, substituted with drugs, confinement, and a controlled market, brings about the end results of a substitution of quantity for quality.

As one travels the plains of Kansas, Oklahoma, and Texas, he sees the many large feed lots and thinks of them as part of the overall farming operations of the nation. This is partly true, but for the most part these operations have become a tax loophole, sometimes called tax shelter, of income juggling for high income individuals and multi-corporations, involved in anything from oil production to the production of electronics equipment, or even land speculation. The operators of the feedlots for the most part, are simply hired nurse-maids for someone else's cattle.

Promoters are now trying to funnel this high income money into the business of the cow-calf operation that is now virtually the only part of the cattle industry remaining in the hands of the independent operator and farmer.

The sad part of this is that the independent producer must operate so as to make a living while his competitor uses it for a tax dodge. For example, one conglomerate, which is involved in the food industry, from the planting to the retailing, had an income of \$464 million and a taxable income of \$88.7 million. Yet, due to federal tax breaks, this conglomerate not only paid no taxes on that income, but he had a tax credit of \$13.3 million. This is certainly an unfair tax advantage.

In my opinion what is happening is that these tax loss type of operations are moving in and setting up these integrated operations at a level just under what would be a profitable operation for the independent farmer, then making up the difference on the price after processing.

This is what is making it impossible for many farm families to stay on the land. It is becoming impossible for the farmer to feed his home-grown grains; consequently, they become strictly cash grain farmers. They must then acquire more acres to farm, crowding out other farm families, or else be crowded out themselves. If they do survive, then they find themselves very susceptible to a fluctuating grain market or loss to drought and pestilence.

This testimony is in no way meant to mean that this is a greater danger to the family farmer than the ownership of agricultural land by corporations, because whoever owns or controls the land controls American agriculture.

My testimony is meant to illustrate how the vertical integration of the production of red meats, poultry, eggs, etc., by giant corporations is just another means by which they can gain control and ownership of the land by driving the farm families out of agriculture.

The need is urgent for national legislation to control and roll back the vertical integrators and tax dodge operators, who have

gained control or are intent on gaining control of this nation's production of meat and eggs.

Also, legislation is needed to prevent contracts that verge on fraud, that trap the unwary, and that many times tie up the young beginning farmer or producer in such a way that he becomes a virtual slave working for pennies with no means of escape, except to get out of agriculture with the possible loss of what equity he may have had in his farm and home.

To sum up . . . the family farmer is being driven from the land through low farm prices, and he is rapidly running out of buffalo.

STATEMENT SUBMITTED BY CYRIL AND NOLA HABIGER, SALINA, KANS.

We believe that unlimited Corporation Farming could eventually destroy the family farm and rural America as we know it today.

Corporations operate on a dollar basis and have no concern for church, school, community, small towns, or family farms.

HAVILAND, KANS.,

March 15, 1972.

DEAR SENATOR HARRIS: In a letter postmarked January 12, 1972 from National Farms Co. P.O. Box 485, Concordia, Kansas 66901, my wife was informed of the tremendous changes taking place in agriculture today. The agricultural changes were listed as technical problems such as the use of fertilizer, chemicals, seeds, and cultural practices, plus taxes, insurance, accounting, marketing, and other related fields. She was warned of droughts and other acts of God. As a life long farmer, being born and reared on the farm I fully agree these problems exist. The punch line of the letter was: "How would you like to make 10% on the value of your land?" This illicit a reply from my wife and I. Whereupon Mr. Allen Kaspar from Concordia drove over to explain the set up.

It seems there is a Feed-Seed-Fertilizer Corporation in Omaha, Nebraska, which has been doing so well that it needs a tax deduction. Also, through the corporation, corn will bring 15¢ a bushel more; fertilizer can be applied for 30% less; and large sums of money to buy land and irrigation equipment can be acquired at low rates of interest. Out of this corporation, which realizes the present Kansas laws forbid foreign corporations, has grown a company composed of the officers of the corporation. This would make the company legal under present Kansas laws. The company wants 25 quarter sections of land in the Kiowa County-Edwards County area this year and 25 more the next year and so on. But, the company also wants an option to buy the land at an agreed price, the rental to be 6% of such agreed price. Taxes on the land would be paid by the "company" and a 4% appreciation of the land value would be allowed each year toward a selling price. Of course, the first two years would be the developmental stage and it is likely at the end of that time the "company" would exercise its option to buy. The results would be the loss of the land by the owner with a 10% income for only 2 years. This apparent bonanza to the land owner could be a bone of contention between him and any present tenant.

Other drastic results of such a carnivorous corporation would be the devouring of local implement companies, local gas and fertilizer companies, and even local banks would lose their good local customers. Most important of all would be the use of itinerant laborers in preference to local taxpaying citizens. More rural residents would filter to the cities.

It takes no mind-reader to see that the net result is bad for all America, whether rural or urban. Only the greedy corporations will benefit.

Sincerely,

RICHARD A. DOWELL.

NATIONAL FARMS CO.,

Concordia, Kans.

DEAR FARM OWNER: Are you aware of the tremendous changes taking place in agriculture today?

As a farm owner, you'd better be!

Each year the business of farming becomes more technical. There are constant changes in the use of chemicals, fertilizers, seeds and cultural practices. Also as a land owner you have highly technical problems such as taxes, insurance, accounting, marketing and other related fields.

Prices for the farm products we are selling today are about equal to the prices of the early 1940's—nearly thirty years ago! Yet prices paid by the farmer and farm owner are at an all time high.

During the past few odd numbered decades (1930's and 1950's) we have experienced several drought years, forecasts for the 1970's call for some drought years.

How would you like 10% or more return on your present land value? I have clients who are interested in cash leasing with an option to buy farmland with irrigation development potential. With the newer type of irrigation equipment available, almost any land can be irrigated providing there is irrigation water available. These clients will drill the well and install pump and irrigation equipment at their expense.

There is no commission or fee to be paid by you as owner of the land. We are being indemnified by our clients we are obtaining the lease for.

If you are interested in obtaining more information on this cash lease, fill in the enclosed postcard, mail it in today and we'll be in touch with you.

May we hear from you please.

Yours very truly,

ALLAN KASPAR.

MARCH 16, 1972.

HON. FRED HARRIS.

DEAR SENATOR: I would like to express my opposition to Corporation farming, for several reasons.

First, by the act of incorporating, they would have some tax advantage not usually available to the individual farmer.

They could draw huge government payments, and add to their land holdings each year with those payments.

By buying up land at high prices, they force the small farmer from the land, and he has to go to town and work at whatever job is offered and most times at low wages.

The corporation farmer doesn't need the small town business man. He can get in his airplane and fly to the large cities to purchase his equipment, fuel, repairs, supplies, etc.

The corporation cattle feeder, by concentrating huge numbers of feeder cattle in a comparatively small area, creates a health hazard for the surrounding community.

In conclusion, it is my considered judgment, that the best interests of the American people is not served by having ownership of land in the hands of the few.

Respectfully submitted,

LEO HENKE,

Farmer.

OSBORNE, KANS.

OSBORNE, KANS., March 15, 1972.

Senator FRED HARRIS,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR HARRIS: I am glad you have come to our area in the interests of the family type farm. There has been much discussion on just how large a family type farm really should be. This, in my opinion, would vary with different individuals and the type of farm they have lived on.

We all know what the large corporation farm is and how disastrous it can be to a community in that the business men would no longer be selling to them—as they would

have their goods shipped in in quantity. It would greatly reduce the size of our small towns as well as remove the farm families from their farms. The employees would not have the direct interest in the soil and community as if it was their own. Churches, schools and community organizations would surely suffer. And, in the end, those who have to move to the already overcrowded cities would only add to their problems.

We have already seen too much of our rural population leave the country. One can only guess at the problems we would encounter with the large corporation type farms.

Sincerely,

GRACE L. OTTE.

MARCH 15, 1972.

U.S. SENATOR FRED HARRIS,  
Washington, D.C.

DEAR SIR: I am pleased you are taking the time to come to our state to find the feelings of our people in regard to Corporate farming.

I'm afraid the American Consumer is being sold a bad bill of goods, when they are told that food can be produced and bought cheaper due to it being produced by Corporate farming. I doubt very much if any other group of people will work for as small an amount per hour as the present farmer.

I'm a darned poor letter writer. I can talk much better than I can write.

I forgot to mention the fact and perhaps you already know this, and that is that schools, churches and smaller towns become extinct. We are having plenty of problems now. No doubt you know the large cities are already broke and I feel quite sure they won't want to put up with me.

Thanks for your efforts on the matter of Corporate farming.

Sincerely,

ALBERT OTTE.

CAWKER CITY, KANS.

MARCH 15, 1972.

Senator FRED HARRIS,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR HARRIS: We hope you will continue to expose and fight against Corporation Farming. We are opposed to it because it is against our American heritage of free enterprise and family farms. Because of Corporation Farming pushing out smaller farmers, creating unemployment, and chaos in our over-crowded cities, we have a deep, restless feeling of dissatisfaction in our country.

We appreciate your efforts. Please continue to force corporations out of farming.

Sincerely,

Mr. and Mrs. CAP C. STREIT.

DOWNES, KANS.

MARCH 16, 1972.

HON. FRED HARRIS,  
U.S. Senator.

DEAR SENATOR HARRIS: I am Robert Anderson of Route 2, Kinsley, Kansas. I farm eleven hundred acres north of Kinsley.

Every day it becomes more apparent that the corporate invasion into Agriculture must be stopped. Corporate control of our Agricultural land brings with it many undesirable results: (1) Land prices are pushed unrealistically high. (2) Cash rent bidding for land is pushed to dangerous heights. (3) Rural towns are dried up as farm families leave due to loss of family purchases, plus the loss of purchases of farm supplies. (4) Large farm corporations take little interest in local government and support of local schools and hospital systems.

The above listing is only a part of the problems created by large corporate farming. In my area there are several investor type corporations involved in farming. It is my hope that a way may be found to stop this invasion before it is too late.

It is a privilege to make this statement.  
Sincerely,

ROBERT W. ANDERSON.

KINSLEY, KANS.

MARCH 16, 1972.

Senator HARRIS,  
Senate Office Building,  
Washington, D.C.

SENATOR HARRIS: There is a deep concern on the part of many of us family farmers about the inroads corporation farming and certain phases of vertical integration are making in our agriculture economy. Family farms are already at a disadvantage on cost price squeeze. Our rural communities are dying because our profit margins cannot support businesses and schools in a way to meet needs. Our sons and daughters must seek a life in urban areas because there is no economic incentive to keep them where we need them the most, in our own rural communities.

Any efforts that you can contribute to help us revert the losses to rural areas brought or to be brought about by corporation farming will be greatly appreciated.

Sincerely,

WARREN E. INSKEEP.

CAWKER CITY, KANS.

MARCH 16, 1972.

Senator FRED HARRIS.

DEAR SIR: Cawker City, Kansas, 800 population. We need every one to make our little towns survive. Help us defeat cooperate farming and keep our churches and schools at home. Your support is greatly needed.

Sincerely yours,

HOWARD V. REECE.

### STRONG DEFENSE: AMERICA'S SWORD OF FREEDOM

### HON. ROBERT PRICE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. PRICE of Texas. Mr. Speaker, the recent presentation to Congress by Secretary of Defense Melvin Laird and Joint Chiefs of Staff Chairman Adm. Thomas Moorer on the U.S. military posture has initiated the annual debate on defense spending. For the last several years the debate has centered on a decision of priorities and the need in America for a reordering of priorities. Admittedly, there is much that must be done for the betterment of our American way of life, but we must deal with the realities of the world today as we seek that better way. Often, in the rhetoric that surrounds this discussion of reordering our priorities, we lose sight of a fundamental principle—the first priority of any society is to provide for its own survival. The concentrated attacks by the liberal elements of our society on defense expenditures only serve the purposes of those who seek our downfall.

For some time now we have been on an antimilitary binge which has forced drastic cutbacks in certain categories of defense spending which I believe are essential to our security. The result of this binge is that during the past 5 years the balance of military power has dramatically shifted in favor of the U.S.S.R. According to Defense Secretary Laird in

his annual Defense Department report, "the Soviet buildup is showing even greater momentum" than projected last year at this time. Admiral Moorer, in his presentation before the House Armed Services Committee on February 17, stated the United States no longer has "that predominance of strategic power which for about a quarter of a century has significantly contributed to our avoidance of nuclear war." If this trend of increasing Soviet capabilities continues while those of the United States remain stagnant, the United States will fast become a second-rate power subject to the dictates of our Communist enemies.

Despite claims by the liberals, the doves, and the disarmers, the cold war is far from over and the threat of nuclear destruction or nuclear blackmail at the hands of the Communists will become even more imminent if our defense posture continues to deteriorate for lack of funds. The only way to deal with the Communists is to do so from a position of superior strength. There can be no talk of disarmament and peaceful coexistence so long as there are Americans who still resist any efforts of the Communists to impose their formal rule over our country. Peaceful coexistence is merely one of the big lies of the Communists to be used to their advantage in their struggle to dominate the world.

Mr. Speaker, it is time for those of us who believe in preserving individual freedom and a democratic form of government to speak out in support of spending whatever is necessary to regain our military superiority. We must join together and inform the American people of the true nature and meaning of the adverse shift in the strategic balance and urge them to support a defense posture that can withstand all threats of Communist coercion. The very existence of our American way of life depends on it.

### MORE HARASSMENT

### HON. JOHN M. ZWACH

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. ZWACH. Mr. Speaker, I have introduced legislation exempting employers of 25 workers or less from the provisions of the Occupational Safety and Health Act.

I am fully in accord with the aim of this act, but I think in drawing up the regulations we drifted pretty far afield from what is practical or even possible.

Recently, an editorial appeared in Ken Anderson's Cottonwood County Citizen in Windom in our Minnesota Sixth Congressional District which was widely reprinted and which dealt with some of the absurdities of this act.

Mr. Speaker, I would like to insert this editorial in the CONGRESSIONAL RECORD so that I might share it with my colleagues and the many others who are regular readers:

### MORE HARASSMENT

Many businessmen and manufacturers are "shook" with the requirements of the Occupational Safety and Health Act (OSHA) which is now in effect.

They should be, because this new law is going to force many of them out of business.

OSHA is another nail in the business coffin which state and federal governments have been in the process of building for years. It is supposedly designed for the protection of workers, but it will add to the harassment of businessmen and manufacturers so that many will eventually quit, or go broke.

The law is filled with silly regulations, all of which are included in a 249-page book. And this is only a start. You can be sure the book will be expanded to 500 pages at the next printing.

There is the rule that if an employee chews snuff, the employer must furnish him with a spittoon which must be cleaned daily. (Presumably this is the boss' job.)

Female employees are not to reach over seven feet. If so, they must be furnished with a ladder. If the ladder is made of wood it must not have over a certain number of knots per foot.

If you have both men and women employees (even if it's only two), you must provide separate rest rooms. The ladies are to have a lounge with a cot.

Weight limits must be posted on various areas of the floor. No one has yet figured out how the limits are arrived at unless you keep loading the floor with employees until they sink into the basement. Then you fish 'em all out, have a mass weigh-in at the elevator, repair the floor and then post the weight.

In addition to these nitpicking regulations governing working conditions, the act will require many additional reports from business firms. Add this to already overburdened clerical departments, and you have still more problems for the average small business.

Possibly one of the worst features of the new law is that when inspectors come in to check for compliance, they are judge, jury and prosecuting attorney, all wrapped into one individual. They can levy fines up to \$1,000, no questions asked. It's a Hitlerian tactic, but it's being done every day.

Getting into business—and staying in business—is getting tougher every year. Now the OSHA law is going to make it all but impossible.

CITIZEN,  
Windom, Minn.

### JACKSONVILLE'S ENVIRONMENTAL- ISTS ACTIVE

### HON. CHARLES E. BENNETT

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. BENNETT. Mr. Speaker, recently, almost 20 civic groups in Jacksonville, Fla., which I represent in the Congress, banded together for the purpose of celebrating Earth Week in an energetic, constructive, and meaningful way.

In January 1972, representatives from interested organizations formed the Jacksonville Earth Week Committee and planned activities and projects to promote local participation during the national observance of Earth Week, April 15 to 22, 1972. The emphasis which was stressed locally this year was one of a

positive, individual effort toward the solution of environmental problems. The over-all slogan which the Jacksonville Earth Week Committee emphasized this year was "Earth Week—a time for a personal commitment to positive environmental action."

Seven week-long projects were undertaken. Displays were set up in four shopping centers, youth groups took up a 7-day campaign to clean up city-owned lots of neighborhood sites, information sheets on ways to fight pollution were handed out at city hall, the Jacksonville Jaycees took on painting projects, special projects were undertaken in the Duval County schools and the Jacksonville Children's Museum put environmentally oriented exhibits on display.

In addition to this, Audubon Society members conducted guided tours throughout Fort Caroline National Memorial Park, which was created as a result of legislation I introduced in the Congress. Junior Gardeners of the Garden Club of Jacksonville paraded through shopping centers in antilitter costumes and ecology films were shown free of charge at the Haydon Burns Library in downtown Jacksonville.

The Ministerial Alliance placed special emphasis on environmental stewardship during Sunday services during Earth Week. The Junior Woman's Clubs of Jacksonville presented an environmental play, "Clean-up Day." The Sierra Club sponsored a bike rally that was open to all members of the public.

The highlight of the week was a buffet banquet honoring the honorary Earth Week board of directors. As you can clearly see, Earth Week in Jacksonville this year was indeed a citywide affair, bringing in persons from all parts of our community. Their activities showed their concern for the environment. I certainly share their concern and congratulate them on their efforts.

#### BILL INTRODUCED TO MAKE ASSASSINATION A CAPITAL OFFENSE

**HON. CHARLES W. SANDMAN**

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. SANDMAN. Mr. Speaker, I am today introducing legislation to provide the death penalty for assassinating or attempting to assassinate candidates for Federal elective offices.

This bill will amend title 18 of the United States Code to cover murder and attempts on the lives of candidates for President, Vice President, the U.S. Senate, and the U.S. Congress.

Currently, Mr. Speaker, capital punishment is a sentence that can be imposed upon conviction for murdering Federal officeholders, but not candidates for those offices.

The full text of this legislation follows:

H.R. 15041

A bill to provide the death penalty for assassinating, or attempting to assassinate, Federal elective office holders, or persons seeking election to Federal office

CXVIII—1124—Part 14

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 18 of the United States Code is amended by inserting immediately after chapter 7 the following new chapter:

#### "CHAPTER 8.—ASSASSINATION

"SEC. 131. Assassination or attempted assassination of a Federal elective office holder, or person seeking election to Federal office.

"Whoever murders or attempts to murder any individual who is an elected Federal officer or who seeks election to any Federal office shall suffer death."

SEC. 2. The table of chapters of title 18 of the United States Code and of part I of such title are each amended by inserting the following new item after the item relating to chapter 7:

"8. Assassination."

Mr. Speaker, it is a sad day in America when this type of legislation becomes necessary. Attempts on the lives of political figures are becoming commonplace.

The tragic occurrence in Laurel, Md., brings to mind that the murders of both Robert F. Kennedy and Martin Luther King, Jr., took place some 4 years ago. Their convicted murderers are still appealing their convictions on technicalities despite the fact that the late Senator's murder was witnessed by many people.

I say it is time for Congress to streamline criminal trial procedures to uphold the constitutional guarantee for a "speedy trial."

And, Mr. Speaker, it is time that we restored importance to facts and truth rather than to remain so buried in format and the technicalities of our criminal trial system.

Justice should be done swiftly. But above all, justice should be done.

#### UNNECESSARY ADVISORY COMMITTEES

**HON. JOSEPH M. GAYDOS**

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. GAYDOS. Mr. Speaker, the House recently passed legislation to control the creation and perpetuation of unnecessary advisory committees and other special study groups within the Federal Government.

It is time Congress started heading these sacred cows under one roof. Some of them have grazed far too long in the lush green pastures of the U.S. Treasury. Others have no business there at all.

Because no one was watching, these bureaucratic bovines multiplied like rabbits over the years, which is the reason we are caught on the horns of a dilemma today. Nobody knows how many of them are straying in the field of Washington and that is no bull. The best guess is somewhere between 2,600 and 3,200 have found a home on the range. Since nobody can count heads, nobody can reckon what it costs to feed them, although it has been said the taxpayer is shoveling out more than \$75 million a

year to keep them sleek and fat. That is a lot of hay. Mr. Speaker, in the words of John Wayne, "I think it's time we corral these critters, head 'em up and move 'em out."

Seriously, the present situation concerning advisory groups and interagency commissions in Government is almost too incredible for belief. It is incomprehensible that, despite the intense effort exerted by the House Committee on Government Operations, an accurate listing of these groups and their cost cannot be compiled. The committee deserves the commendation of the Congress and the country for attempting to bring this morass of bureaucracy into some semblance of order.

It is a known fact many of the committees, with which this legislation is concerned, exist merely on paper. It is a fact that some committees exist although they have long outlived their purpose. It is a fact that some groups have completed the mission assigned to them but their efforts were wasted because the findings are refuted or ignored, sometimes before the formal report is filed. There are committees which do not meet, committees which have no leadership, and committees which duplicate the work of other committees. It adds up to wasted time, wasted money, and inefficient operation on the part of the U.S. Government.

This bill will do much to correct the situation. It provides for the phase-out of advisory committees and study groups unless their continued existence is justified after a review of their activities by appropriate authority. It requires the President to report on his advisory committees, furnishing an annual report on their work and progress and comment on the findings and recommendations of these groups.

Mr. Speaker, I believe this legislation will help streamline Government operation, eliminate duplication of effort, reduce the number of commissions, committees and advisory groups, and save the taxpayers untold millions of dollars.

#### THE MILLION-DOLLAR BIKE RIDE

**HON. SEYMOUR HALPERN**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. HALPERN. Mr. Speaker, Last May 8, over 45 cities across this Nation held bikeology days. The reemergence of the bicycle as a functional and pleasurable mode of transportation has sparked many communities and States to enact legislation designed to provide for public bikeways.

Recently, Mr. Speaker, I sponsored a bike ride around the Capitol in which many of my colleagues from both the House and the Senate participated. Yesterday I received word that a similar bike ride is being conducted in Maryland for the benefit of St. Jude Hospital. Epsilon Sigma Alpha, an international philan-

thropic sorority, will hold several bike rides—many local rides and one which will be coast-to-coast for the benefit of St. Jude Children's Research Center in Memphis, Tenn. These activities should receive the unanimous support of both the Congress and the general American public.

Mrs. Linda Jane Ruhl, chairman of the Washington chapter has informed me that her local group of ESA will sponsor a 15-mile bicycle ride Sunday, June 11 at the R. M. Watkins Regional Park in Forestville, Md. The great coast-to-coast bike ride will begin on July 3, here in Washington, including Danny Thomas and his daughter as guests.

Mr. Speaker, the money raised by these bike rides will go toward research on leukemia, malnutrition, sickle cell anemia, influenza, and infant mortality. The cause is an excellent one and the effort should be supported by Congress and the American people. Let us urge our constituents to contribute to and participate in this worthwhile project.

**PATRICK BUCHANAN TELLS US  
LIKE IT IS**

**HON. MICHAEL HARRINGTON**

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. HARRINGTON. Mr. Speaker, many of us were naive enough to think in January of 1969 that administration policies on civil rights, busing, open housing, and integration were to be based on the merits of those policies, and how much could be gained from them for the poor, the indigent, the discriminated against of this country. If we still believed that, after 3 years of zigging and zagging designed to confuse rather than progress, it would only be from blindness. Clearly it has not been the goal of this administration to bring the hope for social advancement to those who have never held it. Instead we have been treated to a potpourri of programs and nonprograms which all show an unswerving dedication to the supposedly outdated philosophies of "separate but equal," "laissez faire," and "all is best in this best of all possible worlds." Perhaps life is contented in San Clemente and Key Biscayne, but it seethes with injustice in Jacksonville, Watts, Roxbury, Biloxi, and the like.

What, if not social progress, lies behind the motives of the collective mind we know as the Nixon administration? If we did not suspect as much already, Patrick Buchanan, speechwriter for the President, tells us today in the Boston Globe that it is the reelection of the President. In 1970, in a memo to the President reprinted today in the Boston paper, Buchanan tells the President that:

The ship of integration is going down; it is not our ship; it belongs to national liberalism—and we cannot salvage it; and we ought not to be aboard.

This political Jim Hawkins has emerged from the apple barrel with as-

ounding news for his captain about the faltering course of the vessel, only to find that the captain, first mates DENT and Mitchell, and crew nester AGNEW had left the ship before it had even left port.

They are not unrelated, Mr. Speaker, this supposed failure in the efforts toward an integrated society and the Nixon administration "realization" that "benign neglect" is the civil rights policy of greatest political advantage. This administration neglect, benign and otherwise, is the cause, root and branch, of the temporary setbacks in the drive for equality and an end to discrimination. It has eaten away at the spirit of those who were accepting all too slowly the fact that some black people are poor because of a myriad of economic, social, racial, and political winds blowing against them. And it has eaten away at the momentum by which the Federal Government was beginning to attack these problems. If there is hesitation now as to whether to continue with that attack, it is nothing more than a self-fulfilling prophecy.

I find it absolutely despicable, Mr. Speaker, that the questions of whether we will reverse the hatred and discrimination of over 200 years be determined by so blatant political motives as Mr. Buchanan illustrates in the memo of 1970. All other motives in the matter are classed by Mr. Buchanan with those of an ideologue. Well, as one ideologue who sees some profound moral questions here about how millions of black Americans live in America—a Nation which reeked with hypocrisy in 1856 and reeks with a more subtle kind today—I am deeply saddened by the Globe disclosures.

The memo follows:

**TEXT OF BUCHANAN MEMO TO PRESIDENT NIXON**  
The attached is a middle re-write of a speech I have been working on for the Vice President for Atlanta, February 21st.

It contains a bill of particulars against any more compulsory integration, anywhere in the country at this point in time. The reasons are these: (1) The climate of the country racially argues against it for the simple reason of maintaining peace. (2) The record of integration in the North according to Bickel (Alexander Bickel, Yale law professor) is utter failure; and the prospect of success is absent completely without enormous and unacceptable cost. (3) In the South, the trend of integration of the schools will result in socio-economic segregation which is worse for education than racial segregation; it is unfair to the poor who integrate while the middle class retain the freedom of choice to go to the schools they want; it encourages poor white to simply abandon the schools, and life-long teachers to quit their jobs.

In short, integration appears to damage rather than advance both the cause of education and the cause of racial harmony.

Finally, the national mood among blacks and white alike—is toward black separatism and white separatism. Where the Court in 1954 ruled at the crest of a national tide (US Supreme Court decision in Brown vs. Board of Education) outlawing segregated schools; their current rulings go against the grain of rising and angry public opinion.

What of Stennis' amendment? (Amendment by Sen. John Stennis of Mississippi, later adopted by Sen. Abraham Ribicoff of Connecticut, to apply to Northern schools the same standards of desegregation Federal courts were applying to Southern school systems). Certainly equitable. But it can't be

carried out; there will be blood in the streets if we try to bring suburban Northern kids into the central city schools—in the condition those schools are in today.

If we try to apply to some suburban teachers the kind of school ratios they imposed on Atlanta, RN will be a one-term President.

Let me say candidly that for the foreseeable future, it is all over for compulsory social integration in the USA; because that body of public approval which must be present for a social change of this magnitude is not there; indeed, a hard opposite opinion is building.

Where does this leave us?—essentially confronted with the choice of following the Court's logic and decisions and trying to integrate the schools of the entire nation—an impossible task—or the court, in one manner or another backing off from compulsory integration to a posture of freedom of choice; the posture of the orders of Brown as against the far-reaching language of Brown.

What this speech now lacks are the following essentials:

(1) If we are going to hold off integration, we must put forth an alternative to blacks and white liberals that will hold a reasonable chance that education is going to be improved where the blacks are not—if we are not going to move them en masse into white schools.

(2) Recognition that there are thousands of Northern and Southern people who wanted to make this work; who went out on a limb to make racial integration succeed—and who are going to be left holding the bag; for trying something above and beyond the call of duty.

(3) I am deeply concerned that Wallace will in the immediate future force the President to carry out a court ruling whether with marshals or troops—which would make the little demagog invincible in areas and end our chances of destroying him by 1972.

(4) There is on the side of stopping this movement; the Washington Post had an editorial asking for a study of what has been accomplished and where we are going; Bickel's case is almost unassailable; the New York Times is reporting rising racial violence in the schools; the lesson is sinking in rapidly—only an ideologue can, in the face of this kind of evidence, demand that whites and blacks be mixed in more schools; where in every school in which it has been tried racial violence is becoming the rule—according to the Office of Education.

(5) The second era of Re-Construction is over; the ship of Integration is going down; it is not our ship; it belongs to national liberalism—and we cannot salvage it; and we ought not to be aboard. For the first time since 1954, the national civil rights community is going to sustain an up-and-down defeat. It may come now; it may come hard; it may be disguised and dragged out—but it can no longer be avoided.

This is the other side of the coin—and represents in itself a serious problem for the whole country; our objective has to be, I think, to cushion the fall to the degree we can. Looking at the realities as a reasonable individual I can't see how they can win—but we don't want to humiliate them. For that reason, perhaps some of my language is too tough.

My recommendation is that the President withhold any day-to-day comment; perhaps that he set a date in the future when he or the Vice President will outline our policy and concern on this issue; to ease up the heat on us a bit.

The Vice President might be able to deliver a thought-out address, all cheer lines out, and moving to the Right of the President and giving RN time to move the distance we have to move which is essentially to a qualified freedom of choice posture; outlawing segregation but not requiring integration or

racial balance or the shifting of white children into black schools. If we could get Green versus New Kent County (ordering quick and substantial desegregation) reversed, that would be enough.

**RULES FOR FARMWORKERS  
NEEDED**

**HON. BURT L. TALCOTT**

OF CALIFORNIA  
IN THE HOUSE OF REPRESENTATIVES  
Wednesday, May 17, 1972

Mr. TALCOTT. Mr. Speaker, the editor of the Monterey Peninsula Herald is in a unique position to observe objectively, from a close vantage point, the turmoil on the farms caused by the paucity of farm labor legislation.

Practically every conscientious observer without special interest or an "ax to grind" will agree with the May 12, 1972, editorial of the Monterey Herald.

The circulation of the Monterey Herald is predominately urban and suburban rather than rural or agricultural. Therefore, the Herald deserves special credit for calling attention to a serious problem directly involving agriculture, farmers and farmworkers, yet indirectly involving every U.S. citizen.

When other nonfarm area newspapers will take a similar interest in the challenges of agriculture and the problems of the farm, it may be possible to repeal the "law of the jungle" which disrupts agricultural production and engenders so much alienation on the farm.

I ask unanimous consent to include the editorial at this point in the RECORD.

[From the Monterey, Calif., Peninsula Herald, May 12, 1972]

**RULES FOR FARM WORKERS**

Assorted members of the Farm Workers Union are picketing the American Farm Bureau Federation office in Salinas, and elsewhere, because it is trying to establish collective bargaining rules for agricultural employes comparable to those covering industrial and other non-farm workers.

The situation again points up the need for such federal legislation. Rep. Burt Talcott has made the attempt several times with a farm labor bill that usually dies aborning when organized agriculture can't pull itself together for a meaningful effort.

Cesar Chavez, the mercurial leader of the Farm Workers Union, opposes attempts at either federal or state legislation. However, either he has a labor union or he hasn't a labor union. Chavez can't have it both ways to suit his convenience.

Key labor law provisions sought by the Farm Bureau are procedures for secret ballots to determine what unions shall represent farm workers and the outlawing of the secondary boycott.

Because Chavez in the past has depended heavily on show-by-hand voting (so that dissidents can be easily spotted) and the secondary boycott of retail outlets far removed from the farms he is trying to organize, it is not difficult to understand his objection to the Farm Bureau program.

Both these tactics are illegal under the National Labor Relations Act. But because the farm workers are exempt from this law, the secondary boycotts and open voting have been the union's most powerful weapons in organizing unwary field workers.

The self-appointed leader of the California

**EXTENSIONS OF REMARKS**

farm workers bears the name of a line of Roman emperors, and thanks to the vacuum in laws he has been able to write his own law in the Caesarian tradition.

It is no less deplorable that both the Congress and the California Legislature, either of which could establish collective bargaining machinery to protect the rights of both workers and growers in California agriculture, are choosing to fiddle while principles burn.

**WHO IS ESCALATING THE WAR?**

**HON. GLENN R. DAVIS**

OF WISCONSIN  
IN THE HOUSE OF REPRESENTATIVES  
Wednesday, May 17, 1972

Mr. DAVIS of Wisconsin. Mr. Speaker, this editorial appeared recently in the Daily Jefferson, Wis., County Union. Mr. Robert Angus, its editor, raises the question we Americans should be asking the North Vietnamese and ourselves. The editorial follows:

**JUST WHO IS ESCALATING THE WAR?**

President Richard M. Nixon, choosing to take decisive military action as the only real alternative open to him for bringing the hostilities in Indochina to a close, has coupled the mining of North Vietnamese harbors with stern military steps intended to choke off Hanoi's war supplies.

There are many Americans who agree with the President that this new move, drastic that it might be, is the only way to end the drawnout Vietnam War. There are many, of course, who do not agree. They were quick to criticize the United States policy in the past and they were quick to do so today.

It's ironic that President Nixon should be held up to such ridicule for trying vainly to unwind the war while those same critics have little or nothing to say about North Vietnam's big war offensive. Although American troops continue to pour into embarkation ports in Vietnam, with the President adhering to a fast withdrawal schedule even in the face of new enemy assaults, those critics choose to ignore the fact that South Vietnam troops have taken over the burden of ground fighting and that the war has become increasingly "North Vietnamized."

In the Tet offensive of 1968, which was such a telling psychological blow to the American public and to the Johnson Administration, nearly every village and city throughout the length and breadth of South Vietnam was subjected to attacks by Viet Cong guerrillas.

At that time, the argument that the conflict was a civil war against a repressive regime in Saigon which we were immorally supporting had some credibility.

Today, when U.S. troop strength has dwindled to well under 100,000 and no ground units are engaged in active combat, the current fighting is almost entirely a North Vietnamese operation—a textbook operation involving frontal assaults by armored columns across the Demilitarized Zone, artillery support, logistical lines of supply and all the rest, an operation made possible by weapons and materiel from the peace-loving Soviet Union.

At a recent Senate hearing, Sen. J. W. Fulbright, Arkansas Democrat, could ask the secretary of State, in sincere anguish at the continued killing and destruction: "Why have you (the administration) placed us in the position where we have a Hobson's choice between either surrender or escalation?"

Yet, when President Nixon undertook to begin the withdrawal of American troops, with the full support of Congress and the vast majority of Americans, each reduction

in our strength increased the possibility that we would be faced with one or the other eventually. North Vietnam was repeatedly warned what our reaction would be.

The real question that should be asked is, why has North Vietnam chosen to attempt an all-out military conquest of South Vietnam, and to humiliate the U.S. in the bargain, at a time when U.S. withdrawal was so near to being accomplished?

And why aren't more Americans asking that question?

**WEST UNION, OHIO, SUPPORTS  
THE PRESIDENT**

**HON. WILLIAM H. HARSHA**

OF OHIO  
IN THE HOUSE OF REPRESENTATIVES  
Wednesday, May 17, 1972

Mr. HARSHA. Mr. Speaker, throughout the history of our Nation, the American people have always rallied to the support of the President in times of national crisis. Today is such a time. The cause of peace and the cause of freedom are at stake, and our President deserves and needs the support of the American people.

The President has shown great courage in his recent actions, and his example demands nothing less than total national unity. We must make clear to the Communist aggressors that we stand as one people in support of our President and his dedicated efforts to insure the safety of our remaining troops in South Vietnam, to obtain the release of all our prisoners of war, and to achieve an honorable settlement of the war which can form the basis for a just and lasting peace throughout the world.

In concluding his recent address to the Nation, the President expressed his very real need for the support of the American people when he said:

At this moment, we must stand together in purpose and resolve. As so often in the past, we Americans did not choose to resort to war. It has been forced upon us by an enemy that has shown utter contempt toward every overture we have made for peace. . . . I ask for your support of this decision, a decision which has only one purpose, not to expand the war, not to escalate the war, but to end this war and to win the kind of peace that will last. With God's help, with your support, we will accomplish that great goal.

The American people have given the President overwhelming public support. Many thousands of messages of support have been received by the White House and the Congress, and independent public opinion polls indicate that more than 65 percent of the American people are supporting the President in his efforts to end the war.

I have been particularly gratified by the many expressions of support for our President that I have received from the residents of my congressional district. One outstanding example of support that has come to my attention is the bipartisan, nonpolitical action that is being carried out in the village of West Union, Adams County, Ohio. A telegram has been sent to the President assuring him of the community's support of his recent actions, and, under the sponsor-

ship of the local newspapers, one Republican, the Adams County News, and the other Democrat, the People's Defender, efforts are presently underway to gather the signatures of all the residents of the community on an expression of support for the President.

I would like to take this opportunity to commend the fine citizens of this community at this united display of responsible citizenship and to express my earnest hope that their examples will serve to inspire similar efforts in many other communities throughout our country. I also commend the newspapers and their editors for their leadership in this patriotic endeavor.

I would like to share with my colleagues the text of the telegram that was sent to the President on behalf of the residents of West Union, Ohio:

WEST UNION, OHIO.

To the President of the United States of America, the Honorable Richard M. Nixon:

Please be advised that on this date, Thursday, May 11, 1972, the village of West Union, Ohio, located in Adams County, has instigated action to gather the support of the entire community of the recent action that you have taken in the effort to halt the flow of supplies to North Vietnam. The action is being sponsored by the two newspapers in West Union, both the Republican, the Adams County News, and the Democratic, the People's Defender. This is purely a non-political undertaking. It is to emphasize the fact that we are Americans.

HERBERT H. LAX,  
Editor, the People's Defender.  
DELORIS ARMSTRONG,  
Editor, the Adams County News.

#### NIXON PUTS PEACE UP TO SOVIET UNION

### HON. LAMAR BAKER

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. BAKER. Mr. Speaker, a week has passed since President Nixon told the American people of his decision to mine North Vietnamese harbors, cutting off the flow of supplies to the enemy. At the same time, the President announced his firm decision to continue our air and naval attacks until Communist aggression in South Vietnam ceases.

It is still too early to know what impact the President's action will have upon the war. I join the vast majority of the American people in praying this move will lead to the lasting, honorable peace President Nixon so earnestly seeks.

The President placed responsibility for achieving this peace squarely upon the shoulders of the Soviet Union in his televised address last week. Our Chief Executive made it clear he would be the one to cancel planned summit talks in Moscow with Soviet leaders later this month.

At this point, the future of the talks appears promising. Let us hope President Nixon's steadfast refusal to appease Communist aggression has led to a new respect for America in the Kremlin and other world capitals. By his latest an-

nouncement, the President has demonstrated to the Soviets and to the world that the United States is still a nation of her word. His address proved conclusively that the United States will not back down in commitments to her allies. If the President does indeed go to Moscow, he will be speaking from a position of strength, not from one of weakness and cowardice. For the sake of world peace, let us pray Soviet leaders will talk, rather than fight about, international differences.

Editor James Stahlman of the Nashville Banner has written an excellent editorial, "Nixon Puts Peace Squarely up to the Soviet Union." In this hour of national crisis, I commend it to the attention of my colleagues.

#### SUPPORT THE PRESIDENT—NIXON PUTS PEACE SQUARELY UP TO THE SOVIET UNION

Hanoi's repetitious, defiant, insulting refusal to endeavor to end the war in Southeast Asia by negotiation, rather than prolonged and devastating conflict, has finally brought the United States to the only course of action now left open to this peace-loving nation, as solemnly and regretfully announced last night by President Nixon.

The Vietnam war was not started under Nixon. It was inherited by Nixon after more than half a decade of escalation, staggering losses in dead, wounded and prisoners, as well as mounting drain on this nation's financial and material resources.

President Nixon has reduced American combat strength in the field by more than half a million men since 1969. He has fervently sought an honorable settlement at the peace table. He has made every possible effort to free our prisoners, end the fighting, bring every American home, without stultifying the Presidency itself, degrading the United States in the eyes of the world and leaving the field open to aggressors, large and small, to enforce their national wills on weaker neighbors.

Monday night, after consultation with other powers, discussion with members of the Congress, his Cabinet, the National Security Council, the Chiefs of Staff of our military forces and all other pertinent groups and individuals whose advice he considered necessary and helpful in reaching a sound conclusion, President Nixon laid it on the line in manner and terms which none could fail to understand.

Long ago, even from the beginning, we should have mined all North Vietnamese ports, interdicted all shipments, by land or water routes, of arms or equipment furnished the Viet Cong by other nations, particularly the Soviet Union.

The President's challenging, direct confrontation with the Soviet Union, was deliberately temperate but unmistakably determined and firm.

The Soviet Union's response will either help bring the peace which President Nixon and the American people so devoutly wish, or produce the cataclysmic holocaust which would leave the world in rubble and civilization devastated, if not totally destroyed.

The Banner does not believe that the Soviet Union would take that risk. It could not survive a two-front war, with the United States on one side of them and Red China right at their back door. This would be not only unthinkable, reckless, foolhardy. It would be suicidal.

Of one thing all hands may be sure—the leaders of the Soviet Union and other world powers know Richard Nixon as a man of superb courage who has now set his nation's course and will not be deterred.

The American people have only one choice—the preservation of our national

honor and the attainment of a long-sought peace, or abject surrender to insolent, arrogant enemies, which would be provocative of sporadic conflicts which nobody could stop.

The President should have the support of all Americans who love their country, as well as their fervent prayers in these tragic, awesome days ahead.

This, in The Banner's considered judgment is the best and only present hope for world peace.

A nation on its knees is invincible.

#### A RESPONSE TO THE POSTAL UNION STATEMENT

### HON. BILL CHAPPELL, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. CHAPPELL. Mr. Speaker, on May 8, 1972, my colleague of California (Mr. WALDIE) introduced into the RECORD on page 16241 a statement by the National Postal Craft Unions on the inclusion of the Postal Service in H.R. 12202.

At the time the unions submitted this statement, I requested the legal department of the U.S. Postal Service to respond. I now submit this response for the RECORD, and trust the other body will properly evaluate the facts so that the Congress will not go on record as interfering with collective bargaining as a first step in the ultimate collapse of the Postal Reorganization Act:

U.S. POSTAL SERVICE,  
LAW DEPARTMENT,

Washington, D.C., March 17, 1972.

HON. BILL CHAPPELL, JR.,  
U.S. House of Representatives,  
Washington, D.C.

DEAR CONGRESSMAN CHAPPELL: This is in response to your request for the comments of the Postal Service on a lengthy "brief" submitted by a number of postal unions to the House Committee on Post Office and Civil Service on the subject of the inclusion of postal employees in legislation proposed to liberalize the health benefits program.

The unions' "brief" is a repetitious statement of arguments already made—for the most part—at the recently completed Hearings before the Subcommittee on Retirement, Insurance, and Health Benefits on the Postal Amendment to H.R. 12202. These arguments do not draw into serious question the position on this issue taken in the Postal Service's letter of January 26, 1972, to Chairman Dulski. We are taking this opportunity, however, to restate in the attachment, in the context of the various assertions in the union "brief", the reasons for our conviction that the proposed legislation would have no application to postal employees in the absence of language making it specifically applicable to the Postal Service.

Postal employees have fared well under the Postal Reorganization Act and under the collective bargaining agreement in which, in exchange for large wage increases, the unions agreed to a continuation of the health benefits program "at the current contribution level". As we have stated before, we are aware of no reason whatsoever why the Congress should act to change the law by including postal employees within the ambit of the liberalized health benefits program now being considered.

Sincerely,

LOUIS A. COX,  
General Counsel.

COMMENTS OF THE POSTAL SERVICE ON POST-HEARING STATEMENT OF THE NATIONAL POSTAL CRAFT UNIONS ON INCLUSION OF THE POSTAL SERVICE IN H.R. 12202

INTRODUCTION

The unions' statement, which looks and reads like a court brief, is plainly self-contradictory. Ten pages are devoted to showing that the unions' interpretation of the law is correct and would be upheld by the courts; another fourteen are devoted to showing that their interpretation of the collective bargaining agreement is correct and would be upheld by any arbitrator. ("It is inconceivable that the parties believed that the Unions were intentionally settling for a lesser employer contribution than Congress might grant to Federal employees generally in the future." "Brief", p. 14.) Then follows the jarring conclusion that Congress should amend the bill to make it expressly applicable to the Postal Service in order to avoid submitting the issues to the courts or to arbitration. That this legislative assist from Congress is required is a pointed expression of the inadequacies which the unions themselves apparently perceive to exist in the legal arguments presented in their "brief".

The conclusion that the Postal Service should, if the benefits of the proposed legislation are to be extended to postal employees, be included by specific language in the legislation closely approaches the Postal Service's position that without such specific inclusion postal employees will not receive the benefits of this legislation. The conclusion underscores the fact that what the unions are really advocating is a change in the law. That a change is required if postal employees are to be covered seems generally agreed by members of this Committee, including those who, as a policy matter, would favor the change. See, e.g., Hearings on Postal Amendment to H.R. 12202, Ser. No. 92-30, 92d Cong., 2d Sess. 12, 20, 30-31, 37 (Congressmen Hogan and Waldie).

The argument of the unions in favor of Congressional resolution of these issues is particularly weak: they say that if their interpretations of the law and of the contract are correct, then "nothing is gained" by imposing the costs of litigation on them. They do not point out, however, that if the Postal Service's interpretations are correct, then Congressional resolution of these issues to the contrary will soon cost the Postal Service almost \$100 million per year, as opposed to a few thousand dollars that it might cost the unions to litigate the question.

The position of the Postal Service is that changes in health benefits for postal employees were intended under the Postal Reorganization Act to be made solely through collective bargaining, and not through later amendments of chapter 89 generally applicable to other Federal employees. This is the position we took in our January 26, 1972, letter to Chairman Dulski on H.R. 12202. We note also that the Comptroller General and the Civil Service Commission, in their reports on H.R. 12202, have concurred in the position of the Postal Service. H.R. Rep. 92-841, 92d Cong., 2d Sess. 8-15 (1972). It is well established that interpretations of statutes by the agencies administering them are entitled to great weight. See, e.g., *U.S. v. Amer. Trucking Ass'ns.*, 310 U.S. 534 (1940). Consistent with the Postal Service's position, we advocate and need no new or special legislation to provide for the exclusion of postal employees from coverage by the proposed legislation which we believe the Postal Reorganization Act and the collective bargaining agreement were intended to accomplish.

*Subsequent Amendments to the Statutory Health Benefits Program Do Not Apply to Postal Employees Unless Such Amendments Are Expressly Made Applicable.*

In support of the proposition stated above the Postal Service relies on a well-known and

commonly-accepted rule of statutory construction as follows:

"A statute of specific reference [i.e., one that refers to a particular statute by its title or section number] incorporates the provisions referred to from the statute as of the time of adoption without subsequent amendments, unless the legislature has expressly or by strong implication shown its intention to incorporate subsequent amendments with the statute." 2 *Sutherland, Statutory Construction*, § 5708 (3d ed. 1943).

In their "brief" (p. 6) the unions make the argument that this canon of construction actually supports their position. While admitting that the first sentence of 39 U.S.C. 1005(f) makes benefits applicable to postal employees at the level at which the benefits existed "immediately prior to the effective date of this section", they say that the canon could not apply to the second sentence of section 1005(f) because: "... under that rule, the ceiling on the three benefits would be programs as they existed on the date of adoption of the legislation, whereas, with respect to all the others, the ceiling would be the effective date of the section, which Congress understood would occur quite considerably later. It is unthinkable that Congress intended to treat the subjects referred to in the second sentence less favorably than all the others comprehended by the first sentence. Yet, that would be the result of applying the presumption." "Brief", p. 6 (emphasis in original).

The lack of merit in an argument that the canon cannot apply to statutes having a delayed effective date because the canon, as stated by Sutherland, uses the words "time of adoption" is rather obvious. It is clear that the rule as stated did not consider the case where, by a delayed effective date provision, a law becomes effective after the date of its adoption. We would agree that the programs mentioned in the second sentence of section 1005(f) should, in the context of the first sentence and of the delayed effective date provision, be deemed to have been made applicable as of the effective date of the section. This sensible departure from the literal wording of the canon, however, in no way indicates that the canon can have no application to the Postal Reorganization Act or that, because the Act contains a delayed effective date provision, the incorporation date for the programs referred to in section 1005(f) should be indefinitely advanced to comprehend all changes made after passage of the legislation.

It is further argued that the canon cannot be applied to 39 U.S.C. 1005 because that section also extends retirement and injury compensation benefits to postal employees and everyone agrees that subsequent statutory increases in such benefits would apply to them. "Brief", pp. 7-8. This argument is refuted, however, by the fact that the canon, by its own terms, recognizes that it does not apply if the legislative history of the statute clearly indicates that the incorporation by reference is intended to include subsequent amendments. The legislative history of the Postal Reorganization Act clearly indicates that subsequent statutory increases in retirement and injury compensation benefits were intended to apply to postal employees but that increases in other benefits were expected to be provided solely through collective bargaining. 116 Cong. Rec. 20229-20230 (1970) (remarks of Mr. Udall), reproduced at pages 43-44 of Hearings on Postal Amendment to H.R. 12202, Ser. No. 92-30, 92d Cong., 2d Sess. (1972).

The union "brief" (pp. 3-4) contains an attempt to destroy this clear legislative history by arguing that somehow the term "existing law" as used in reference to health benefits in the statement "[w]ill be identical to existing law until changed by collective

bargaining" includes future amendments to that law. (Quoted language is from the table accompanying Mr. Udall's remarks, cited above.) This argument is based—as it must be—on giving the word "existing" a strained and unusual meaning for which there is utterly no justification in the context of its original usage by Congressman Udall. The Postal Service's position, however, is based on ascribing to the word "existing" its normal and usual meaning, a meaning that has the result of necessarily excluding future changes. This interpretation was the one supported by Congressman Hogan at the Hearings: "I think the legislative history is very clear . . . I think this makes it very, very clear that health benefits were not envisioned in the legislation to be increased every time we increase it for other Government employees . . ." Hearings, p. 37.

It is asserted in the union "brief" (pp. 4-6) that a comparison of the first and second sentences of section 1005(f) lends weight to the argument that statutory changes in the health benefits program were intended to apply to postal employees. The unions appear to agree that the first sentence of section 1005(f) freezes compensation, benefits, and other terms and conditions of employment "in effect immediately prior to the effective date of this section" until changed, as to bargaining unit employees, by collective bargaining. It is argued, however, that unlike the first sentence, the second sentence "carries no restrictive reference to what was 'in effect immediately prior to the effective date of this section'." On this basis the "brief" concludes that Congress clearly intended that the benefits provided by the chapters enumerated in the second sentence should be treated differently from the "compensation, benefits and other terms and conditions of employment" referred to in the first sentence, for otherwise the second sentence would become utter surplusage.

Contrary to the statement in the "brief", the second sentence of section 1005(f) does indeed carry a "restrictive reference". The first words read: "Subject to the provisions of this chapter and chapter 12 of this title". Being "subject to . . . this chapter" includes, obviously, the provisions of the first sentence of section 1005(f), which contains the reference to benefits "in effect immediately prior to the effective date of this section". In addition, the second sentence of section 1005(f) concludes by providing that the benefits of the chapters enumerated in the second sentence would remain at existing levels "unless varied, added to, or substituted for, under this subsection." (Emphasis added.) "This subsection" is a precise "restrictive reference" that clearly includes the provisions of the first sentence of section 1005(f).

The Postal Service's interpretation of the second sentence of section 1005(f) does not, however, lead to the conclusion, as is contended in the "brief" (p. 5), that the provision is "utter surplusage". Under the first sentence, fringe benefits, including subchapter I of chapter 85 and chapters 87 and 89, continue in effect until changed through collective bargaining. Standing alone, however, this sentence might not be interpreted to authorize or require the Civil Service Commission to continue to administer the statutory benefits programs on behalf of postal employees, particularly in light of 39 U.S.C. § 410(a), generally rendering federal personnel laws inapplicable to the Postal Service. Accordingly, the second sentence performs a quite proper and necessary role in that it provides for the involvement of a third-party agency, the Civil Service Commission, in certain continuing statutory benefit programs affecting postal employees. Moreover, the second sentence performs the additional function of making it clear to postal employees that the key fringe benefits they had secured through Congressional ac-

tion, involving existing known and specific benefits administered by the Civil Service Commission, would stay in effect until changed through collective bargaining. The importance of these programs is sufficient in itself to merit a specific reassurance to employees of their continuation.

THE MEANING OF THE COLLECTIVE BARGAINING AGREEMENT

Approximately half of the "brief" is devoted to a lengthy discussion of the meaning of the collective bargaining agreement. As indicated above, this discussion before this Committee—instead of before a court or an arbitrator—is inappropriate and would be unnecessary if the union position had any substantial merit to it.

The key argument advanced about the meaning of the collective bargaining agreement is that the words "at the current contribution level" are ambiguous and do not mean what they so clearly appear to mean. We suggest, however, as Congressman Hogan stated during the Hearings (p. 30), that the words are "crystal clear". In using them the parties could only have meant that insofar as the contract was concerned "current contribution level" means just that—the contribution level on the date the contract was entered into. In this regard, the language reflects the fact that, while the unions had pressed during the early stages of bargaining for liberalized benefits—including in the retirement as well as the health benefit areas—they had settled, in the contract as signed, for a continuation of the *status quo*.

The Postal Service has stated that a change in the retirement program which had the result of increasing the contribution of the employer would apply to the Postal Service as a matter of law, notwithstanding the language in the contract. It is claimed that this position—in view of the Postal Service's contention that changes in the health benefits program would not apply to postal employees as a matter of law—results necessarily in our giving identical words in the contract different meanings "as a matter of contract construction". "Brief", p. 13. This assertion reflects a basic misunderstanding of the interplay and differences between contract rights and statutory rights within the context of postal collective bargaining.

The difference in treatment of changes in the retirement and health benefits programs is unrelated to the contract. It stems instead directly and uniquely from the terms of the Postal Reorganization Act itself. Each time the words "at the current contribution level" were used they were intended "as a matter of contract construction" to have exactly the same meaning, namely that existing contribution levels would continue for the duration of the contract.

If a law were passed, however, which had the effect of overriding the contractual intention, that law would take precedence. Accordingly, changes in the retirement program could apply to postal employees, not because altered contribution levels would be consistent with or intended by the words "at the current contribution level" but because, as a matter of statutory law, on the basis of legislative history mentioned above, changes in the retirement program would operate notwithstanding the words of the contract. Changes in health benefits, however, would not apply, since, as a matter of statutory law, as also discussed above, health benefits were fixed as to postal employees on the effective date of 39 U.S.C. § 1005. In sum, the fact that changes in retirement benefits apply as a matter of statute to postal employees does not affect the intended meaning of the contract in any way. Moreover, application of such changes sheds no light upon the application to postal employees as a matter of contract or of statute of changes in the unrelated health benefits program. This result was anticipated in Article XX of the agreement, which provides that should a part of the

agreement be rendered invalid by legislation such invalidation "shall not invalidate the remaining portions of this Agreement and they shall remain in full force and effect."

CONCLUSION: THE POSTAL SERVICE SHOULD NOT BE SPECIFICALLY COVERED BY LIBERALIZED HEALTH BENEFITS LEGISLATION

As stated above, the Postal Service and the unions reach the same conclusion as to the course to be followed if it is decided that postal employees are to be covered by the liberalized health benefits legislation now pending in the Congress. That course would be to include the Postal Service by specific reference in the legislation. The Postal Service reaches this conclusion out of a conviction of the correctness of its interpretations of the law and of the collective bargaining agreement, while the unions reach a similar conclusion out of an apparent lack of confidence in their interpretations.

The most noteworthy fact about the "brief" of the unions is that it concludes that the health benefits bill pending before the Congress should be amended to cover the Postal Service specifically without stating a single economic or other equitable reason to justify the change. The reason for this omission appears to be related to the fact that postal workers have been heavily favored by the collective bargaining provided under the Postal Reorganization Act and that they cannot show they deserve additional and special consideration from Congress. We cannot stress too emphatically our belief that collective bargaining cannot be successful unless the parties understand that they will have to abide by the agreements they reach through the bargaining process.

The negotiated agreement signed by postal labor and management on July 20, 1971, provided for a \$300.00 one-time payment as well as salary increases totaling \$1,250.00 per employee during the two-year life of the contract and a cost-of-living adjustment that may come to an additional \$160.00 per year, all of which places postal employees in a very advantageous position as compared to other Federal employees. Additional benefits, mentioned at the recently concluded Hearings, which postal employees enjoy that are not shared by other Federal employees include the no-layoff, no reduction-in-force provision in the collective bargaining agreement and the provision guaranteeing a minimum of 4 hours' pay for employees called in outside their regular work schedules. Additional health care benefits for postal employees would constitute a windfall to such employees, on top of the already ample pay increases and other benefits which they have won through collective bargaining.

In order to maintain fiscal responsibility, salary and fringe benefits must be considered as a single compensation package. The union representatives initially proposed during negotiations that all health plans should "continue in effect, with the exception that the Postal Service would pay the entire cost of premiums." Affidavit of Francis S. Pilbey, February 7, 1972, Hearings, pp. 54-55. They later opted for more direct remuneration for their members and agreed that fringe benefits would be maintained at the current level for the duration of the contract. Any massive costs added to this compensation agreement would severely strain the efforts to stabilize postal costs. By 1976 the proposed health insurance increase would cost the Postal Service more than \$100,000,000 annually. Financing for this increase would obviously have to come from increased postage rates.

For reasons outlined in our letter to Chairman Dulski of January 26, 1972, stated during the recently completed Hearings on this matter, and reiterated above in response to the unions' "brief", the Postal Service believes that H.R. 12202 would not, without amendment, apply to postal employees and we recommend strongly that the bill not be amended to provide for such application.

FREE PRESS MUST RESPECT RIGHTS OF PRIVACY, TOO

HON. LESLIE C. ARENDS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. ARENDS. Mr. Speaker, in my regular weekly newsletter of March 16, 1972, to the newspapers of my district I had occasion to comment on the study being made by our Committee on Armed Services with respect to the classification of information pertaining to our national security. I wrote at that time:

Basic to our form of government is the people's right to know about the affairs of their government. At the same time, the safety and security of our country require that certain information affecting our national defense and conduct of foreign relations not be made public. The problem is how to maintain a proper balance.

Striking a proper balance between the people's right to know and the "Government's right to privacy" is not easy to accomplish. An editorial which appeared in the Beacon-News of Aurora, Ill., under the date of May 9, 1972, impresses me as making a distinct contribution to this problem. It emphasizes that it has been a tradition of American journalism itself to strike a balance. I call this editorial to the attention of the House, if for no other reason than it indicates there are highly responsible journalists in the United States who recognize that newspapers themselves have a responsibility. The Beacon-News of Aurora, Ill., is to be commended for the attitude it takes and its speaking out on this subject.

The editorial follows:

FREE PRESS MUST RESPECT RIGHTS OF PRIVACY, TOO

When President-elect Dwight D. Eisenhower flew to Korea in December 1952 to fulfill a promise to make a personal effort to end the Korean war, no news about his trip was published until he had visited the battlefield and was on his way home.

Six reporters and photographers from American news services had accompanied him. They and their editors who knew about the trip were pledged to secrecy, and they kept their pledge.

That episode reminds us of how recently in history it was possible for our government leadership to take the press into its confidence with assurance that such confidence would be respected.

To put it another way, it reminds us of how recently a bond of responsibility united the American press in respect for the necessity of secrecy in some activities of its government.

It has been a tradition of American journalism that when the lure of an exclusive headline was balanced against the national interest, the latter would prevail.

The award of Pulitzer Prizes last week to a newspaper and a columnist who trampled on that tradition shows how the atmosphere of trust between governments and organs of the press is deteriorating—a phenomenon not confined to the United States of America.

In West Germany, a sensational element has been added to the debate over ratification of the Moscow and Warsaw treaties by the leaking and publication of confidential notes kept by treaty negotiators.

In Japan, a newspaper has created a political crisis by publishing secret cables exchanged during negotiations for the new

agreement on Japanese administration of Okinawa.

In both these cases, as with the "Pentagon Papers" incident and others in the United States, persons whose position of trust gave them access to government files found a ready market in the press for documents they decided to steal.

In America, newsmen are the first to protest any attempt by government to conceal what the public deserves to know. By and large courts have interpreted the First Amendment in a way that keeps most doors and records open to reporters covering a government beat.

However, the public's "right to know" has never precluded the government's own right to an element of privacy—the right of officials to meet and talk informally, to propose and dispose of ideas, to take notes, to exchange memoranda, and to record this confidential background of its public actions.

Such privacy is essential in the sensitive field of international relations and is of crucial importance in matters of national defense and security.

A free press serves the public interest. However, the public interest is not served when elements of the free press behave in a way that impedes the right of a government to function in behalf of its people.

That is what is threatened by the disturbing, no-holds-barred attitude of one segment of our press toward information which the government has every right to keep under lock and key.

NATIONAL PUBLIC BROADCASTING SURVEY

HON. CLARENCE J. BROWN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. BROWN of Ohio. Mr. Speaker, during the recent hearings before the Subcommittee on Communications and Power concerning the funding authorization for the Corporation for Public Broadcasting, I sent a questionnaire to each of the Nation's educational TV stations, asking their views on this issue. The survey was intended to gain a further understanding of the needs and priorities of the public broadcasting stations from the stations themselves, rather than relying solely on their national representatives. I am confident that the responses of 105 public educational TV stations to my survey and the information gained from it were influential in the subcommittee and in the full committee in gaining some needed basic changes in the Public Broadcasting Act of 1967.

At the time the Public Broadcasting Act of 1967 was passed, the prospects of classroom and general instructional programs offered the strongest appeal to many Members of the Congress, as the debate at that time indicated. It was my feeling then, and even more so now with the growing financial crisis in our schools, that both the local stations and the CPB should give priority to developing programs for classroom instruction above either cultural or public affairs programming.

Most important, though, is the need for "grassroots" input into programing decisions from both the stations and the local communities which they serve. By

reversing the downward power flow of programing decisions, which H.R. 13918 does, from a federally well-heeled CPB to hard-pressed, locally financed stations, we can reestablish the balance of educational, national, and local programing so as to serve the local communities as they want to be served. Local stations, locally controlled, may be pleased with what is happening at the top, but if they are not, they should be able to do something about it.

Public broadcasting, as clearly shown during the hearings, is still "growing up" and has a way to go to reach maturity. The bill, H.R. 13918, expected to come up on the House floor in the near future will further this process and should be passed. I believe that the results of my survey demonstrate the need for this legislation.

The results follow:

EDUCATIONAL TV SURVEY, FEBRUARY 1972

(By CLARENCE J. BROWN, M.C.)

1. Does your station need additional federal assistance funds?

- A. 100%, yes.
- B. 0%, no.

2. If you answered "yes" to 1 (above, how much could your station effectively use this year from the federal government for:

A. Facilities \$493,000 (average); \$51.8 million (total).\*

B. Annual operating cost assistance \$122,000 (average); \$12.8 million (total).

C. Local program production assistance \$123,000 (average); \$12.9 mil. (total).

3. What amounts did your station receive last year from the federal government (CPB, HEW, etc.) for:

A. Facilities \$87,000 (average); \$9.1 million (total).\*

B. Annual operating cost assistance \$13,500 (average); \$1.4 million (total).

C. Local program production assistance \$24,800 (average); \$2.6 mil. (total).

4. What minimum and maximum percentage of your local station budget do you feel it is "healthy" for the federal government to provide?

A. For facilities: Minimum, 40% (average); maximum, 72% (average).

B. For annual operating costs: Minimum, 21% (average); maximum, 44% (average).

C. For local program production costs: Minimum, 20% (average); maximum, 44% (average).

(Percentages not totaling 100 represent question not answered by all respondents.)

5. With regard to federal funds distributed to local stations to cover a portion of their operating costs (not facilities grants), would you prefer:

A. 13% distribution at the discretion of a federal agency and for purposes designated by the distributing agency?

B. 50% a formula written into law distributing a portion to every station with minimum and maximum limits on the amount each can receive and incentives for local stations to increase local funds?

C. 31% NAEB proposal (30% of CPB funds direct to station; "advice and concurrence").

6. No matter which style of distribution you preferred in 5 (above), what agency should be responsible for distributing federal funds to assist with station operating costs (not facilities grants)?

- A. 2% HEW.
- B. 96%, CPB.
- C. 1%, Other (specify), State education authority.

7. Should the percentage of money going directly to local stations from federal tax

\*Equals sum of all questionnaires.

dollars increase as the total amount of federal funds available increases.

- A. 97%, yes.
- B. 1% no.

8. If your station received a significant increase in revenue this year, what would be your spending priorities? (Indicate first, second, third.)

- A. 1, facilities.
- B. 3, operations.
- C. 2, programming.

9. In connection with question 8 (above), please list your top priorities in each category (summary):

A. Facilities: Color equipment; mobile and remote capacity.

B. Operations: Increased staff and program personnel.

C. Programing: Local public affairs; community education.

10. Please rank in 1, 2, 3 order the kinds of programs on which your station would spend any additional funds it received:

- A. 8, national news.
- B. 8, national public affairs.
- C. 4, local news.
- D. 1, local public affairs.
- E. 3, cultural programs.
- F. 6, children's programs.
- G. 7, professional training.
- H. 5, instructional programs for classrooms.

I. 2, instructional programs not for classrooms.

11. Please rank in 1, 2, 3 order the kinds of programs on which CPB should spend its funds and efforts:

- A. 7, national news.
- B. 1, national public affairs.
- C. 7, local news.
- D. 5, local public affairs.
- E. 2, cultural programs.
- F. 3, children's programs.
- G. 7, professional training.
- H. 6, instructional programs for classrooms.

I. 4, instructional programs not for classrooms.

12. Do you feel your station has adequate input into the decisionmaking process of:

- A. CPB? 47%, yes; 51%, no.
- B. PBS? 67%, yes; 32%, no.
- C. Any regional network to which you belong?

66%, yes; 6%, no; 24%, not applicable.

D. Any state network to which you belong? 42%, yes; 7%, no; 41%, not applicable.

E. HEW for determining priorities for facilities grants?

30%, yes; 65%, no.

13. Do you feel local stations should be represented on the decisionmaking board of:

- A. CPB? 94%, yes; 6%, no.
- B. PBS? 99%, yes; 1%, no.
- C. Regional networks? 99%, yes; 0, no.
- D. State networks? 94%, yes; 0, no.

94%, yes; 0, no.

14. If you answered "yes" to any part of question 13 (above), what percentage of the board do you think should be made up of station representatives?

- A. In the case of CPB, 40% (average).
- B. In the case of PBS, 68% (average).
- C. In the case of regional networks, 78% (average).
- D. In the case of state networks, 60% (average).

15. If you answered "yes" to part A of question 13 (above), do you think such CPB representation should be:

- A. 80%, elected from the stations themselves?
- B. 20%, appointed by the President (as in the case of CPB at present?)

16. Has your station ever felt an attempt to exert influence on its programing decisions or operations from sources of financial support?

- A. 41%, yes.

B. 58%, no.

17. If "yes" from what sources. (CPB, PBS, foundations, private donors, corporations, etc.)? \*\*

18. How would you normally react to such pressure (summary)?

Almost all of the stations stated that such pressure would be considered on a case by case basis, within the requirements established by the Congress and the F.C.C. Generally, any undue pressure or attempt at control would be rejected.

Tabulation results represent a 63% response, or 105 questionnaires returned out of 166 sent.

**PROTEST RESOLUTION ON FRANCHISE GIVEN TO LANDMARK SERVICES, INC.**

**HON. JOHN D. DINGELL**

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. DINGELL. Mr. Speaker, the American Legion, Michigan Department, on April 9, 1972, approved a resolution urging reconsideration of the franchise given Landmark Services, Inc., to provide transportation services on an exclusive basis at Arlington National Cemetery.

I share the American Legion's concern about this matter and insert the text of the resolution to appear at this point in the CONGRESSIONAL RECORD.

**RESOLUTION**

Whereas, Several million Americans annually visit Arlington National Cemetery to pay homage to our Nation's honored dead, particularly our late President John F. Kennedy, and the Tombs of the Unknowns; and

Whereas, The Department of the Interior granted earlier this year an exclusive franchise to Landmark Services, Inc. to charge \$1.25 each for adults and \$.75 for children, ages two to twelve for a thirty minute interpretative tour and \$.70 each for adults and \$.30 for children for a twelve minute non-interpretative tour; and

Whereas, This exclusive franchise, with its attendant charges, restricts entry of even private automobiles, except for special purposes, thus causing an automatic and substantial expense for virtually all who enter; and

Whereas, The tenets of this franchise are effectively an evasion of what has always been a free and fundamental American right of reverence not to be confused with normal sightseeing tourism to our National Park System; now, therefore, be it

Resolved, By the Executive Committee of The American Legion, Department of Michigan, in Spring Meeting assembled in Sturgis, Michigan, this 9th day of April, 1972, does respectfully petition the Department of the Interior to reconsider its granting of said exclusive franchise to the Landmark Service, Inc. with a view to making its services optional to visitors and to lifting the restrictions of the entry of private vehicles; and be it further

Resolved, That copies of this resolution be sent to Senators Griffin and Hart, Congressmen Dingell and Ford with a respectful request that it be read into the Congressional

\*\* Of the 37 responding to this question, 32% cited private corporation, 38% private donors, 30%—state agencies, 24%—local governments, 22%—foundations, 19%—PBS, 14%—CPB, 5%—NET. (percentage totalling over 100 represent multiple answers)

Record and, thus, be made available for corrective action by Congress.

**RESOLUTION TO END U.S. INVOLVEMENT IN SOUTHEAST ASIA**

**HON. DON EDWARDS**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. EDWARDS of California. Mr. Speaker, I rise to commend the city council of San Jose for a resolution recently passed by unanimous vote. The resolution calls for an end to U.S. involvement in Southeast Asian military affairs and, the fact that it has been passed unanimously is of great significance. For many years our Nation was divided over the the important question of our continued involvement in this horrible war. Many fine people found themselves troubled and unable to see clearly the best path to take. This period of uncertainty is almost behind us now. Our citizens seem to have arrived at the undeniable conclusion that our involvement in this war must end. I commend the city council for its responsible leadership of the San Jose community on this question and I fervently hope that we in Congress will begin to represent the will of our citizens as expressed in the resolution, which follows:

**RESOLUTION TO END U.S. INVOLVEMENT IN SOUTHEAST ASIA**

Be it resolved by the Council of the City of San Jose:

Whereas, The United States involvement in Southeast Asia has persisted for over ten years costing over 55,835 hostile and non-hostile American deaths, many of whom were from San Jose; and

Whereas, there are a multitude of problems within the United States that must be solved, including poverty programs, educational reform, environmental improvement, unemployment and urban renewal that could use the monies presently being allocated to the war effort in Southeast Asia; and

Whereas, a large percentage of youth in the United States and San Jose have been alienated and disillusioned by our continuing involvement in Southeast Asia; and

Whereas, there are 490 POW's now being held in North Vietnam, including 55 from the San Jose area who may be released with a total United States withdrawal from Southeast Asia; and

Whereas, the City of San Jose realizes that the expenditures for the war effort in Southeast Asia could be better used for solving some of the domestic problems that exist within this city and other cities; and

Whereas, our involvement in Southeast Asia is against international agreement which cause American practices to be questioned at home and abroad; and

Whereas, the citizens of Southeast Asia are innocently dying and are suffering from this war and the destruction that has persisted for over ten years;

Now, therefore, be it resolved by the Council of the City of San Jose that:

The City of San Jose on this 1st day of May, 1972, go on record as being opposed to the war in Southeast Asia and in favor of withdrawal of all armed forces and military personnel from Southeast Asia by November 7, 1972.

Be it further resolved by the Council of the City of San Jose that we urge the immediate

release of all prisoners of war held by the Democratic Republic of Vietnam and the National Liberation Front, and during the interim period of this date and the release of the prisoners of war, the camps containing these American citizens be opened to inspection by the International Control Commission and the International Red Cross.

Adopted this 1st day of May, 1972, by the following vote:

Ayes: Councilmen—Colla, Garza, Goglio, Hayes, Hays, Naylor, and Mineta.

Noes: Councilmen—None.

Absent: Councilmen—None.

**TRIBUTE TO THOMAS E. LIVINGSTON AND THE MEMPHIS LIFE UNDERWRITERS ASSOCIATION**

**HON. DAN KUYKENDALL**

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. KUYKENDALL. Mr. Speaker, in the April 20 issue of the Memphis Commercial Appeal, Jerry Obermark, the new business writer for the newspaper, tells the story of a major professional association and one of its leaders who has done much to promote its professionalism. I would like to take this opportunity to share with my colleagues this article which justly pays tribute to one of Memphis' largest professional associations made up of many outstanding life underwriters and to the capable leadership of its president, Mr. Thomas E. Livingston. The article follows:

**PRESIDENT OF UNDERWRITER'S UNIT IS EARLY RISER**

(By Jerome Obermark)

Since last July Thomas E. Livingston, a Memphis insurance agent for the past 30 of his 60 years, has been getting up an hour earlier.

The extra time is needed to organize his workload and tend to the extra duties that came with the office of president of the Memphis Life Underwriters Association. With 1,100 life insurance agent members representing 150 local agencies, the association is one of the largest professional associations in Memphis.

"Our main purpose is to better prepare life insurance agents so they in turn, can do a better job of serving the insurance buying public," Mr. Livingston said.

To that end, as association president, Mr. Livingston supervises the work of 22 committees. He dictates memos in the early-morning hours, attends an average of two luncheon meetings each week on association matters and about an equal number of committee meetings each week.

The main association work is accomplished by committees, especially the program and public affairs committees.

"The secret of our success has been the selection of good competent committee leaders. If I offer any advice to my successor in July, it will be to select good committee heads," Mr. Livingston said.

Mr. Livingston's main responsibility is organizing and coordinating committee work. Each month industry spokesmen present talks at association meetings, which are usually sales oriented. Motivation is a major recurring topic. Advanced insurance courses, also, are supported by the association and its members.

In addition, the association supports two public service programs: Man-to-Teen and Medic Alert.

About 65 association members serve as auxiliary probation officers and make weekly contact with a youth on probation in the Man-to-Teen program. Juvenile Court Judge Kenneth Turner says many youngsters have to be sent to correctional institutions.

The Medic Alert program involves distribution of brochures to doctors' offices and clinics. The brochures tell how to obtain a necklace or bracelet to identify hidden disorders which may be critical following an accident rendering the wearer unconscious. About 200 association members participate in this program, Mr. Livingston said.

Mr. Livingston has served in every office of the association in the 25 years he has been a member. He will continue to serve on the board of directors after a new president is elected in July.

"It has been time-consuming work, but very enjoyable and rewarding. . . I've made so many friends," he said.

#### H.R. 14243—SYMINGTON TAX BILL

### HON. JAMES W. SYMINGTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. SYMINGTON. Mr. Speaker, as the Internal Revenue Code now stands, business firms and labor groups are free to plead their case before Congress on legislative proposals which affect them, using funds deductible by the taxpaying donor. By contrast, certain public charities risk the loss of their tax-exempt status by engaging in the same type of activity.

By making it financially easier for one sector of our society rather than another to inform Congress, the law is inequitable. It discourages healthy debate; it deprives Congress of open access to the views of charitable, educational, and scientific organizations, on legislation which affects the interests that such organizations represent; and it seriously undermines the watchdog function which these groups serve in the public interest—a function which is almost impossible for the average citizen.

It is the goal of Congress to make reasoned judgments on legislative proposals based on a balanced response to the popular will. For Congress to achieve such a balance, all elements of our society should be able to present their views to their representatives. The legislation, H.R. 13720, proposed by Congressman AL ULLMAN and cosponsored by a bipartisan group of over 65 House Members, is an important step toward insuring that Congress will hear balanced debate on public issues. The Ways and Means Committee recently held 3 days of hearings on this legislation.

Mr. Speaker, I would like to submit for the RECORD an editorial emphasizing the need for such legislation which appeared in the New York Times last week:

[From the New York Times, May 11, 1972]

#### LOBBYING FOR THE PUBLIC

Ever since the Internal Revenue Service deprived the Sierra Club of its tax-exempt status for sponsoring newspaper advertisements on the Redwoods National Park bill five years ago, other public interest groups have been uncertain as to how far they could go in efforts to influence legislation without meeting a similar fate.

The Internal Revenue Code is unclear on how much legislative or lobbying activity is permissible. As a result—as Chairman Russell Train of the Administration's Council on Environmental Quality said in his Congressional testimony last week—communication between public interest groups and Congress or state legislatures has been stifled. This has deprived legislators of a valuable flow of information and expertise from groups with vast experience in such important fields as health, education, social welfare and the environment.

The threat of the loss of tax-deductible status has also put public interest groups at a disadvantage compared to private corporations, which can treat their legislative and lobbying activities as tax-deductible business expenses, and to Governmental agencies, which have free access to legislative bodies.

A bill to correct this imbalance and help public-interest groups further the causes they were formed to promote has been introduced into Congress by Representative Ullman of Oregon, with bipartisan backing. The bill would permit such organizations to spend up to 20 per cent of their annual disbursements on efforts to influence legislation, but no more than 5 per cent on so-called "grass roots" lobbying.

Such clear limits would free citizen groups to make a valuable contribution to the legislative process. President Nixon has stressed the importance of citizen involvement in environmental issues and other public concerns requiring legislative action. This bill would promote such involvement and at the same time undo a serious wrong perpetrated by the I.R.S. against many public-interest organizations by its decision in the Sierra Club case.

#### REMARKS BY E. CARDON WALKER

### HON. JOHN G. SCHMITZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. SCHMITZ. Mr. Speaker the following is a news release by Mr. E. Cardon Walker, president, Walt Disney Productions. At a time when everyone worries about the ecology issue, it is refreshing to find that the Disney plan for Mineral King fulfills the public need, while at the same time provides maximum protection for the national park and forest lands involved.

The news release follows:

#### REMARKS BY E. CARDON WALKER

In calling this press conference to discuss the future of Mineral King today, we would like to begin by setting the record straight once again on the history of this project.

The area known as Mineral King is located in Sequoia National Forest, whose mandate from Congress is to provide a balanced program of land management which takes into consideration the needs of all segments of the American public. This policy has resulted in the establishment of millions of acres of permanently protected primitive or wilderness areas. It also gives the Forest Service authority to designate for use by the general public an area such as Mineral King, which has outstanding year-around recreational potentials, including the complete range of winter sports activities. This has been done in more than 80 other areas.

After many years' experience in the management of Mineral King, the Forest Service determined that the area was, and is, best qualified to fulfill the recreational needs of all Californians. Why? Because of its un-

matched potential as a winter recreation site, its natural summer beauty, and because of its proximity to major population centers. It is not a wilderness. Formerly subjected to mining and timbering activities, it is now extensively used for summer recreational activities, including a pack station and almost 60 summer homes. For many years, it has been accessible via a dangerous and sub-standard access road.

Thus, in 1965, the Forest Service issued a prospectus seeking competitive bids for the recreational development of the Mineral King area.

Of the six proposals submitted, the Disney plan was accepted and judged as best serving the public need under the terms of the prospectus.

It was the Forest Service which stipulated in its prospectus that the area must be freely accessible by means of an improved all-weather road, and it continued to maintain that position throughout the three-year period allotted to Walt Disney Productions for the preparation of its master plan.

We believe that our master plan for Mineral King, which was approved by the Forest Service in January, 1969, offered the best possible protection of the surrounding environment under the constraints established by the Forest Service in 1965.

However, we have now obtained approval from the Forest Service to revise our master plan. These major revisions were developed over the past two years under the guidance of our Conservation Advisory Committee, and we will not proceed with this project unless this new plan is implemented.

Those who serve on our Conservation Committee are as follows:

Mr. Horace M. Albright, Former Director of the National Park Service, and Superintendent of Yellowstone National Park.

Dr. Ira Gabrielson, President, Wildlife Management Institute.

Mr. Thomas Kimball, Executive Director, National Wildlife Federation.

Mr. Bestor Robinson, Former President and member of the Board of Directors, the Sierra Club; Formerly Chairman of Secretary of Interior's Advisory Committee on Conservation.

Mr. Elvind T. Scoyen, Former Superintendent of Sequoia and Kings Canyon National Park and Associate Director of the National Park Service.

Mr. William E. Towell, Executive Vice President, American Forestry Association.

These nationally recognized conservationists, who support the development of Mineral King, have freely given of their time to advise the Disney organization and review its plans for the area.

We believe, and these men and the Forest Service concur, that the following recommendations will substantially improve both the aesthetic concept and operational control of this project:

1. As you know, the Disney plan now includes an electrically-powered, cog-assisted railroad to take visitors into the Mineral King Valley from a point in Sequoia National Forest just east of its common boundary with Sequoia National Park. We propose the extension of this transportation system westward across Sequoia National Park to a termination point in the Oak Grove area, which is below and outside the boundary of the National Park.

Preliminary engineering studies indicate that a two-track, cog-assisted, narrow gauge railway would be highly flexible, allowing the train to traverse the National Park along the general path of the existing access road, for which Tulare County holds the right-of-way.

The proposed route for the railway would pass below the Atwell Mill Grove of redwood trees in Sequoia National Park and enter the Mineral King area at a lower elevation than the proposed road, thereby elim-

inating any possibility whatsoever of any effect on these redwood trees.

We propose that the entire cog-assisted railroad be publicly owned. Walt Disney Productions would enter into a contract to operate the publicly-owned transportation system on a non-profit basis, during the 30-year term of the permit to be issued to Disney by the United States Forest Service. Income from the operation of the train would return only the cost of operation and maintenance, and the principal and interest required to finance its construction.

2. The extension of the cog-assisted railroad to a point below Sequoia National Park would allow many "gateway" facilities to be removed from the Mineral King area. Among those facilities which could be located below the National Park would be the entire reception area, all administrative and many service facilities, the maintenance and storage shed for the trains, and a major portion of the employee housing. The plan would also eliminate the need for construction in the Mineral King area of a multi-level parking structure and all other facilities necessary to accommodate the visitor automobile.

The Forest Service plans development of rail served, walk-in summer camping opportunities near Silver City and to a lesser extent hike-in camping in the bowls above the valley. Capacity of the camping facilities will be determined after careful planning but would probably accommodate 500 people.

3. The original Forest Service prospectus, which stipulated that access to the area must be by automobile, made it necessary for Walt Disney Productions to plan enough recreational facilities to serve the largest number of visitors who could traverse the public road on any given day. The proposal outlined today will allow us to scale down the number of recreational facilities, such as restaurants and ski lifts, which will be necessary at ultimate development. Under the administration of the Forest Service, the number of visitors admitted to the area at any one time will be limited to a reasonable number, which will guarantee an enjoyable recreational experience for the guest. We expect that visitation will average 4,000 per day.

The Forest Service approves the concepts described in this statement.

The plan we have just proposed would have the following positive effects:

1. It would eliminate the need for the construction of a new access road across Sequoia National Park. The proposed railroad would traverse the park along the general alignment of the existing access road, thereby eliminating the need for cutting a new route through the same area, as would have been required under the previous plan. The right-of-way for the narrow-gauge train would need to be less than half as wide as that required for the two-lane access road planned by the State of California.

It would still be necessary for the state to improve, but to a lesser standard, the existing road between State Route 198 and the Oak Grove area. This road would not cross any National Park or National Forest land. Since the road would now terminate below the snow line, and winter visitors would never have to drive under snow conditions, the plan will mean greater safety in transportation for the general public.

2. This proposal would drastically reduce the amount of state gas tax revenues necessary to provide adequate public access, saving California's taxpayers as much as \$30,000,000. The cog-assisted railroad would be paid for by those who would use it.

3. The plan will provide a positive means of controlling, at all times, the number of visitors allowed into the Mineral King area, and would facilitate enforcement of new For-

est Service and Park Service restrictions on the use of wilderness back country.

4. The new proposal will eliminate the need for a separate 66KV power line across the National Park, which had been estimated by Southern California Edison Company as necessary to provide the initial burst of power to start up the cog-assisted trains above the National Park, where the access road would previously have terminated.

The electrical requirements for the Mineral King valley area can now be supplied by a power line at a fraction of that voltage, which would be buried underground in the roadbed of the railroad.

5. Perhaps most significant is the fact that visitor automobiles will now be restricted from the entire Mineral King area. This will set a precedent similar to the type of access now being advocated by officials of the National Park Service, the National Forest Service and other recreational planners. It will provide a prototype demonstrating that the public will accept access to our National Parks and Forests by means other than automobile. The train ride, in itself, will be a revolutionary and enjoyable experience for the general public.

We in the Disney organization believe that the plan presented today is economically practical, aesthetically and environmentally sound. It has always been our desire, and it was the desire of Walt Disney himself, to establish at Mineral King new standards of excellence in the development of recreational facilities on public land, consistent with the protection of the area's natural beauty. This objective can and will be achieved.

Walt Disney Productions has now met all the objections to the creation of recreational services and facilities at Mineral King, save one: Shall this area remain totally inaccessible in winter and available only to a select few in summer, or shall it be made available for the pleasure, benefit and enjoyment of everyone?

That is the remaining question. That is where we stand today. Now, where do we go from here?

The future of Mineral King is in the hands of those who feel the project is needed—the United States Forest Service; the Board of Supervisors of Tulare County; the many other public officials and private citizens and organizations who have advocated this project; and most of all the members of the general public, particularly the citizens of California, who have every right to the year-round enjoyment of our National Forests.

Since the Forest Service determined the public need in 1965, Walt Disney Productions has responded in good faith to the government's requirements. Our demonstrated concern for America's natural heritage is a matter of record. Walt Disney received 37 awards for his work in the field of conservation, including an Honorary Life Membership in the Sierra Club.

Therefore, we can no longer allow the good name and worldwide reputation of the Walt Disney organization to be attacked due to circumstances over which we have had no control. No longer will we allow our plans for this project to be misrepresented, as they often have been in the past.

We restate that Walt Disney Productions ceased all financial investment in this project three years ago, and that we withdrew from active advocacy of the project at that time. We have never been a party to the litigation between the Sierra Club and officials of the federal government, and we are not now.

As everyone knows, there are millions of acres in California's High Sierra where those who desire and are physically capable may backpack under primitive or wilderness conditions. Yet, there are all too few areas available to serve those who enjoy the wide variety

of winter recreational activities and the high alpine summer experiences which would be available at Mineral King.

Thomas H. Kuchel, while serving California in the United States Senate, was a strong supporter of the recreational use of Mineral King. In an article written in 1967, he eloquently and wisely assessed the situation in the following words:

"We must make balanced judgments on whether any given resource should be developed commercially, developed for recreation, or maintained in a natural state. These are difficult judgments for which there are all too few guideposts. But if we fail to allocate a balanced portion of our total resources to each of these needs, sheer economic and demographic pressures will lay waste to the remaining wilderness we possess.

"People will continue to go to the mountains. There is no way to stop them. Indeed, why should we try to stop them? Is it not far better for their government to help set aside specific and suitable areas for their enjoyment and recreation? If we fail to develop selected areas, such as Mineral King, the 50 million people who will be in California before the end of this century will spill over the sides of the coastal cities and ravage the Sierra with unplanned and undirected enthusiasm for the vanishing outdoors.

"The best assurance that we will permanently protect portions of our natural heritage lies in orderly development to accommodate the demands of our growing population to be near nature.

"In Mineral King, California has an outstanding opportunity that should not be lost. It is a spectacularly unique area which, if carefully planned, can be developed into one of the finest recreational complexes of the world."

The public need for additional recreational areas clearly exists. We have presented a plan today which fulfills the public need, while at the same time provides maximum protection for the National Park and Forest Lands involved.

If the public agencies and officials responsible for the Mineral King area respond favorably to our plan, then Walt Disney Productions is ready to move ahead. We stand by, prepared to fulfill our commitments as the permittee for this project.

For the people of California, Mineral King truly represents an opportunity that should not be lost.

MR. AND MRS. KENT C. NICODEMUS, SR., CELEBRATE BIRTHDAY AND ANNIVERSARY

HON. GOODLOE E. BYRON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. BYRON. Mr. Speaker, this Sunday, May 21, Mr. and Mrs. Kent C. Nicodemus, Sr., of Walkersville, Md., will celebrate their 50th wedding anniversary. On the same day, Mr. Nicodemus will be celebrating his 90th birthday with his family and friends.

I am sure the celebration of these two remarkable anniversaries will be joyful as the Nicodemuses are joined by their many friends in the Walkersville area. I would like to join with these friends in wishing them happy anniversary and happy birthday and to extend my best wishes for their future together.

RIDICULOUSNESS OF AMNESTY

**HON. BOB WILSON**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. BOB WILSON. Mr. Speaker, I would like to share with my House colleagues two excellent and particularly pertinent editorials on amnesty for draft dodgers and deserters by Dan McKinnon, the president of radio KSON in San Diego. Dan is the son of former Member of Congress Clinton B. McKinnon, whom I know many will remember well, and I am pleased to include these two editorials in today's Record.

[Radio KSON editorial broadcast]

THE RIDICULOUSNESS OF AMNESTY—PART I

There's a new controversy bubbling under the surface of American Society.

It's an offshoot of the Vietnam war and it's going to shake the very foundations of our principles in this country.

Many people not only feel it will rattle the foundations . . . but, should it occur, it will mark the start of the crumbling of our country and the principles for which it stands.

The issue . . . amnesty.

Should the turncoats, deserters and chickens who left America rather than serve their country in the Armed Forces during the heavy fighting in Vietnam be welcomed back without punishment?

The anti-war groups are the instigators of amnesty and say deserters and draft dodgers should be just as welcome home as veterans.

Have you seen their latest bumper sticker . . . "Support our boys in Canada."

The issue promises to raise the total ire of the hawks and it only seems logical for the doves to want their flocks of peaceniks . . . now scattered all over the world . . . reunited.

How do you feel about amnesty?

The feelings and sentiment in congress will be reflected by those who express to their congressman how they feel. That expression will have tremendous impact on what is done.

Why not write your congressman and let him know what you think . . . instead of just grumbling about what a raw deal the guy who served his country got while the deserters are returned without punishment.

[Radio KSON editorial broadcast]

THE RIDICULOUSNESS OF AMNESTY—PART II

We talked some about amnesty yesterday. There seems to be a growing effort by some to grant amnesty to approximately 70,000 persons who freely chose to disobey the draft law during the Vietnam war.

On the other hand, five million persons accepted the responsibilities of citizenship.

One's personal views on a particular war, or this particular war, are irrelevant to the point that the draft is and has been the law of the land and a fundamental duty of citizenship.

Those people intelligently and knowingly violated the law and consciously accepted the consequences.

As far as the argument that "theirs was a harder decision" is concerned, it is infinitely more palatable to be alive in Canada or Sweden than possibly dead in Vietnam, and for someone who chose to avoid his responsibilities, the decision would be simple.

It would appear that the "moral" argument is camouflage for the easy out.

Forgetting that for a moment, what do we say to those five million men in this war alone who chose to face the stark possibility of death, as well as their responsibilities, whether they agreed with the war or not. What do you say to them if amnesty is granted to those who chose to run from both death and responsibility under the guise of "conscience"?

What sort of precedent will be set for those of future conflicts who can say "Why go? I'll get amnesty in a few years."

More importantly, what sort of amnesty can be given to those who wanted it, but sought their duty instead, and met eternity on Bunker Hill, in the fields at Flanders, on the beaches at Iwo Jima, in the ice at Chosin and in the jungle provinces of Vietnam?

Without them, we wouldn't have the privilege of discussing amnesty for anyone. Why not write Congressmen Lionel Van Deerlin or Bob Wilson in Washington and let them know how you feel.

A NATION OF LAWS AND GOV. GEORGE WALLACE

**HON. J. HERBERT BURKE**

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. BURKE of Florida. Mr. Speaker, as most Americans, I am at a loss to explain the chronic symptoms which have engulfed this, our Nation during the past decade, slowly tearing at the very fiber of our domestic tranquility and expression of peaceful assembly in our governmental process. We have witnessed the snuffing out of the life and genius of one of our Presidents; his brother, a United States Senator; two leaders of the social movement and peaceful reformers; a union leader, and now, a candidate for the presidency, Gov. George Wallace. I am at a loss to explain and rationally analyze the actions of these assassins who have sought to silence a political opponent not with wisdom and through persuasive rhetoric and challenging ideas, but through the use of the most destructive tool man has invented—a gun.

And one wonders what impulse has instigated this process in our political life; what kind of a stimuli is being promoted and brought into play to witness such acts of cowardice and undemocratic behavior. One wonders whether some of the young who rather than use their God-inspired minds to create and develop better life for us and themselves, turn to the "crutches" in today's society and instead become dupes of the extremists who want immediate solutions to old-age problems; who instead of reasoning and challenging dormant institutions with novel, sensible approaches, accept revolutionary answers which can only lead to violence and destruction.

I believe that we should begin reversing that process which if unchecked, will ultimately disintegrate our resolve to promote our republican form of democ-

racy. And, we better begin now. Rather than "curse the darkness" as someone has said, let us take those steps—one at a time—to rebuild that fiber which we once possessed in our own unique experiment in social living when this Nation was born. We can begin by firmly reminding our judicial powers—our judges and our court systems—to pay closer heed to the rights of the majority. To mete out just punishment to flagrant violators of our society's norms, rather than continue to create and promote the aura of psychological uncertainty. Because it appears that too many times an offender has greater rights than the victim, as he feels he will not have to account to society for his or her acts of violence.

Every society is governed by its laws and the manner they are imposed on all the subjects. The moment that the law is shown to be meekly proscribed; the moment basic norms by which that society is guided become confused and caught in a quagmire of indecision and abnormal resolve: That moment the society becomes vulnerable to deterioration. And, I might add, this is when the misfits in our society begin dreaming up their schemes to assassinate political leaders. My colleagues in the Congress, this is that substance which is being eroded in our society, and perhaps in our today's world. And this process must be reversed. A nation guided by its laws to survive must make certain that they are adhered to. Let us make sure that the laws we in the Congress enact, and those enacted at lower levels of government, are also adhered to, and not circumvented.

A free society will continue to progress, or fall victim to confused chaos when its resolve to maintain its basic norms begins to disintegrate. The job is incumbent on all of us who have a stake in the freedoms we have enjoyed and want to promote for our posterity. Let not unpunished criminals continue to guide our spirit, nor the uncertain judges in whose hands our legal process rests, but let the men and women who have something to offer to the political vitality of this Nation speak out and seek a balance to the norms which have sustained our country in the past.

MAN'S INHUMANITY TO MAN—HOW LONG?

**HON. WILLIAM J. SCHERLE**

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 15, 1972

Mr. SCHERLE. Mr. Speaker, a child asks: "Where is daddy?" A mother asks: "How is my son?" A wife asks: "Is my husband alive or dead?"

Communist North Vietnam is sadistically practicing spiritual and mental genocide on over 1,600 American prisoners of war and their families.

How long?

## FORMER AMBASSADOR HONORED

**HON. JOHN J. RHODES**

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. RHODES. Mr. Speaker, rarely do we see such a glowing tribute paid to a diplomat leaving his post as was the one which appeared in the January 13 issue of *El Alcazar*, a leading newspaper of Madrid, to our former Ambassador to Spain, the Honorable Robert C. Hill.

Since Ambassador Hill is a longtime friend, it is with pride that I place this editorial in the CONGRESSIONAL RECORD—particularly so because I know it to be true, well deserved, and a genuine expression of the affection and admiration the Spanish people felt for Mr. Hill and his family.

America has been well served by Ambassador Hill, not only in Spain, but previously in Costa Rica, El Salvador, and Mexico. I thank him for representing our country with grace and ability, and for presenting her in her finest light to other nations of the world.

[From "El Alcazar," Madrid, Jan. 13, 1972]

Mr. HILL IS LEAVING—FAREWELL TO A FRIEND  
"I am not going there with a brass band. I am going to a serious country and I am aware of my many responsibilities."

That was Robert C. Hill's first statement in May, 1969, when the Senate approved his designation as Ambassador to Spain.

In those words, Mr. Hill intended to sum up his program of activities in our country. He did exactly this at the farewell party offered him by the New York Hispanic-American Chamber of Commerce and by the Spanish Institute.

The Ambassador has fulfilled his mission and is now returning to his country. He understood Spaniards, and we understood him. He leaves many friends and good remembrances. This is a priceless legacy for his successor at the Madrid Embassy by which the future new Ambassador should profit to maintain and develop mutually cooperative relations between two friendly countries, whose interests are in harmony and whose responsibilities are so clear and important in this critical hour of the world.

Without being a career diplomat, the man who till recently has been American Ambassador to Spain has shown outstanding diplomatic gifts, not only among us but also at the other places where he was posted by his country's Foreign Service. At this moment of farewell our memories of his tact and understanding are still fresh, of the way in which he knew how to maintain the contacts between Madrid and Washington to bring to a successful end the negotiations leading to the renewal and "up-dating" of the agreements of cooperation between the two countries, not only in the military field but also in the economic, cultural and technical ones.

The visit to Spain of the American President and of his leading helpers—the Vice President and the Secretaries of Defense, State, and Transportation, among others—capped the diplomatic efforts of the man who has been American Ambassador to Madrid till now.

Some day History will make known the full scope and significance of the role played by Mr. Hill during recent years in the field of Hispanic-American relations.

The son of a physician, Mr. Hill—54 years old at present—was born in the rural town of Littleton, New Hampshire. After his

primary and high school studies he graduated from Dartmouth College. In addition to filling many important civilian posts, he served in the Foreign Service and in the U.S. Army. Before becoming Ambassador to Spain he had been Ambassador to Costa Rica, El Salvador, and Mexico.

On June 17, 1969, he presented his credentials to the "Caudillo", thereby becoming accredited Ambassador to our country. When he landed at Algeciras he said: "I bring President Nixon's and the American people's warm and sincere greetings to all Spaniards."

At this moment of farewell, we bid a sincere and friendly one to him, to his wife Cecelia and to their children, who became so well adapted to Spanish society.

Good bye, Mr. Ambassador!

ST. JAMES CATHOLIC CHURCH OF  
YOUNGSTOWN, OHIO, CELEBRATES 25TH ANNIVERSARY**HON. CHARLES J. CARNEY**

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. CARNEY. Mr. Speaker, recently, I had the honor of attending the 25th anniversary celebration of St. James Catholic Church in Youngstown, Ohio.

Through cooperation, loyalty and sacrifice, St. James Catholic Church has become one of the most dynamic parishes in the entire Youngstown area.

I extend my sincere congratulations to the pastor, Father James R. Kolp, and all the priests, sisters, and parishioners of St. James Church on their silver anniversary. It is my fervent hope that St. James Parish will continue to grow and prosper in the coming years.

Mr. Speaker, I insert letters from Bishop James W. Malone of Youngstown and Father Kolp, the names of the parish clergy and members, and a brief history of the parish and school in the RECORD at this time.

The articles follow:

DIOCESE OF YOUNGSTOWN,  
Youngstown, Ohio.

MY DEAR FRIENDS: It is a pleasure to learn that St. James Parish is celebrating its 25th anniversary.

During these years, many families have come closer to Christ through the ministry of the priests and the Notre Dame Sisters and other generous people at St. James. Gratefully we acknowledge the enrichment which they have brought to the lives of St. James parishioners.

May the celebration of this 25th anniversary bring increased joy and happiness to all of you.

Yours sincerely in Christ,  
The Most Reverend JAMES W. MALONE,  
Bishop of Youngstown.

## A WORD FROM OUR PASTOR

DEAR PARISHIONERS: This booklet is the result of loyalty and effort of many people. Special thanks to the Altar and Rosary Society and their president, Barbara Fercana, who took the formation of this pictorial directory under their wings and stayed with it until its completion. Many thanks to the many parishioners who came over to the school at the appointed times to have their pictures taken. Many thanks to Sister Mary Edwardin, SND, and Helen Racz who compiled our school and parish history. And finally, a special note of appreciation to Rich-

ard Whetstone and Joan Blessing who arranged this booklet for publication.

St. James Parish can be summed up in five words: Sacrifice of priests and people. It includes the untold sacrifice of young Fr. Halter, who answered Bishop McFadden's call to be the leader of the 200 families of the Christian community in southeast Warren and Howland township. Father Halter's dynamic determination, his confidence in the people, his foresight of the needs of the parish, have led to our present beautiful Church and School, rectory and parish grounds. While parishes sometimes see the need of future building or constant repair, St. James has adequate, modern facilities. Msgr. Halter could read into the hearts of the loyal, generous and justly proud people of St. James.

St. James parish is still growing. In one recent month, for example, we accepted 19 new families into our parish. In a half year, there has been 53,000 Communion.

As pastor, I am tremendously prejudiced, but I believe on our silver anniversary, that we at St. James have the most beautiful church in the area, the finest school, the most excellent C.C.D. program, the greatest choir, the most enthusiastic folk song Mass, and the greatest spirit of cooperation and loyalty of any group around.

One thing I want to bring out is the theory that working in our parish has been like "drinking from the fountain of youth." Many parishioners who are working hard on this anniversary celebration were working with Fr. Halter 25 years ago in the initial formation of our parish.

May God bless all who have made St. James parish what it is today. It is my prayer and the prayer of Fr. Coleman, that God will guide us to that even greater and holier years ahead.

Sincerely yours in Christ,

FR. JAMES R. KOLP.

## FORMER PASTOR AND ASSISTANTS

Msgr. Clarence Halter, 1947-1967.

Fr. Francis Snook, 1950-1951.

Fr. Vincent Scharf, 1951-1952.

Fr. Bernard Bast, 1953-1959.

Fr. Robert Lyden, 1952.

Fr. Robert Sfara, 1959-1962.

Fr. James Foley, 1962-1963.

Fr. John Mulqueen, 1962-1967.

Fr. Felix Tecca, 1963-1969.

Fr. Kenneth Sanders, 1967-1969.

Fr. Robert Coleman, 1968-

Fr. Joseph Bennett, 1969.

Deacon Joseph Rudjak, 1971-1972.

## RELIGIOUS FROM PARISH

Fr. Donald Bank, Fr. John Bank, Fr. John Lody, Fr. Paul Sanders, C. Ss. P.; Fr. Martin Susko, Fr. Edward Wiczorek.

Sr. Mary St. James S.N.D. (Margaret Davis).  
Sr. Mary Marquette S.N.D. (Antoinette Der-shaw).Sr. Mary Sherise S.N.D. (Lynette Marcello).  
Sr. Mary Sean Maureen S.N.D. (Bonita Quinn).Sr. Mary Janeta S.N.D. (Patricia Stamper).  
Brother Daniel Kelly F.S.C. (Daniel Kelly).  
Brother Paul Keough F.S.C. (Paul Keough)  
Louis Santucci (Seminarist).  
Sr. Kathleen Pillar O.S.U. (Kathleen Pillar).

## HISTORY OF THE PARISH

In January 1941, with the approbation of the Most Reverend Joseph Schrembs, Bishop of Cleveland, Ohio, the Right Reverend Monsignor Edward A. Fasnacht, pastor of St. Mary's Church of Warren, purchased a site in the South East section of Warren, for the purpose of establishing a mission for the faithful Catholics in this area. The site chosen was located at Willard and Burton Streets.

The Most Reverend James A. McFadden Auxiliary Bishop of Cleveland, broke the ground, blessed it and laid the cornerstone of

the newly formed mission, which was named St. James, in honor of the bishop.

The parish was begun as a Chapel of Ease for the families in the East end of Warren, to have a place where they could assist at Mass on Sunday. No other ceremonies were authorized. It belonged to St. Mary's Parish. It was later made a Mission of St. Mary's with additional Masses scheduled and confessions and other services provided. The original building, that was used as a Church, was dedicated July 25, 1941, and still stands on the corner of Milton and Willard. It had a seating capacity of 250, and is presently used as the Parish Hall.

St. James Parish was officially established May 10, 1947, by decree of the late, first Bishop of Youngstown, the Most Reverend James A. McFadden. At the time of its establishment, it had approximately 200 families living within its boundaries. Father Clarence A. Halter, was appointed pastor and offered the first Mass in the parish Church on Mother's Day, Sunday, May 11, 1947.

A five room house diagonally across from the church was purchased to be used until a rectory could be built. However, this home, after two additions, is now adequate as an administration building and residence for the priests who serve the parish.

In 1950, the first assistant, Father Francis Snock, was assigned to the parish. Also, the priests of the Society of the Pious Father of St. Paul, in Canfield, Ohio, helped out for a time.

In early 1955, the church was undergoing severe taxation due to overcrowding conditions at Mass on Sundays. The auditorium in the school building had a seating capacity of approximately 450, so a decision was made to use that facility for the offering of the Holy Sacrifice of the Mass. The change was made on Easter Sunday, April 10, 1955.

More parking space became necessary, so the pastor obtained more property for that purpose. A home for the custodian was also purchased at this time, this home is adjacent to the rectory. The parking area also doubles as a playground for the children of our school.

On July 10, 1959, coincidental with the establishment of a parish on the North East side of Warren, a boundary change was effected. This extended the boundaries of St. James Parish to include an additional 150 families, thus making the parish larger, and raising the census figures to over 900 families.

Establishment of the present boundaries added a territory which was already under development. This promised to add even further to the future numbers of parishioners. Permission was obtained from the Most Reverend Bishop, Emmett M. Walsh, for the project of building a new church of contemporary design to seat 800. A contemporary design was selected to both serve the spiritual needs and to ease the financial burden of the parishioners.

On October 1, 1961, the Most Reverend Emmett M. Walsh, Bishop of Youngstown, dedicated the new edifice. Thus beginning a new era for St. James Parish.

The parish continued to offer social and religious apostolates and added some to make the parish a close knit community of concerned Catholics willing to help their fellow man. These organizations included:

St. Vincent de Paul Society, Holy Name Society, Altar and Rosary Society, Catholic Mothers Study Club, Home and School Association, Mens Choir—Mixed Choir, Nocturnal Adoration Society, Confraternity of Christian Doctrine.

Many discussion groups have also been held to provide the parishioners with a deeper and fuller understanding of the Catholic Faith.

Many changes have taken place within the Christian community of St. James, the years have given us approximately 13 assistants (refer to page 3) and two devoted and dedicated pastors. The first pastor, Monsignor

Clarence Halter, was destined to leave us, and in 1967, was assigned as pastor of St. Michaels Church in Canton, Ohio. It was a bad time for St. James, as Msgr. Halter had devoted 20 years service to his flock. The sadness was compensated only by the appointment of Fr. James R. Kolp, our present pastor, who in his short 5 years with us has equaled the devotion of Msgr. This brings us up to date of the history of St. James. The future years, with the grace God, will bring us more blessings.

RECTORY STAFF

Fr. J. Robert Coleman, Assistant; Lenora Weinstock, Church Secretary; Joan Blessing, Housekeeper; Evelyn Pickens, Sacristan.

HISTORY OF THE SCHOOL

Sr. Mary Edwardin, Principal.  
Mrs. Virginia Saxon, School Secretary.  
In September of 1951 St. James School opened its doors for the first time to an enrollment of 168 happy, curious youngsters, with bright new classrooms, and a staff of four Sisters of Notre Dame.

On January 13, 1952, his excellency, Bishop Emmet Walsh, dedicated the new school. The bishop stated in his sermon that, "a new school is a monument upon which Christ, the lover of children, smiles lovingly and raises his hand in blessing." He told Father Halter and the Sisters that they could be very proud of St. James School.

Due to an evergrowing parish population, and to provide more adequate facilities for a better Catholic education, plans for an additional expansion of six classrooms were soon underway and completed.

In the fall of September of 1971, St. Mary Middle School was ready for operation, the first in the diocese, thus affecting St. James in so far as we now have classes from Kindergarten to Grade Five.

This diocesan plan enables the school to provide a modern individualized learning program through the use of our well equipped Learning Center, centralized library and an up-to-date teacher reference room.

Principals of the School

- Sister Mary Leoncia, S.N.D., 1951-53.
- Sister Mary Padua, S.N.D., 1953-57.
- Sister Mary Lawrence, S.N.D., 1957-1963.
- Sister Mary Annrita, S.N.D., 1963-64.
- Sister Mary Concepta, S.N.D., 1964-70.
- Sister Mary Edwardin, S.N.D., 1970-

MEMBERS OF ST. JAMES CATHOLIC CHURCH

A

- Abruzzi, Mr. & Mrs. Anthony.
- Abruzzi, Mr. & Mrs. Guerino.
- Abruzzi, Mr. & Mrs. Robert.
- Abruzzo, Mr. & Mrs. Cloyd.
- Abruzzo, Mr. & Mrs. Paul.
- Ackerman, Mr. & Mrs. Homer.
- Albrect, Mrs. Mary Ann.
- Alexander, Mr. & Mrs. Saker.
- Alexi, Mr. & Mrs. Joseph.
- Amato, Mr. & Mrs. James.
- Antolini, Mr. & Mrs. Anthony.
- Anzellotti, Mrs. Joseph A.
- Anzellotti, Mr. & Mrs. Joseph R.
- Ardingo, Mr. & Mrs. Angelo.
- Arnold, Joyce.
- Athya, Mr. & Mrs. Howard.
- Aulizio, Mr. & Mrs. Michael J.
- Axe, Mr. & Mrs. L. Gregory.

B

- Baciu, Mr. & Mrs. John.
- Bagnall, Mr. & Mrs. George.
- Bailey, Mr. & Mrs. Donald L.
- Bailey, Mr. & Mrs. James W.
- Bailey, Mr. & Mrs. Steve.
- Bair, Mrs. Stella A.
- Baker, Mr. & Mrs. E. Roger.
- Balek, Mr. & Mrs. Michael.
- Balestrino, Mr. & Mrs. Joseph.
- Ballock, Miss Ann.
- Banish, Mr. & Mrs. Joseph.
- Banish, Miss Mary.

- Banish, Mr. & Mrs. Thomas.
- Bank, Mrs. Sue.
- Barranco, Mr. & Mrs. Joseph.
- Barson, Mr. William.
- Bartlett, Mrs. Leroy.
- Barton, Mr. & Mrs. James.
- Barton, Mrs. Joan.
- Bartosik, Mr. & Mrs. Joseph.
- Basciano, Mr. & Mrs. Thomas.
- Bates, Mr. & Mrs. Clarence.
- Batta, Mr. & Mrs. Thomas.
- Battee, Mr. & Mrs. Frank.
- Bauer, Mr. & Mrs. Edward.
- Beck, Mrs. Cecil.
- Beatty, Mr. & Mrs. Charles.
- Belanger, Mr. & Mrs. Harvey.
- Bellas, Mr. & Mrs. Steven.
- Bellay, Mr. & Mrs. Frank.
- Bencivengo, Mr. & Mrs. Raymond.
- Bennett, Mrs. Robert.
- Benoit, Mr. & Mrs. Irving.
- Benyel, Mr. & Mrs. Roger.
- Beougher, Mr. & Mrs. J. Howard.
- Berardo, Mr. & Mrs. Ralph.
- Berry, Mr. & Mrs. Charles.
- Bertolasio, Miss Karen.
- Bertuzzi, Mr. & Mrs. Louis.
- Bevan, Mrs. Ann.
- Bezusko, Michael.
- Bianco, Mr. & Mrs. John.
- Bianco, Mr. & Mrs. Louis.
- Biles, Mrs. Anna.
- Biles, Miss Marilyn.
- Binben, Mr. & Mrs. Victor.
- Binko, Mr. & Mrs. Frank Eugene.
- Birich, Mrs. Joseph.
- Bissell, Mrs. Ida.
- Blair, Mr. & Mrs. John A.
- Blazek, Mr. & Mrs. John.
- Blessing, Miss Mary Joan.
- Blevins, Mrs. Charles.
- Blosic, Mr. & Mrs. Peter.
- Bodnar, Mr. & Mrs. Joseph J.
- Bolchalk, Mr. & Mrs. Frederick.
- Bolen, Mr. & Mrs. Bruce L.
- Bolen, Mr. & Mrs. Donald.
- Bolyard, Patricia.
- Bonanno, Mr. & Mrs. Anthony.
- Bordash, Mr. & Mrs. Frank.
- Bosso, Miss Constance.
- Bowman, Mr. & Mrs. Paul.
- Boye, Mr. & Mrs. Donald.
- Braden, Mrs. Charles.
- Brazina, Mr. & Mrs. Eugene.
- Breig, Miss Regina K.
- Brekoski, Mr. & Mrs. Robert.
- Britt, Mr. & Mrs. James F.
- Britt, Mrs. Pauline.
- Brocco, Mr. & Mrs. William.
- Brown, Mrs. John.
- Brown, Mr. & Mrs. Richard W.
- Brutz, Mr. & Mrs. Dominic.
- Brutz, Mr. & Mrs. James.
- Brutz, Mr. & Mrs. James.
- Buchanan, Eliza.
- Bufalini, Mr. & Mrs. Edward.
- Bufano, Mrs. Ben.
- Bufano, Mr. & Mrs. Michael.
- Bukovan, Mr. & Mrs. George A.
- Bulvony, Mr. & Mrs. Carl.
- Bulvony, Mr. Michael.
- Burless, Mr. & Mrs. Andrew.
- Burns, Mr. & Mrs. Francis.
- Burns, Shirley.
- Butcher, Mrs. Anne.
- Butler, Mr. & Mrs. Frederick H.
- Buydos, Mr. & Mrs. Michael.
- Buydos, Therese.
- Bycraft, Mrs. Ann M.
- Byers, Mr. & Mrs. Bernard L.

C

- Calvin, Miss Kathryn.
- Camarata, Mr. & Mrs. Peter.
- Cameneti, Mr. & Mrs. James.
- Campbell, Mr. & Mrs. Jack.
- Cancelli, Mr. & Mrs. Neal.
- Caniglia, Mr. & Mrs. John.
- Caniglia, Mary Jo.
- Canton, Mr. & Mrs. Joseph.
- Canzonetta, Mr. & Mrs. Anthony.
- Canzonetta, Mrs. Donald.

Canzonetta, Mr. & Mrs. Donald.  
 Capak, Mr. & Mrs. Elmer.  
 Capak, Mrs. Steven.  
 Capan, Mr. & Mrs. George.  
 Capellas, Mr. & Mrs. George.  
 Capito, Mr. Frank A.  
 Capito, Mr. & Mrs. George.  
 Capito, Mr. & Mrs. Gregory.  
 Capito, Mr. & Mrs. Patsy.  
 Caporali, Mr. & Mrs. Lancy.  
 Caputo, Mr. & Mrs. Eugene.  
 Caputo, Mr. & Mrs. John.  
 Carano, Dr. Joseph.  
 Carbone, Mr. & Mrs. Vincent.  
 Cardarelli, Mr. & Mrs. Rock.  
 Carney, Mr. & Mrs. James.  
 Carney, Mr. & Mrs. John.  
 Caroots, Mr. & Mrs. Stephen.  
 Caroselli, Mrs. Frank.  
 Carson, Mr. Anthony.  
 Casagrana, Mr. & Mrs. Millard.  
 Cashman, Miss Dorothy.  
 Cashman, Mrs. M. J.  
 Cashman, Mr. Robert.  
 Castellano, Mr. & Mrs. Jerry.  
 Castilla, Mr. & Mrs. Daniel.  
 Catignani, Mr. & Mrs. Bert.  
 Cauduro, Mr. & Mrs. John.  
 Cavalcante, Mr. & Mrs. Barry.  
 Cavalcante, Mr. & Mrs. Otto Joseph.  
 Ceglia, Mr. & Mrs. Nick, Sr.  
 Cessna, Mr. & Mrs. William.  
 Cesta, Mr. & Mrs. Carmen.  
 Cesta, Mr. & Mrs. Vernon.  
 Chance, Mr. & Mrs. Joseph A., Jr.  
 Chehovits, Mr. & Mrs. Donald.  
 Chickerno, Mrs. Andrew.  
 Childboy, Mr. & Mrs. Charles.  
 Chilli, Mr. & Mrs. Thomas.  
 Choinski, Mr. & Mrs. Joseph.  
 Chos, Mr. Stephen.  
 Christie, Mr. & Mrs. John.  
 Christin, Mr. & Mrs. Michael.  
 Ciabattoni, Mr. & Mrs. Luigi.  
 Ciferno, Mr. & Mrs. Salvatore.  
 Cimbanin, Mrs. Nancy.  
 Clark, Mrs. Elmer.  
 Clark, Miss Kathy.  
 Clark, Mr. & Mrs. Patrick.  
 Clark, Mr. Thomas.  
 Clemente, Mrs. Grace.  
 Clemente, Mr. Victor.  
 Clementi, Mr. & Mrs. Felix D.  
 Clementz, Mr. Robert.  
 Clifford, Mr. & Mrs. Kevin.  
 Clossin, Mrs. Louis.  
 Clossin, Mr. & Mrs. Patrick.  
 Collins, Mrs. Alfred.  
 Collins, Mr. & Mrs. Ralph.  
 Conable, Mr. & Mrs. F. E.  
 Conceller, Mr. & Mrs. Edward  
 Conti, Mrs. Frank.  
 Conway, Mr. & Mrs. Michael.  
 Cook, Mrs. Howard.  
 Cook, Mr. John Howard.  
 Core, Mr. & Mrs. Camillo.  
 Cornicello, Mr. Joseph.  
 Courey, Therese.  
 Cox, Mrs. Lester L.  
 Crabb, Mrs. Ann.  
 Crean, Mr. Thomas.  
 Crigler, Connie.  
 Crigler, Mr. & Mrs. William E.  
 Criste, Mr. Ralph J.  
 Crkvenac, Mr. & Mrs. Thomas J.  
 Cronin, Mr. & Mrs. James.  
 Crooks, Mr. & Mrs. Dennis.  
 Crowley, Mr. & Mrs. Patrick.  
 Cuff, Mr. & Mrs. Donald.  
 Cummings, Mr. & Mrs. James.  
 Cupples, Mrs. Sarah.  
 Curtis, Mr. Carl.  
 Curtis, Mr. & Mrs. George V.  
 Curtiss, Dr. & Mrs. Charles.

## D

Dallas, Mr. & Mrs. George.  
 D'Amico, Anna Marie.  
 D'Amico, Mr. & Mrs. Anthony.  
 D'Amico, Mr. & Mrs. Stephen.  
 D'Andrea, Mr. & Mrs. Ray.

Danko, Mr. & Mrs. Paul.  
 DiVincenzo, Mr. Dominic.  
 D'Annunzio, Mr. & Mrs. Eugene.  
 D'Annunzio, Mr. & Mrs. Faust.  
 Daugherty, Helen.  
 Daugherty, Mrs. Thomas.  
 Davenport, Mr. & Mrs. Howard.  
 Davis, Mrs. Elizabeth.  
 Davis, Mr. & Mrs. Sherman.  
 Dawson, Mr. & Mrs. Dwight.  
 Dean, Mr. & Mrs. Philip.  
 DeCandio, Mr. & Mrs. Mike.  
 DeCapito, Mrs. Frank.  
 DeCapito, Mr. & Mrs. John.  
 DeCato, Mr. & Mrs. Albert.  
 DeFelice, Mr. & Mrs. Anthony.  
 DeFilice, Mr. & Mrs. James.  
 DeFilippis, Mr. & Mrs. Pete.  
 DeJacimo, Mr. & Mrs. Anthony.  
 DeJacimo, Mr. & Mrs. Ronald.  
 Delahunty, Mr. & Mrs. Carl.  
 Delahunty, Mr. & Mrs. Thomas E.  
 DelBene, Mr. & Mrs. Donald J.  
 DelDuca, Mr. & Mrs. Frank.  
 DeLeo, Mr. & Mrs. Blase.  
 DelGarbino, Mr. & Mrs. Albert.  
 DelGarbino, Mr. & Mrs. Guido.  
 Delsanter, Mr. & Mrs. Anthony.  
 DelVecchio, Mr. & Mrs. Richard.  
 DeMarco, Mr. & Mrs. John Leo.  
 DeMedicis, Mrs. Thomas.  
 DeNicholas, Mr. & Mrs. Angelo.  
 DePizzo, Mr. & Mrs. James.  
 DeRose, Mrs. Frank.  
 DeRose, Mr. & Mrs. Louis.  
 Derr, Mr. & Mrs. George H.  
 Dershaw, Mr. & Mrs. Leonard.  
 DeSantis, Mr. & Mrs. Eugene.  
 DeSantis, Mrs. Rose.  
 DiAntonio, Mr. & Mrs. Rudolph.  
 DiCenso, Mr. & Mrs. Frank J.  
 Dick, Mr. & Mrs. James.  
 DiCristofaro, Mr. & Mrs. Raymond J.  
 DiFrancesco, Mr. & Mrs. Cosmo.  
 DiFrancesco, Mr. & Mrs. Fred.  
 Dillon, Mr. & Mrs. John.  
 DiLoreto, Mrs. Flowers.  
 DiLoreto, Mr. & Mrs. Gregorio.  
 DiLoreto, Mr. Tony.  
 DiMauro, Mr. & Mrs. Anthony.  
 DiMauro, Miss Carlene.  
 DiMauro, Mr. & Mrs. Dominic.  
 DiMauro, Mrs. James.  
 DiVincenzo, Debbie.  
 DiVincenzo, Mr. & Mrs. Michael.  
 Dodgson, Mr. & Mrs. Ernest.  
 Dohar, Mrs. Elizabeth A.  
 Donohoe, Mr. & Mrs. Gerald.  
 Dooley, Mr. & Mrs. Hughston.  
 Dorsey, Mrs. Veronica.  
 Doshner, Mr. & Mrs. Paul.  
 Drapcho, Mr. & Mrs. Henry.  
 Drab, Mr. & Mrs. Henry.  
 Drab, Mr. Henry, Jr.  
 Draper, Mrs. Pearl.  
 Drapp, Mr. & Mrs. John G.  
 Driscoll, Mr. & Mrs. Gerald.  
 Drobik, Mr. & Mrs. Joseph.  
 Duck, Mrs. Burton.  
 Duda, Mr. & Mrs. Walter.  
 Dulick, Miss Karen.  
 Durkin, Mr. & Mrs. John J.  
 Duttko, Mr. & Mrs. Joseph.  
 Duttko, Mr. & Mrs. Joseph, Jr.  
 Dyer, Mr. & Mrs. Daniel.  
 Dzurilla, Mr. & Mrs. Michael.

## E

Eakins, Mrs. William.  
 Eckenrode, Mr. & Mrs. Leo.  
 Eckroate, Mr. & Mrs. William.  
 Ellwood, Mr. & Mrs. Ronald.  
 Ellwood, Mrs. Theresa.  
 Emmerth, Mr. & Mrs. Andrew.  
 Ericksen, Mr. & Mrs. John.  
 Evans, Mrs. Donna.

## F

Falfas, Mr. & Mrs. Andrew.  
 Fallone, Mr. & Mrs. Paul R.  
 Feher, Mr. & Mrs. Joseph.

Fercana, Mr. & Mrs. Carl.  
 Ferguson, Mr. & Mrs. Francis.  
 Ferradino, Mr. & Mrs. Louis.  
 Ferris, Mr. and Mrs. John.  
 Fetsko, Mr. and Mrs. Stephen.  
 Flalko, Mr. and Mrs. Joseph.  
 Ficeti, Mr. and Mrs. Silvio.  
 Fiedor, Mr. and Mrs. Louis.  
 Fiore, Mr. and Mrs. Elfonso.  
 Flaviano, Mr. and Mrs. Anthony.  
 Flemming, Mr. and Mrs. William.  
 Floch, Mr. and Mrs. Robert T.  
 Floden, Mr. and Mrs. Rudolph.  
 Fogel, Mr. and Mrs. David.  
 Fonce, Mr. and Mrs. Carmen.  
 Fondoulis, Mrs. John.  
 Forrest, Mrs. Helen.  
 Fortsch, Mr. and Mrs. Frank.  
 Foskile, Mr. and Mrs. Bruno.  
 Francesangli, Mr. Louis.  
 Francis, Mr. and Mrs. Adam.  
 Franco, Mr. and Mrs. Lawrence.  
 Frankenstein, Mrs. P. V.  
 Franko, Mrs. Ann M.  
 Frantz, Mr. and Mrs. Robert.  
 Frederick, Mrs. Cosma.  
 Frengel, Mr. and Mrs. Daniel P., Jr.  
 Fulton, Mr. and Mrs. Harry.  
 Funge, Mr. and Mrs. Robert.  
 Futey, Mr. and Mrs. Joseph.

## G

Gabelle, Rita.  
 Gabele, Mr. and Mrs. Edward J.  
 Gabele, Rita.  
 Gabele, Mr. and Mrs. John.  
 Gabriel, Mr. and Mrs. Kenneth.  
 Galick, Mr. and Mrs. Robert.  
 Gallagher, Mr. and Mrs. John.  
 Gamon, Mr. and Mrs. Jerome.  
 Gallagher, Mr. Richard.  
 Gano, Mrs. Harold.  
 Garvin, Mr. John V.  
 Garritano, Miss Georgeann.  
 Gaughan, Mrs. J. W.  
 Gedeon, Elmer.  
 Geidner, Mr. and Mrs. William.  
 Geist, Mrs. Louise.  
 George, Mr. and Mrs. John R.  
 Giammaria, Miss Carmella.  
 Giannamore, Mr. and Mrs. Nelson.  
 Gill, Mr. and Mrs. Elmer R.  
 Gilmore, Mrs. Charles.  
 Gilmore, Mr. and Mrs. Donald R.  
 Gilmore, Mr. and Mrs. Robert.  
 Giordani, Mr. & Mrs. Aldo.  
 Glavan, Mrs. Joseph.  
 Godicui, Mr. & Mrs. Robert W.  
 Goehring, Mr. & Mrs. Henry.  
 Gonda, Mr. & Mrs. Joseph.  
 Gonia, Mr. & Mrs. Kazimier.  
 Gonia, Mr. Ludwig.  
 Gorbil, Mr. & Mrs. John.  
 Gore, Mr. & Mrs. Robert.  
 Gore, Mr. & Mrs. William.  
 Gorse, Mr. & Mrs. Edward J.  
 Gorsick, Mr. & Mrs. Louis A.  
 Gorsick, Mr. & Mrs. Louis M.  
 Gorsick, Mr. & Mrs. William.  
 Gotthardt, Mr. & Mrs. Glenn.  
 Gourlay, Mr. & Mrs. James.  
 Grabosky, Mr. & Mrs. Francis.  
 Gracott, Mr. & Mrs. William.  
 Graham, Mrs. Gladys.  
 Graziano, Mr. & Mrs. Joseph.  
 Green, Mr. & Mrs. Robert.  
 Gregor, Mr. & Mrs. Andrew.  
 Gregor, Mrs. John.  
 Gregory, Mrs. Rosemary.  
 Griffith, Mr. & Mrs. William A.  
 Grimes, Mr. & Mrs. Russell.  
 Grocott, Miss Margaret.  
 Grubish, Mrs. John.  
 Guerra, Mr. & Mrs. Donald.  
 Guerrero, Mr. and Mrs. Manuel.  
 Guerrieri, Mr. & Mrs. James.  
 Guerrero, Mr. & Mrs. Ramon.  
 Gundy, Mr. & Mrs. George.  
 Guyon, Mr. & Mrs. Stanley.  
 Guzan, Mr. & Mrs. James.  
 Guzzi, Dominic.  
 Gwyer, Mr. W. L.

## H

Halavick, Mrs. Cecelia.  
 Halavick, Mr. & Mrs. Rudolph.  
 Hall, Mrs. Lester.  
 Hallock, Mrs. Albert.  
 Hamilton, Barbara.  
 Hanick, Mr. & Mrs. John.  
 Harkins, Mr. & Mrs. Robert L.  
 Harry, Mr. & Mrs. Desmond A.  
 Hayes, Mrs. Robert.  
 Hayth, Mr. & Mrs. Chester.  
 Heald, Mrs. Richard.  
 Hearn, Mr. James E.  
 Heibling, Mr. James.  
 Heltzel, Mrs. Louise.  
 Hendrickson, Mr. & Mrs. Fred.  
 Hecceg, Mr. & Mrs. Daniel.  
 Hinkson, Mr. & Mrs. John.  
 Hiryo, Mrs. Michael.  
 Hivick, Mr. & Mrs. H. Clark.  
 Hivick, Mr. & Mrs. James.  
 Hlaudy, Mr. & Mrs. John A.  
 Hockenberry, Mr. & Mrs. Clarence.  
 Hoffman, Mr. & Mrs. Charles.  
 Hoffman, Mrs. Kenneth A., Jr.  
 Homa, Miss Anna.  
 Homa, Mr. George.  
 Homa, Mr. & Mrs. John.  
 Homchosky, Mr. Charles.  
 Homlitas, Mr. & Mrs. John.  
 Howell, Mr. & Mrs. Joseph.  
 Hraboury, Mr. & Mrs. Franz.  
 Hrusovsky, Mr. & Mrs. John.  
 Hudock, Mr. & Mrs. Steve.  
 Huff, Mr. & Mrs. Herbert.  
 Humenuk, Miss Anne.  
 Hutchinson, Mr. & Mrs. Thomas.  
 Hutzler, Mr. & Mrs. Donald.

## I

Iacozzili, Mr. & Mrs. Augustine.  
 Iacozzili, Mr. & Mrs. John.  
 Iacozzili, Mrs. Nicolina.  
 Iannizzaro, Mr. & Mrs. Robert.  
 Iannucci, Mrs. Fannie.  
 Iannucci, Mr. & Mrs. Michael.  
 Imblum, Mr. & Mrs. Howard J.  
 Infante, Miss Sophia.

## J

Jackson, Mr. & Mrs. A. R.  
 James, Mrs. Angela.  
 Jara, Mr. & Mrs. Thomas.  
 Jenyk, Mrs. Andrew.  
 Jerina, Mr. & Mrs. John.  
 Johnston, Mr. & Mrs. Jerome.  
 Johnson, Mrs. William.  
 Jones, Mr. & Mrs. Harry D.  
 Jones, Mr. & Mrs. William A.  
 Jonesco, Sharyn.

## K

Kachenko, Mr. & Mrs. Nicholas.  
 Kacir, Mr. & Mrs. Paul.  
 Kadvan, Mr. & Mrs. Joseph.  
 Kaliney, Mr. & Mrs. William.  
 Kalinowski, Mr. & Mrs. Bruno R.  
 Kanche, Mr. & Mrs. Michael.  
 Kania, Mrs. Bruno.  
 Kapouralos, Mr. Harry.  
 Kapouralos, Mrs. Margaret.  
 Kapraly, Mr. & Mrs. Donald.  
 Kasanicky, Mr. & Mrs. William.  
 Karrenbauer, Mr. & Mrs. Ronald.  
 Kassan, Mr. & Mrs. Andy.  
 Kassan, Mrs. Helen.  
 Kassan, Mr. & Mrs. Robert.  
 Kassan, Miss Sandra.  
 Kassan, Mrs. Sophia.  
 Kearns, Mrs. Elizabeth.  
 Keating, Mr. & Mrs. Leo W.  
 Kebe, Mr. & Mrs. Joseph.  
 Kellar, Mr. & Mrs. Harley.  
 Kelly, Edward.  
 Kelly, Mr. & Mrs. Paul.  
 Kender, Mrs. Theodore.  
 Kensek, Mr. & Mrs. Michael.  
 Kerchofer, Mr. & Mrs. Thomas.  
 Kereszturi, Theresa.  
 Kerul, Mr. & Mrs. Joseph.  
 Kins, Mr. & Mrs. Edward E.  
 Kirchner, Mr. & Mrs. Donald.

Klapka, Mr. & Mrs. Lewis.  
 Klein, Mr. & Mrs. Robert.  
 Klenovic, Mr. & Mrs. Matthew.  
 Knoch, Dennis.  
 Knoch, Mr. & Mrs. Joseph.  
 Knock, Mrs. Charlotte.  
 Knowles, Mr. James.  
 Kodash, Mr. Michael.  
 Koenig, Mr. & Mrs. Thomas G.  
 Kois, Mr. Jacob L.  
 Kondzich, Mr. & Mrs. Paul.  
 Kopnick, Mr. & Mrs. Steve.  
 Korodi, Mr. & Mrs. Joseph, Jr.  
 Koziel, Mr. & Mrs. Stanley.  
 Kratochvil, Mr. & Mrs. Francis.  
 Kreidler, Irene.  
 Krempasky, Mr. & Mrs. Edward J.  
 Krisman, Mr. & Mrs. John V.  
 Kroeger, Mr. & Mrs. Gary.  
 Kurilla, Mr. & Mrs. Joseph.  
 Kudrich, Mr. & Mrs. John.  
 Kurdila, Mr. & Mrs. Andrew.  
 Kurtz, Mrs. Marie.  
 Kush, Mrs. Michael.  
 Kusnir, Mr. & Mrs. Michael.  
 Kuszmaul, Mr. & Mrs. Gene.  
 Kvesich, Mr. & Mrs. Joseph.  
 Kwortek, Mr. Charles.  
 Kyle, Mrs. Paul.

## L

Lachowski, David.  
 LaDuca, Mr. & Mrs. Anthony.  
 Lackey, Mrs. Harvey.  
 Lachowski, Rina.  
 Lachowski, Mr. & Mrs. Stanley.  
 Lackey, Mr. & Mrs. William.  
 LaClave, Mary.  
 Lacusky, Mr. & Mrs. Joseph.  
 Lahait, Mr. & Mrs. Arthur.  
 Lampla, Mrs. John.  
 Lance, Mrs. Hilda.  
 Lancey, Mr. & Mrs. Andrew.  
 Lapmardo, Mr. & Mrs. Michael.  
 LaPorta, Miss Clementine.  
 LaPorta, Mr. & Mrs. Ralph.  
 Laprocina, Mr. & Mrs. Gabriel.  
 Laprocina, Mr. & Mrs. Nicholas.  
 Laprocina, Mr. & Mrs. Patrick.  
 Laratta, Miss Mary Lou.  
 Laretta, Mr. & Mrs. Samuel.  
 Lasso, Mr. & Mrs. Samuel A.  
 Lavelle, Mr. & Mrs. John.  
 Law, Jeffrey.  
 Law, Mr. & Mrs. John E.  
 Lewler, Mr. & Mrs. James.  
 Lazzari, Mr. & Mrs. Edward J.  
 Lazzari, Mr. & Mrs. Eugene J.  
 Leancu, Mr. & Mrs. George.  
 Leancu, Tim.  
 Lecocq, Mrs. Anna.  
 Leon, Mr. & Mrs. Frank.  
 Lesnoski, Mr. & Mrs. Leonard.  
 Letscher, Mr. & Mrs. James.  
 Letscher, Mrs. Martin.  
 LeVander, Mrs. Ernest.  
 Levero, Mr. & Mrs. James.  
 Lewis, Mr. & Mrs. David.  
 Liberatore, Mr. & Mrs. Fred, Sr.  
 Liberatore, Mr. & Mrs. John.  
 Liberatore, Mr. & Mrs. Joseph.  
 LiBossi, Mrs. Ida.  
 Lisby, William.  
 Littell, Mrs. Donley.  
 Lloyd, Emma.  
 Lody, Mr. John.  
 Loftus, Mr. & Mrs. James.  
 Loftus, Mr. & Mrs. James J.  
 Lombardi, Mr. & Mrs. Dominic.  
 Loney, Mr. & Mrs. William.  
 Long, Mr. & Mrs. Daniel.  
 Lonsway, Miss Marguerite.  
 Lonsway, Mr. Paul.  
 Lonsway, Mr. Robert.  
 Lorello, Mr. & Mrs. Dominic.  
 Loreto, Mr. & Mrs. E. A.  
 Loyall, Mrs. Harold.  
 Loychik, Mr. & Mrs. Donald.  
 Lucas, Mr. & Mrs. Donald E.  
 Lucas, Mr. & Mrs. John.  
 Ludwick, Mr. & Mrs. Albert.

Ludwick, Mr. & Mrs. Stanley.  
 Ludwick, Mr. & Mrs. Walter.  
 Lugiewicz, Mr. & Mrs. Michael.  
 Lugiewicz, Mr. Zigmunt.  
 Luich, Mr. & Mrs. Michael.  
 Lulek, Mr. & Mrs. John.  
 Lusk, Mrs. Roger.  
 Lyntz, Mr. & Mrs. Charles.  
 Lyons, Mr. & Mrs. James.

## M

Mack, Mr. & Mrs. Ray.  
 Macklin, Mr. & Mrs. Kenneth.  
 Maffel, Mrs. Joseph.  
 Maggio, Mr. & Mrs. Joseph.  
 Maher, Mr. & Mrs. Charles.  
 Makis, Mr. & Mrs. Peter J.  
 Malie, Mr. & Mrs. John.  
 Malone, Mr. & Mrs. Edmund.  
 Maloney, Mr. & Mrs. Edward.  
 Mancini, Mr. & Mrs. Guglielmo.  
 Mann, Mr. & Mrs. Raymond.  
 Manna, Mr. & Mrs. Joseph.  
 Manna, Mr. & Mrs. Joseph, Jr.  
 Manzo, Mr. & Mrs. Vincenti.  
 Marado, Mr. & Mrs. Charles.  
 Marcello, Mr. & Mrs. Leonard.  
 Marchand, Mr. Edward.  
 Marchand, Mr. & Mrs. Robert.  
 Marchese, Mr. & Mrs. Felix.  
 Marchese, Mr. & Mrs. Guy.  
 Marchese, Miss Mary.  
 Marchese, Mr. & Mrs. Victor.  
 Marcolini, Mr. & Mrs. Ronald.  
 Marilla, Mr. & Mrs. Ralph.  
 Marino, Mr. & Mrs. James.  
 Marks, Mr. & Mrs. Carl.  
 Marscio, Mr. & Mrs. Anthony.  
 Marsco, Mr. & Mrs. John.  
 Marsh, Mr. & Mrs. Roger.  
 Marshall, Mr. & Mrs. Charles.  
 Martelli, Bartholomew.  
 Martelli, Fiore & Sue.  
 Martin, Ann.  
 Martin, Mr. & Mrs. Augustine.  
 Martin, Mrs. Mary.  
 Martin, Mrs. Mary.  
 Martin, Mr. & Mrs. W. W.  
 Martin, Mr. & Mrs. Peter M.  
 Martin, Mr. Robert.  
 Martini, Mr. & Mrs. Albert Jr.  
 Martini, Mr. & Mrs. Elvedio.  
 Martini, Mr. & Mrs. Perry.  
 Martini, Mrs. Raffala.  
 Maruskin, Mr. & Mrs. Ronald.  
 Marvin, Mr. & Mrs. Thomas.  
 Marx, Mr. & Mrs. Louis.  
 Masa, Mr. & Mrs. Pete.  
 Mascio, Mr. Dominic.  
 Maselli, Mr. & Mrs. Donald.  
 Massacci, Mr. & Mrs. Dundy.  
 Massaro, Mr. & Mrs. Cesidio.  
 Matock, Mr. & Mrs. John.  
 Matsick, Mr. & Mrs. John.  
 Matysiak, Mr. & Mrs. Gilbert.  
 Maycher, Miss Dorothy.  
 Maycher, Mrs. Josephine.  
 Mayo, Mr. & Mrs. Joseph F.  
 Mayo, Mr. & Mrs. Peter.  
 Mayville, Mrs. Isador.  
 Mearnic, Mr. & Mrs. George.  
 Medvitz, Mr. & Mrs. Elmer.  
 Mehall, Miss Agnes.  
 Mehall, Frances C.  
 Menendez, Ida.  
 Menendez, Mr. & Mrs. Leo.  
 Mensi, Mr. Ben.  
 Menz, Mr. & Mrs. Harry.  
 Merat, Mr. & Mrs. Lawrence.  
 Mermer, Mr. & Mrs. John.  
 Merolla, Mr. & Mrs. Salvatore.  
 Merryman, Mr. & Mrs. John B.  
 Meter, Mr. & Mrs. Andrew.  
 Metro, Mr. & Mrs. George.  
 Metter, Mr. & Mrs. Louis.  
 Middleman, Mrs. Alberta.  
 Mignella, Anthony.  
 Mihalik, Mr. George L.  
 Mikusevich, Mr. & Mrs. Frank A., Jr.  
 Mikusevich, Mrs. Frank, Sr.  
 Miller, Mr. & Mrs. Albert.

Miller, Mr. & Mrs. Gene.  
 Miller, Mrs. William.  
 Mindek, Mr. & Mrs. Paul.  
 Misus, Loretta.  
 Misus, Mr. & Mrs. Raymond.  
 Modic, Mrs. Frank.  
 Molek, Mr. & Mrs. Thomas.  
 Molish, Mr. & Mrs. George S.  
 Mongelluzzo, Mr. John.  
 Monroe, Mr. & Mrs. Louis.  
 Monroe, Mr. and Mrs. Paul.  
 Moon, Mrs. James.  
 Moran, Miss Betty Lou.  
 Moran, Mr. Frank T.  
 Moreau, Mr. & Mrs. Ronald.  
 Morgan, Miss Enith.  
 Morgan, Mrs. Mary.  
 Mori, Mr. and Mrs. Patsy.  
 Morrison, Mr. & Mrs. Bernard E.  
 Mortaro, Angelina.  
 Mosholder, Mrs. Charles.  
 Motak, Mr. Vinko.  
 Muccio, Mr. & Mrs. Fred.  
 Muldowney, Mr. & Mrs. John.  
 Munno, Mr. & Mrs. James.  
 Myford, Mr. & Mrs. Sherman.  
 Mylott, Mr. & Mrs. Thomas M.  
 McAleer, Mrs. Frank.  
 McAleer, Mrs. Kathleen.  
 McBride, Mrs. John.  
 McCann, Mrs. Margaret.  
 McCann, Mr. & Mrs. Raymond.  
 McCauley, Mr. William T.  
 McCord, Mr. & Mrs. Thurman.  
 McCorkle, Mrs. Ida.  
 McCorkle, Mrs. Joseph R.  
 McFarland, Mr. & Mrs. H. A.  
 McGarrity, Mr. & Mrs. Hugh.  
 McGinley, Miss Barbara.  
 McGinley, Mrs. James.  
 McGuire, Mr. & Mrs. Bernard.  
 McMahan, Mr. & Mrs. Charles.  
 McMahan, Mr. & Mrs. John A., Sr.  
 McMurray, Mrs. Frank.  
 McVeigh, Mr. & Mrs. Sam.  
 McVicker, Mr. & Mrs. James F.

## N

Nagy, Mrs. Robert.  
 Nagy, Mr. & Mrs. William G.  
 Natural, Mr. & Mrs. Joseph J.  
 Nelson, Mr. & Mrs. Gerald.  
 Nicholas, Mrs. Tony.  
 Noark, Mr. & Mrs. Eugene.  
 Nolan, Mr. & Mrs. Joseph.  
 Notar, Mr. & Mrs. Dan.  
 November, Mr. & Mrs. Theodore.  
 Null, Mr. & Mrs. Jerome.  
 Nyre, Mrs. Anna.

## O

O'Connor, Miss Mary K.  
 O'Day, Mr. & Mrs. Stanley.  
 Ognibene, Mr. & Mrs. Patsy.  
 Ognibene, Mr. Vincent.  
 O'Hara, Mr. & Mrs. Joseph.  
 O'Hara, Miss Maureen.  
 Ohlin, Mr. & Mrs. George.  
 Ohlin, Mr. & Mrs. Joseph.  
 Okopal, Mr. & Mrs. James.  
 Oliver, Mrs. Mary Rose.  
 O'Loughlin, Mr. & Mrs. Coleman.  
 Onder, Mr. & Mrs. Andrew.  
 Onder, Mr. & Mrs. John.  
 Ondrejko, Mrs. Elizabeth.  
 O'Rourke, Mr. & Mrs. Thomas P.  
 Orsinelli, Dr. & Mrs. David.  
 Osborne, Mr. & Mrs. Ronald.  
 Ossolo, Mr. Ray.  
 Ostic, Mr. & Mrs. Stephen.  
 Ott, Mrs. Donald.  
 Otto, Mrs. C. W.

## P

Pabin, Mr. & Mrs. Thomas A.  
 Pachay, Mrs. Helen.  
 Pacifico, Mr. & Mrs. Harry.  
 Pack, Mr. & Mrs. Paul R.  
 Padovan, Mrs. Gene.  
 Padvani, Mr. & Mrs. Armand A.  
 Palen, Mr. & Mrs. Walter.  
 Palen, Mr. & Mrs. Walter, Jr.  
 Palcich, Mrs. Helen.

Palipchak, Mr. & Mrs. Richard.  
 Palmer, Mrs. Angela.  
 Palmer, Mr. & Mrs. Dominic.  
 Palmer, Mr. & Mrs. Frank.  
 Palmer, Mr. & Mrs. Joseph.  
 Palmer, Mrs. William C.  
 Palya, Mrs. Joseph.  
 Pananen, Mrs. Carl.  
 Pandak, Miss Barbara.  
 Pandak, Mr. and Mrs. John.  
 Pankovich, Mr. & Mrs. Stephen.  
 Parana, Mr. & Mrs. William.  
 Parise, Mr. & Mrs. Dennis.  
 Parise, Mr. & Mrs. Donald.  
 Parise, Mrs. Michael.  
 Parker, Miss Cindy.  
 Parker, Mrs. Dorothy.  
 Parker, Mrs. William.  
 Pasek, Mr. & Mrs. Donald.  
 Pasquini, Mr. & Mrs. Patsy.  
 Patrick, Mr. & Mrs. Regis.  
 Patrone, Mr. & Mrs. Joseph.  
 Patrone, Miss Rosalind.  
 Patterson, Mr. & Mrs. Walter.  
 Pavlik, Mr. & Mrs. Anthony.  
 Pavkovich, Mr. & Mrs. Steve.  
 Pawlicki, Mr. & Mrs. Clarence.  
 Peck, Mr. & Mrs. Joseph.  
 Pellegrim, Mr. & Mrs. Louis.  
 Pellezzeri, Mr. & Mrs. Guy.  
 Perez, Mrs. Guillermo, Sr.  
 Perez, Mr. & Mrs. William.  
 Perhacs, Mr. & Mrs. Richard.  
 Perone, Mr. & Mrs. Michael.  
 Petkovich, Mrs. Florence.  
 Petrick, Mr. & Mrs. Frank.  
 Pettenati, Mr. & Mrs. Enrico.  
 Pickens, Miss Janice.  
 Pickens, Mr. & Mrs. William M.  
 Pierce, Mrs. Adam.  
 Pike, Mrs. Elaine.  
 Pillar, Mr. & Mrs. John.  
 Pinciaro, Mr. & Mrs. Frank R.  
 Pinter, Mr. & Mrs. Donald.  
 Placanica, Mr. & Mrs. Francesco.  
 Plasky, Mr. & Mrs. William.  
 Plevyak, Mr. & Mrs. George.  
 Plihcik, James D.  
 Plihcik, Mr. & Mrs. John.  
 Plihcik, John M.  
 Politsky, Mr. & Mrs. Joseph.  
 Polehonki, Mr. & Mrs. Ralph.  
 Polena, Miss Leona.  
 Polko, Mr. & Mrs. Richard.  
 Potts, Miss Angelina Marie.  
 Plumley, Mr. & Mrs. Carl.  
 Polovich, Mrs. Mary.  
 Polyak, Mr. & Mrs. Joseph.  
 Pompeo, Mr. & Mrs. Albert.  
 Pompili, Mr. & Mrs. Paul.  
 Ponikvar, Mr. & Mrs. Harry.  
 Popovich, Mr. & Mrs. Robert.  
 Poppal, Mrs. Patsy.  
 Portale, Mr. & Mrs. Joseph.  
 Potts, Mr. & Mrs. Joseph.  
 Pountious, Mr. & Mrs. Wallace.  
 Powell, Mrs. Marjorie.  
 Powers, Mr. & Mrs. Leonard.  
 Pozega, Mr. & Mrs. Paul.  
 Prince, Mr. & Mrs. Joseph.  
 Prince, Mr. & Mrs. Lawrence.  
 Principi, Mr. & Mrs. Joseph.  
 Profera, Mr. & Mrs. Salvatore.  
 Prokay, Mr. & Mrs. John.  
 Prosser, Mr. & Mrs. John.  
 Protomaster, Mr. & Mrs. John.  
 Pruitt, Mrs. Floyd.  
 Puncsak, Mr. & Mrs. John.  
 Puncsak, Mr. & Mrs. Michael.  
 Pupillo, Mr. & Mrs. Valentino.

## Q

Quinby, Mrs. Helen.  
 Quinby, John.  
 Quinn, Mr. & Mrs. Bruno.  
 Quintiliani, Mr. & Mrs. Dominic.

## R

Racher, Mr. & Mrs. Frank.  
 Racz, Mr. & Mrs. Michael.  
 Racz, Mr. & Mrs. Paul.  
 Radcliffe, Mrs. Everett.

Radich, Mr. & Mrs. Richard.  
 Radon, Mr. & Mrs. Fred.  
 Ragazzo, Mr. & Mrs. Raymond A.  
 Rajski, Mr. & Mrs. Anthony.  
 Rakijasic, Mr. Frank.  
 Ramos, Mr. & Mrs. Manuel.  
 Ramsey, Mr. & Mrs. Ken.  
 Rapach, Mr. & Mrs. Paul.  
 Rapone, Mrs. Lucy.  
 Rathy, Mr. & Mrs. George.  
 Razum, Mr. & Mrs. Thomas.  
 Recheck, Mr. & Mrs. Norman.  
 Reda, Mr. & Mrs. Dominic.  
 Redmond, Mr. & Mrs. James H.  
 Reed, Mr. & Mrs. J. Harry.  
 Reghetti, Mrs. Robert.  
 Reichenhauser, Mr. & Mrs. George J.  
 Rek, Mr. & Mrs. August.  
 Rek, Mr. & Mrs. Michael.  
 Rek, Mr. & Mrs. Paul.  
 Reilga, Mr. & Mrs. John W.  
 Remsey, Mr. & Mrs. Kenneth.  
 Renie, Mr. & Mrs. Elmer.  
 Renn, Mr. & Mrs. Robert.  
 Repasky, Mr. & Mrs. Matthew.  
 Reppart, Mrs. Martha.  
 Rhoda, Mr. Harold.  
 Rhodes, Mr. & Mrs. Eugene.  
 Rhodes, Mr. & Mrs. James.  
 Richards, Mrs. Helen C.  
 Rihn, Mrs. W. H.  
 Riley, Miss Patricia.  
 Rinaldi, Mr. & Mrs. Paul.  
 Ritter, Mr. & Mrs. Fred.  
 Rizzi, Mr. & Mrs. Sam.  
 Roberts, Mr. & Mrs. Michael.  
 Roberts, Mr. & Mrs. Steve.  
 Robinson, Mr. & Mrs. Thomas G.  
 Rogan, Mr. & Mrs. Otto G.  
 Romachik, Mr. & Mrs. John.  
 Ronyak, Mr. & Mrs. James.  
 Roseman, Mr. & Mrs. Edward J.  
 Rosile, Mr. & Mrs. Nicholas.  
 Ross, Mr. & Mrs. Patrick.  
 Rozzano, Mr. & Mrs. Louis.  
 Rubbo, Mr. Roland.  
 Rubinic, Mr. & Mrs. Louis.  
 Ruddy, Mrs. Audrey.  
 Rufo, Mr. & Mrs. Americo J.  
 Rufo, Mr. & Mrs. Leonard.  
 Rumanck, Helen.  
 Rumanck, Mr. & Mrs. John.  
 Rummell, Mr. & Mrs. Robert.  
 Rusk, Dr. & Mrs. Thomas.  
 Ruson, Mrs. Rose.  
 Russell, Mr. & Mrs. Edward.

## S

Saiani, Mr. & Mrs. Geno.  
 Salucci, Mr. Angelo.  
 Salucci, Mr. & Mrs. Joseph.  
 Salucci, Mr. & Mrs. Luigi.  
 Saluga, Mr. & Mrs. Stephen.  
 Salvato, Mr. & Mrs. Jerry.  
 Salvato, Mr. Lawrence.  
 Sanders, Mr. & Mrs. John.  
 Santucci, Mrs. Adolph.  
 Santucci, Mr. & Mrs. Alex.  
 Santucci, Mr. Louis A.  
 Santucci, Mr. & Mrs. Nick.  
 Sapashe, Mr. & Mrs. Louis.  
 Saponaro, Mr. & Mrs. Charles.  
 Sawayda, Mrs. John.  
 Sawayda, Mr. & Mrs. John.  
 Saxon, Mr. & Mrs. Michael.  
 Sayfoot, Mr. & Mrs. Warren.  
 Scala, Mr. & Mrs. Anthony.  
 Scala, Mr. & Mrs. Sebastian.  
 Scarpacl, Mrs. Marie.  
 Schatzel, Miss Dorothy.  
 Schatzel, Mr. Leo T.  
 Schick, Mr. & Mrs. Dennis.  
 Schisler, Mr. & Mrs. James R.  
 Schisler, Mrs. Thurman.  
 Schisler, Mrs. William, Sr.  
 Schooley, Mr. & Mrs. A. J.  
 Schuller, Mr. & Mrs. Dennis.  
 Schulz, Mrs. Elizabeth.  
 Scott, Miss Leanova E.  
 Scully, Mrs. Thomas.  
 Seifer, Mr. & Mrs. Andrew.  
 Seifer, Mr. & Mrs. Robert.

Seifert, Mrs. Paul.  
 Seikel, Mr. & Mrs. Gerald.  
 Seiple, Mr. & Mrs. Lee.  
 Seman, Allen J.  
 Senard, George.  
 Sergl, Mrs. Rose.  
 Sesler, Mr. & Mrs. Hugh.  
 Setting, Mr. & Mrs. Anthony.  
 Sferra, Mr. & Mrs. Edward.  
 Shader, Mr. & Mrs. Thomas.  
 Shafer, Mr. & Mrs. Thomas.  
 Shaver, Mr. Dale.  
 Shebestok, Mr. & Mrs. John.  
 Shine, Mr. & Mrs. Albin.  
 Shine, Mr. & Mrs. Andrew.  
 Shine, Andrew J., Jr.  
 Shine, Mr. & Mrs. Anthony.  
 Shine, Mrs. Jenny.  
 Shoffner, Mr. Herman.  
 Showacre, Mr. & Mrs. John.  
 Shver, Mr. & Mrs.  
 Sibera, Mr. & Mrs. Ronald.  
 Sicuro, Mr. & Mrs. Charles.  
 Siekkinen, Mr. & Mrs. John E.  
 Simini, Mr. & Mrs. James.  
 Simoni, Mrs. Fred.  
 Sinovec, Mr. & Mrs. Joseph.  
 Sisk, Mr. & Mrs. Eugene.  
 Skiba, Mr. & Mrs. Fred.  
 Skidmore, Mr. & Mrs. Charles.  
 Slanina, Mrs. Theresa.  
 Slapsak, Mrs. Caroline.  
 Slavina, Mr. & Mrs. Robert.  
 Slyk, Mr. & Mrs. Nicholas M.  
 Smart, Mrs. J. J.  
 Smart, Mr. John.  
 Smiley, Mr. & Mrs. Dominic T.  
 Smiley, Mr. & Mrs. William.  
 Smith, Mr. & Mrs. Clair.  
 Smith, Mr. Gary.  
 Smith, Mr. & Mrs. Kenneth.  
 Smith, Mr. & Mrs. Michael.  
 Smith, Mr. & Mrs. William.  
 Smolka, Mr. & Mrs. Joseph.  
 Smuke, Mr. & Mrs. Edward A.  
 Smuke, Mr. Joseph F.  
 Snyder, Mr. John.  
 Snyder, Mr. & Mrs. Joseph.  
 Solitto, Mr. & Mrs. Frank.  
 Sollitto, Mr. & Mrs. Michael.  
 Soltesz, Mr. & Mrs. Godfrey.  
 Sopik, Mrs. John.  
 Sopik, Leonard.  
 Sotak, Mr. & Mrs. Joseph.  
 Spanish, Mrs. Matt.  
 Spano, Mr. & Mrs. Larry.  
 Spelich, Mr. & Mrs. George.  
 Spelich, Mr. & Mrs. Joseph.  
 Spitilli, Mr. & Mrs. Concetto.  
 Sporich, Mrs. Jerry.  
 Sporich, Mr. & Mrs. Paul.  
 Stacey, Mrs. Stanley E.  
 Stamper, Mr. & Mrs. Hugh B.  
 Stamper, Miss Margaret.  
 Stampel, Mr. & Mrs. Anthony.  
 Stangasser, Mr. & Mrs. Louis.  
 Stankevich, Mr. & Mrs. William.  
 Stankewich, Mr. & Mrs. Joseph.  
 Stankovich, Mr. & Mrs. George.  
 Stanton, Mrs. Martin J.  
 Stefanko, Cindy.  
 Stefanko, Mr. & Mrs. Paul.  
 Sprague, Mrs. Loyd A.  
 Stefano, Mr. & Mrs. John.  
 Stefano, Mrs. Lucy.  
 Stefano, Mrs. Micheline.  
 Stefano, Robert.  
 Stem, Mr. Michael.  
 Sternitzke, Mr. & Mrs. Richard.  
 Stimak, Mrs. Annette.  
 Stishan, Mr. Frank.  
 Stoshak, Mr. & Mrs. Joseph.  
 Stratton, Mr. Allan.  
 Stritto, Mr. & Mrs. Dennis Dello.  
 Strutt, Mr. & Mrs. Howard.  
 Stutsman, Mr. & Mrs. Richard.  
 Sullivan, Anthony.  
 Sullivan, Mary.  
 Sullivan, Michael.  
 Sullivan, Mr. & Mrs. Thomas.  
 Sullivan, Mrs. William.

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Susko, Mrs. Margaret.  
 Susleck, Mr. & Mrs. Matthew.  
 Swap, Mr. & Mrs. Wesley W.  
 Swayngim, Mrs. James.  
 Syzmannski, Mr. & Mrs. Victor C.  
 Szakacs, Mrs. Daniel.  
 Szallay, Mr. & Mrs. Michael.

T

Talstein, Mrs. Emil.  
 Tate, Mr. & Mrs. Richard.  
 Telesz, Mr. & Mrs. Edward J.  
 Telesz, Mr. Thomas.  
 Terzigni, Mr. & Mrs. Anthony.  
 Testa, Mrs. Teresa.  
 Theis, Mrs. Peter W.  
 Thirion, Mr. & Mrs. Richard.  
 Thomas, Mr. & Mrs. John M.  
 Thomas, Mr. & Mrs. John T.  
 Thomas, Mr. & Mrs. Lewis E.  
 Thomas, Mrs. Mark.  
 Thomas, Mr. Mark.  
 Thomas, Mr. & Mrs. Robert P.  
 Thompson, Mr. & Mrs. George.  
 Thompson, Mrs. Jack.  
 Tocarzcic, Mrs. Michael.  
 Tocarzcic, Mr. & Mrs. Milton.  
 Tomassi, Mr. & Mrs. Benedict.  
 Tomazin, Mrs. Karl.  
 Tomko, Mr. & Mrs. Thomas.  
 Tortorete, Mr. & Mrs. Michael.  
 Toth, Mr. John.  
 Toth, Mr. & Mrs. Joseph.  
 Toth, Judith.  
 Trautmann, Mr. & Mrs. William.  
 Tresey, Mr. & Mrs. Joseph.  
 Trimbur, Mr. & Mrs. Thomas.  
 Tripodi, Mr. & Mrs. Ernest.  
 Trolano, Mr. & Mrs. Guy.  
 Trunick, Mr. John.  
 Turek, Mr. & Mrs. Theodore.

U

Uber, Mrs. Charles.  
 Uhlir, Mary E.  
 Urban, Mr. & Mrs. Edward.  
 Urban, Mr. & Mrs. Thomas.  
 Urbania, Mr. & Mrs. Matthew, Jr.  
 Urchek, Mr. & Mrs. John L., Jr.  
 Usselman, Mr. & Mrs. William H.

V

Vaccar, Mr. & Mrs. Dominic.  
 Vadas, Mr. & Mrs. John.  
 Troiano, Mr. & Mrs. Vincent.  
 Valentz, Mrs. Amelia.  
 Vanus, Mr. & Mrs. Richard.  
 Vargo, Mr. & Mrs. Steve.  
 Vargosko, Mr. & Mrs. Stephen.  
 Varie, Mrs. Nick.  
 Venetta, Mr. & Mrs. Dominic.  
 Venetta, Mr. & Mrs. Henry.  
 Venetta, Mr. & Mrs. Loreto.  
 Venetti, Mr. & Mrs. Dominic.  
 Vennette, Mr. & Mrs. Jerry.  
 Ventura, Mr. & Mrs. Sam.  
 Vera, Mr. & Mrs. Nicholas.  
 Verbosky, Mr. & Mrs. John.  
 Verhosek, Mr. Albert.  
 Veri, Mr. & Mrs. Nick.  
 Veri, Mrs. William, Sr.  
 Verich, Mr. & Mrs. Alex.  
 Via, Mrs. Charles H.  
 Victor, Mrs. Ronald.  
 Victor, Mr. & Mrs. William.  
 Vigil, Rita.  
 VILLECO, Mrs. Nancy.  
 Vincent, Mrs. Angeline.  
 Vincent, Mr. & Mrs. Joseph.  
 Vingle, Mr. & Mrs. Richard A.  
 Vlahos, Mr. & Mrs. John.  
 Vlastic, Barbara.  
 Vlastic, Mr. & Mrs. Thomas.  
 Vogt, Mrs. David.  
 Voik, Mr. & Mrs. Frank.  
 Voytek, Mr. & Mrs. Adam.  
 Vucco, Mr. Joseph, Sr.  
 Vucco, Mrs. Luby.

W

Waldeck, Mr. & Mrs. Henry.  
 Walker, Mr. & Mrs. James.

Walsh, Mr. & Mrs. Daniel.  
 Walters, Mrs. Sylvia.  
 Waltko, Mr. & Mrs. Joseph.  
 Wanecek, Mr. & Mrs. Frank A.  
 Ward, Mr. & Mrs. William Daniel.  
 Waris, Mrs. James.  
 Warner, Mrs. Elizabeth.  
 Washington, Mr. & Mrs. Walter.  
 Wasil, Mr. & Mrs. Thomas.  
 Wassel, Mrs. Alexander.  
 Waters, Mr. & Mrs. Charles J.  
 Watros, Mrs. Harold.  
 Welch, Mr. & Mrs. Thomas.  
 Weston, Mr. & Mrs. George H.  
 Wheeler, Mr. & Mrs. Charles.  
 Whetstone, Mrs. James.  
 Whetstone, Mr. & Mrs. James, Jr.  
 Whetstone, Mrs. Richard J.  
 Whipple, Mr. & Mrs. Lynn.  
 White, Ann.  
 Wiczorek, Mr. & Mrs. Edward.  
 Wiesen, Mr. & Mrs. Herbert.  
 Williams, Mrs. Charles.  
 Williams, Mrs. Jack.  
 Williams, Jill.  
 Williams, Mr. & Mrs. Mark.  
 Williams, Mr. & Mrs. Richard T.  
 Williamson, Mr. & Mrs. William.  
 Wilson, Mrs. Dorothy.  
 Wilson, Mr. & Mrs. Randall.  
 Wimer, Mr. & Mrs. Homer.  
 Wirth, Mr. & Mrs. Donald.  
 Woods, Mr. & Mrs. Everett.  
 Worosz, Mrs. Browlaw.  
 Wrataric, Mr. George.  
 Wright, Mr. & Mrs. Leonard.  
 Wyko, Mr. & Mrs. John R.

Y

Yakovac, Mrs. Elizabeth.  
 Yaksic, Mr. & Mrs. Rudy.  
 Yanitor, Mr. & Mrs. Michael.  
 Yannucci, Mr. & Mrs. Nick.  
 Yannucci, Mr. & Mrs. Norman J.  
 Yannucci, Mr. & Mrs. Samuel.  
 Yants, Mr. & Mrs. William J.  
 Yasechko, Mr. & Mrs. Joseph.  
 Young, Mrs. Jack.  
 Yurko, Mr. & Mrs. Joseph.  
 Yurtin, Mr. & Mrs. Frank.

Z

Zagger, Mr. & Mrs. John.  
 Zalac, Mrs. Joseph.  
 Zampedro, Mr. & Mrs. John, Jr.  
 Zampedro, Mr. John, Sr.  
 Zampedro, Mr. Publio V.  
 Zarlinski, Mr. & Mrs. Joseph.  
 Zelinsky, Mr. & Mrs. Andrew.  
 Zelinsky, Mr. & Mrs. John.  
 Zelinsky, Mr. & Mrs. Joseph.  
 Zeno, Mr. & Mrs. Thomas.  
 Zerecheck, Mrs. Mary.  
 Zerecheck, Raymond.  
 Zickefoose, Mr. & Mrs. Elmer.  
 Ziegler, Mrs. Ethel.  
 Zito, Mrs. Bruno.  
 Zoba, Mr. & Mrs. Eugene.  
 Zock, Mr. & Mrs. Henry.  
 Zucco, Mr. & Mrs. Angelo.  
 Zucco, Mr. & Mrs. Anthony.  
 Zupon, Mr. & Mrs. Matt.

TRIBUTE TO ALAN BANNER

HON. PATSY T. MINK  
 OF HAWAII

IN THE HOUSE OF REPRESENTATIVES  
 Wednesday, May 17, 1972

Mrs. MINK, Mr. Speaker, recently a young constituent of mine, Alan Banner, the son of Dr. and Mrs. Albert Banner of Hawaii, was tragically lost at sea off the coast of western Samoa.

Though young, Alan Banner lived a full and meaningful life. Because of his

deep and sincere concern for his fellow man, Alan had served in the Peace Corps in the Fiji Islands where he lived and worked in a small, remote village. He helped to establish a successful fishing cooperative that was not only of immediate benefit to the people of the village but was structured in such a way that it continued to be most effective even after his departure.

Alan's parents received a letter from the chief of that village expressing the sorrow of his loss and extolling the contribution Alan had made in improving the welfare of the entire village. Alan's family consider this letter the finest tribute to his life and memory. Though it is a tribute to Alan Banner it is, in a greater sense, a memorable tribute to the many unsung volunteers whose priceless contributions all too often go unnoticed. These are the deeds we should consider when authorizations for the Peace Corps are before us. The letter follows and it shows the impression and friendships our Peace Corps volunteers make for us all around the world:

KIA ISLAND,

Vannalain, Fyi, Is., April 22, 1972.

DEAR MR. & MRS. BANNER AND FAMILY: On behalf of the people of Kia I share with you your sorrow at the loss of Alan. Though he hasn't been here, except for one short visit, for over a year, the work that he did here and his being here as one of us is remembered by us all. It was his efforts that enabled us to get our boats, engines, nets and equipment to carry out modern methods of fishing that he taught to us. His living with us gave us an example of how to carry on with our scheme. He helped us to increase our fishing from small individual efforts to a scale that brought us all together in a common effort. Through him, all our children who attend secondary schools are able to get financial aid through the fishing enterprise.

Most of all, he taught us in a way that made it possible for us to carry on even after he had gone.

When he returned last year, it was for the presentation of our new fishing vessel which he helped us to buy, and since then we are hoping to buy a deep sea tuna fishing vessel, at his suggestion.

The people of Kia are going to have a "BRUA", a feast in his honor. Our thoughts will be with you and with Alan on this day and in the future. We will be honoured and pleased if at any time in the future any of you would like to visit us on Kia and hope that someday we will have this opportunity

On my own behalf, I feel very deeply because in the two years that Alan was here I came to know him and love him as a brother and as such, feel that we all are part of the same family.

Sincerely yours,

AKUILA TUTORA.

TRINITY LUTHERAN CHURCH IN  
SMITHSBURG, MD., CELEBRATES  
150TH ANNIVERSARY

HON. GOODLOE E. BYRON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. BYRON. Mr. Speaker, this Sunday, the Trinity Lutheran Church in Smithsburg, Md., will mark its 150th

anniversary. A full program has commemorated this day beginning with special Lenten services.

Part of the celebration has been the return to Trinity of past pastors. These included Rev. Paul Curfman, Rev. C. Huddle, Rev. Gomer Rees, Rev. Francis Bell, Rev. James Horn, Rev. Harry Yeide, and Rev. Robert Hyson. Trinity Lutheran Church was founded through the efforts of Rev. Benjamin Kurtz who served as Trinity's first pastor in 1822-28.

I would like to congratulate Rev. William L. Dreikorn and the congregation on this anniversary and to wish them a happy reunion and successful celebration.

#### CRIME—THE PROBLEM AND SOLUTION

HON. ROBERT PRICE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. PRICE of Texas. Mr. Speaker, crime in our country is skyrocketing. Even though fortified in their homes, 78 percent of respondents to a recent Life magazine pool reported they do not feel secure in their own homes.

Why? Why are so many crimes committed in spite of what we like to believe is our increasing degree of civilization? Crime is a national disgrace—it is threatening, alarming, wasteful, expensive, and apparently ever increasing.

Our priorities are radically offcenter. National, State, and local governments have failed the people on the crime issue. In talking about human needs and social programs, we overlook the societal obligation that lives must first be protected. The fear of crime is destroying some of the basic human freedoms which any society is supposed to safeguard—freedom of movement, freedom from harm, freedom from fear itself.

It is a fact that if fear stalks our country, all the worthy programs we can dream up to advance our society will be for naught.

We must check the trend now by supporting firm law enforcement. We must stop mollycoddling and babyfooting criminals. Let us get such criminals off the streets and in the jails where they belong. We must back up our police for they are doing a difficult and often thankless job for society. Perhaps a logical step for many communities is citizen anticrime patrols or groups of volunteers that keep a protective eye on the community via roving patrol units and providing escort services after dark. Crime prevention should not be the exclusive province of the police department; individual citizens also need to become more actively involved in fighting today's rampant crime.

As horrifying as the crime statistics are, it is still acknowledged that for many reasons, citizens do not report at least half of all crimes committed. How can our police make any decent progress in arresting crime rates if they do not know the true extent of the problem?

Collectively, we should pick up the pay telephone, drop a dime in, and give information to the police—we should reactivate the old concept of "dirty-diming" the criminal. Let us not hesitate to point the finger at the wrongdoer who constitutes a true menace to our peaceful society. Through citizen anticrime patrols or just by becoming involved, citizens should be more prepared to assist in fighting crime.

Experience demonstrates that the faster policemen are able to respond to a call, the higher the arrest rate for suspected violators. Accordingly, policemen may be able to apprehend 80 percent or more of suspects if the police are notified within 1 minute after the event, while the chances for prompt arrests after the lapse of 4 minutes or so after the event are practically nil. There is no doubt that police and the community they serve can form an effective team for crime prevention and law enforcement.

It is a known fact that relatively few offenders are caught, and most of those arrested are released. I am troubled that previous Supreme Court decisions have aided the criminal by giving him technical ways of beating the system. This idea of dismissing a criminal because the policeman forgot to sign his name on column B of page 3 of form A is ridiculous.

Law enforcement officers are tired of arresting and prosecuting criminals only to see them go free—to commit new crimes. New York City's Police Commissioner Patrick V. Murphy has said:

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

The late J. Edgar Hoover once said:

I am firmly convinced that one of the most effective moves we could make to combat crime in the 1970's would be to speed up and improve our judicial processes so that the time element between a criminal violation and its disposition in court is sharply reduced.

We must take immediate steps to improve our court system. We need to beef up our court system and provide faster justice. The only answer to our Nation's crime problems will be found in direct, purposeful, positive action—not just waiting and hoping the problem will go away. The guilty criminal should have little doubt that when he is arrested, he will be promptly prosecuted and substantially punished for his misdeeds.

If we are to find relief from crime, it is imperative that we shore up our legal walls to prevent lawbreakers from slipping back and forth through loopholes to prey on the public, then hiding behind legal sanctions to avoid just and adequate punishment. Justice should be all-inclusive—that is, just for the victim and the public as well as for the accused. If we are to contain the spiraling crime rate and bring a higher degree of security to the law-abiding citizen, then we must make justice swift and certain.

I speak of action programs, not blue-ribbon study groups to improve conditions. While we spin our wheels setting up commission after commission to study prison and court reform, crime continues rapidly on the rise.

The FBI reported 5.5 million crimes

In 1970. The risk of being a victim of crime has increased 144 percent since 1960. Yet during this same period, the population increased only 13 percent. Thus, over this 10-year period, crime increased 11½ times as fast as the population.

We know that between 40 to 75 percent of all released offenders from prison will be returned to prison on criminal charges. And, consider a statistic to break the heart, 20 percent of all arrests in 1970 for serious crimes were for persons under the age of 15. Such juvenile crime statistics suggest that the reason our criminal justice system is failing is that parents, schools, and churches are failing to impress young people with the meaning of discipline and right conduct.

What can we do about crime? More police will help. Tougher judges will help. More enlightened job training in humane prisons will help. And more citizen participation in law enforcement will help.

All of our government institutions on the local, State, and Federal levels must become more responsive to the needs of citizens and take appropriate actions immediately if they are to command the continued respect of the citizenry.

Even more important, the respect for law among our whole society—parents, schools, churches—must be strengthened. For if moral values and the sense of civic responsibility are shaped carefully, crime will be reduced. It is as simple, and as fearfully difficult as that.

#### A STUDY OF LAMBERT ST. LOUIS INTERNATIONAL AIRPORT

HON. JAMES W. SYMINGTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. SYMINGTON. Mr. Speaker, several weeks ago FAA Administrator John Shaffer made a speech in Miami before the National Airlines Management Association. In that speech Mr. Shaffer indicated that the best way to meet this Nation's air transportation needs may not be by building larger and larger airports which sterilize huge chunks of land. He said that not only is the building of superports detrimental to the landscape, but that these superports may be "more attuned to officials egos than passenger needs." Mr. Shaffer suggested that some of the air traffic pressure on large airports might be more efficiently relieved by the development of short haul systems using small planes and small existing airports.

Mr. Shaffer's views have been reconfirmed by a study of Lambert St. Louis International Airport recently completed by the Systems Analysis and Research Corp. This study concluded that with revised FAA traffic projections, with scheduled improvements of Lambert, and with a diversion of private aircraft to a reliever airport, Lambert could function as an adequate air transportation facility for the St. Louis area well into

the 1990's. This study emphasized, as Mr. Shaffer has, that passenger convenience must be considered in planning air transportation for a region.

An article describing the Systems Analysis study appeared in yesterday's St. Louis Globe-Democrat. Because this study makes a strong argument for the adequacy of an existing airport—Lambert—and against the building of an enormous new airport proposed for the St. Louis-East St. Louis area, I insert this article into the RECORD:

#### LAMBERT COULD BE USED FOR 20 YEARS, STUDY SAYS

(By Robert Blanchard)

An improved Lambert St. Louis International Airport will be adequate as the main air carrier airport for St. Louis for the next 20 years, a new technical study disclosed Monday.

Therefore there should be no rush to abandon Lambert or to retard its improvement, the report says.

"Lambert Field is ideally situated to serve air travelers, and therefore St. Louis should take full advantage of this existing facility," concluded the study of the Systems Analysis and Research Corp., an aviation economic consulting firm based in Washington, D.C.

The study was prepared at the request of the Lambert Field Evaluation Committee of the Missouri-St. Louis Airport Authority, which was recently created by the Missouri Legislature.

W. R. Persons, committee chairman, hailed the report as conclusive evidence against a move to abandon Lambert in favor of an airport near Waterloo-Columbia, Ill.

"The report clearly and conclusively demonstrates that the entire argument for rushing to abandon Lambert in favor of the Illinois site has no substance and has all the characteristics of a political power play which would ultimately cost the taxpayers multimillions," Persons declared.

The consulting firm concluded that Lambert, with revised FAA traffic projections and with scheduled improvements, can adequately serve as the main airport here through 1990.

Also, based on an analysis of projections and a lead time of 10 years, the firm said it will not be necessary to begin construction of a new commercial airport here until after 1990 at the earliest.

"This will provide sufficient time to determine whether new technology, will obviate the need for a new airport or, if not, provide sufficient time for construction of a new facility."

"However, prudent management of resources requires that steps be taken to reserve land now, should the need for a new airport develop beyond 1990," the report stated.

Systems analysis and Research Corp. is an economic forecasting firm which provides studies in support of engineering planning for airport development. It is presently employed in planning an additional airport in Chicago and a new Dade County airport near Miami.

In the St. Louis study, the firm reassessed air traffic forecasts, airport capacity, current improvement plans at Lambert and initial estimates of the cost of needed improvements.

The study warned that without efforts to expedite the Lambert improvements, the airport "could easily become obsolete by default."

Among improvements urged in the report was the development of a major reliever airport for private aircraft. Ideally, such an airport could be located on property adequate for development as a major airport which could be exchanged with Lambert after 1990

if it proves desirable to do so, the report said.

The consultants stressed that Lambert is the best site for the major St. Louis airport from the point of view of the air traveler, the airlines, the community and the environment.

They assailed a "prevalent bias" in airport planning, based on the rapid growth of the 1950s and 1960s, "that oversized airports will soon be utilized by rapid traffic growth and, therefore, it is better to err on the side of overstating traffic demands."

The most recent available data reflecting the actual decline in air traffic in St. Louis was studied by the firm, which produced these forecasts for air travel demand for airlines here:

One: Annual enplanements will grow to a total of 14.26 million in 1990, compared to last year's total of 3.01 million at Lambert.

Two: Annual airline aircraft movements will increase from 167,000 this year to 262,000 in 1990.

Three: Peak hour IFR (instrument flight rules) movements will increase from 47 this year to 67 in 1990. This consideration is most important during adverse weather conditions when all flights are IFR (in contrast to flying under visual flight rules).

The current Lambert runways with planned but unaccomplished extension and improvements will have sufficient capacity to serve anticipated demand beyond 1990, the report stated.

It urged prompt action on the planned extension of runway 12L-30R and the resurfacing of the parallel runway, 12R-30L, which serves as Lambert's main runway.

Plans of the Municipal Airport Commission announced in 1970 to improve the passenger terminal "are generally adequate but the first steps must be taken promptly to ensure that full potential of Lambert is maintained and realized," the consultants declared.

Cost of improvements to serve the expected demand through 1990 at Lambert was estimated to be about \$76 million. Funds from the 1968 airport revenue bond authorization can provide for all of the needed improvements, it was pointed out.

"It is feasible, based on reasonable traffic estimates which recognize most recent traffic trends, to develop Lambert through the 1980's. Moreover, the advent of new technology leaves open the probability of Lambert serving indefinitely as the major air carrier airport," the report concluded.

The convenience of the air traveler, the consultants noted, has yet to be accepted as a major influence on the airport decision for St. Louis. Lambert's proximity to the air traveling public should be a key consideration, they said.

A further reason to use Lambert's full potential is the economic impact of the airport on the surrounding community, the report continued. Abandonment of Lambert as the main airport "would cause severe and unnecessary economic dislocation throughout the community," it stated.

The study also dealt with airport traffic forecasts. The firm developed the Air Transport Association's forecasting method which is now being widely used at major airports so that forecasts of passenger volume will compare accurately with other long-range forecasts.

The report was released in a press conference at Emerson Electric Co.

Persons, board chairman and chief executive officer of Emerson, said costs of the report have not been determined. He added that it will be paid either by the authority or by "interested citizens."

The study was conducted by Henry Sweezy, vice president of SARC, who was present at the conference. He is a former vice president of Ozark Air Lines, Inc., and a former

planning officer of the Civil Aeronautics Board."

He said the study required about three and one-half weeks.

#### DEATH OF AN INDUSTRY?

### HON. JAMES T. BROYHILL

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. BROYHILL of North Carolina. Mr. Speaker, I have long been concerned about recent Federal court decisions regarding the broadcast industry and the effect they have had in bringing instability and chaos to a vital American institution.

An article appearing in the May 1972 issue of Nation's Business graphically describes a number of problems facing broadcasters. I commend it to the Members of the House, to better inform them of the important issues involved.

It is time that the Congress took the initiative in setting broadcast policies which will serve the public interest. I have long supported legislation to establish an orderly procedure for the renewal of broadcast licenses, and I strongly urge its consideration by the House of Representatives:

#### DEATH OF AN INDUSTRY?

How would you like to own a business where you are required every three years to justify your performance to seven political appointees and perhaps lose that business if they don't think you measure up?

Or perhaps be forced to give away one of your wares for each one you sell?

Those are only two of the life-or-death problems facing the American radio and television industry.

Why should you be concerned about the broadcasters? Everybody knows they make millions and millions of dollars.

Their plight is of concern to you, however, for two reasons. If you ever advertise anything at all, new rules proposed for the broadcasting industry could eventually affect you, whatever form your ads take.

In a broader sense, you have a stake in the broadcasters' struggle because government policies that could cause the death of their industry could spread to others. The worst threat to the stations, of course, is that of being put out of business.

Owners of two TV stations—one in Boston, Mass., the other in Jackson, Miss.—have actually been stripped of their licenses, and over a hundred more stations are under attack.

Because of court decisions, any individual or group can challenge a station's right to continue operating. No matter how frivolous or unrealistic the complaint, the station is compelled to respond.

And a recent decision by the U.S. Court of Appeals in Washington has raised concern that a broadcaster—even after meeting the demands of a protester—might be required to pay for all expenses incurred by the challenger. And this, warn industry officials, could open the floodgates to all kinds of extortion by persons more interested in money than in changing a station's programs.

Pressures on broadcasters are coming from militant minority groups on the one hand and government edict on the other.

Target stations are having to spend untold man-hours and many thousands of dollars in legal fees to protect their investments.

The seven-member Federal Communications Commission can wipe out those investments by refusing to renew the licenses of station owners who come under attack. The owners' recourse: a further investment in money and time before the U.S. Court of Appeals in Washington, whose past rulings do not cast it in the role of the broadcaster's best friend. And now the Federal Trade Commission is asking the FCC to force radio and TV stations to offer time—even free time—to almost anyone who wants to challenge the contents of commercials.

This is known as "counteradvertising" and if it should come to pass, warns the Columbia Broadcasting System, it would "undermine and destroy" the financial base of commercial broadcasting.

Here, too, the fate of the industry is in the hands of the FCC.

These twin threats are part of an overall review of who should have access to the airwaves under the so-called Fairness Doctrine for presenting all sides of controversial issues.

The implications are abundantly clear: Under this kind of oppressive federal regulation, the foundation of the competitive enterprise system is being severely rocked.

While advertisers on radio and television are most immediately under the threat of counteradvertising required by government decree, it's only a short step to the point at which any form of advertising would be affected.

Broadcasting officials, from the owners of tiny radio stations to executives of the national networks, have warned that any attempt to implement a counteradvertising policy in their industry could lead to an end to free TV and radio in this country.

After all, the only thing the broadcasters have to sell—in order to remain in business—is the time for commercials.

Sponsors, they say, are hardly likely to continue paying for commercials when part of the money is going to finance time to rebut those commercials.

One broadcasting executive asks specifically: Should free air time be made available to horse lovers to condemn autos, or to let "the carrot juice sippers" rail against soft drinks?

A colleague puts the issue in somewhat different terms: "When a commercial for a brassiere is aired on radio or television, should the no-bra bunch be offered equal time to extoll the virtues of the swinging life?"

#### PROGRAMS AND PERSONNEL

While the counteradvertising debate rages, militants are aiming at the very heart of the broadcast's business—his federal license to operate.

Petitions to deny license renewals are being filed with the FCC on behalf of Negroes, Mexican-Americans, Puerto Ricans, Indians, Orientals, Gay Liberation, Women's Lib and various other groups and causes. Common threads of their complaints concern programming and personnel.

They argue that they are entitled to more attention in broadcasting through "relevant" programs reflecting their interests and concerns. The racial and ethnic blocs in particular contend they should be represented on the broadcasting staffs of the stations.

Recent court and administrative decisions have opened the FCC's door petitions by such groups for denials of license renewals, even though the complainants do not want to take over the licenses themselves and indeed often have no suggestions on who should operate the stations.

Some stations have compromised and agreed to such steps as putting on more black-oriented programs and hiring blacks for on-the-air jobs.

Hanging over the broadcasters, who have at stake millions of dollars in capital investments, not to mention goodwill built up over

the years, is the fact that their licenses must come up for renewal every three years. The long-standing policy for the 7,000 radio and television licenses in this country once was to judge a broadcaster at renewal time on the basis of the record. Satisfactory performance in the previous three years virtually guaranteed renewal.

A competing application for the same license could be filed by a party with sufficient resources to establish and maintain a station on that same frequency. But a petition to deny the renewal application could be filed only by someone who could show a direct economic stake—another station that claimed interference with its signal, for example.

#### SHOCK WAVES

In recent years, however, two major developments have sent shock waves through the broadcasting industry.

Here's what happened:

In 1966, the U.S. Court of Appeals in Washington—overruling the FCC—held that the general public, as individuals or groups, had legal standing to challenge a renewal and to argue that a given station had not performed in the public interest. (In the same case, three years later, that court stripped television station WLBT in Jackson, Miss., of its license as a result of objections to the way it handled matters concerning the local Negro community.)

The FCC, in 1969, made a major departure from its own policy that an adequate record gave a licensee priority over a challenger. It refused to renew the license of WHDH-TV, of Boston, Mass., which had gone on the air in 1957 and was estimated to be worth more than \$50 million. The station's record was not "superior," the FCC ruled, and the licensee would therefore be considered on the same basis as a competing applicant for the same license.

Then the FCC went on to take the license away from WHDH on the ground that its parent company also owned a newspaper, the *Boston Herald Traveler*. The FCC said it believed in diversification of ownership of communications media.

(There were two grim ironies for the station here: Only three of the seven members of the FCC voted against it. One member voted against transferring the license and the other three did not act on the decision.)

(And, when the station finally ceased broadcasting this past March, company officials said the *Herald Traveler* could not long survive without television revenues that more than offset its losses.)

Later, the FCC sought to draw back from its sharp departure in the WHDH case and issued a policy statement reaffirming the importance of a good record in renewal applications. But the Court of Appeals in Washington struck down the policy statement last June on the ground it discriminated against new applicants.

#### LIBERALS ATTACK A LIBERAL

Sen. John O. Pastore (D-R.I.), chairman of the Senate communication subcommittee, introduced a bill in 1969 to stabilize the situation. Under the legislation the FCC could not consider a competing application for a license unless it had first taken the license away from the applicant for renewal.

Said the Senator: "A person who has a license has to live up to the law. And when he does, and does a good job, he hadn't ought to be harassed by any entrepreneur who comes in and makes a big promise."

Sen. Pastore, a veteran liberal and staunch supporter of civil rights legislation, suddenly found himself the target of liberal, civil rights and other activist groups.

Absalom Jordan, national chairman of Black Efforts for Soul in Television (BEST), told the Senator: "This bill is back-door racism . . . it says, in effect, no black ownership. First priority goes to whites."

The Rev. William F. Fore, executive director of the Broadcasting and Film Commission of the National Council of the Churches of Christ, opposed the bill "because we believe it would have the effect of permanently protecting the licenses of incumbent broadcasters. . . ."

The hearings on the Pastore bill became so emotionally charged over allegations that it would insulate broadcasters from challenges by minority groups that it got nowhere. While the Senator pointed out that challenges would still be possible, the provisions of the bill itself were obscured by injection of the racial issue.

Sen. Pastore, who was subjected during his 1970 re-election campaign to charges of racism because of his sponsorship of the bill, has declined to take up the fight again.

And the industry has been unable to obtain hearings on measures to restore some stability to the license renewal situation while at the same time keeping open avenues for legitimate grievances against a station.

As a result, more and more stations find themselves under fire.

In 1967, only one petition to deny a license renewal was filed with the FCC. In 1970, there were 32. In 1971, there were 68. The total this year is expected to go even higher.

Organizations that have filed, or are considering filing, petitions to take licenses away from present holders include such groups as the Black Knights and the Columbus Civil Rights Council, both of Ohio; the Black Identity Educational Association, of Omaha, Nebr.; the Bilingual-Bicultural Coalition on Mass Media, of San Antonio, Texas; the Chinese Media Committee of San Francisco, Calif.; the United Farm Workers [see "Chavez Blight Spreads East," page 32]; the National Organization of Women (NOW); and the National Union Alianza Federal de Pueblos Libres of Albuquerque, N. Mex. (The Alianza was organized originally to press a claim that Southwestern inhabitants of Mexican origin are entitled to vast tracts under Spanish land grants.)

#### ONE STATION'S STORY

In Denver, Colo., for example, station KLZ-TV was the target of a complaint that carried such allegations as "lack of programming related to the black community and the frustrations, problems, aspirations and the cultural values of the black community and the Chicano community. . . . Many commercials urge children to purchase edibles of doubtful nutritional value and perhaps harmful. . . ."

KLZ-TV officials estimated that to prepare a response to those and other allegations, executives and employees put in 1,200 man-hours. In addition, University of Denver students were hired to review more than 1,000 days of news scripts. And thousands of dollars went for legal fees involved in drafting the response.

The station said:

"With one exception, none of the individuals or organizations signing the petition even contacted the station to make known any of their views, suggestions and observations . . . which are so vehemently expressed in the petition.

"Because of the nonspecific nature of charges, the preparation of this response . . . has consumed tremendous amounts of time . . . Effort of this magnitude was required because the petitioners indulged in broad characterizations and loosely stated serious allegations without providing supporting facts. The licensee is left, therefore, to defend itself against many charges and innuendos that are neither articulated nor supported."

As an example of what it was facing, the station told of one incident: It had received a complaint that a commercial featuring the "Frito Bandito" was considered offensive by Mexican-Americans.

The station told its advertising agency, the sponsor and CBS that when the commercial was scheduled, it would disconnect from the network and substitute a commercial acceptable locally. This involved special arrangements for a cue, breaking the network connection, presenting the local commercial and then rejoining the network.

"This arrangement required special handling by six different members of the station's personnel," KLZ told the FCC.

#### HOW MUCH IS ENOUGH?

Broadcasters confronted with challenges often find themselves up against such questions as who, if anyone, has the wisdom to lay down specific standards for determining "relevance" of programming to one or more minority groups, for identifying the genuine spokesmen for such groups, and for fixing the point at which minority-oriented programming is sufficient.

How much is enough? A Bakersfield, Calif., radio station directed 97 per cent of its programming to the Mexican-American community but was challenged on grounds it had not discussed programming with bona fide representatives of that community.

From the industry standpoint, the key legal case now pending involves WMAL-TV of Washington, D.C. That city's Black United Front has filed a petition for a denial of license renewal on grounds the station "has failed to serve the public interest . . . by completely overlooking and failing to serve the interests, needs and desires of the substantial black population within its primary signal area." The petition noted that blacks "constitute an overwhelming majority" of the city that WMAL "purports to serve."

The cost to WMAL-TV, in legal fees alone, of defending its position and retaining its license can only be described as staggering. Nation's Business editors, examining FCC files, studied one set of documents submitted by the station—not its entire response—which amounted to a stack measuring some 36 inches high.

The FCC refused to order a hearing on the complaint. "Many types of programming cannot be broken down into that for black people and that for others," it said. "Were the Commission to require such a breakdown of programming according to the racial composition of the city of license, we would effectively be prohibiting the broadcast of network and other nationally presented programming. It is sufficient to say that such 'separate programming' is not feasible."

The Black United Front has asked the U.S. Court of Appeals to overrule the FCC and order a hearing.

A key issue in the case, one that could have a major impact on broadcasters in urban areas everywhere, is what constitutes WMAL-TV's area of responsibility.

The Black United Front says it is Washington, D.C., which is 70 percent Negro. But the station points out its signal area, extending far beyond the city limits, contains a population that is predominantly white.

#### RUNNING THE GAUNTLET

Thomas H. Wall, president of the Federal Communications Bar Association, says broadcasting is "the only industry I know where you have to run the gauntlet every three years to stay in business."

No one is suggesting, he says, that broadcasters who do not live up to their responsibilities be shielded from competition. On the other hand, Mr. Wall says, those who make charges against licensees should be compelled to bear the burden of proving them. And, he adds, "if broadcasters give in to the wishes of the protesters too much, they will wind up being led around by the nose."

Mr. Wall says the bar group believes Congress should act to clarify the "confusion and uncertainty" surrounding license renewals.

The National Association of Broadcasters is backing legislation to extend the license period to five years from three. It also would provide that a license be renewed if the holder shows he has made a "good faith effort" to fulfill his responsibilities and has not shown callous disregard for the law or FCC regulations. Opponents could still come in to challenge licensees on whether they had met those standards. Meanwhile, what amounts to pools of legal aid have been set up for challenges.

That pioneer case in Jackson, Miss., was brought on behalf of the local black community by the Office of Communication of the United Church of Christ, which has since made its legal expertise in license matters available to protesting groups in many other communities. And several other organizations have been formed to provide legal services in license challenges on request.

One recent case in which the United Church of Christ figured prominently could well cause even more headaches for the broadcasting industry.

Several black groups filed a petition to deny renewal of the license of KTAL-TV, in Texarkana, Ark.

Whereupon, KTAL entered into an agreement in which it pledged, among other things, to "discuss programming regularly with all segments of the public." It also hired two black newsmen to appear on camera.

On top of that, the station agreed to a demand that it pay more than \$15,000 in legal and other fees incurred by the protesters.

The challenge to the license renewal was withdrawn, but the FCC refused to allow the payment to the challengers, holding that would not be in the public interest.

Then the same Court of Appeals that had ruled against the broadcasting industry so many times in the past overturned the FCC ruling and said the payment could be made.

Another case in which protesters have demanded that a station pay their legal fees—this time, the station refused to pay—is now before the FCC and is expected to wind up in court. Industry sources are concerned, because of the KTAL decision, that judges are heading toward requiring, not just permitting, payments by stations when challenges are withdrawn.

Taking a long look at all that is going on, the National Association of Broadcasters sums up this way: "It is no longer foolish or alarmist to say that present trends in government control . . . could wreck broadcasting."

#### NOW YOU SEE IT, NOW YOU DO NOT

In 1967, the Federal Communications Commission ruled that radio and television stations had to carry—without charge—antismoking messages to counter the paid commercials of the cigaret companies.

Smoking, the FCC said, had become sufficiently controversial to come under the Fairness Doctrine requiring broadcast licensees to air all sides of major public issues.

On Jan. 2, 1971, cigaret commercials were banned from the airwaves under a law Congress had passed the previous year.

But the antismoking messages continued. The FCC had announced just before the ban took effect that continuing the antismoking spots would be regarded as a public service. (Many broadcasters took the announcement as a strong signal that it would be good to be able to tell the FCC when their licenses were up for renewal that they had provided this service.)

So, under the Fairness Doctrine, it now appeared that the shoe was on the other foot, that stations carrying antismoking messages would have to carry the industry's arguments on the smoking-and-health issue.

No, it wouldn't be that way at all, the FCC said. Only the antismoking messages could continue.

The Fairness Doctrine? Well, the FCC ex-

plained, information about cigaret smoking had become so well-known that there no longer was a controversy over its effects. And the Fairness Doctrine, you know, applies only to controversial issues.

## THE SOUR SUGAR DEAL IN MAINE

### HON. H. R. GROSS

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. GROSS. Mr. Speaker, I have spoken out from time to time in protest over the outrageous use of the taxpayers' money to bankroll the infamous Maine Sugar Industries operation, which was tainted with political consideration from the beginning of its ill-conceived life.

In a recent column, Pulitzer Prize winning reporter Clark Mollenhoff, writing with reporter George Anthan, revealed that the now-bankrupt sugar company had as its production manager a convicted international swindler who served time in a Federal prison for his crimes.

This same criminal is now head of a firm that will allegedly try to put Maine Sugar Industries back in business.

Mr. Speaker, the American people have been bilked enough by this sugar gang in Maine and I sincerely hope that this latest exposé will serve as a warning to the Federal Government that not another red cent of the public's money should be put into this operation.

I include Mr. Mollenhoff's column for insertion in the RECORD at this point:

#### SOUR TASTE TO MAINE SUGAR

(By Clark Mollenhoff and George Anthan)

WASHINGTON, D.C.—Controversy is brewing in Maine over the fact that John Cancelarich is president of a new corporation that has contracted with an agency of the state government to make another attempt at developing a sugar industry in that traditional potato-raising state.

Cancelarich is the former production manager for Fred H. Vahlsing, whose firm, Maine Sugar Industries, Inc., cost the state of Maine more than \$10 million, and the federal government more than \$13 million during the last decade in another sugar beet venture.

This has left a sour taste in the mouths of a large number of Maine political figures and citizens, so far as Vahlsing is concerned.

What has not been known generally in Maine is that Cancelarich is a convicted international swindler, who has served a federal prison term.

The more you know about the nature of his conviction—on charges of stealing drug cultures and documents—the more you question why Vahlsing hired him in the first place.

The chronology of events involving Cancelarich shows:

On Oct. 26, 1962, Cancelarich was indicted in the Southern District of New York on four counts of transportation of stolen drug cultures and documents, and one count of conspiracy involving theft of drug cultures and information from an American drug firm, where he had been employed.

#### FIRM IN ITALY

The indictment charged that Cancelarich and four co-conspirators entered into a complex arrangement for delivery of the cultures and documents to an Italian drug firm.

On Dec. 5, 1962, Cancelarich was employed by Vahlsing in a key role at the Vahlsing sugar plant at Easton, Maine.

Throughout the period from 1962 through 1965, Vahlsing worked with various state and national political figures to obtain state and federal loans and loan guarantees to finance his sugar industry plants.

With governmental backing, the Great Western Sugar Co. in 1964 made tests that indicated a sugar industry in Maine would be a poor business risk.

On Jan. 20, 1966, Cancelarich and other defendants appeared before U.S. District Judge Charles Metzner in New York City. Despite pleas by his lawyer that Cancelarich had admitted his part in the conspiracy and had told federal authorities about the affair, Judge Metzner sentenced him to six months in the federal prison at Danbury, Conn.

The judge indicated that payments for delivery of the drug material earned the co-conspirators lump sum payments of up to \$80,000.

From January to May 3, 1966, Cancelarich served at Danbury prison, but remained on Vahlsing's payroll at a time when the sugar company was deeply involved in losing millions of dollars in taxpayers' money.

Vahlsing, who was aware of Cancelarich's criminal activities, contacted the U.S. Board of Parole in a successful effort to release Cancelarich from prison before he served his full sentence.

From June, 1966, through the fall of 1968, Vahlsing and Cancelarich continued to seek additional federal financing to bolster the unsuccessful sugar venture.

The U.S. Economic Development Administration (EDA) opposed pouring more federal money into Vahlsing's sugar company despite the fact that Senator Edmund Muskie (Dem., Maine) was a leader in promoting Vahlsing's requests to federal agencies.

#### CONSULTANT HIRED

In the fall of 1968, EDA hired an outside consultant to evaluate the financial affairs of Vahlsing's company, Maine Sugar Industries. Vahlsing and his employees refused to permit the consultants to examine plant operations and key financial records.

The reports the auditors made to EDA, however, charged that cost overruns for plant development were more than 100 percent—\$14.7 million to \$32.9 million.

In May, 1969, in a final report to EDA, the consulting firm referred to the financial condition of Vahlsing's company as "adverse and alarming."

In the fall of 1969, Vahlsing complained to the Nixon administration that the first report was "unfair." The administration then hired another firm to look at Maine Sugar Industries again. This study was nearly as devastating as the first.

The Nixon administration then rejected Vahlsing's pleas for more federal money. Vahlsing's operations have been a special embarrassment to Senator Muskie because of financial support he's received from the sugar company owners, and because of pollution problems arising from Vahlsing's sugar and potato enterprises in Maine.

#### SAME OLD DEAL

The State of Maine, through the Maine Industrial Building Authority (MIBA), took over the Vahlsing sugar plant to satisfy its debts. Maine Sugar Industries was forced into bankruptcy last year, and the federal government indicated it was willing to write off its \$13 million investment as a loss.

Now, the State of Maine has turned around and leased the plantation to the firm headed by Cancelarich.

State Senator Joe Sewell, a Republican, said of the new arrangement, "Here we go again, same old deal."

## LEAA—VIOLATES CIVIL RIGHTS ACT

### HON. WILLIAM (BILL) CLAY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. CLAY. Mr. Speaker, I wish to call to the attention of the Members of this body the fact that Federal moneys are being spent each day by the executive branch of the Government in direct violation of the law. The case that I refer to is particular to my district in the State of Missouri but similar situations are happening throughout the country. The Justice Department is continuing to allocate LEAA moneys to agencies who are discriminating against blacks and other minorities. The lackadaisical attitude of Justice Department officials indicates that they hold civil rights laws in utter contempt.

Mr. Speaker, I would like to commend the following exchanges of letters between Jerris Leonard and myself to my colleagues' attention. The letters follow:

#### HOUSE OF REPRESENTATIVES,

Washington, D.C., April 5, 1972.

Mr. JERRIS LEONARD,  
Administrator, Law Enforcement Assistance  
Administration, Washington, D.C.

DEAR MR. LEONARD: I am writing to express my deep concern over the flagrant lack of compliance with Title VII of the Civil Rights Act by recipients of LEAA funds in Missouri.

As you know, the funds in Missouri are administered by the Missouri Law Enforcement Assistance Council. This organization in itself has avoided compliance with the law. Funds have been arbitrarily dispensed, with no affirmative action programs presented by many of the State agencies receiving these monies.

One of the recipients of LEAA funds has been the Missouri Highway Patrol. I wish to point out that this is the most rigidly segregated police unit in the State of Missouri. They have an authorized strength of 750 troopers—of which two are black. I am sure you will agree that this represents a wanton disregard of federal civil rights laws and the laws of the State of Missouri.

Another LEAA recipient is the St. Louis Police Department. The St. Louis Police Department with approximately 2,290 commissioned men and women employs only 311 blacks among its ranks. It may interest you to know that blacks comprise 42 percent of the population in the City of St. Louis. Thus, a figure of 311 is a mere token representation. The underemployment of blacks on the Police force has been brought to the attention of the department on numerous occasions with no attempt to rectify the situation.

Since these agencies are receiving substantial federal monies, efforts should be made to bring them into compliance with federal law. As the Administrator of the Law Enforcement Assistance Administration, I am, therefore, urging you to take immediate action to withhold from the State of Missouri all LEAA funds. Funds should not be dispensed until positive action is taken to insure compliance with all federal laws by the Missouri Law Enforcement Assistance Council and its grantees.

Discrimination which is aided and abetted by the federal government cannot and should not be tolerated. The federal government should serve as an exemplary figure in ending these racist tactics—instead, as is the case with LEAA recipients, we find it promoting them.

I trust you will move on this matter swiftly and I look forward to hearing from you shortly.

Sincerely,

WILLIAM L. CLAY,  
Member of Congress.

U.S. DEPARTMENT OF JUSTICE,  
Washington, D.C., April 21, 1972.

HON. WILLIAM L. CLAY,  
House of Representatives,  
Washington, D.C.

DEAR CONGRESSMAN CLAY: This is in response to your recent letter regarding compliance with Title VII of the Civil Rights Act by recipients of Law Enforcement Assistance Administration funds in Missouri.

I share your concern about the under utilization of minorities in the criminal justice system. However, our Statistical Division recently completed a survey of the minority representation on all State Planning Agencies and Regional Supervisory Boards. The Bureau of Census statistics indicate that the minority population of the State of Missouri is 11.54 percent. Our survey shows the minority representation on Missouri Law Enforcement Assistance Council to be 10.53 percent, and on the Regional Supervisory Board to be 10.89 percent.

As you know, St. Louis is one of the eight major American cities selected for LEAA's High Impact Anti-Crime Program to combat burglary and street crime. In connection with that selection, the Office of Civil Rights Compliance of LEAA has recently completed a civil rights compliance review of the St. Louis Police Department. An analysis of the review has now begun.

It is my belief that the cut-off of LEAA funds would be a disservice to minority communities, which have a disproportionately high crime rate. You may be assured of LEAA's determination to fulfill its statutory obligation by requiring full compliance with the civil rights provisions of the Civil Rights Act.

Your interest in this matter and the programs of the Law Enforcement Assistance Administration is appreciated.

Sincerely,

JERRIS LEONARD, Administrator.

HOUSE OF REPRESENTATIVES,  
Washington, D.C., May 17, 1972.

MR. JERRIS LEONARD,  
Administrator, Law Enforcement Assistance Administration, U.S. Department of Justice, Washington, D.C.

DEAR MR. LEONARD: This is in response to your letter in connection with my request concerning compliance with Title VI and VII Law Enforcement Assistance Administration funds in Missouri.

I am not impressed nor convinced in the least by the cursory, non-responsiveness of your letter to the specific charges I brought to your attention. It is meaningless to point out that the non-white population of Missouri is 11.54% and your survey indicates that the minority representation on the Missouri Law Enforcement Assistance Council is 10.53% black and on the Regional Supervisory Board, it is 10.89% black. I assume that the black representatives on these boards are eminently qualified and adequately reflect the needs and desires of the minority community. I would further assume that if the Department of Justice were truly interested in justice, it would devote its resources to an in-depth investigation of the charges I have made.

If there are blacks living in Missouri who are qualified to serve on the important LEAA Council and LEAA Regional Supervisory Board, I cannot understand why there are none qualified to serve as Missouri Highway patrolmen or hold key positions in other components of the criminal justice system in the State. In view of your proud statement that only 11% of Missouri is black and that

10% of the LEAA Board is black, I am requesting for a second time, that your department withhold all LEAA funds from the State of Missouri until all grantees, including the Highway Patrol, reflect like percentages. Until the Highway Patrol employs 75 black patrolmen, the logic of your argument for not denying funds remains very illogical.

The Missouri Highway Patrol is one of the recipients of LEAA funds. Once again, I wish to call to your attention that this is one of the most rigidly segregated institutions in the United States. They have an authorized strength of 750 troopers—of which two are black. There are more than 500,000 blacks in Missouri, but only three have been found qualified for the Highway Patrol since its inception.

If your investigators would just attempt to determine what disqualifies blacks from the Highway Patrol, I'm sure they will come up with the same findings that my investigation revealed—pure, unadulterated racism. Applications from blacks have been indiscriminately rejected and justified by illegal excuses which range from not enough education, to being over-educated; from being too short to being too tall; and from having too much experience to not enough experience. Many have been determined to be physically unfit, only to be re-examined by their own doctors and told that the alleged physical disabilities do not exist.

I further wish to point out that the St. Louis Metropolitan Police Department also receives LEAA funds. The St. Louis Police Department with approximately 2,290 commissioned men and women employs only 311 blacks among its ranks. The situation shows little improvement when considering the courts and corrections aspect of the criminal justice system—not only in St. Louis—but throughout the entire State. It may further interest you to know that 42% of the population in the City of St. Louis is black. Thus, according to your percentage rationale concerning the racial composition of the LEAA Council and Supervisory Board, I would think you would insist on 900 blacks being employed as commissioned officers.

In addition, I think it is quite important to consider the 42% black population in the inner city since St. Louis has been designated as one of the LEAA High Impact Crime cities. The plan for the City of St. Louis, which I understand is to be forwarded to LEAA in a few weeks, apparently was developed in the usual fashion that totally excluded active input and participation from the black community. Consequently, I must request that no LEAA funds be invested in the St. Louis Impact City Program until a thorough analysis and assessment has been conducted to ascertain whether or not program needs and desires of the black community are adequately considered.

In my opinion, it is regrettable that citizens and elected representatives of this country cannot turn to the Federal Government to secure compliance with federal law. Obviously, it is your opinion that 10% black representation on the LEAA Board satisfies the federal law relating to non-discrimination based on race. I seriously question such a narrow and discriminatory opinion.

It is also regrettable that those who scream the loudest about respect for law and order are precisely the ones who aid and abet law violators—when the only laws being violated are those protecting the rights of minorities. In your letter you state, "you may be assured of LEAA's determination to fulfill its statutory obligation by requiring full compliance with the civil rights provisions of the Civil Rights Act." I might add that the only thing left out was "with all deliberate speed."

Such glowing generalities as "determination", "statutory obligation", "concern" and "full compliance" are merely generalities. Justice would be better served if you would confine your response to the specific charges

that I leveled against the Missouri Highway Patrol and the St. Louis Metropolitan Police Department. To refund LEAA in Missouri in light of the apparent discrimination against blacks in law enforcement agencies would constitute a callous disregard for the federal laws protecting the rights of minorities.

We will never instill respect for law among our citizenry until those responsible for enforcing laws are committed to respecting them.

It is within this context that I request that no further LEAA funds be awarded to the Missouri Law Enforcement Assistance Council (or the City of St. Louis) until a comprehensive investigation has been conducted on the effectiveness of the administration, operation and implementation of the LEAA program within the State of Missouri. While LEAA and MLEAC input and involvement in such an investigation would be helpful, it is important that adequate citizen involvement and participation at the State and local level also be realized.

Sincerely,

WILLIAM L. CLAY,  
Member of Congress.

GUARD-RESERVE DOMESTIC ACTION PROGRAMS DESERVE "WELL DONE!" FROM ALL OF US

HON. JIM WRIGHT

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

MR. WRIGHT. Mr. Speaker, 34 units of our National Guard and Reserves received Department of Defense awards Tuesday morning in recognition of their continuing efforts in support of community projects and domestic actions.

These outstanding men and women, enlisted and officers, showed their desire to do something over and beyond the primary military mission of their organizations as a means of improving the quality of American life. It is apparent that no single organization of people in American society has done more toward finding practical, effective solutions to the problems that haunt our American cities, and to the problems that victimize disadvantaged youngsters, than have the Armed Forces of the United States. And in the lead of this effort are the magnificent officers and men of the Guard and Reserve units of this country.

The idea of the Armed Forces making contributions in the domestic area is an idea not always well received. Some would argue that the military should do the military thing and only the military thing. But many dedicated Guard and Reserve members do care enough to work personally to meet the needs of our society and to try to improve our society. The kind of people who voluntarily join the Guard and Reserve organizations demonstrate by that very act that they are not just ordinary citizens. They are more interested in serving others than in serving only their material appetites, and their conscientiousness extends not only to performing a military job, but to employing the skills which they possess to solve the problems of our society. Here are but a few examples of the awards made to members of the Guard and Reserve today:

An Air Reserve unit in Massachusetts

provided a mass immunization program to combat the threat of birth defects and death caused by rubella to unborn babies.

A Denver Army Reserve unit established comprehensive outpatient medical care and referral program on weekends in an area of high unemployment and large numbers of poor.

The Coast Guard Reserve in Texas originated, coordinated and participated in an ecological project called "Sportsmen Against Pollution" in which reservists involved local community members and organizations in a cleanup campaign at a huge reservoir.

In Indiana, the Marine Corps Reserve used training byproducts in the construction of civic projects with emphasis on recreational facilities and soil conservation and gave valuable assistance to local schools, Goodwill Industries, and Boy and Girl Scout programs.

An Air Guard flight group organized and supervised the complete restoration of the condemned residence of a 63-year-old woman in Syracuse, N.Y., donating both labor and materials.

Prescott, Arizona's Army Guard, conducted a highway antilitter drive, an antidrug program, a Christmas collection campaign, sponsored a Little League baseball team, a Halloween party, and assisted in building a youth center gym.

The Naval Reserve in Illinois benefited more than 8,000 youths and 1,200 adults by supporting Explorer Scouts, conducting crash and rescue demonstrations for more than 30 local fire departments, assisting Scout camps and even hosting the national model airplane meet.

Other Guard and Reserve units from Huntington Park, Calif., to New Bedford, Mass., from Ponce, P.R., to Tuskegee, Ala., to McCord Air Force Base, Wash., made equally impressive marks with their own programs. Right here in the District of Columbia the National Guard conducted its annual youth leaders camp, a program which provides 170 youths, representing a cross section of the community, with the opportunity to learn and practice basic principles of leadership in a wholesome multiracial, outdoor atmosphere.

Space and time do not permit a complete recitation of the accomplishments of every Guard and Reserve unit over the past year. It suffices to say, however, that had every segment of our society contributed in like manner, this Nation would be considerably further along in its efforts to achieve those goals all men and women of good will so earnestly seek to improve the American way of life for all.

The military is oftentimes criticized because it has been called upon to represent our Nation in missions that are always popular today.

Therefore, it is most fitting that another side of the military—composed of citizens of your and my community who stand ready and alert within our Guard and Reserve components—be recognized for their selfless, altruistic acts toward their fellow man.

I am pleased to have the opportunity to tell you of these proud moments in the

lives of our military men and women—people whose dedication is too often ignored and rarely complimented in these times. And I am confident all Americans will join in extending a heartfelt "Well done!" on this occasion.

#### LEGAL DIMENSIONS OF THE NIXON BUSING PROPOSAL

### HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. STOKES. Mr. Speaker, I have just received a copy of a very thorough memorandum of law concerning President Nixon's bills on the subject of busing, H.R. 13915 and H.R. 13916. The memorandum was prepared by students at the Harvard Law School under the auspices of the Harvard Black Law Students Association. I congratulate the students for a job very well done.

I have repeatedly voiced my very strong objections to the President's proposals on policy grounds. This legislation would turn the clock back and would destroy many of the gains which we have made in the desegregation of education. It indicates a total lack of commitment on the part of the administration to equality in education.

In order to provide my colleagues with a thorough legal analysis of this legislation, I insert here a copy of the memorandum.

#### THE LEGAL DIMENSIONS OF THE NIXON BUSING PROPOSAL

(By Lavell Jackson, Henry Melchor, Michael Peay, and Virgil Roberts)

##### PART I

The opportunity of education, where the state has undertaken to provide it, must be made available to all on equal terms. Today, the constitutional principle that the opportunity of education provided by the State must be made available to all on an equal basis is firmly established. The landmark case in this is, of course, *Brown v. Board of Education*, 347 U.S. 483 (1954). *Brown* was actually a consolidation of four cases heard together by the Supreme Court. The plaintiffs in the four cases were Black children who had been denied admission to state public schools attended by white children under state laws which required or permitted racial segregation. There had been findings in the lower courts that the "Black" and "White" schools involved had been "equalized," or were being "equalized," with respect to buildings, curricula, qualifications and salaries of teachers, and other tangible factors. Thus, the Court was presented with the question:

"Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities?" *Id.* at 493.

The Court concluded, in answering the question, that "separate educational facilities are inherently unequal. Therefore . . . the plaintiffs and others similarly situated are by reason of the segregation . . . complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment." *Id.* at 495

It is important to note that when the Court made its decision in *Brown* it took

cognizance of the importance of education to our society. The Court wrote:

"Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even services in the armed forces. . . . In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the State has undertaken to provide it, is a right which must be made available to all on equal terms." *Id.* at 493.

In the aftermath of *Brown* there have been numerous cases holding that to separate Black and White children in the public schools, on the basis of race, is a denial of equal protection of the laws in violation of the Fourteenth Amendment. For example, in *Cooper v. Aaron*, 358 U.S. 1 (1958), the Court recognized that state support of segregated schools through any arrangement, management, funds, or property could not be squared with the mandate of the Fourteenth Amendment that no state shall deny equal protection of the laws to any person within the jurisdiction of the state. The Court went on to hold that the right of a student not to be segregated on racial grounds in public schools was so fundamental and pervasive that it was embraced in the concept of due process of law.

The unconstitutionality of the operation of dual school systems based on race or color was also recognized in *United States v. Louisiana*, 364 U.S. 500 (1960); *Bolling v. Sharpe*, 347 U.S. 497 (1954); *Watson v. Memphis*, 373 U.S. 528 (1963); *Goss v. Board of Education*, 373 U.S. 683 (1963); *Rogers v. Paul*, 382 U.S. 198 (1965); *Green v. County School Board*, 391 U.S. 430 (1968); *United States v. Montgomery County Board of Education*, 395 U.S. 225 (1969); and *Northross v. Board of Education*, 397 U.S. 232 (1970), to name just a few cases.

In summary, it can be stated that today, eighteen years after the *Brown* decision, no constitutional principle is more firmly established than the one which outlaws racial segregation in the public schools as a denial of equal protection of the laws under the Fourteenth Amendment to the federal Constitution.<sup>1</sup>

However, it must be noted that *Brown* and the other cases cited above found a denial of equal protection under the laws guaranteed by all persons by the Fourteenth Amendment where dual school systems were maintained. The Supreme Court has yet to hold that *de facto* segregation on the basis of race in the public schools is a denial of equal protection under the Fourteenth Amendment.<sup>2</sup> But in the recent case of *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, the Court intimated that in the future the equal protection clause would require desegregation of the schools in states which formerly practiced *de jure* racial segregation, as well as desegregation in those states which practice *de facto* segregation.

Congress should not declare a moratorium on busing and thereby attempt to restrict the historic power of the Supreme Court to use equitable remedies in enforcing the equal protection clause of the Fourteenth Amendment. To do so would violate the principle of separation of powers and precipitate a constitutional crisis.

The principle of separation of powers of government is fundamental to the American constitutional system. Philosophically and realistically the body politic is an absolute despotism. Thus, when all governmental

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power from the body politic is placed in the hands of an individual or one branch of government, the individual becomes a despot (no matter how enlightened) and the government totalitarian. It was this fear of despotism coupled with the desire to "secure the Blessings of Liberty" that led the framers of the American Constitution to divide the government into three branches—legislative, executive, and judicial.

Madison, one of the framers of the Constitution, expressed the views held by many of his colleagues in *Federalist Papers*, No. 47. There he argued stringently for the adoption of the then recently drafted American Constitution with its separation of powers. He wrote, in *Federalist Papers*, No. 47:

"The accumulation of all powers, Legislative, Executive, and Judiciary, in the same hands, whether of one, a few or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."

The theory of separation of powers advocated by the framers and embodied in the United States Constitution is rather simple. Each branch of government is coequal and independent. See *Humphrey's Executor v. United States*, 295 U.S. 602 (1935). Moreover, each branch and the officers of each branch are limited to exercising only the powers or functions assigned to that branch. Thus, there is a system of "checks and balances." For whenever one branch of government ventures beyond its constitutionally granted authority, the other two branches can act to bring the "wayward" branch into line. In this manner, arbitrary and unlimited power, the chief characteristics and evil of tyrannical forms of government, is never vested in any one department of government.

Through the years numerous Supreme Court decisions have been instrumental in preventing encroachments by one department into the functions of another department. In *Luther v. Borden*, 7 How. 1 (1849), the Court refused to get involved in what was essentially a legislative function, namely the determination of whether or not a state had a republican form of government. The Court in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), prevented the executive from performing the legislative act of confiscation. A final example is *Quinn v. United States*, 349 U.S. 155 (1955). In that case the Court limited the investigative powers of the Congress. The Court stated:

"[T]he power to investigate, broad as it may be, is also subject to recognized limitations. . . . [T]he power to investigate must not be confused with any of the powers of law enforcement; those powers are assigned under our Constitution to the Executive and the Judiciary." *Id.* at 161.

See also *Kilbourn v. Thompson*, 103 U.S. 168 (1880).

Today, despite the long American constitutional history of separation of powers, the President is attempting to upset the delicate balance of governmental power established by the Constitution. The executive branch of the government is in disagreement with the manner in which the Supreme Court has exercised its judicial power to enforce the mandate of the Constitution. Consequently, the executive is endeavoring to enlist the assistance of Congress in an effort to prevent the judiciary from enforcing the constitutional rights of a minority group of American citizens.

If the President is successful in his attempt to ignore the counsel of such political philosophers as Aristotle, Montesquieu, Madison and Jefferson, a severe blow will have been struck against representative democracy. The Presidential bid to thwart the busing proposals of the Supreme Court and lower federal courts serves only to aggravate a grievance which originally helped spark the American Revolution nearly two centuries ago. The Declaration of Independence, in

listing the grievances of the colonists against the King of England, states:

"The history of the present King of Great Britain is a history of repeated injuries and usurpations. . . . He has made judges dependent upon his will alone."

The colonists did not forget the evils of a judiciary influenced by the executive. Thus, when the Constitution was drafted safeguards were placed into the document to prevent the judiciary from being "dependent" on other branches of the government. Article III of the Constitution provides, for example, that judges of all federal courts shall hold their offices for life, during good behavior, and that their compensation cannot be diminished during their continuance in office.

In response to political pressure the President now is proposing "a moratorium on busing to achieve racial desegregation." (Busing, as discussed elsewhere in this memorandum, has been ordered by a number of courts as a means of remedying the effects of unconstitutional behavior on the part of many states.) This "moratorium" would be achieved by act of Congress. In other words, if the proposed legislation were enacted, Congress and the President would be attempting to prohibit the judiciary from enforcing the equal protection clause of the Fourteenth Amendment as it applies to education. This would be the case since in many states equal educational opportunity can be achieved only if schools are desegregated by busing. Such action by the executive and legislative branches of government would be a clear attempt to usurp the functions and power of the judiciary.

Article III of the Constitution expressly reserves all judicial power of the United States government to the federal courts. The article states:

"Section 1. The judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. . . . Section 2. The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the laws of the United States, and Treaties."

It is clear the judicial power of the United States resides with the federal courts. If Congress and the President attempt to usurp that power, a constitutional crisis will arise. The courts can only interpret the law, the President must enforce the law. Suppose Congress passes a law calling for a "moratorium" on busing and the Court declares it unconstitutional. Will the President say, "The Court has made its decision, now let them enforce it"? Will law and order be encouraged, or will people lose faith in the efficacy of the legal order? To whom should the American people listen: the courts, Congress, or the President?

One can readily imagine that the loyalties of the American people would be greatly divided. Some will favor busing and adherence to court orders. Others will refuse to abide by court decisions knowing that they are taking a position officially adopted by Congress. Only the Congress can prevent the growth of national discord over the meaning and enforcement of the Constitution. This discord can be prevented by the refusal of Congress to join the Presidential attempt to usurp judicial power.

#### PART II

The question to be discussed in this Part is as follows: Are the constitutional standards for upholding the right to equal educational opportunity satisfied by the proposed Equal Educational Opportunities Act of 1972 and the Student Transportation Moratorium Act of 1972?

The constitutional standards for upholding the right to equal educational opportunity have been established by the Supreme Court of the United States. In 1954 the Su-

preme Court decided that "... [i]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." *Brown v. Board of Education*, 347 U.S. 483, 493. In establishing equal educational opportunity as a constitutional right, the Court held that racial segregation in the field of public education was a denial of the equal protection of the law guaranteed by the Fourteenth Amendment. It explicitly overruled the "separate but equal" doctrine announced in *Plessy v. Ferguson*, 163 U.S. 537, and stated that "[s]eparate educational facilities are inherently unequal." *Brown v. Board of Education*, *supra*, at 495.

To effectuate these constitutional principles, the Court authorized the federal district courts "to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases." *Brown v. Board of Education*, 349 U.S. 294, 301. The district courts were to take these cases under their equity jurisdiction and to eliminate obstacles "in a systematic and effective manner," taking into account the public interest but not allowing the "vitality of these constitutional principles" to yield to public disagreement with them. The "with all deliberate speed" requirement was amenable to "good faith" compliance at the earliest possible date. *Brown v. Board of Education*, 349 U.S. 294, 300. Initially the burden was upon the individual aggrieved parties to seek relief in the district courts, and the defendant school boards were required to present plans for achieving a racially nondiscriminatory school system. Subsequently, the Court prohibited racial segregation in the public schools of the District of Columbia as a denial of due process of law under the Fifth Amendment. The constitutional duty of the states imposed by the Fourteenth Amendment was imposed upon the federal government by the Fifth Amendment. *Bolling v. Sharpe*, 347 U.S. 487 (1954).

Evasive desegregation plans, controversy over what constituted "state action" to demonstrate a Fourteenth Amendment violation, and the indecisive "good faith" and "with all deliberate speed" requirements produced prolonged delay in school desegregation. Absent a finding of purposeful activity on the part of school boards with the aim of maintaining segregated schools, there was no affirmative duty on school boards to achieve racial balance or integration within public schools. *Bell v. School City of Gary, Inc.*, 324 F.2d 208, *cert. denied*, 377 U.S. 924. However, the defective plans and delays in achieving "racially nondiscriminatory school systems" required a re-evaluation of the standards by which desegregation was to be effectuated.

In 1968 the Supreme Court overruled a "freedom-of-choice" plan because it was ineffective. The Court stated:

"The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now. The obligation of the district courts . . . is to assess the effectiveness of a proposed plan in achieving desegregation. . . . It is incumbent upon the district court to weigh that claim in light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness." *Green v. County School Board*, 391 U.S. 430, 439.

The Court also noted that the general experience indicated that "freedom of choice" was an ineffective tool for desegregation although it might prove useful in certain instances. *Green v. County School Board*, *supra*, at 440.

More importantly, the Supreme Court had charged district courts to actively assess desegregation plans before their implementation. Feasibility and realizability were added to effectiveness as the criteria for such plans. Alternatives which more closely approached these criteria were to be given foremost consideration. In addition, the "with all deliberate speed" requirement was replaced by a demand that plans be designed to work "now." In 1968 the Court held that "continued operation of segregated schools under a standard of allowing 'all deliberate speed' for desegregation is no longer constitutionally permissible." *Alexander v. Board of Education*, 396 U.S. 19, 20. That fundamental constitutional rights could be collusively denied and delayed became increasingly objectionable to the Court.

In 1971 the Court added the term "reasonableness" to the criteria defining the equitable remedial solutions available to the courts, but it stressed substance and the "basic fairness inherent in equity" over semantics as the governing factors. *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 31. In outlining the efforts which might be necessary to overcome constitutional violations in educational opportunity because of state-enforced discrimination, the Court stated:

"The remedy for such segregation may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems." *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 28.

After the *Swann* decision, the standards for a judicial remedy against segregation in public education were (1) reasonableness; (2) feasibility; (3) realizability; and (4) effectiveness. The district courts were commissioned to actively weigh desegregation plans against these standards and "the basic fairness inherent in equity." The "with all deliberate speed" requirement was discredited constitutionally, and decrees providing remedy to the denial of equal educational opportunity were to become effective immediately. All available techniques were to be considered by the district courts. *Davis v. Board of School Commissioners*, 402 U.S. 33, 37.

In the light of the standards outlined by the Supreme Court of the United States for implementing desegregation, the provisions of the proposed Equal Educational Opportunities Act of 1972 and the Student Transportation Moratorium Act of 1972 do not uphold the constitutional prohibition on racial segregation in public education as a denial of equal protection of law and due process.

The sections of the Equal Educational Opportunity Act of 1972 which pertain to the remedies available for correcting segregation do not violate the definitive standards outlined by the Supreme Court. However, to the extent that these provisions affect the ability of the courts to consider the remedies provided and the remedies available within their equity powers, the bill restricts the discretion which has traditionally attached to equity jurisdiction.

Section 402 outlines the privity within which specific remedies must be considered upon a finding of denial of equal educational opportunity. The court is required to make a specific finding concerning the efficacy of each remedy and to apply the first remedy or combination of remedies which would correct the denial. To be considered in order the remedies are: (1) neighborhood school (closest to residence) noting capacity and natural physical barriers; (2) neighborhood schools noting only capacity; (3) voluntary transfer out of a school in which the majority of the stu-

dents are of one's own race; (4) revised or newly created attendance zones or grade structures (within transportation limitations); (5) construction of new schools or closing inferior schools; (6) construction of educational centers; or (7) any other educationally sound and administratively feasible plan (within transportation limitations).

The transportation limitations mentioned are found in § 403 which prevents implementation of any plan requiring increased transportation over the average number of students or the average daily distance for the preceding year unless there was clear and convincing evidence that this plan alone would provide an adequate remedy despite the provisions in § 402, *supra*. In addition the appellate court is required to grant a stay over an order directing a transportation plan exceeding such limitations if the defendant appeals.

Thus the proposed bill has not removed any of the remedies presently available to a party denied equal educational opportunity and it has not altered the constitutional standards outlined by the Supreme Court. But it does propose to alter the equity power of the federal courts. The Court in *Brown v. Board of Education*, 349 U.S. 294, 300, had cited the equity powers under which it authorized district courts to remedy denial of equal educational opportunity.

"The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument of nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims." *Hecht Co. v. Bowles*, 321 U.S. 321, 329-30, cited in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15. In the *Swann* decision, the Court rejected an argument that Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000(c) limited the equity powers of the federal courts. If this is the intent of the President's proposed bill, as it is clearly the effect, there is an issue of separation of powers.<sup>1</sup>

The Student Transportation Moratorium Act of 1972 proposes a stay for one year on the implementation of any desegregation order from a federal court which requires such transportation of students as was not in existence prior to the order or until Congress provides an alternative remedy to end segregation. This proposal removes for one year the affirmative constitutional duty of a school board to remove the vestiges of racial segregation in public education if transportation is required to effectively implement desegregation in a particular situation. More importantly, the bill prolongs the denial of equal educational opportunity to those students for whom transportation may provide the only realistic, feasible, reasonable or effective remedy to segregation. In addition, a moratorium on transportation which removes for a year or any period of time the courts' ability to consider all the alternative remedies to segregation implies a return to the doctrine of "with all deliberate speed" to the extent it forecloses an effective remedy and this doctrine has been declared by the Supreme Court to be constitutionally defective. "The importance of bus transportation as a normal and accepted tool of educational policy is readily discernible . . . An objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process." *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 30-31.

It can be concluded that to whatever extent transportation provides an effective remedy to segregation in public education, it is an alternative to be considered by the federal courts. To whatever extent it is the most effective remedy before the court in a

particular situation of denial of equal educational opportunity, transportation is constitutionally required.

## PART III

The question of Congressional control over the jurisdiction of federal courts is multifaceted and complex. This is an area of the American legal system which has seen a considerable degree of conflict. The view that Article III of the federal Constitution casts an obligation on the Congress to endow federal courts with the full scope of federal judicial power was rejected in the framing of the first Judiciary Act. See Warren, *New Light on the History of the Federal Judiciary Act of 1789*, 37 *Harv. L. Rev.* 49 (1923). The test of the article places a mandatory obligation upon Congress; its obligatory force is so imperative that Congress could not, without being derelict in its duty, have refused to carry it to operation. "The judicial power of the United States, shall be vested in one supreme court, and in such inferior Courts as the Congress may from time to time ordain and establish." *U.S. Const.*, Art. III, § 1. Be this power as it may, the question posed is whether Congress could have lawfully refused to create a Supreme Court, or to vest in it the constitutional jurisdiction.

To logically follow, the duty of Congress to vest the judicial power of the United States would be a duty to vest the whole judicial power. Put another way, the language, if imperative as to one part, is imperative as to all. If it were otherwise, this anomaly would exist: Congress might refuse to vest the jurisdiction in any one class of cases enumerated in the Constitution and thereby defeat the jurisdiction to all, for the Constitution has not singled out any class upon which Congress is bound to act in preference to others:

"If Congress possess any discretion on this subject, it is obvious, that the judiciary, as a co-ordinate department of the government, may, at the will of Congress, be annihilated, or stripped of all its important jurisdiction; for, if the discretion exists, no one can say in what manner, or at what time, or under what circumstances it may, or ought to be, exercised. The whole argument, upon which such an interpretation has been attempted to be maintained, is that the language of the Constitution, shall be vested, is not imperative, but simply indicates the future tense. This interpretation has been overruled by the Supreme Court upon solemn deliberation." *Martin v. Hunter's Lessee*, 1 *Wheat.* 304 (1816).

Congress is bound to establish some inferior courts in which to vest all its jurisdiction which, under the Constitution, is exclusively vested in the United States, and of which the Supreme Court cannot take original cognizance. Congress might establish one or more inferior courts; Congress might parcel out the jurisdiction among such courts, from time to time, at its pleasure. But, to be sure, the whole judicial power of the United States should at all times be vested, either in an original or appellate form, in some courts created under Congressional authority.

An observation of Article III, § 2 of the Constitution reveals an imperative sense of the meaning of the words employed. The words are "the judicial power shall extend . . ." To be sure, there has been argument that this phrase is equivalent to the words "may extend," and that "extend" means to widen to new cases not previously within the scope of the power. However, such a contention does not logically weigh in the balance. To accept that this was not an absolute power would lead to an unwieldy construction of the courts' powers. The primary case outlining the authority of Congress *vis-a-vis* the federal courts is *Ex parte McCordle*, 74 U.S. (7 *Wall.*) 506 (1869). Under the post-Civil War Reconstruction Act, Congress imposed military governments on a large number of the former Confederate states. McCordle was

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a Mississippi newspaper editor in military custody on charges of publishing "incendiary and libelous articles." After being denied a habeas corpus petition, he appealed to the Supreme Court. After arguments had been heard on the merits, Congress stepped in to pass the Act of March 27, 1868. That law stated that so much of the 1867 Act "as authorized an appeal from the judgment of the circuit court to the Supreme Court of the United States, or the exercise of any such jurisdiction by said Supreme Court, on appeals which have been, or may hereafter be taken, and the same is hereby repealed." This effectively withdrew the Supreme Court's appellate jurisdiction.

The *McCardle* decision prescribed the role of Congress to have plenary power to limit federal jurisdiction when the consequence is merely to force proceedings to be brought, if at all, in a state court. Much mental gymnastics have been devoted to this question; the most coherent and logical argument was advanced by Professor Henry Hart. Professor Hart's thesis is that most interpreters read *McCardle* too broadly. That is to say in measuring the worth of *McCardle* one must be mindful that an undisciplined interpretation of the case would threaten to destroy the essential role of the Supreme Court. Upon closer scrutiny it is clear that this is a result which *McCardle* carefully avoided. For instance, the circuit courts of the United States were still open to habeas corpus, and the Supreme Court itself could still entertain petitions for writs which were filed with the Court in the first instance. *Ex parte Yerger*, 75 U.S. (8 Wall.) 85 (1869). Hart stresses that *McCardle* should not be read as an instance of the Supreme Court attempting to be an architect of its own doom.

The Norris-LaGuardia Act<sup>6</sup> is a more recent statutory example of the manner in which Congress validly may define the jurisdiction of the federal courts. This legislation narrowly restricted the authority of courts of the United States to issue a restraining order or a temporary or permanent injunction in "a case involving or growing out of a labor dispute," and provided that "yellow dog" contracts "shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court." The Act was drawn as a limitation of the "jurisdiction" of the courts. However, there is a notable distinction between present attempts to restrict through legislation the power of federal courts to issue busing orders, and the scope of Norris-LaGuardia: the latter act did not challenge the dignity of a constitutional claim. The intent of Norris-LaGuardia is not to impinge upon the assertion of constitutional claims, but to create a new forum (namely, the National Labor Relations Board) for the adjudication of statutory rights. The current legislative proposals, however, constitute direct threats to constitutional rights announced by the Supreme Court.

Any attempt by Congress to undermine the remedy fashioned by the Supreme Court is an empty one if Congress itself cannot propose an effective remedy for unequal educational opportunities. In a democratic country operating under a system of limited governmental power, there could be no greater unseemly sight than the specter of its courts standing powerless to prevent a clear transgression by the government of a constitutional right of a person or group with standing to assert it. *Cf. Crowell v. Benson*, 285 U.S. 22; *Birens v. Six Unknown Narcotics Agents*, 409 F.2d 718. See also *Case Co. v. Borak*, 347 U.S. 426 (example of a case in which the Court was willing to imply a remedy in order to effectuate a right or duty declared by Congress).

The question of Congressional power was

similarly contended with in *Lockerty v. Phillips*, 319 U.S. 182 (1943), *overruled, Yakus v. United States*, 321 U.S. 414 (1944). This case involved a suit by wholesale meat dealers in a federal district court in New Jersey to restrain the United States Attorney from prosecuting pending and prospective criminal proceedings for violations of Maximum Price Regulation No. 169, fixing maximum wholesale prices for specified cuts of beef. It was alleged that in view of the prices fixed by the regulation, the Act as applied to the plaintiff denied due process of law in violation of the Fifth Amendment and that the Act involved an unconstitutional delegation of legislative power to the administrator of the Act. Congress gave the administrative "Emergency Court" (and the Supreme Court upon review of decisions by the "Emergency Court") equity jurisdiction to restrain the enforcement of price orders under the Emergency Price Control Act. At the same time it withdrew that jurisdiction from every other federal and state court. In contrast to Nixon's anti-busing proposal, Congress in this instance established a court with exclusive jurisdiction to hear constitutional claims regarding disputes on the grounds that the federal courts did not have the power to enjoin constitutional claims. More importantly, Congress set up interim relief so that all constitutional claims might be heard. The authority and wisdom to determine the remedy was impliedly restored to the courts.

*Katzenbach v. Morgan*, 384 U.S. 641 (1966), which imputed broad power to Congress, went on to hold that a constitutional right may not be abridged; the decision amounted to an expansive exercise of judicial power to implement a constitutional remedy. The case concerned the constitutionality of § 4(e) of the Voting Rights Act of 1965. This law provided that no person who had successfully completed the sixth primary grade in a public school or a private school accredited by the Commonwealth of Puerto Rico could be denied the right to vote in any election, even if the language of instruction in such school was not English. The Court held that Congress had the power to remove the states' literacy requirements in order to sustain the vitality of the equal protection clause of the Fourteenth Amendment. A notable fact about the manner in which Congress acted in *Katzenbach* is that Congress was attempting to fashion the most effective means of enforcing the Constitution; Congress did not step in until there was an immediate threat to constitutional objectives. Rather than being a regressive action, § 4(e) granted what Congress considered to be the only viable and effective remedy to meet the constitutional goal.

"Implication of a private right of action may be suggested by explicit statutory condemnation of certain conduct and a general grant of jurisdiction to enforce liabilities created by statute . . . or from such consideration as the protection intended by the legislature and the effectiveness of existing remedies . . . fully to achieve that end." *Colonial Realty Corp. v. Bache & Co.*, 358 F. 2d 178.

President Nixon's unprecedented attempt apparently argues that only Congress should decide the manner through which a constitutional right may be enforced. But it has been the traditional role of the judiciary to act through the creation of remedies in order to make a constitutional right more than an empty shell of words. See, e.g., *Mapp v. Ohio*, 367 U.S. 643 (1961) (formulation of the exclusionary rule of evidence to prevent illegal searches and seizures). In the present busing controversy the courts again have acted to formulate a remedy: their considered judgment, reached after deliberating upon the arguments of all interested parties, is that busing is a proper and potentially effective vehicle through which to achieve the goals first elaborated almost two decades ago in *Brown v. Board of Education*, 347 U.S. 483

(1954). This judgment of the federal courts has marked the culmination of an orderly judicial process; any attempt by anti-busing advocates to disrupt this orderly process in *ex post facto* fashion must be made to meet a heavy burden of justification. Put in its proper perspective, therefore, the Nixon proposal at the very least must demonstrate the ineffectiveness of busing and must show that any new plan to effectuate the goals of *Brown* will provide a proper and workable remedy.

It can be concluded that effectiveness is the principle which decides whether the legislature is promoting or abrogating a constitutional right. The Supreme Court in *Miranda v. Arizona*, 384 U.S. 436, for example, explicitly noted:

"Congress and the states are free to develop their own satisfaction for the privilege [against self-incrimination], so long as they are as fully effective as those [required by the Court] in informing accused persons of their right of silence and in affording a continuous opportunity to exercise it."

Of course, there must be judicial review of any new methods of enforcement to ensure that the constitutional protection has not been diluted. *Marbury v. Madison*, 1 Cranch 137 (1803).

Thus, to some, of course, the legislative and executive responsibility to interpret and apply the Constitution does require them to function in a rather Burkean sense. This responsibility forbids President Nixon to reflect every whim and passion of the community at large, and commands that he take account of the "sober second thought." See Store, *The Common Law in the United States*, 50 *Harv.L.Rev.* 4, 25.

Returning to the question of judicial remedies, the case of *Jacobs v. United States*, 290 U.S. 13 (1933), may delineate a clearer example of a constitutional right with a necessarily implied remedy. The construction of a dam by the government caused repeated overflows onto the plaintiff's land; the Court found this to be a taking of private property for a public use within the meaning of the Fifth Amendment. The damages remedy was implied from the constitutional right itself. The right to "just compensation" can scarcely be vindicated other than by securing "just compensation." Thus, the Court read the Fifth Amendment as self-executing, creating a duty to pay upon the government even in the absence of specific statutory authorization for suits to enforce the right to just compensation. *Jacobs v. United States*, 290 U.S. 13, 16 (1933). See also *Weeks v. United States*, 232 U.S. 383 (1914) (exclusionary rule enacted for federal courts); *Battaglia v. General Motors Corp.*, 169 F.2d 254 (1948).

In conclusion it should be noted that to deny effectiveness to this Congressional busing proposal is not, of course, to disparage Congressional assertion of authority in the area of civil rights. The denial merely recognizes that the power of Congress does fall within known limits. For, as Mr. Justice Harlan stated in his dissent in *Katzenbach v. Morgan*, 384 U.S. 641, 670 (1966), "[f]ederal authority, legislative no less than judicial, does not intrude unless there has been a denial of state action of Fourteenth Amendment limitations, in this instance a denial of equal protection."

#### PART IV

When the Supreme Court handed down the landmark decision of *Brown v. Board of Education*, 347 U.S. 483 (1954), the constitutional principle that state-imposed racial segregation in public schools is unconstitutional under the Fourteenth Amendment equal protection clause, became firmly established. Thus, so-called *de jure* segregation in schools was outlawed.

However, the geographical impact of that decision both within and beyond the context of the facts involved in the case was limited, in the main, to the South, which

Footnotes at end of article.

had a long-standing tradition of affirmative state encouragement of racial segregation. In effect, *Brown* and its early progeny left so-called *de facto* patterns of segregation in the North essentially unaffected.

The anomaly which immediately sprang to view in the wake of *Brown* was that the "root and branch" elimination of the evil—state-supported segregation in schools—became a singularly heavy burden for the South, simply because of historical-cultural-legal fortuities, while placing little or no burden on other regions in which the evil of segregation was equally rampant, albeit for other reasons.

*De facto* segregation is generally recognized within the educational context as a situation in which segregation exists as a result of housing and other patterns or practices which (1) do not bear a patent stamp of an official policy of segregation; (2) are characterized by a discrete interaction of private and ostensibly benign state conduct; and (3) tend to racially concentrate residential neighborhoods.

As a consequence, Northern schools which are located in areas of significant black population are for the most part characterized by "racial imbalance." The question is thus presented: What constitutes impermissible segregation in public schools in the North? Or otherwise posed, do Northern school districts have an equally affirmative constitutional duty to undo patterns of segregation in their schools as the Supreme Court held was mandatory upon formerly dual school systems. *Green v. County School Board*, 391 U.S. 430 (1968).

The question has found various responses in the federal courts. On the one hand, some circuits have not found an affirmative constitutional duty absent demonstrable "state action," that is, state involvement in segregation. *Board of Education v. Dowell*, 375 F.2d 158 (10th Cir.), cert. denied, 387 U.S. 931 (1967); *Griggs v. Cook*, 272 F.Supp. 163 (N.D. Ga.), aff'd, 384 F.2d 705 (5th Cir. 1967). On the other hand, some circuit courts have found to the contrary. *Davis v. School District*, 309 F.Supp. 734 (E.D. Mich. 1970), aff'd, 443 F.2d 573 (6th Cir.), cert. denied, —U.S.—, 92 S.Ct. 233 (1971); *United States v. School District No. 151*, 404 F.2d 1125 (7th Cir. 1968), modified, 432 F.2d 1147 (7th Cir. 1970), cert. denied, 402 U.S. 943 (1971); *Spangler v. Pasadena Board of Education*, 311 F.Supp. 501 (C.D. Cal.), intervention denied 427 F.2d 1352 (9th Cir. 1970).

Although the circuit courts currently are in disarray on the issue, recently a "spate of decisions has consistently held school segregation actionable in cities outside the South." Dimond, *School Segregation in the North: There Is But One Constitution*, 7 *Harv. Civ. Rights-Civ. Lib. L. Rev.* 1, 12 (1972). Two basic types of constitutional theories have been advanced to challenge *de facto* segregation: (1) "equal educational opportunity; and (2) "state-enforced racial separation." The first theory looks at educational resources, inputs, and outcomes for predominantly white schools as compared with black, and searches for a resulting denial of "equal educational opportunity." See *Hobson v. Hanson*, 269 F.Supp. 401 (D.D.C. 1967), aff'd sub nom., *Smuck v. Hobson*, 408 F.2d 175 (D.C. Cir. 1969).

The second theory attempts to discern state-enforced segregation through the broad discretion of school authorities to assign teachers and pupils to schools, construct and locate schools and attendance boundaries, choose initial student assignments, and finally to set and enforce transfer policies. See Dimond, *School Segregation in the North: There Is But One Constitution*, 7 *Harv. Civ. Rights-Civ. Lib. L. Rev.* 1, 13-20; cf. *Davis v. School District*, 443 F.2d 573 (6th Cir.), cert. denied, —U.S.—, 92 S.Ct. 233 (1971).

The landmark case of *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1,

gives notable comfort to the "equal educational opportunity" theory. See *id.* at 18-19. The decision also supports the "state-enforced segregation" position. See *id.* at 20-22.

However, the Supreme Court has not ruled authoritatively on the impact of the Fourteenth Amendment upon *de facto* school segregation. With the on-going refinement through case law of the appropriate operative standards for determining in what situations school segregation is unconstitutional, it becomes increasingly clear that the distinction between *de jure* and *de facto* hides more than it reveals, and is at base constitutionally repugnant because it places equal evils on unequal footings.

In conclusion, the death knell for the phenomenon of *de facto* school segregation may very well be found in the following language from *Swann, supra*, at 20-21 (emphasis supplied):

"The construction of new schools and the closing of old ones are two of the most important functions of local school authorities. . . . Over the long run, the consequences of [their] choices will be far reaching. . . . The location of schools may thus influence the patterns of residential development of a metropolitan area and have important impact on composition of inner-city neighborhoods.

"In ascertaining the existence of legally imposed school segregation, the existence of a pattern of school construction and abandonment is thus a factor of great weight."

#### FOOTNOTES

<sup>1</sup> See Part II, *infra*, for further development of this equal protection argument.

<sup>2</sup> But a number of lower courts have held that *de facto* segregation is as violative of the Fourteenth Amendment as *de jure* segregation.

<sup>3</sup> The *Swann* decision was based on the fact that the school district had a past history of racial segregation imposed *de jure* by school authorities. However, there were findings in the District Court that residential patterns within the district (city and county) had resulted because of local, state and federal action other than decisions of the school board. Based upon these patterns, the board in turn had located schools and fixed their capacities. The Court did not decide the question whether school segregation as a "consequence of other types of state action, without discriminatory action by the school authorities is a constitutional violation" subject to judicial remedy. *Swann v. Charlotte-Mecklenburg Board of Education, supra*, at 23. This argument is important in reference to extending the finding of *de jure* segregation especially in Northern cities where there is no past history of segregation of the *de jure* (state-imposed) type. This problem does not attach to the constitutional standards of remedies to desegregation and therefore is not developed in this memorandum.

<sup>4</sup> See Part I, *supra*, for a discussion of the issue of separation of powers.

<sup>5</sup> This Act authorized federal courts to grant habeas corpus to anyone restrained in violation of the Constitution.

<sup>6</sup> Act of March 23, 1932, 47 Stat. 70.

<sup>7</sup> For further elaboration of the *Katzenbach* decision, see *Oregon v. Mitchell*, 400 U.S. 112 (1970).

#### CONGRESSIONAL CEMETERY

### HON. TOM RAILSBACK

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. RAILSBACK. Mr. Speaker, the Congressional Cemetery is in dire need

of our help. This cemetery, opened in 1807, is the burial site of J. Edgar Hoover, John Philip Sousa, Simon Bolivar's son, the builder of the Washington Monument, several Indian chiefs, and 55 Senators and 75 Congressmen. The bodies of John Quincy Adams, William Henry Harrison, and Zachary Taylor lay in the public vault until they could be moved to other gravesites.

Despite such important people associated with the Congressional Cemetery, it has been seriously neglected. Family vaults have been stripped of their doors. Trees and other foliage are overgrown. There are piles of beer cans and whisky bottles. The small gray chapel built at the turn of the century has not been used since 1970.

There is something that we in the Congress can do about these problems. The property can be acquired, protected, and administered by the Secretary of the Interior with adequate sums for the proper development and operation of the Cemetery. Legislation I am introducing today will do just that, and I urge its immediate consideration.

THE NATION SALUTES REV. JOHN SEYMORE MOORE, PASTOR EMERITUS OF THE FIRST REFORMED CHURCH OF HAWTHORNE, ON THE GOLDEN ANNIVERSARY OF HIS ORDINATION

### HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. ROE. Mr. Speaker, I am pleased to submit this commendation and respectfully request my colleagues here in the Congress to join with me in tribute to the Reverend John Seymore Moore, a most distinguished clergyman and outstanding senior citizen of our Eighth Congressional District of New Jersey on the 50th anniversary of his ordination to the gospel ministry. On Sunday, May 21, 1972, his many friends and citizens of the State of New Jersey will join his congregation in celebration of this golden anniversary of the pastor emeritus of the First Reformed Church of Hawthorne, N.J.

In 1922 Pastor Moore was ordained in New York City by the Classis of New York, Reformed Church in America, and was welcomed by the congregation of the First Reformed Church of Hawthorne in 1929 where he served as pastor with dignity and sincerity of purpose until his retirement in 1962. He served on the battlefield of France in World War I, was founder and chaplain of the American Legion of Hawthorne, also served as chaplain to the Veterans of Foreign Wars of Hawthorne and to the police and fire departments of Hawthorne.

He is a member and past president of the Rotary Club of Hawthorne; served for 30 years on the board of education, Reformed Church of America; as founder and chairman of the young people's committee and vice president of the board; member of the YMCA of Paterson and founder of its Hawthorne branch; president of the board of superintendents of

New Brunswick Theological Seminary, America's oldest seminary; vice president of the Synod of New York, RCA; and president of the Synod of New Jersey, RCA.

Pastor Moore has won the deep admiration and respect of all who have had the good fortune of knowing him. He is highly revered by our community, State, and Nation for his cultural and spiritual enrichment of others in his pursuit of the noble cause of brotherhood, good will, and understanding among all men. Yes, Pastor Moore, the Nation does, indeed, salute you and all of your good works.

#### LIMITATION IN U.N. APPROPRIATION

### HON. ANCHER NELSEN

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. NELSEN. Mr. Speaker, I have been pleased to note the tough but wise position of the Committee on Appropriations relative to the United Nations in the appropriations bill for fiscal year 1973 which we are considering today.

The committee specifically notes in its report, 92-1065, that it—

Has placed in the bill a proviso limiting the annual United States contribution to the United Nations and affiliated agencies to 25 per centum, except for the joint financing program of the International Civil Aviation Organization. As a result of this proviso, a reduction of \$25,103,500 has been made.

The committee report continues:

Much has been said and written by officials of the Executive and the Legislative branches of the Government relative to the necessity for reductions in our contributions to these international organizations but to date little has been accomplished. This recommended reduction serves notice that the Congress means what it has been saying in this regard.

Certainly, Mr. Speaker, I wish to urge wholehearted support for the retention of this reduction, which has also been requested by President Nixon. It is the conviction of a great many of us that we have for far too long contributed more than our fair share to the U.N. This year we are paying this 131-member organization around one-third of the U.N.'s total budget. Yet we have only around 6 percent of the world's population. Since the start of the U.N. in 1945, we have paid about 41 percent of the entire U.N. operation and it is fair to ask what we have got in return.

What makes the burdensome amount we contribute to the U.N. especially irritating is that some nations that usually oppose us are not even paying what they legitimately owe. The Soviet Union, for example, has never paid assessments for the U.N. operations in the Congo and the Middle East.

The U.N. needs to mend its ways, curtail its excessive spending habits and reform its operations. It makes no sense, for example, for the Soviet Union to be casting three votes in the General Assembly while we can only cast one. The Soviets claim that both the Ukrainian SSR and

the Byelorussian SSR are separate states, but this is pure fiction. Neither of these regions has had separate diplomatic relations with other countries since 1918.

Some dedicated patriots and loyal American citizens are so disenchanted with the U.N. that they would like to get us out of it and get it out of the United States. The failure of Congress to take a tough line on this spending issue would certainly add impetus to such efforts, even though we would thereby lose our veto power in the Security Council, a veto that could be crucial to the welfare of the free world at some future moment in history.

At the very least, we should restrict the size of our contribution to this controversial organization in recognition of the great need in many areas for these funds right here at home.

#### POLISH CONSTITUTION DAY

### HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. DERWINSKI. Mr. Speaker, one of the most impressive annual events conducted in Chicago is the Polish Constitution Day parade and program conducted under the auspices of the Polish National Alliance.

The parade and program are always held the first Sunday of May commemorating the third of May Polish Constitution. This is an historic document revered by the people of Poland even though the present Communist tyrants of that country have attempted to eradicate its principles.

The major address at this year's Polish Constitution Day program at Humboldt Park, Chicago, was delivered by Mr. Aloysius A. Mazewski, president of the Polish National Alliance. I insert it into the RECORD at this point calling the particular attention of the Members to the strong support given the President in this period of international crisis.

The speech follows:

AT MANIFESTATION OF POLISH CONSTITUTION DAY, HUMBOLDT PARK, CHICAGO, ILL., MAY 7, 1972

(Speech of Aloysius A. Mazewski, president, Polish National Alliance)

Since the turn of the century, these May 3rd Constitution observances by Chicago Polonia have always represented more than observances of a historic event.

They have always had special significance and meaning for our grand parents and parents and still have it for Americans of Polish ancestry and their compatriots of other origins.

For, in addition to its power to renovate the Polish spirit, give the nation new directions and restructure the political viability of the state,—the May 3rd Constitution of 1971 contains within its framework vitally important and enduring lesson for all men committed to the principles of freedom and justice.

It is the lesson of responsibility.

It declares that concomitants are—civic responsibility of the individual, commitment to the unity and security of the nation, respect for the laws of the land, socio-political prog-

ress toward a viable state, and—above all—commitment to a deeply felt patriotic living.

Another lesson highly relevant to our times, springs from the fact that May 3rd Constitution restricted excessive permissiveness and unlimited individual freedom that has grown wild in the 18th Century Poland.

Thus, as a legislative document which joined the real freedom and dignity of man with the sense of responsibility toward the state and the society, the Constitution of May 3rd has signal relevancy and meaning to our generation of Americans.

Like in the 18th Century Poland, we see in our America freedom grown wild on the lunatic fringes of nihilism and radicalism, negation of civic and social responsibilities by those who would destroy our institutions and temples of freedom not for the sake of changes but for the sake of anarchy. They do not have the slightest conception of what to replace the things they are bent on destroying.

Like in Poland of the May 3rd Constitution era, we too, see in our land and in our times insidious hedonism which adds to the socio-cultural and even political malaise.

Poland, with the political reformation and the progress toward social justice, embodied in May 3rd Constitution, was an island of enlightened and responsive freedom, surrounded by powers of absolutism and tyranny. It fell under the onslaught of these reactionary powers and the frontier of freedom in Eastern Europe ceased to exist for more than one century—until the aftermath of world war one.

Today—another frontier of freedom is endangered in another part of the world, where our commitment to defend this freedom is clear and unequivocal.

We see what is happening in Vietnam. We know that President Nixon's wisely planned policy of winding down the war and securing the right of self determination for the people of South Vietnam, has been challenged by the Communist forces of North Vietnam.

We also know that Mr. Nixon's plans designed for a peaceful and honorable solution of the struggle was brutally disrupted by the savage invasion of South Vietnam by communist forces from the north.

These self evident facts, however, seem to be of no import to those who summarily criticize and condemn Mr. Nixon's response to this latest Communist provocation and raw, undisguised aggression.

And for us, concerned with the security and viability of the free world—the time has come to declare our support for President Nixon's policy and his search for lasting peace based on justice and honor among nations.

As in the times of the May 3rd Constitution, civic responsibilities and duties of all of us, call for more patriotic, and deeply felt patriotic living.

The May 3rd Constitution teaches us that true patriotism is not mere flag waving or pious exercises in historical semantics.

True patriotism is a way of life nurtured by love for the land, respect for our institutions of freedom, and awareness of civic and social responsibilities toward fellow men and toward the state.

And to these propositions we commit ourselves today, as our ethnic historical legacy.

This noble legacy is not ours alone. It belongs to the descendants of those peoples who in the 15th Century constituted the first in Europe, if not in the world, Commonwealth of Nations known as Polska, Litwa i Rus.

We share together the glories of the Jagiellon dynasty, and the tragedies that befell our homelands in later years. And one of the tragedies was the fact that the partitioning powers applied divisive tactics against all of us and succeeded in creating inimical attitudes among us.

Old habits and prejudices die hard. But time has come for us to start a substantive dialog among us, to declare our common heritage and renew the ties that formed real brotherhood among our nations.

Together, we have much to contribute to the culture and cohesiveness of the pluralist society of our America.

**GUN CONTROL: A TIMELY REMINDER FROM WAVA**

**HON. LIONEL VAN DEERLIN**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. VAN DEERLIN. Mr. Speaker, the despicable attempt on the life of Governor Wallace has caused thoughtful Americans to ponder the directions in which this country is, or should be headed.

One of the most eloquent commentaries, an editorial appeal for controls over handguns, was made by WAVA, an all-news radio station in Arlington, Va.

While I do not agree with every point, such as the call for the death penalty for use of concealed guns during commission of a crime, the general thrust of the editorial—the need to deny unstable individuals the “tools of deranged violence”—can hardly be disputed.

As WAVA says, we cannot have it both ways in filling our highest public offices. Eventually we must choose between “freedom of speech with the secret ballot” and “freedom of handguns with the secret bullet.”

Text of the editorial, which was aired yesterday, follows:

**THE WALLACE SHOOTING**

The attempted assassination of yet another American political leader, this time Alabama Governor George Wallace, has again shocked this country and set us awash once more with self-searching about ugly shootings, youth and rampant violence. But it is all just not that complicated.

If there is this time, and finally, a lesson to be learned from these things, it is not that America has in these years gone suddenly berserk, it is rather very simply that this surging, developing and increasingly crowded nation is humanly bound to create among 200 million people a small, dangerous fringe element and that our advancing technology has produced their tool of expression, and the source of our national problem, the pistol.

The Kennedy brothers, and Martin Luther King and now George Wallace are really only public symbols of something which happens without headlines to hundreds of other innocent Americans—the little people the politicians talk about in election years who are gunned down by pistols every day of every year in robberies and domestic quarrels.

It is something of an irony of history that many of the same people who support George Wallace in Maryland were the same, in defense of the right to possess guns, who defeated Senator Joseph Tydings only two years ago after his campaign to ban the unlicensed federal sale of handguns—pistols and revolvers still on sale despite all of our grim experience in hardware stores in every state from Wisconsin to Maryland.

Now the pointy heads who supported Tydings and the Kennedys as well as the constitutional gun defenders who supported Wal-

lace may at last end common cause—in hard realization that the only way we are going to protect the common man or the uncommon leader from the fringe element crazes is by denying them the tools of deranged violence.

We do not need any more studies or rationales or presidential commissions of inquiry or more secret service—the matter has been studied to death over enough graves of the common and uncommon man. The sum of it is that in the nuclear age, no one other than a law officer needs to own or carry a handgun.

If something at the end is simply to be done about this it is to approve in Congress the studies and pending legislation which already fill the file cabinets of Washington and make the sale or possession of unlicensed handguns, like machine guns before them, a federal crime, and make the use of a concealed gun to commit a crime a Federal offense punishable by death.

To you who want to do something now, write or call your congressman, and to you who can do something on Capitol Hill, the time is now before more of this to make it the law of a land which will be more free and more happy without fear of the blazing pistol.

The harsh hard final truth is that in the crowded theater of modern democracy, we cannot have it both ways—the freedom of speech with the secret ballot, and also have the freedom of handguns with the secret bullet.

**ASTRONAUT'S BROTHER**

**HON. OLIN E. TEAGUE**

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. TEAGUE of Texas. Mr. Speaker, Astronaut Charles Duke's twin brother, Dr. William Duke, has recently written to the Washington Post responding to an article by Mr. Nicholas von Hoffman. Dr. Duke's letter was published in the May 10, 1972, edition of the Washington Post. Because of the value of Dr. Duke's remarks, I am including his letter in the RECORD for review of all Members:

[From the Washington Post, May 10, 1972]

**FROM AN ASTRONAUT'S BROTHER**

The article by Nicholas von Hoffman, “Two Klutzes on the Moon,” which appeared in the Washington Post, April 26, 1972, has come to my attention. I would like to make a few comments concerning Mr. von Hoffman's rather schizoid commentary. My viewpoint is no doubt biased, since I happen to be the twin brother of one of the “klutzes” on the moon.

I could find no listing of klutze in the dictionary. Obviously, quite a derogatory noun was used. My reaction to the activities on the lunar surface was that I was watching two enthusiastic, exuberant, excited, inquisitive men, performing a job as best they could, yet showing their natural human reactions and emotions.

Mr. von Hoffman's point about nobody remembering the second man to sail around the world after Magellan is correct, although most “klutzes” know that Magellan never made it around the world. He was killed by natives on an island in the Pacific, fully one year before Juan de Elcano (del Cano) sailed the last remaining ship into his home port.

My brother stated publicly that he would go to the moon anonymously. He sought no personal gain. No one will recall the names of these space explorers, but each time one mission is completed, the next is easier. I am

sure the second, third, or one hundredth man to sail around the world found it easier than the one preceding. Who is to judge what is to be gained now or one hundred years hence in and from space?

I am envious that Mr. von Hoffman has such a direct line to God and informs us so well about God's refusal to live up to His treaty obligations with NASA. Too bad the United States Air Force Academy should be damned in the same paragraph, since neither of the “klutzes” on the moon graduated from that institution, an error difficult to explain for one who knows so much about what God would or would not do.

Perhaps most distressing is Mr. von Hoffman's belief, almost hope, that death would claim the two or three “klutzes,” and put the space program back on the front page. All of our astronauts fly with this prospect in mind, but they go. Why, I wonder for what reasons? Clue us in, Mr. von Hoffman.

I feel genuine sorrow for Mr. von Hoffman. He is obviously unhappy and disenchanting with his country, his earth, his heavens, his fellow humans, but most of all with himself. We would welcome a visit to Lancaster so that we could show him how a whole town of “klutzes” are enthusiastic, exuberant, and excited about our earth, our country, our heavens, and about life. I hope most Americans share this view.

WILLIAM W. DUKE, M.D., F.A.C.P.  
LANCASTER, S.C.

**READING HIGH SCHOOL BAND WINS TOP HONORS**

**HON. GUS YATRON**

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. YATRON. Mr. Speaker, I would like to take this opportunity to congratulate my alma mater, Reading High School, for the top-notch performance of the Reading High School Marching Band at the Shenandoah Apple Blossom Festival in Winchester, Va. The band's first-place performance in Winchester earned it a place in the competition in New York City's Salute to Israel parade.

According to Mr. Hiram D. Hoch, band director, the excellent showing in Virginia will allow Reading to be one of the 40 high schools from an 11-State area to participate in the invitational parade.

In the 45th Annual Winchester Festival held in May, the Reading High Band and Band Front captured six first-place and one second-place awards.

Top honors were won in both band and twirling contests as Scott Evans retained his title in the featured twirler category. During the grand feature parade, the Reading Band was second in the category for a group with 91 or more musical instruments. Majorette Captain Kim Beck brought in two more top honors in that category and the entire twirling corps beat its competition for its second win for the weekend.

The Reading High School Band has visited Virginia for the past 5 years and has brought back a total of four first place and four second place trophies. I would like to especially congratulate the following award winners of the 200-member first place organization: Miss Kim Beck for her majorette award; Mr. Scott Evans for his twirler award; Miss

Debbie Fair, captain of the rifle squad, for their participation in the band front competition; Mr. Richard Strunk, band president; and Mr. Hiram D. Hock, band director, for his dedicated and excellent efforts in training the Reading High School Marching Band.

#### THERE'S NO LION LIKE FRASIER

### HON. JOHN G. SCHMITZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. SCHMITZ. Mr. Speaker, at a time when there is nothing in the news but reports of mayhem, murder, hate, and greed, I would like to call your attention to the story of an aging lion, who lives in the well-known Lion Country Safari in my district, who has captivated the hearts of people from coast to coast.

The article follows:

#### THERE'S NO LION LIKE FRASIER

(By Stan Leppard)

Most people figure if you've seen one lion you've seen them all, but Frasier—Lion Country Safari's leonine Lothario who really IS the King of Beasts—would stand out in the middle of a jungle full.

He is the seediest-looking, the rattiest-looking old lion you're likely to ever see, in or out of captivity. Furthermore, he looks like he doesn't give a damn.

Frasier is at least 20 years old, which would be 80-plus by human reckoning. His tongue muscles are shot and his tongue lolls from his mouth, which is constantly between a drool and a yawn. He is rheumatic and he walks with stiff-legged difficulty.

But he is the Pride of the pride at Lion Country, keeping seven giant young lionesses blissfully happy while siring 33 cubs in 16 months.

The saga of Frasier has been headlined across the country and featured on TV in the past few months. But just in case you missed it, it started like this:

Frasier had outlived the normal life leonine life span of 12 to 15 years by at least two years—and maybe as much as 10—at the time Lion Country Safari bought him from a Mexico City circus two years ago.

Underweight, lame, and suffering from malnutrition, Frasier was fed 12 pounds of meat a day and shot full of vitamins and minerals to restore his health. He gained 100 pounds and the sparkle was restored to his eye, which he immediately started casting about among the young lady lions at Lion Country.

This gave the zoologists an idea, and they decided to try Frasier out on a group of tough and choosy lionesses.

Lions run in prides, which include six to a dozen lionesses, a dominant male, maybe a lesser male or two, and the cubs. There was one pride, lacking a dominant male, in which the lionesses had rejected and mauled five young males in a row which were introduced into their compound. Lion Country staffers decided to see how old Frasier could make out.

The next morning the lionesses were found purring happily around Frasier, who lay on his back snoozing with his paws in the air. Chunks of meat, fetched by the lady lions, were stacked around him. Frasier was in like Flynn.

The rest is history. Frasier Fan Clubs have sprung up all over the country. Frasier is the ideal and inspiration of the Geritol generation. Kids as well as senior citizens are wearing "Frasier" T-shirts, and there is even

a "Frasier for President" movement. There has never been anything in the animal world like Frasier, and the human world has never related with the animal world like people are relating with Frasier.

I set out to find out what makes Frasier tick, for want of a better or more usable word; to see if zoologists, psychiatrists or just people in general could explain his phenomenal feats and why they have captivated the nation.

It started with a visit to Lion Country Safari and an eyeball confrontation with the old master.

"No, you couldn't call Frasier a woman chaser," said Zoological Director Pat Quinn in an office briefing before we went out to look over the lions.

"Female lions actually select the males," Quinn said. "A male may take aim at certain females, but the lionesses really make the choice."

"The prides are well-established social structures, both here at Lion Country Safari and in the wilds. Animals are territorial, like people, but males sometimes move from one pride to another."

"The main purpose of the male lion," Quinn went on, "is to breed females and defend his territory against invasion by other males from outside the pride. Frasier does both of these chores very capably."

While Frasier's happy females do pamper him and wait on him, it isn't true that they continue to fight his battles against young males trying to move in, Quinn emphasized. "Frasier is old, but he is tough when defending his own turf," Quinn said. "He has shaken the daylights out of quite a few much younger cats trying to move in."

Frasier's toughness, however, never is evident with his own pride, Quinn said.

"Animals, like people, have individual traits, and Frasier has outstanding ones. He is good-natured, patient, and even-tempered to an astonishing degree. You'll see him lying out there with the cubs tumbling over him, pulling at his ears and stepping on his ears and stepping on his face. Younger male lions would be likely to bat the cubs a good one when they get this playful, but Frasier just nuzzles at them and yawns."

Is Frasier really all this virile, or have his feats been exaggerated by an alert public relations staff? Quinn was asked.

"Frasier is absolutely genuine," Quinn insisted. "He has been officially recorded as breeding 22 times in an hour and a half, by the way."

"You sure Frasier isn't really a young lion who looks old?" I asked. But Quinn, laughing, shook his head.

George Cohen, LCS sales representative, drove me out to Frasier's turf in his car. As Quinn prophesied, Frasier was lying there surrounded by his happy lionesses, and with the cubs tumbling over him. Birds were walking around his head, occasionally taking a peck at one of his ears.

"The birds seem to congregate around his head, occasionally taking a peck at one of his ears."

"The birds seem to congregate around Frasier," Cohen commented. "Sometimes they light on his head and just sit there. Any other adult lion would take a swipe at them, but Frasier just opens one eye and looks at them."

Frasier struggled to his feet, yawned prodigiously, and started ambling with stiff-legged strides toward the compound in which the lions are locked for the night. The lionesses and the cubs got up to follow.

"Better get that door shut and the window rolled up before they get too close to the car," Cohen cautioned. "Frasier probably wouldn't bother you but those females are big, aggressive and mean Kalahari Desert lionesses, and they can tear your head off in one slash. They don't like anybody getting close to him."

One of the lionesses, sporting a new and

raw scar across her face and two more on her right front leg, paused to snarl menacingly at us.

"That's Sonja, one of Frasier's favorites, and one of the meanest of the pride," Cohen said. "She got the scars in a fight the other day with Linda, there, who is even meaner. Jealousy, I guess. But the meanest of the pride is Najulla, over there, nicknamed 'Nasty,' and deserving it."

After the lions were locked in the compound, Frasier flopped down next to the steel fencing and surveyed his wives and children with a sleepy and contented gaze.

I knelt and eyeballed him through the chain links at two-foot range. "What's your secret, Frasier?" I pleaded. "Give me a hint."

Frasier closed his eyes, yawned, and shook his head. Sonja sprang against the fencing, snarling, her eyes glittering venom.

It looked like I wasn't going to get much help from the principal characters in solving the Frasier mystery.

After Frasier and his lady friends refused to comment I went back to Pat Quinn.

"Tell me what kind of vitamins and minerals you feed this cat every day," I said. "Frasier gets vitamins A, D, E, B<sub>12</sub>, B<sub>6</sub>, B<sub>2</sub>, B<sub>1</sub>, along with niacin, methionine, inositol and chlorine chloride in massive doses, pantothenic acid, cobalt, manganese, iron, copper, phosphorus, calcium and salt," Quinn said. "On top of that he gets 12 to 15 pounds of meat, mostly beef, and some chickens."

I decided to go into the question of why humans love Frasier so. I sought the answer from a psychiatrist.

A woman psychiatrist who had been kind enough to help me, and to let me quote her by name, on a long-ago story involving criminal types, wouldn't go that far this time.

"I realize you are asking about humans, not lions, but after the story is out a lot of people won't see the difference," she said firmly. "I will then be in the position of being remembered as the analyst who is a lion-shrink, and no, thanks."

However, she said she didn't think the Frasier story reflected any national overemphasis on sex, or on the male fear of sexual shortcomings.

"It's a good story, a fun story," she said. "The public reaction, I think, represents the desperate need of people—men, women and children—to find something like this in the middle of news that is nothing but mayhem, murder, hate and greed. People are fearful nowadays. The world is getting more frightening by the day, and something like the Frasier story is a welcome relief."

I went to the people in the street. Ten kids, boys and girls, evenly mixed, had the same answer: "Wow—that Frasier."

Six male senior citizens said essentially the same thing: "Frasier is the guy who shows 'em there can be life in the old boy, yet—I'm a Frasier man."

Three elderly ladies giggled, and a fourth responded: "I think this Frasier stuff being printed is just outrageous. I can't understand why people carry on about him like that. But I don't miss reading one word."

Finally, I went back to Lion Country. It was closing time and Frasier's pride was locked up in the compound.

Remember the scene from the movie "Cat Ballou," where Lee Marvin's disreputable horse was leaning against a building with his front legs crossed?

Well, Frasier was leaning against the steel fence exactly that same way when I approached. Sonja was slinking coyly up to him, offering a mangled chicken.

Frasier wouldn't take the chicken, but he thanked her for it with his eyes, and he touched her briefly on the ear with his floppy old tongue. Sonja dropped at his feet and started to eat the chicken, looking up at Frasier all the time just to make sure he wasn't going to change his mind.

Linda walked up at this point, stepping daintily around Sonja with only one haughty downward glance and rubbed up against Frasier. He gave her an affectionate, though sort of absent-minded nip on the neck. Then he flopped down against the steel fence, sighing deeply, looking contentedly out over the compound.

"Is this the way you do it?" I whispered through the fence. "Just by letting them come to you; being nice and gentle, but also being indifferent enough to worry them a little?"

Frasier didn't say a word. But I'll swear one old eye closed for a split second in a conspiratorial wink.

## JOSEPH A. LOFTUS WINS PENNSYLVANIA AWARD FOR EXCELLENCE

### HON. JOSEPH M. McDADE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. McDADE. Mr. Speaker, there is in the Commonwealth of Pennsylvania an award given annually to certain citizens who have distinguished themselves in their professions to such a degree that the Commonwealth wishes to take note of this distinction through the conferring of a Pennsylvania Award for Excellence.

A distinguished recipient of that award this year is Mr. Joseph A. Loftus, who received the award for excellence in journalism. Mr. Loftus is a native of Scranton who began his career in journalism working for the Scranton Republican, now the Scranton Tribune-Scrantonian. He pursued his career in journalism with the New York Times and is presently a special assistant for communications in the U.S. Labor Department where he also serves as an adviser to Department officials and the White House on communications matters.

I know that all my colleagues here in the Congress will join me in offering the warmest congratulations to my fine friend, Joe Loftus. In the newspaper career recited as well as in his career as State manager of International News Service, Mr. Loftus has shown those fine perceptions and that intelligent understanding of news and the news media which are so characteristic of the great men of journalism in our time.

I append an article from the Scranton Tribune concerning Mr. Loftus:

[From the Scranton (Pa.) Tribune, May 15, 1972]

#### EX-TRIBUNE REPORTER GIVEN PENNSYLVANIA AWARD

A former reporter for the Scranton Republican, now The Tribune, was one of six persons who received 1971 Pennsylvania Awards for Excellence Friday night.

The awards, given to an assortment of people including the world champion heavyweight boxer and a symphony conductor, were presented at ceremonies held in the Bellevue-Stratford Hotel, Philadelphia.

Loftus received the Award for Excellence in Journalism.

A Scranton native, Loftus began his newspaper career here before joining the New York Times, where he served 2 years.

Currently he is special assistant for communications in the U.S. Labor Department.

He also serves as an advisor to department officials and the White House on communications matters.

Son of the late Mr. and Mrs. George J. Loftus, he was graduated at St. Thomas College, now the University of Scranton, and holds a masters degree from Columbia.

At one time he was state manager of International News Service, now a part of United Press International.

He is a brother of Mrs. Dorothy Kairis, a member of the Scranton School Board.

Others who received awards were Joe Frazier, world heavyweight boxing champion; Dr. William Steinberg, conductor of the Pittsburgh and Boston symphony orchestras and the London Philharmonic; Dr. Sylvester A. Stevens, historian and former curator of the Pennsylvania State Museum; Samuel Baxte, former Philadelphia water commissioner, and Clarence Farne head of Philadelphia's Human Relations Commission.

## NATIONAL HEART, BLOOD VESSEL, LUNG, AND BLOOD ACT OF 1972—VITAL LEGISLATION

### HON. EDWARD J. PATTEN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. PATTEN. Mr. Speaker, I hope that the House will swiftly pass legislation that would expand and advance the national attack against diseases of the heart, blood vessels, and lungs, because it would help prolong, and even save, thousands of American lives a year.

It is disturbing—and appalling—that diseases of the heart and blood vessels cause over 50 percent of deaths in the United States. The combined effect of the disabilities and deaths from these diseases has a major social and economic impact on the Nation. Reduction of cardiovascular diseases could increase the average American's life expectancy by about 11 years and provide annual savings of over \$30 billion a year in lost wages, productivity, and medical care costs.

Mr. Speaker, the bill I have cosponsored—H.R. 14493—contains a 10-point program to be carried out by the National Heart and Lung Institute at the National Institutes of Health.

It would provide for:

Investigation into the epidemiology, etiology, and prevention of all forms and aspects of cardiovascular, lung, and blood diseases.

Studies and research into the basic biological processes involved in understanding functions of the heart and lungs.

Development of techniques used in the diagnosis, prevention, and treatment of such diseases, and rehabilitation of patients.

Establishment of programs that would apply scientific efforts to the diseases and assist in detection and treatment.

Creation of centers for the conduct and direction of field studies involving cardiovascular and pulmonary diseases.

Studies and research into blood diseases and blood.

Education and training of scientists and others in fields and specialties to

conduct programs involving cardiovascular, pulmonary, and blood diseases.

Public and professional education relating to all aspects of these diseases.

Establishment of programs and centers for study and research into diseases of children and for diagnosing, treating, and preventing such diseases.

And establishment of programs to provide emergency medical aid for persons stricken by any of these diseases.

Under the proposal I have helped sponsor, a National Heart and Lung Advisory Council would be created, consisting of 23 members, each leaders in the fields of fundamental sciences, medical sciences, or public affairs.

Mr. Speaker, the Senate has already passed a heart, lung, and blood vessel bill introduced by the able and dedicated chairman of the Senate Subcommittee on Health, the Honorable EDWARD M. KENNEDY, of Massachusetts. I hope that this vital legislation will soon be passed by the House and signed by the President. There should be no delay, because it would mean disability or death for many Americans.

This legislation represents great hope for the present and future victims of these devastating diseases. Good health is the most precious of all blessings and this bill would significantly improve the health of our people. Mr. Speaker, I strongly urge my colleagues to support and vote for the National Heart, Blood Vessel, Lung, and Blood Act of 1972.

## THE POWER OF AN IDEA

### HON. ED JONES

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. JONES of Tennessee. Mr. Speaker, this week the American Advertising Federation is meeting here in the Nation's Capital. At one of yesterday's sessions, Mr. John Cleghorn, vice president for advertising and public relations of Holiday Inns, Inc., delivered an address entitled "The Power of an Idea."

Mr. Cleghorn's remarks, though brief, give a great deal of insight into the remarkable success of Holiday Inns, which, I am proud to say, had its origins in Memphis, Tenn.

I have known and respected Mr. Cleghorn for many years, and I insert his address at this point in the RECORD:

#### THE POWER OF AN IDEA

What is an idea? The dictionaries don't know quite what to do with this four-letter word which has played such a dominant part in the growth of America. The most appropriate definition I could find is from the Readers Digest Encyclopedia Dictionary which describes an idea as "that which is conceived in the mind as a result of conscious thinking or creative imagination." Now this product of conscious thinking and/or creative imagination seems to have a limitless power—but not by itself. It has to be combined with action.

But what turns out to be the most salient kinetic potential of an idea is not its power to generate action—but its power to generate other ideas. As one idea starts to churn

around, it spins off another idea and the two ideas spin off two more and this process produces a kind of relentless excitement. The result is that suspenseful and dramatic activity which we call Free Enterprise. And that just about sums up the story of Holiday Inns.

To quote Ecclesiastes, "There is nothing new under the sun." Back in the twenties, in the Saturday Evening Post, the late great novelist Sinclair Lewis, in a series called "Adventures in Autobumming," wrote as follows: "Somewhere in these states there is a young man who is going to become rich. He may be washing bottles in a dairy lunch. He is going to start a chain of small, clean, pleasant hotels, standardized and nationally advertised, along every important motor route in the country. He is not going to waste money on gilt and onyx, but he is going to have agreeable clerks, good coffee, endurable mattresses and good lighting; and in every hotel he will have at least one suite which is as good as the average room in a modern city hotel. He will invade every town that doesn't have a good hotel already. When he has completed his work, he will be in the market for European chateaux as fast as retiring royalties have to give them up."

The founder of the Holiday Inn System was hardly twelve years old when this was written—and he never heard of that prophecy until it was brought to his attention a few years ago. But he's the person Sinclair Lewis had in his clairvoyant mind.

As an oyster's pearl starts with irritation, so this gem of an idea started with what Kemmons Wilson calls the most miserable vacation of his life. In 1951, he and his wife, Dorothy, and their five small children drove to Washington. The hotels along the route were inadequate, expensive, and downright hostile to children. Driving home, Kemmons conceived of a chain of motels and started noticing likely sites at intersections on the fringes of major cities. That's when the "conscious thinking and creative imagination" referred to in the dictionary began to produce, and other ideas began to spin off.

In true conservative fashion, the stodgy element called it Wilson's folly when he completed his first Holiday Inn on the outskirts of Memphis. It had 120 rooms, about five times larger than the average tourist court. It had wall-to-wall carpeting and those "endurable mattresses" Sinclair Lewis referred to. But it had much more. It had free television, a free swimming pool. And to cap it all off, this father of five advertised "children under twelve free when sharing their parent's room." Actually inviting children, and not charging for them! And maybe the most unorthodox gesture of all was to welcome pets, and have a free dog kennel—and actually allow the dogs to stay in the room if preferred.

So Wilson's folly opened full, in 1952. It's been full—or almost so—ever since, and the original Inn—with much updating—is still there, along with 14 other Holiday Inns in greater Memphis, Tennessee.

The power of an idea! Kemmons started with one Inn in 1951. Twenty years later, according to our 1971 annual report, Holiday Inns, Inc., had revenues of \$707.8 million and pre-tax earnings for the year of \$73.6 million. From that one Inn there are now 1,400 Holiday Inns, with 200,000 rooms, in all 50 states and Holiday Inns are either open, under construction, or planned in 50 foreign countries.

Kemmons built two other Holiday Inns in Memphis and realized he couldn't expand fast enough on his own. That's when another idea evolved. Franchising. The most likely prospects were builders. Kemmons was a builder, himself. He teamed up with another master builder named Wallace E. Johnson, also of Memphis, who was a power in the national Home Builders Association. They persuaded 65 builders from throughout the U.S. to come to Memphis to see the Holiday Inn and hear about their idea. The 65 came,

listened, and said they liked it. But only two bought franchises. The others were too busy with their regular projects. Only after hard work and hard selling not only by Wilson and Johnson, but by others on the team, were more franchises sold. Finally, however, franchises began to dribble in at \$500 each and the fledgling System began to gain momentum. Franchises now sell for \$15,000 or \$100 per room, whichever is larger, and about 400 applications are processed each year, resulting in an average of 125 bona fide franchises. That figure, plus the Inns built by the parent company, gives the startling statistic of a new Holiday Inn opening every 55 hours, somewhere in the world.

With that many Inns, you're going to have some amusing episodes. A recent one involves a guest who found he couldn't get out of his bathroom. The door had jammed. He pounded on the wall and shouted and the guests in the next room called the front desk. The innkeeper came over with his pass key to investigate. When he couldn't unlock the bathroom door, he phoned the Inn operator to have the porter bring a screw-driver to room 204. Well, it was 5:30 in the afternoon and at this Holiday Inn the porters also handled room-service calls. So the porter stopped by the bar and brought Room 204 a screw-driver—vodka and orange juice, which didn't help open the door, but the harried guest thought it was a delightful extra touch to offer it to him when the door finally was open. He drank it—and everyone was happy.

This franchising is a fascinating idea. It seems to be almost exclusively an American institution. Foreign investors don't understand it and their language has no word for it. The term was first applied to a privilege or right, such as the franchise to vote. Then it began to mean a special business privilege bestowed by a government, such as the franchise or right to operate a bus line in interstate commerce. Then it began to mean the right given by a manufacturer to a distributor or retailer to sell the manufacturer's products in a given area, like the right to sell Chevrolets in Birmingham.

And from there it expanded to the right to sell things such as food and lodging service under given conditions—under the green and yellow sign of Holiday Inns, for example.

But we carry the principle even further by working out a mutual arrangement with the franchise holder so that he has a vote in making rules and setting assessments for the entire Holiday Inn group, involving also the company-owned properties. We think our method of franchising is a very good arrangement for the mutual benefit of everyone involved, including the customers. Our franchisees represent a wide range of knowledge and experience. Doctors and dentists, builders, developers, bankers, retired military men, farmers, entertainers, and, of course, hotel and restaurant operators. And now we even have an astronaut. John Glenn is a Holiday Inn franchise holder. All these people are part of the Holiday Inn family. We provide them the know-how to build and operate a Holiday Inn. They feed back suggestions based on what they have learned in their special fields.

They have to live up to a set of standards which assures a good operation, but they help set the standards. We all put a part of our revenues into a pool for national advertising, but we all help determine the amount that goes into the pool.

Our people will attest to the power of the franchising idea. They have a high degree of autonomy but they also have many of the advantages usually confined to large corporations. The franchise method, coupled with employee profit-sharing, involves everyone in the incentive system. Holiday Inn stockholders, Holiday Inn franchisees, who also may be stockholders, and the employees

of both groups—all these people are engaged in an incentive enterprise. That's the American way!

Ideas generate ideas. From franchising came the International Association of Holiday Inns which provides all Holiday Inn operators the right of self-determination and self-government—which gives representation with taxation. It also feeds into the system the tremendous input of talent, judgment, and influence of our franchise holders. Think of the ideas that must generate.

A good example of the Association as an idea factory is the Holidex System. In 1965, we had 63,000 guest rooms and our teletype reservation method couldn't carry the load. An association committee was assigned to the problem. This group, working with company representatives, came up with a computerized reservation system which is unique and tremendously effective. The result is our data processing complex which now spans the Atlantic and handles reservations for 200,000 guest rooms, and if the type of room you want is not available at one Inn, the computer automatically throws on the screen the name, location, and of two other nearby Holiday Inns as alternates. It all started with an idea.

With several idea-generating people around, you are soon unable to trace the actual source of an idea. Such is the case with Trav-L-Parks, a new Holiday Inn venture offering campsites to touring families. The need became apparent when such a large segment of the traveling public moved outdoors. Now there is a chain of Holiday Inn Trav-L-Parks embodying the same franchising principles as the Holiday Inn motor-hotel System.

One more idea and we'll be through. The Chaplain-on-Call program. Our headquarters employees—all 200 of them—needed a chaplain, someone to counsel and take charge in bereavement or tragedies. So we hired one, an ordained minister. He and our president, William B. Walton, conceived the chaplain-on-call program. The power of an idea! We now have 800 chaplains on call, in the U.S., Canada and five foreign areas and it is still growing. They're listed in each Inn, like physicians-on-call.

We certainly don't want to invade privacy, but we know any hotel room can be a very lonely place to a troubled guest. Last year the chaplains report more than 200 potential suicides prevented—temporarily at least—and a great number of other calls to help out in marital crises and mental disturbances. Kemmons didn't think of that one as he drove back from Washington.

Ideas have to be implemented. We have in the Holiday Inn administrative organization an elite club called the Royal Order of Bear Skinners. I am proud to be a member. It originates from the old vaudeville joke which most of you must have heard. It seems that our two top idea men, Wilson and Johnson, were invited to a bear hunt. They bought all the equipment, clothes, boots, hats, guns, and typically, showed up at the lodge two hours late. The rest of the hunters had already returned. So Wilson and Johnson set out to find their own bear. Before they had gone very far they turned a corner and met one face to face. Wilson, being chairman, fired first, and missed. Johnson also fired and missed. This irritated the bear and he took out after them. They headed for the cabin with the bear close behind, snapping at their backsides. They dashed through the open front door of the cabin with the bear right with them. They dashed out the back door but slammed it quickly in the face of the bear. Then they yelled through the window: "You skin that one and we'll go find another one."

And that pretty well tells the story. Those two idea-merchants have been bringing us about two live bears a week to skin—while they go find another one.

In September of this year we will have the formal opening of the Holiday Inn University which will train an estimated 4,000 people. It is an expansion of our present scattered training units and will have its own 88-acre campus, lake, dormitories, and alumni group, without subsidized athletics, and we trust, no campus disorders. The System now needs 120,000 employees and there is a scarcity of trained personnel.

In order to raise money to expand, Holiday Inns, Inc., went public in 1957, with 120,000 shares of stock at \$9.75 per share. If you had bought 100 shares for \$975, today it would be equivalent to 1,632 shares. At the current quotation of \$50 per share, your initial investment would be worth more than \$80,000.

That is the power of an idea—in America.

## VISITS STRENGTHEN FRANCO-AMERICAN TIES

### HON. PATRICK T. CAFFERY

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. CAFFERY. Mr. Speaker, in 1968, at a time when there was evidence of some coolness in relations between the United States and France, then-Ambassador Sargent Shriver conceived the idea of a continuing parliamentary exchange between Members of the House of Representatives and the French National Assembly as one means of ameliorating our differences.

His idea sprang from the simple but sound premise that for lawmakers of the one country to gain a deeper knowledge of the other could not help but cement the many lasting bonds between our two countries and lessen the few misunderstandings that occasionally arise between even the closest of allies.

It was my pleasure to serve as a host for one of my French counterparts during the visit of the French delegation last October, and it was my distinct honor to serve as cochairman, along with my colleague from Illinois (Mr. RALLSBACK), of the nine-member delegation from this body which reciprocated that visit during the past Easter recess of the Congress.

As guests of the French Government, we were privileged for several days to observe the operation of the French Parliament and to meet for a very frank and beneficial exchange of ideas with a broad range of French officials from Prime Minister Jacques Chaban-Delmas to a number of officials in charge of special areas of mutual concern.

From our discussions with a large number of legislative leaders, Cabinet ministers, and local government officials, several impressions remain most vivid.

I felt some special kinship to our French hosts, perhaps because my district in Louisiana shares so much of the French heritage. The last few years have witnessed a remarkable resurgence of the French language in south Louisiana and an equally remarkable and successful effort to perpetuate other elements of the French culture in which south Louisiana is so rich. Thus it was especially gratifying and informative for me to an-

swer questions about this renaissance from my hosts, who not only are aware of this movement but are obviously most interested in expanding their cooperation with us in that area.

One of the primary mutual concerns of our two countries is the attack on the international traffic of heroin and other hard drugs, and I believe our two countries have entered into a model example of binational cooperation to curb this traffic.

After our lengthy discussions with concerned French officials, including Interior Minister Raymond Marcellin, many of us in the American delegation came away with increased confidence that the French are taking strong steps, both in passage of new laws and enforcement of existing ones, to clamp down on a vast smuggling enterprise which warranted the concern of both our countries.

Mr. Speaker, these are but a couple of the highlights of our visit, and there are many more which I shall not enumerate here today. The most general and certainly lasting benefit of any such exchange is the broadened knowledge and understanding of another country, another culture, another people.

In an era of increased dialog even with our adversaries with whom we have great differences, I believe it is not only important but essential that we seek to further our cooperation with France, a country with whom we have often stood and with whom we have deep ties that are indeed as old as America itself.

## ANTIBLOCKBUSTING BILL FACES TROUBLE

### HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. DERWINSKI. Mr. Speaker, it is my judgment that the Department of Housing and Urban Development has become an unmanageable institution and the adverse effects of its policies have been seen in numerous areas in the district I represent. Specifically, the Chicago Heights-Park Forest area has suffered from very questionable HUD programs.

Recently, Secretary Romney was in the area, and an article in the Park Forest Reporter of May 10 is sufficiently self-explanatory that I place it in the RECORD believing its point to be well made:

#### ANTIBLOCKBUSTING BILL FACES TROUBLE

Senator Tom Hynes (D-29th) said Senate Bills 942-43-44, which are an attempt to strengthen the current antisolicitation law were defeated in the senate judiciary committee last week by a 6 to 6 vote. He said it is unlikely that the bill will get out of committee during session.

The anti-solicitation law presently is implemented by the Illinois Commission on Human Relations, to stop block busting through unscrupulous realtors who call by phone or in person on homeowners who have not indicated their property is for sale.

Senator Hynes told the Reporter by telephone that he thought Senate Bills 942-43-44 were pretty good. He said they would have

been of great assistance in combating panic peddling.

There is another series of bills still alive—House Bill 1769-70-71, cosponsored by Senator Frank D. Savickas (D-27) and Representative Edward Madigan (R-47). This bill, Senator Hynes said, has passed the House and is now before the Senate.

Hynes said he and Senator Daniel Doherty (30th) were in support of the bill, as were Senators Jack Walker, Frank Ozinga and Charles Chew.

This series of bills, if passed, would transfer the implementation of the present law from the state Human Relations Commission to the Department of Education and Registration. Hynes said it would put more of a burden to actively check realtors than the law now provides.

The down state legislators are blamed for the downfall of a total of five bills that would have given strength to the anti-solicitation law. Hynes said the down state lawmakers just don't understand the problem the city and surrounding suburbs have in combating blockbusting and its accompanying ills.

Hynes urged that all area residents write their legislators to support House Bill 1769-70-71 immediately. The Senators and Addresses are: 6th Dist.—Frank Ozinga, 3101 West 95th, Evergreen Park, 60642; 8th Dist.—Jack E. Walker, 18018 Arcadia, Lansing, Ill. 60438; 28th Dist.—Thomas C. Hynes, 10540 Western, Chicago, 60643; 30th Dist.—Daniel Doherty, 1957 E. 93rd Chicago, 60617.

To be effective at all the letters must be written, now, today. This is how you can help return your community to stability.

## CAPITAL PUNISHMENT AND THE WAR ON CRIME

### HON. JOHN G. SCHMITZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. SCHMITZ. Mr. Speaker, the late J. Edgar Hoover said in the FBI Law Enforcement Bulletin, June 1960, that—

Law-abiding citizens have a right to expect that the efforts of law enforcement officers in detecting and apprehending criminals will be followed by realistic punishment. . . . It is my opinion that when no shadow of a doubt remains relative to the guilt of a defendant, the public interest demands capital punishment be invoked where the law so provides.

As it happened, I was attending a meeting of the House Internal Security Committee when the news came to Capitol Hill that J. Edgar Hoover was dead. It brought immediately to mind the superb cooperation which the FBI Director had always given to our committee, even in the days when it was known as the House Committee on Un-American Activities, and was under the most vehement attack.

J. Edgar Hoover's judgment was as sound as his public service was extraordinary. Through nearly half a century, through changes that altered many aspects of our country almost beyond recognition, J. Edgar Hoover held fast to the eternal moral principles and total devotion to duty which originally caused him to be appointed head of the FBI—by President Calvin Coolidge, in 1924. How many men in public office today will be able to say that, or have

it said of them, if they complete an even remotely comparable span of time in the service of their country?

So much has been made, both pro and con, of Hoover's fight against subversion that we sometimes tend to forget that this man was first and foremost a crime fighter. He detested crime—especially violent crime—with all the fervor of a militantly Christian heritage. He led men into battle against crime like a general in war. In the 1930's he brought America's "gangster era" to an end in a brilliant campaign whose victories over the Dillingers, the Barkers, the Karpises, and the Floyds and their like, became American legends comparable to the tales of the Old West. And he removed from American families a shadow whose heart-stopping terror has been all but forgotten by a whole subsequent generation which, thanks to him, was spared it: the shadow of widespread kidnaping of little children for ransom.

J. Edgar Hoover and the FBI brought the kidnap-killer of the Lindbergh baby to justice, and were centrally involved in the passage and enforcement of the "Lindbergh Law," which imposed the death penalty for kidnaping, and by so doing made it possible for kidnaping on a large scale to be eliminated from our land. And so J. Edgar Hoover knew well that there are some crimes which the death penalty does help to prevent.

On March 17, 1971, testifying before the House Subcommittee on Appropriations, Hoover reviewed the grim record of policemen murdered on duty during the decade of the sixties. In the period 1960-69, 561 police officers met death at the hands of 741 felons, 54 percent of whom had previously been charged with a crime of violence. One-fourth of these murderers were on parole or probation when they killed the police officer and 3 percent—19—had already been convicted of a murder. Nineteen of our police officers would be alive today if these men had been executed so that they could not kill again. In January 1971, Hoover reported in the FBI Law Enforcement Bulletin the case of a man arrested, after a furious gun battle, for two murders, a kidnaping, and an armed robbery, who had already committed a previous murder 4 years earlier, only to be found insane, "treated," and subsequently released. Facts like these—which it is unfashionable even to mention nowadays—have been totally disregarded by those responsible for the court decisions and propaganda campaigns for the elimination of capital punishment.

J. Edgar Hoover believed in enduring values and he understood that human nature does not change. Many of our present judges believe that neither law nor truth endures, and that evil does not exist—and try to remake our law accordingly. We dare not let them take many more essential weapons away from our hard-pressed law enforcement, or the fight against crime will be lost, resulting in anarchy, which all history shows is inevitably followed by tyranny.

DAILY CALUMET READERS HONOR "DR. MAX"

HON. ABNER J. MIKVA

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES  
Wednesday, May 17, 1972

Mr. MIKVA. Mr. Speaker, in every community, there are people who devote themselves to helping others and to making the community a better place to live. Unfortunately, they are not always recognized for their service. In my district, there has been an acknowledgement of such a servant. Dr. Max Brzezinski has been honored as "Man of the Year"—thanks to the readers of the Daily Calumet, a leading newspaper in my district. The newspaper sponsored the contest, and more than 6,000 readers responded. "Dr. Max" was the clear winner.

Dr. Brzezinski is an active community leader, working on those "little things"—like getting a crossing guard for a dangerous street intersection—that are so important in the day-to-day life of a community. Dr. Max is a good example of what a good citizen should be. We are glad that he has been honored and are grateful for his work.

A copy of the Daily Calumet article describing Dr. Brzezinski's election and his work follows:

DR. MAX CAL "MAN OF THE YEAR"  
(By Kathleen Hallahan)

Dr. Max Brzezinski has been named Man of the Year by Daily Calumet readers.

Dr. Brzezinski was one of a group of 10 nominees for the honor in The Daily Calumet's Man of the Year Contest. He received 2,609 votes from readers, who cast their ballots during the last two weeks.

The other finalists and their vote totals are:

Douglas Maynard and James Badoni, 1,430;  
Officer John Hodges, 849;  
Art Schmidt, 410;  
Eddie Kamraczewski, 349;  
Jim Mills; 278;  
Ronald Perkich, 96;  
Birthe Hultgren, 52;  
Rev. Lennart Arnell, 22;  
John Szymanski, 10.

A total of 6,105 votes were cast in the contest, excluding some 250 votes which were discarded as fraudulent ballots.

The nominees were also selected by Daily Calumet readers in a "primary" voting period, during which cans of food accompanied ballots. A total of 1,310 votes were received, with an equal number of cans, donated to the southeast side's community pantry which provides emergency food relief.

Dr. Brzezinski is a lifelong resident of the South Chicago community. He resides at 83rd and South Shore Dr., and is an optometrist with offices at 8810 Commercial.

As were other nominees, "Dr. Max" was featured as The Daily Calumet's Man of the Week in 1971.

"It's terrific—it's wonderful," Dr. Brzezinski said. "My friends really worked hard." He noted that many of those who voted for him have been his patients.

Dr. Brzezinski is active in community affairs, and was instrumental in obtaining a crossing guard for 82nd and Exchange. He also successfully campaigned to have a tavern in the area closed on the grounds that it was a "den of prostitution and gambling."

During World War II, he was a liaison officer between the Vatican and the U.S. Army. As a member of the overseas staff of the National Catholic Welfare Conference, he was knighted by Pope Paul XII in 1946 in the order of St. Gregory the Great. During the war, he was responsible for reuniting displaced persons with their families. Since he fluently speaks Polish, Italian, French, and German, he also assisted other families overseas.

Currently, he is involved in work at St. Michael's Parish, as well as the Old Settlers Association of Chicago. He is named in the American Catholic Who's Who, and is president of the Polish American Optometric Association. He also is a member of the fourth district police steering committee.

The fifth highest vote-getter, Edward Kamraczewski, known to many South Chicago residents as Eddie Kam, died last week of a heart attack, but he continued to receive votes through the April 21 deadline.

CONTINUED CAMPAIGN TO DENY BASIC RIGHTS TO MIGRANT FARMWORKERS

HON. HERMAN BADILLO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES  
Wednesday, May 17, 1972

Mr. BADILLO. Mr. Speaker, this afternoon I briefly participated in a vigil being conducted by the United Farm Workers Union, AFL-CIO. This vigil was held to highlight the fast being observed by Cesar Chavez and to protest a repressive farm labor law recently enacted by the Arizona State Legislature and sponsored by groups such as the American Farm Bureau Federation.

The measure quickly passed by the Arizona Legislature outlaws the secondary boycott and makes it virtually impossible for farmworkers in Arizona to gain some bargaining power through the use of an effective strike. This action is simply another in a continuing series of efforts aimed at destroying the United Farm Workers Union and denying basic rights to the thousands of farmworkers throughout the country. The UFW is clearly being persecuted by narrow, special interests and antiunion forces such as the American Farm Bureau Federation and an alliance known as the Free Marketing Council.

Mr. Speaker, I believe our colleagues must be aware of this vicious and ill-conceived effort to prevent farmworkers from protecting their interests and securing a living wage, decent working and living conditions, and simple human dignity. I present herewith, for inclusion in the RECORD, the text of a press release issued by the United Farm Workers Union this morning and a letter written by Cesar Chavez during his current fast.

The press release follows:

PRESS RELEASE

Supporters of the United Farm Workers and Cesar Chavez held a vigil today outside the Washington office of the American Farm Bureau Federation. The vigil was called in conjunction with a fast being observed by UFW's director Cesar Chavez in Phoenix, Arizona. Chavez began the fast after the

Arizona state legislature passed a farm labor law which was sponsored by the Farm Bureau, UFW leaders contend that the bill will severely hamper efforts to win union recognition for the state's farm workers.

At the vigil in Washington D.C., Ramon Romero, a lettuce boycott coordinator for the Farm Workers Union, charged that in effect the new Arizona law will take away the only economic lever that Arizona farm workers have to bring their employers to the bargaining table. He said that the law, which goes into effect in 90 days, will make it impossible for Arizona farm workers to strike effectively and that it outlaws secondary boycotts.

The farm workers' spokesman said that similar bills sponsored by the Farm Bureau have passed in Idaho and Kansas and have been introduced in over 20 other states. He called for a Congressional investigation of the Farm Bureau, stating that the Farm Bureau enjoys tax-exempt status although there is a serious question as to whether the Farm Bureau is an "agricultural organization" for the betterment of farmers. Romero pointed to the fact that in the eyes of the President's Price Commission, the Ohio and Indiana State Farm Bureaus were "companies" and were among those which failed to file quarterly profit margin reports last week. He also claimed that many Farm Bureau members are not farmers at all, but businessmen who happen to buy Farm Bureau insurance. He called for a full disclosure of the sources of income, salaries, and expenditures of the Farm Bureau.

Chavez' fast is being undertaken just two weeks after resumption of the farm workers' boycott of iceberg head lettuce from California and Arizona. Since the beginning of the fast last Thursday, Chavez has attended Mass nightly with farm workers from the area surrounding Phoenix. He is attended by a private nurse and his personal body guards. The location of the fast and nightly services is a small community center in Phoenix's Mexican-American Southside.

In a letter to farm workers supporters written at the sight of the fast and made public at the vigil, Chavez explained that "The fast is not out of anger at the growers. My concern is the spirit of fear that lies behind such laws in the hearts of growers and legislators across the country. Somehow these powerful men and women must be helped to realize that there is nothing to fear from treating their workers as fellow human beings." He also called for a commitment from farm workers supporters not to eat or buy head lettuce until the boycott is won.

MAY 15, 1972.

DEAR BROTHERS AND SISTERS: Our people have been poor for more years than we can remember. We have made only a small amount of progress in the past ten years of work and struggle. Our women and children still die too often and too young. There is too much hunger and disease among us. Not even 5 per cent of America's migrant farm workers are protected by union contracts. Yet there is a great fear of our union, a fear that I do not fully understand, but that I know is present with most growers and especially among the lettuce growers in the current resistance to the rights of their workers. Growers, through the Farm Bureau, are seeking to bring the whole machinery of government against us. Why are they so afraid of a union for migrant workers? Is it so much to ask that the poorest people of the land have a measure of justice?

In Arizona, a major lettuce-producing state, the growers and the politicians have just passed a law that destroys the right of farm workers to have a union. Farm workers under this law cannot engage in consumer boycotts. Supporters of our union could be arrested for telling their friends not to buy lettuce. Farm workers are put in the humiliating position of having to go to a special Agricultural Labor Relations Board ap-

pointed by Republican Governor Jack Williams, for a government-conducted election to determine their right to strike. The law provides for union-representation elections but establishes so many steps and procedures that seasonal and migrant workers would never have a chance to vote. Growers can not only frustrate an election for two to three months, but they can actually avoid elections by a minor change in hiring practices. Even if workers should vote for the union, an employer can seek a decertification election after only a three-month waiting period. The bill is discriminatory. It is aimed only at farm workers, who are mostly Black, Brown, and Indian. No other labor force is asked to live with these repressive measures. This is what the Farm Bureau means when they advocate "free elections" and "responsible legislation."

Farm workers in Arizona tried to tell their legislators about the unfairness of this law. They collected letters and petitions and brought them to their representatives. They were met with cold indifference. They were patient, but could not get appointments. In many cases their letters were thrown into trash cans in front of their eyes. After the bill passed, it was brought by the highway patrol to the governor, who signed it immediately. The next day the governor was asked by a reporter to comment on the farm workers who wanted to meet with him. He responded, "As far as I am concerned, these people do not exist."

What is it that causes sane men to act so hastily and so cruelly? It cannot be that we are so powerful. In the context of the great corporations, we are like a mosquito on an elephant's back.

This attack on our union, in Arizona and in every major state, is also an attack on the spirit of justice in America. Why shouldn't farm workers finally have a chance to hold their heads high in their own organization? Why shouldn't there be food on the tables of the families who work so hard to harvest that food? Why shouldn't poor people be allowed to struggle non-violently for justice? The answers seem so obvious, but the Farm Bureau, the lettuce growers, and the politicians are deaf to our pleas.

My major concern is not this particular Arizona law. The fast is not out of anger at the growers. My concern is the spirit of fear that lies behind such laws in the hearts of growers and legislators across the country. Somehow these powerful men and women must be helped to realize that there is nothing to fear from treating their workers as fellow human beings. We do not seek to destroy the growers. We only wish an opportunity to organize our union and to work non-violently to bring a new day of hope and justice to the farm workers of our country. It is long overdue, and surely it is not too much to ask. Justice for farm workers is our only goal. It is the goal of our non-violent lettuce boycott. Will you help us by making a commitment not to eat or buy lettuce? This is a small sacrifice that can bring a great change for migrant farm workers. I ask your prayers and your continued help in our struggle.

Your Brother,

CESAR CHAVEZ.

### CUTTING OFF SUPPLIES TO THE COMMUNIST INVASION

HON. LOUIS C. WYMAN

OF NEW HAMPSHIRE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. WYMAN. Mr. Speaker, many persons feel the quickest and best way to get the war ended in Vietnam is to help

the South Vietnamese defeat and expel the Communist invading armies. President Nixon is doing this by acting at long last to cutoff supplies, munitions, and oil, to the invading armies.

If these Communist invaders can be defeated the probability is that North Vietnam will meaningfully negotiate an end to the war including return of Americans they hold prisoner. In fact, the likelihood is that only in this way will such an agreement be made, inasmuch as their response has consisted of arrogant refusal to negotiate for so long that it is obvious to one and all that the so-called negotiations at Paris were a one-way street.

That the results of the President's action are beginning to show is indicated in the following Evans and Novak column appearing in today's Washington Post. Many of us suspect that both the Soviet Union and Red China would just as soon see this thing ended now. If so, Evans and Novak's writing may be prophetic.

The article follows:

#### NOOSE TIGHTENS ON HANOI

Although President Nixon's order to mine the ports of North Vietnam is more than ten days old, there is still no sign that Communist China is rushing work troops to North Vietnam to protect vital rail links—a Chinese omission that fits perfectly the Nixon plan to choke off Communist war supplies.

To the contrary, the relatively mild Chinese reaction to the President's blockade by mines of North Vietnamese ports strongly hints that Peking is not at all eager to repeat rail-repair assistance it gave North Vietnam during the height of U.S. bombing in the late 1960s.

During that last extended period of major U.S. bombing of the two major rail lines connecting North Vietnam and China, 40,000 to 50,000 Chinese work troops were assigned one job: quick repair of American bombing damage. That mission not only helped keep open rail supply lines but also gave Peking political leverage in Hanoi to match Moscow's rising influence.

Relations between Hanoi and Peking have steadily deteriorated since those troops went home in late 1968, reaching bottom with President Nixon's spectacular trip to Peking, which the Hanoi politburo regarded as an act of betrayal.

Hard prediction of China's long-range reaction to the American blockade of its Communist ally's ports would be folly this soon. Nevertheless, there is reason to believe Peking's present leadership does not wish to become any more involved with the Vietnam war than the minimum necessary to prevent an open break with Hanoi.

Because of this, Hanoi may have severe difficulty making up by overland transport from China the calamitous loss of war shipping into North Vietnamese ports. Hanoi's war machine, fueled about 15 per cent from China, is likely to find it difficult to keep even that relatively low level of supplies flowing by rail and truck route from China.

Thus, the noose around Hanoi is now perceptibly and inexorably tightening. Experts here estimate that with Haiphong's port facilities able to unload a maximum of between 30,000 and 40,000 tons of war supplies per day, the first two weeks or so of the blockade will cost Hanoi close to half a million tons.

Quite apart from the deadly psychological blow that the supply cutoff must be causing Hanoi, its military significance is even more important. Commanders in the field at the hottest points of contact with the South Vietnamese army—Hue, Kontum and Anloc—now must begin to think about husbanding

what heretofore had been a fairly constant stream of incoming supplies.

That transforms current military operations. The South Vietnamese position around the provincial capital of Kontum is extremely precarious today, but, as of this writing, the Communists appear to be still holding back the long-predicted attack. Likewise, although some military experts have been convinced that Hue could be taken when the Communists were willing to make the sacrifice, the assault still has not been launched so far. The reason: understandable caution about jumping headlong into the unknown suddenly created by the choking off of new supplies.

Possibly, assaults on these and other highly exposed South Vietnamese positions are being deliberately held up until Mr. Nixon leaves Washington this weekend for the Moscow summit, when they would have maximum political effect on both the United States and the Soviet Union.

Hanoi may also be playing the long shot that Moscow will threaten a military response to Mr. Nixon's port closures after the West German parliament has ratified the Bonn-Moscow and Bonn-Warsaw treaties, now scheduled for final action by the end of this week.

But supporters of those contingencies are in a minority. Far more likely, Hanoi is reassessing a military position that has brought its future war-making potential into serious question and a political position that has denied it the all-out support it needs from Peking and Moscow.

OPINIONS ON THE WAR IN VIETNAM

HON. DEL CLAWSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. DEL CLAWSON. Mr. Speaker, the editor of the Daily Signal published in Huntington Park, Calif., has, in my opinion, accurately reflected the reaction of most Americans at this point in the history of U.S. involvement in Vietnam. I believe his comments are worthy of the attention of my colleagues and include his column at this point in the RECORD. [From the Huntington Park (Calif.), Daily Signal, May 10, 1972]

News

(By Tom Hageman)

Opinions on the war in Vietnam and how to get out of that miserable nation of intrigue were set in concrete long ago.

There are those who would have our troops march out on hands and knees. There were those who feel certain that a military victory could be achieved if we ever used our real muscle.

And then there is the vast middle ground that followed three presidents in the belief that our system was sound and that our leaders would not betray us.

Those three broad categories of opinion existed on Monday morning and they remained in precisely the same position Monday night following President Nixon's blockade decision.

Those three positions mentioned are thoughtful ones, arrived at honestly and without selfishness.

And then there are the rioters—the idiots who burn, destroy and disrupt. A prime example of this kind of counterproductive nonsense was displayed yesterday at Isla Vista in Santa Barbara.

Yesterday they tried to burn the bank and inconvenience citizens who in no way caused

or wished them harm. They did this, they said, in protest of the blockade.

Not too long ago they did exactly the same thing—then they were more destructively successful—because the rents were too high and the establishment educators were not properly relating to the brilliant minds assembled at UC Santa Barbara.

That kind of value system—and it was exhibited at Stanford and Berkeley as well—seems painfully twisted and shallow.

Undoubtedly there were some peaceful protest marches and demonstrations yesterday. Most, however, looked suspiciously contrived and anything but peaceful in intent.

And the news media, particularly television, is at its worst in reporting campus protests. By using the "roundup" device of reporting, all sense of proportion is lost. You see the rioters, but you do not see the 98 per cent not engaged in such activity.

A "roundup" story often fails because it takes all of the extremes and all of the exaggerations and puts them together in a gloriously distorted version of the way things are going.

Escalation of the war by any name is not a course of action that the people of the United States by any means welcome. The war was actually lost long ago. We are now trying to salvage the peace.

Certain members of the Congress are beginning to sound like spokesmen for Hanoi. Those who talk impeachment, among other things, are off the track and are not properly assessing the mood of the vast majority. They are perhaps blinded by "roundup" thinking and are doing a disservice to this nation, its people and our honor.

Yes, there really is a thing called "honor" left in this world. And it will be around a lot longer than the promulgators of division and defeat.

THE HANDICAPPED—WILLING AND ABLE WORKERS

HON. PATSY T. MINK

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mrs. MINK. Mr. Speaker, a young constituent of mine, Wayne Valdez of McKinley High School in Honolulu, recently visited Washington, D.C., to participate in a national convention concerning employment of the handicapped.

Wayne was the winner in Hawaii's "Ability Counts" essay contest sponsored by the Governor's Committee on Employment of the Handicapped. He was awarded the trip to Washington to participate in a national convention on the subject with other statewide winners.

Wayne's winning essay is a perceptive analysis of the special problems which confront the physically handicapped in attempting to find gainful employment. Though a handicapped person may possess all the requisite skills, he is often denied an opportunity merely because of an irrelevant handicap. Wayne also conducted a random survey of the public concerning the attitudes toward handicapped people and found that ignorance and apathy regarding their problems and abilities often prevail.

I applaud Wayne's articulate recognition of the capacities of the handicapped and the awareness that "ability counts" should be the determining factor in hiring these individuals. I would like to share with my colleagues the insights

expressed in Wayne Valdez' winning essay:

THE HANDICAPPED—WILLING AND ABLE WORKERS

Daniel Inouye and Mrs. John Burns, well-known Honolulu citizens, have one thing in common, a physical handicap. Senator Inouye lost his left arm in World War II, but has represented Hawaii in the United States Congress almost since Statehood. Mrs. Burns, the First Lady of Hawaii, is confined to a wheelchair since a bout with polio, but has headed numerous charity drives. But what about the less famous people who are handicapped? Are they leading successful, productive lives? How do the handicapped feel about their disability?

I have found the answers to these and other questions that apply to the physically handicapped in Hawaii. I have arrived at a general definition of a handicapped person from the data I compiled. A handicapped person is one who, because of certain physical disabilities, has had to make major readjustments in life. Handicapped people usually experience a sense of alienation because they know they are different and are afraid of being rejected by others. But they are human beings who want to and can lead normal lives.

There are about 100,000 physically handicapped people in Hawaii. Most of them are not receiving any kind of aid from a rehabilitation center, although there are 138 organizations that offer rehabilitative services that are usually free.

An organization offering a good rehabilitation program is the Goodwill Industry of Honolulu, Inc. Its main purpose is to provide vocational training and paid job experience that will eventually give the handicapped person more self-confidence. This rehabilitation enables them to seek jobs never before open to them; it nurtures independence.

The handicapped with vocational training would be no better off if Hawaii's employers are not aware of their potential or are prejudiced against them. If employers can accommodate the handicapped, provide work for them, they will surely find the handicapped just as efficient if not more efficient than normal employees. The requirements of some jobs do not demand the full array of senses; Lyle McQuary, a letterpressman at the Sturgis Print Company in Honolulu is deaf; his job does not require hearing.

The handicapped must also make emotional adjustments. An interview with Mrs. Mildred O., a secretary at a Goodwill Industry office in Honolulu, showed me she did not feel handicapped. Despite an artificial left arm, she has a job and says she leads "a normal life." She also feels that the public is not aware of her abilities or they might "give some sympathy."

Mr. Donald I., a proprietor of a concession stand at Honolulu International Airport, feels that his blindness does not hamper him in his work. He knows the monetary units by size and texture, but depends on the customers' honesty to a certain extent. When asked if the public seemed sympathetic towards him, he said, "I just know what I hear and I can't tell from that."

Mr. Henry K., is confined to a wheelchair, but he has a job with a Honolulu realty company's accounting department. He does not feel handicapped because he has a Master's Degree in accounting and feels he is as qualified as anyone. He also commented that he learned to accept sympathy as unavoidable.

These people and many others have learned to accept their handicap. They have gained self-confidence and are capable of doing efficient work. But is the public aware of their capabilities?

I conducted a poll selecting 50 people at random at the Ala Moana Shopping Center. First, I asked, "Who are the physically handicapped?" The general response was "I don't

know" or "People who can't work." Second, "Are you aware of the rehabilitation services offered in our state?" The answers were, for 100 per cent, "No." The last question was "Do you think the handicapped are capable of competing with non-handicapped people for the same job?" The answers varied from "Yes, depending on the job" to "No, they're hopeless."

Although a general conclusion cannot be drawn from this survey, I cannot help but feel that if this is a sample of the public awareness of the handicapped, the attitude of the majority in the community must be apathetic. The image of the handicapped seems to be one of a helpless individual. Until the public changes its apathy to concern, the citizens can be of little help in meeting the needs of the handicapped.

I feel that the public of Hawaii has much to learn. The people must first become interested and enthusiastic in order to give the handicapped equal job opportunities and the recognition they deserve for their accomplishments in various fields of labor. Once the community is alerted and awakened, much help can be directed toward a better, happier life for the handicapped person.

#### MODERN VERSION OF LITTLE RED RIDING HOOD

### HON. FRANK ANNUNZIO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES  
Wednesday, May 17, 1972

Mr. ANNUNZIO. Mr. Speaker, recently I mailed a questionnaire to certain Chicago residents, and Mr. Jack D. Sheets, one of those who responded to my questionnaire, has asked me to insert the modern version of Little Red Riding Hood into the CONGRESSIONAL RECORD.

I know that my colleagues in the Congress will find this version of the classic story of Little Red Riding Hood both provocative and interesting, for it reflects on some of the serious problems confronting our society today. The story follows:

#### THE MODERN VERSION OF LITTLE RED RIDING HOOD

Once upon a time there lived a little girl called Red Riding Hood. One day her mother asked her to take a basket of fruit to her grandmother, who lived in a cottage in a forest, and had recently been ill.

It happened that wolf was lurking nearby and heard the conversation. He went to the grandmother's house, killed her, and dressed in her nightgown, and jumped into her bed to await the little girl.

When Red Riding Hood arrived, he pretended to be the grandmother, and then tried to grab her and eat her.

Red Riding Hood ran screaming from the cottage, and a woodcutter working in the forest heard her cries and rushed to her rescue. He killed the wolf with his axe, and Red Riding Hood's life was saved. All the townspeople hurried to the scene, and hailed the woodcutter as a hero.

However, at the trial, several facts were brought out by the lawyers and the American Association for Understanding Unfortunate Wolves, who voluntarily entered the case.

It was shown that the woodcutter had not advised the wolf of his rights under law. Moreover, he had not made any warning signals with his axe before striking the fatal blows.

Then the AAUW stressed the point that, although the act of eating the grandmother

may have been in "bad taste," the wolf was only "doing his thing," and thus should not have been punished by death.

The AAUW contended that the killing of the grandmother could have been considered self-defense on the part of the wolf, and also that since the grandmother was over the age of 30 she was beyond the age of serious regard and of being considered of further value to society.

The threat which the wolf had made to little Red Riding Hood in seeking to kill and eat her was also only a natural urge of the animal instinct to satisfy his normal hunger desires, and it may have been activated by a condition of dire physical hunger. Also it was the normal reaction of a person in a situation of being underprivileged and of a minority oppressed group.

When the court took these matters under consideration, it rendered post-mortem decision that there was no basis for charges against the wolf.

On the other hand, it was held by the court that the woodcutter should be charged with unprovoked assault with a deadly weapon. He was tried and found guilty and sentenced to ten years in the penitentiary.

Also, the family of the wolf brought a civil suit against the woodcutter and were awarded damages totaling 50 thousand dollars, which were assessed against his property and assets (consisting of a small cottage, a donkey, and a few personal effects). These were taken from the woodcutter's family and they were turned out into the streets.

Ten years after the "incident" at grandma's the cottage was made into a "shrine" in honor of the wolf who bled and died there. On the tenth anniversary of the incident all the village officials made speeches eulogizing the noble wolf. The most touching tribute of the memorial service was given by Red Riding Hood herself, now grown and a married woman.

She said that while she was selfishly grateful for the woodcutter's intervention, she now realizes that the impetuous man had "overacted" and had taken advantage of an unfortunate and helpless victim.

As Red Riding Hood knelt to place a wreath in honor of the brave wolf, there was not a dry eye in the crowd.

Adapted by Hart Armstrong from a U.S. Press Assn. release.

1. "The defender magazine" vol. 46, No. 10, for April 1972, page 28.

2. There is no record of a documented history of a non-rabid wolf ever attacking or harming a human being. However, changing the animal would have destroyed the value of the story.

#### THOUGHTS ON A TRAIN

### HON. BILL FRENZEL

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES  
Wednesday, May 17, 1972

Mr. FRENZEL. Mr. Speaker, the St. Paul Dispatch, a prominent evening daily serving the metropolitan area of St. Paul and Minneapolis, carried an editorial column in its April 26 issue concerning Amtrak, the National Railroad Passenger Corp.

This column indicates at least one observer's deep convictions concerning the need to maintain and improve our railway passenger service. I hope my colleagues will find it helpful in building their own evaluations of Amtrak and its services. The article follows.

[From the St. Paul (Minn.) Dispatch,  
April 26, 1972]

#### THOUGHTS ON A TRAIN

(By Oliver Towne)

Somewhere between Tomah and La Crosse, as the Empire Builder slipped through a rain-streaming Wisconsin night toward the Twin Cities, Jack Birdsell, Amtrak representative, sat down in the compartment's empty chair.

"Well," he said, "what's the verdict after our first year?"

There were three of us with some train of thought. Ramsey County Sheriff Kermit Hedman, president of the New Brighton Central railway, a nationally-famous railroad museum, and his wife, Eyleen, had also made this first anniversary ride on Amtrak to Milwaukee and return.

Just a year ago, we had ridden the farewell run of the old Burlington Northern Zephyr. A month later, we had climbed aboard our first Amtrak train to Wisconsin Dells.

Jack Birdsell may not have chosen just the right moment for his question. All three of us were prejudiced.

We had just finished a leisurely dinner in the diner under the ministrations of steward Burt Taurma, as polished a maitre d' as ever ran a restaurant. Our waiter, Eddie Hansford, had plied us with service, humor and good food—thick, slabs of juicy prime rib; jellied consommé; creamy, cheesy, au gratin potatoes from a renowned old Great Northern recipe; fresh, hot rolls; a dish of celery, pickles and olives; and an offering of deep dish apple pie.

With it we drank a fine 1966 St. Emillion Bordeaux.

And where is there a restaurant left in the world which still supplies finger bowls?

Or a complete dinner served in that grand manner at \$5.10?

And all the while, we had sat in the colorfully appointed, newly decorated diner, with its bouquets of fresh, red roses on each table, with its snow-white linen and polished silverware, and watched soggy dusk and then rainy night come to the Wisconsin countryside, its farmhouses, villages, towns.

Nor were we in a mood to condemn Amtrak service. We had just come from Milwaukee, whose new, beautiful railroad station has fared much better than St. Paul's empty hulk and Minneapolis' shabby receptacle for a mere four trains a day.

Milwaukeeans can ride 20 trains a day, more than ever before. All are sleek comfortably equipped and passenger business has risen 32 per cent in Amtrak's first year.

Perhaps Jack Birdsell should have asked his question that morning when, at 5 a.m., we got up and drove sleepy-eyed through a mixture of rain and spitting snow to the Minneapolis station to board the east-bound Amtrak Builder, which was 40 minutes late and staffed by a crew as disconsolate as the morning outside.

The affront to St. Paulites having to take a train in Minneapolis is unpardonable, and the hour at which they must board is diabolical.

"Agreed," said Jack. "And we know it and are doing something about it."

Starting June 11, the Hiawatha North Coast Limited, the second train, will leave for Chicago at a Christian hour of 11 a.m., instead of 8 a.m. And the Empire Builder will pull out at 8 a.m. instead of 6:30 a.m.

What's more, there is a torrid rumor, not attributable to Jack Birdsell, that a new Twin Cities Amtrak station will be built and operating by Nov. 1 at N. Fairview and the mainline in the Midway district.

If there is any bitterness among Amtrak staffers, it is the impatience and total ignorance of some editorial writers and congressmen about Amtrak's hopes and struggles.

Writers who haven't ridden a train in 30 years are suggesting that since Amtrak's first year turned in a deficit, that service still didn't measure up in many places, the whole thing ought to be scrapped.

How any one could believe that Amtrak could take the nation's broken down, rusting passenger trains and work miracles in 12 months is beyond me. Or that a nation which can spend billions putting men on the moon frets at having to subsidize rail passenger traffic on Earth for a few million of dollars.

And if you think the airlines aren't being subsidized already or that buses don't run on taxpayer-provided surfaces, you live in an Alice-in-Wonderland world.

Amtrak cars are being rotated through shops for refurbishing. The task of smoothing roadbeds is already beginning between the Twin Cities and Chicago. You can see it along the way. New ties, new ballast, new rail.

It is no idle chatter that Amtrak is negotiating to buy a fleet of Turbo-Jet trains which will make the run from the Twin Cities to Chicago in 4½ hours, Loop to Loop.

There still is glamor and romance, if not exquisite pleasure, about beginning the day in the cozy diners comfort over a plate of fried eggs and sausage, English muffins and marmalade, fresh orange juice and hot coffee.

And you can sit and look out of the window at the tiny bugs crawling over the spaghetti freeways and shake your head at what fools we mortals be.

From a train window, you can see America, not the traffic ahead of you.

#### STATE DEPARTMENT PRACTICES AND PROCEDURES

### HON. JOHN M. ASHBROOK

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. ASHBROOK. Mr. Speaker, in the May 15, 1972 CONGRESSIONAL RECORD, beginning on page 17384, there appears the testimony of John D. Hemenway given before the Senate Foreign Relations Committee on April 25 in which he raised objections to certain promotions included on a list of State Department and USIA personnel, which promotions require Senate confirmation. The Senate committee temporarily withheld confirmation while the State Department responded to the objections. Yesterday the committee voted to confirm the list of promotions, and today the Senate voted to approve the committee's action.

The Hemenway testimony, plus the documents he submitted with his statement but which did not appear in the CONGRESSIONAL RECORD, points up the subtle methods which have been refined at State to dispose of, or reward, those of their choosing. State, for instance, in emphasizing the highly competitive nature of the Foreign Service, will claim that it is sometimes necessary to dismiss admittedly capable officers to keep a high level of competency among those implementing our foreign policy. Yet, when one specific standard, language proficiency, is applied to a list of promotions offered by State, the Hemenway findings demonstrate that State recommends officers over 60 percent of whom did not meet the minimum professional level of

proficiency in two foreign languages. Furthermore, over 30 percent of those proposed did not meet the very minimal standards of a single foreign language.

On the other hand, consider the possible plight of Foreign Service officers who have fallen out of grace with the hierarchy. An FSO can be dismissed for being at the bottom of his class for a certain time or if he fails to be promoted to a higher class over a specified period of time. Promotion boards review the efficiency records of an FSO and make a determination as to his standing in his class or whether he deserves promotion. Mr. Hemenway's testimony referred to an official memo which stated that many FSO's have 12 to 14 files on themselves, some not authorized, and some of which contained information not actually placed in the official personnel folders provided in the regulations and not made available to the officers being considered.

In the case of a competent FSO who was undesirable from State's viewpoint, the logical question arises as to which files were presented to the promotion board members for evaluation. Did files from the FSO's efficiency record contain those which were unauthorized or those withheld from his inspection to which he is entitled by statute.

Also, the question arises as to how much "coaching" promotion board members received in the way of oral presentations from State officials. Mr. Hemenway claimed in his testimony that such a practice was in effect in the past, and State in answering his testimony conceded that this was indeed true. State stated:

While it was, as the witness contends, practice in the past for members of promotion boards to consult during their deliberation process with individuals in various areas of the Department, we have taken steps to halt such consultations.

In view of the above two possibilities for mischief, one can picture a dismissed FSO asking himself what files did the promotion board consult in his case which he was not allowed to see. Or he might ponder as to the nature of any consultation between board members and individuals in various areas of the Department which he was not privy to. Of course, the final question suggests itself as to how many FSO's were dismissed due to the chicanery of State officials.

To complete the record of this latest confrontation on one aspect of State Department procedures and practices, I insert at this point the State Department response, dated May 8, to Mr. Hemenway's charges of April 25. In addition, there is included Mr. Hemenway's reply, dated May 16, copies of which were delivered to the Foreign Relations Committee, addressed to committee members, yesterday morning in advance of the committee meeting which responded to State's letter of May 8. Also included are several documents which accompanied Mr. Hemenway's testimony of April 25 which are pertinent to the above remarks and which appeared in Mr. Hemenway grievance case against the State Department now over 2 years old and still unresolved.

The articles follow:

DEPARTMENT OF STATE,  
Washington, D.C., May 8, 1972.

HON. J. W. FULBRIGHT,  
Chairman, Committee on Foreign Relations,  
U.S. Senate,  
Washington, D.C.

DEAR MR. CHAIRMAN: The Department appreciates very much the invitation of the Committee, as contained in Mr. Marcy's letter to Deputy Under Secretary Macomber of April 26, to comment on Mr. John D. Hemenway's allegations regarding the Foreign Service promotion list recently sent by the President for the advice and consent of the Senate. We have taken the liberty of replying at length and in some detail.

Mr. Hemenway's basic charge, that the Department is violating regulations in nominating for promotion officers without proper language qualifications, is not correct. In 1967 the Department announced as a self-imposed objective that each officer should acquire at least a minimum professional level of proficiency in two foreign languages before reaching the senior level. Our regulations did not then, nor do they now, establish such proficiency as a prerequisite for promotion.

We continue to adhere to "two language" proficiency as an objective and believe we have made significant progress in attaining it. For example, in 1966 some 64 percent of all FSO's had tested speaking proficiency in one foreign language; the percentage is now 74 percent, and nearly 30 percent of all FSO's now have such proficiency in two or more foreign languages.

The attached charts make it clear that the Department is committed to and is making progress in upgrading the language capabilities of its officers. Of course, language ability is but one of the professional skills which the selection boards consider in reaching eventual decision on the rank order of each officer in comparison with his colleagues in a class.

Among the materials I have enclosed is a chart which indicates the tested scores of the 67 officers who are recommended for promotion from Class 3 to 2 and from Class 2 to 1. We believe the Committee will find it interesting as it gives a more complete picture of the actual individual language skills of the officers in question. You will note, for example, that some of the officers cited in testimony as having no language capability actually have proficiency at the "near-professional" level in one or in several languages. Some of the officers who were listed by the witness as having but one language have "near-professional" ability in an additional or in several other languages.

Related to this basic charge of the witness is the allegation that the Department's *Biographic Register* has been altered to "expunge" instances of an officer receiving language training but subsequently failing to attain proficiency in it. It was the practice in 1964 (the edition of the *Biographic Register* the witness refers to) to list all training assignments irrespective of their duration. In the late 1960's the *Biographic Register* was considerably streamlined to make individual entries more concise and to reduce the overall length and cost of the publication. In doing so, reference to all training assignments and temporary details of less than six months was dropped (for example, Spanish, French, and German training courses do not exceed six months).

We would now like to comment on a number of other charges made by the witness.

While the Department continues to have the highest confidence in Mr. Howard Mace, Mr. Hemenway is in error in commenting that this is the "last Mace list." The fact is that Mr. Mace had very little involvement with this year's promotion process. Only preliminary consideration had been given to the membership of last fall's Selection Boards prior to his departure in August from the Office of Personnel, and he was in no way

involved in the final selection of members. It is therefore false to say that this is the "last Mace list."

The witness has also raised questions as to the materials available to Selection Boards during their deliberations. Only the official performance file consisting of the Development Appraisal Reports and the Performance Reports was provided to the 1971 Boards on each officer eligible for promotion. That was the official performance file. To enable Board members to get a "feel" for the strictness or leniency of any particular rating or reviewing officer (or Inspector), however, the Board has access to files containing all other recent reports written by these officers. The Boards are also given a brief factual biographic summary (Department of State Personnel Abstract, DS-1711) on each officer, which includes a statement of his language capabilities. Boards were able to establish additional facts on length of assignment, health, etc., by specific inquiries when this was required for their deliberations.

While it was, as the witness contends, practice in the past for members of promotion boards to consult during their deliberation process with individuals in various areas of the Department, we have taken steps to halt such consultations. In fact, Selection Board precepts now require that members sharing relevant personal knowledge with other Board members must do so by signed memorandums with copies going to the officer concerned and to the personnel office for inclusion in the officer's performance file.

Mr. Hemenway makes reference to the past promotion of the present Director General of the Foreign Service to Career Minister. When, last fall, Director General William O. Hall became aware that certain individuals were questioning the legality of his promotion to Career Minister, he asked the Legal Advisor for an immediate opinion. The Legal Advisor replied that the promotion had been accomplished legally. The Director General informed the Secretary and other senior officials of the details of the situation and offered to resign his position. The Secretary accepted the opinion of the Legal Advisor, expressed his full confidence in Ambassador Hall, and asked him to stay on as Director General.

Another allegation made by the witness is that one of the officers nominated for promotion on the list could somehow have prevented the tragic murder of one foreign service employee by another at one of our posts in West Africa. The facts simply do not support this extraordinary charge.

Mr. Hemenway alludes to another case ("#114") and claims that the charges lodged against a particular officer have not been investigated and answered. His facts are distorted. The case to which he alludes involved a grievance filed by an officer not on

the list. It has been investigated and the officer granted redress. No charges were lodged against "#114" nor were any warranted. Mr. Hemenway implies that the Selection Boards should have had knowledge that one officer being reviewed was the supervisor of a complainant in a grievance case. This is in direct contradiction to Mr. Hemenway's earlier objection that the promotion boards have access to information not contained in performance files.

The witness next contends that to get a promotion it pays to be close to "top management and administration." Three cases are cited to support this thesis, and only one of these can reasonably be described to have been "close" to top management. The promotion lists are the product of the Selection Board deliberations. Performance and not organizational location is the main focus of their attention. A review of the promotion lists does not reflect any particular organizational or skill bias on the part of the Boards. It is true promotions are affected by the anticipated vacancies each year by specialization and class. This is necessary if available officers are to match the requirements of the service.

In commenting on these three officers, Mr. Hemenway states that "two of those three are without any language qualifications." The fact is that one of these is almost bilingual in Spanish and also has an S-2/R-3 in French, while a second of the three has an S-3/R-2 in German and an S-2+/R-2 in Spanish.

The witness's comments concerning a promotion board which considered Foreign Service Reserve Officers of Unlimited Appointment (FSRU) are also misleading. He questions the quality of the officers promoted by this Board by applying his language criteria to the members of the Board itself. He fails to explain that many of the people considered by these Boards are specialists (physicians, scientists, historians, communications technicians, audio visual technicians, etc.), categories in which highly specialized knowledge is of primary and language skills of secondary consideration.

The witness's contention that a member of one of these Boards was rewarded for his efforts with a "payoff" promotion is incorrect. The Class III Board which recommended "#126" completed its findings on December 16, 1971; the memorandum suggesting this officer as one of several potential FSRU Board members was dated January 10, 1972, almost a month after the Class II Board had recommended this officer for promotion.

The witness also registers his belief that persons without formal academic degrees are unqualified for officer rank. Some of the most distinguished officers in the Foreign Service, in other agencies, and indeed in all branches of the Government are without

formal academic degrees, and we do not require any officer entering the Foreign Service to display academic degrees. Experience indicates that those candidates able to pass through the examination process for the Foreign Service including that for lateral entry, have very satisfactory intellectual qualifications, however acquired.

The Department believes that all officers included in the list are qualified for and deserving of promotion. They have been found so after careful consideration under duly established procedures. We, therefore, urge the Senate to give prompt consent to these nominations.

Sincerely yours,  
DAVID M. ABSHIRE,  
Assistant Secretary for Congressional Relations.

LANGUAGE PROFICIENCY RATING SCALES

S-1: Able to satisfy routine travel needs and minimum courtesy requirements.

S-2: Able to satisfy routine social demands and limited office requirements.

S-3: Able to speak the language with sufficient structural accuracy and vocabulary to satisfy representation requirements and handle professional discussions within a special field.

S-4: Able to use the language fluently and accurately on all levels pertinent to foreign service needs.

S-5: Speaking proficiency equivalent to that of an educated native speaker.

R-1: Able to read elementary lesson material or common public signs.

R-2: Able to read intermediate lesson material or simple colloquial texts.

R-3: Able to read nontechnical news items or technical writing in a special field.

R-4: Able to read all styles and forms of the language pertinent to foreign service needs.

R-5: Reading proficiency equivalent to that of an educated native speaker.

THE GROWTH OF LANGUAGE PROFICIENCY OF FSOs

The following table—provided by the Foreign Service Institute—gives the numbers and percentages of Career Ambassadors, Career Ministers and other Foreign Service Officers with tested S-3 language proficiency as of February 7, 1972. The change in percentage since August 31, 1966, is shown, as well as the number of officers who have met the Department's goal of S-3 proficiency in two languages. The percentage of FSOs with tested S-3 proficiency in at least one language increased from 63.8 in 1966 to 74.4 in 1972. The percentage of FSOs with a proficiency of S-3 or better in more than one language increased from 23.2 in 1967 to 29.7 in 1972.

Class	Officers with tested S-3				Officers with tested S-3 in 2 or more languages				Tested S-3 skills per class
	Number of officers in class	Number	Percent	Change in percent since Aug. 31, 1966	Number	Percent	Change in percent since July 15, 1967		
CA	3	1	33.3	+33.3				1	
CM	54	32	59.3	+13.9	16	29.6	+1.3	51	
FSO-1	278	180	64.7	+12.4	75	27.0	+8.3	287	
FSO-2	396	271	68.4	+8.3	113	28.5	+6.7	427	
FSO-3	599	438	73.1	+10.7	215	35.9	+7.1	742	
FSO-4	660	552	83.6	+16.6	277	42.0	+8.1	900	
FSO-5	568	506	89.1	+12.5	171	30.1	+2.1	719	
FSO-6	314	234	74.5	+2.9	42	13.4	+2.9	284	
FSO-7	179	72	40.2	-14.0	6	3.4	-1.4	81	
FSO-8	32	9	28.1	-7.1			-3.6	9	
Total	3,083	2,295	74.4	+10.6	915	29.7	+6.5	3,501	

Note: The possessor of an S-3 minimum professional language proficiency can participate effectively in all general conversation; can discuss particular interests with reasonable ease; comprehension is quite complete for a normal rate of speech; vocabulary is broad enough that he rarely has to grope for a word; accent may be obviously foreign; control of grammar good, errors never interfere with understanding and rarely disturb the native speaker.

ENCLOSURE 3  
LANGUAGE SKILLS OF OFFICERS ON 1971 PROMOTION LIST

Name	Tested ratings meeting departments objectives						Additional tested ratings		
	Language	Speaking	Reading	Language	Speaking	Reading	Language	Speaking	Reading
FSO 2 to 1									
Bloomfield, Richard J.	Spanish	4	4+	Portugese	4	4	German	2	2
Bradford, William G.							Italian	2+	2
Broderick, William D.	Spanish	3+	4+	Serb-Croat	3+	4	French	2+	2
Button, Jack B.							German	3	3
Crowley, Edwin D.	French	3+	4	German	3	3+	Hungarian	2	1
Culbert, William E.							French	2	2+
Day, Arthur R.	German	4	4+						
Ericson, Richard A., Jr.							Japanese	3	2
Goldstein, Gerald							German	2+	2
							Portugese	1+	1+
Holdridge, John H.	Chinese	3	4						
Hussman, Margaret							Italian	3	2
							Spanish	2	2
Johnson, Richard E.	Polish	3+	3+	German	3	3+	Serb-Croat	2+	2+
							Bulgarian	2	2+
							French	2	2
							Portugese	2+	3
							German	2	2+
Laingen, Lowell Bruce									
Lehfeldt, William W.	Spanish	4+	4+						
Maestroni, Frank E.	French	4+	5	German	4	3+			
McKee, Henry Hunt	do	4	3						
Myerson, Jacob M.	do	4	4+				Spanish	2+	3
Pringle, Sandy MacGregor	Spanish	3+	4						
Schiff, Stanley D.	German	4	4	French	3	3			
Shoemith, Thomas P.	Japanese	4+	4+				Chinese	1	1
Stearns, Montague	Greek	4	4	French	4	4+			
Vine, Richard D.	French	4	4+	German	3+	4+			
Wortzel, Arthur I.	German	3+	3+	Russian	3	3+	Polish	3	3
							Czech	2+	2
FSO 3 TO 2									
Bell, S. Morey	Spanish	4+	4	French	3+	3			
Berlin, Calvin C.	do	3	3+				Italian	2+	2
							French	1+	2
Bliss, Robert R.							German	3	2
Brown, Charles W.							Spanish	2+	2
Calingaert, Michael	French	4+	4	Italian	4	4+	German	4	4
Carson, James L.	do	3	4				do	2+	2
Cash, Harvey J.	Spanish	4+	4	French	4	3+	Portugese	3+	3
Chaplin, Maxwell	do	4	4+						
Davis, John R., Jr.	Italian	4	4				Polish	2+	3
							Spanish	1+	2
							French	1+	0
Ely, Michael E.	French	4	4				Indonesian	2	2
							Spanish	1+	2
							French	1+	2
French, Harry George							French	1+	2
Grove, Brandon H., Jr.	French	4	3+	German	3+	3+			
Handyside, Holsey G.	do	4	4	Arab, East	3	3			
Hemenway, Brewster R.	Spanish	4	4				Russian	2	2
							French	2	1
Houston, Robert B., Jr.	Polish	3+	4+	Bulgarian	3+	4	German	1+	2
							Russian	2+	0
Johnson, Charles K.	German	4	4+	Italian	3	3+	German	3	2
Johnston, Ernest B., Jr.	French	4	3+	Spanish	3	3	Italian	2	2
Lang, Archie S.	German	3	3						
Leidel, Donald C.							Spanish	1	1
Livingston, Robert Gerald	Serb-Croat	4+	4+	German	4+	4+	Russian	2+	3
							French	2+	3
							Italian	1+	2
							do	3	3
							German	2	3
Matthews, H. Freeman, Jr.	Spanish	3+	3+	French	3	3+			
McCabe, David H.									
Melencamp, Noble M.	Italian	4	4+	Russian	3	4	German	2+	3
							French	2	3
Mencher, Alan G.	French	4	4+	German	3	3	Spanish	1+	1
Mills, John L.	Spanish	3+	4				Italian	2+	3
Moran, James B.							French	2	2
O'Neill, John J., Jr.							do	2	0
Pike, Wendall									
Rogers, Stephen H.	French	4	4+						
Simcox, David E.	Spanish	4	4+				French	2	3
Sinn, Melvin E.	do	4	4+						
Smith, Thomas W. M.	French	4	4				Russian	1	1
Smyser, William R.	German	5	5	Spanish	3+	4+	French	3+	3
							Italian	3+	3
Sorenson, Roger A.	Italian	3	3				Russian	0+	1
Squire, Christopher A.	Hungarian	3	3	French	3	4			
Sternier, Michael	Arab, East	3+	4				French	2+	2
Sulser, Jack A.	German	4	4+				Italian	2+	3
Summers, Thomas E.							German	2+	3
							French	1	1
Terranova, Joseph, Jr.							Spanish	1	1
Thorne, Nicholas G. W.							French	3	2
Veliotes, Nicholas A.	French	4	3+	Italian	3+	4	Hindi	1+	1
							Urdu	1+	0
White, Robert	Spanish	3	3+	French	3	3+			
Yoder, Amos							French	1+	2
Zachary, Dan A.	Greek	4	4	French	3+	3+	German	3	3
Zucca, Albert L.	Spanish	4	4	Italian	3+	3			

WASHINGTON, D.C.,  
May 16, 1972.

Re: 60% of the Senior Foreign Service Officers on Promotion List are not qualified.  
HON. J. WILLIAM FULBRIGHT,  
Chairman, Senate Foreign Relations,  
U.S. Senate.

DEAR MR. CHAIRMAN: During the confirmation hearing of Mr. Howard Mace, you ex-

pressed a desire to make meaningful nomination hearings at which the Senate was asked for its advice and consent. You regretted that confirmation hearings had become a *pro forma* affair and you indicated that you sought a meaningful and constructive role for the Senate Foreign Relations Committee in hearings of this kind.

On 25 April 1972 I testified before your

Committee in that spirit. Subsequently, on 8 May 1972, Mr. Abshire wrote you a letter which purports to rebut my testimony of April 25. In fact, it confirms much of what I said on that date.

It is my role to testify to facts known to me; it is for the Senate to give its advice and consent. In considering the facts, I repeat the question I posed during my testi-

mony: Can a man consider himself a diplomat by profession who, after more than 20 years of professional service still knows not a single foreign language? Thirty per cent (30%) of those recommended for promotion are in this category by the Department's own revised (and this time, presumably accurate) statistics. And a total of 60% of the senior officers (classes I and II) fail to meet the Department's own "minimal professional levels" of language proficiency, which is two foreign languages before reaching senior level (FSO class I and II).

Why is this the case? The Department has not even bothered to answer why. The Department merely asserts that all on the list are qualified. Also, they have not even responded to the charge that, of the promotion board determining officers for promotion to FSO-2, for example, not one met the Department's language standards; further, two out of the five had no recorded language qualifications at the "useful" level at all (S-3, R-3). Other boards are similarly poorly qualified. I submit that the quality of the promotion boards goes far to explain the quality of the promotion list.

Let us use the new statistics of the Department of State, but if you will forgive me, I will retain the old math! We still can calculate that 60% of the officers recommended for promotion fail to meet the Department's own standards. Look at the record:

Among those recommended for promotion to FSO-2, we find: 12 out of 45 have no tested language at the "useful" level. 15 out of 45 have only one "useful" language. It follows that 27 out of 45 fail to meet the Department of State's own minimal levels for senior officers.

In other words, 60% of the FSO-2 promotees are not qualified.

Again, using the Department's new statistics, look at FSO-1: 7 out of 23 know no language at all at the "useful" level. And 7 out of 23 have only one language at the "useful" level. Therefore 14 out of 23 fail to meet the Department of State's own goals.

Again, about 60% are not fit, judging from the Department's own objective standards.

Very early in Mr. Abshire's letter to you of May 8, Mr. Chairman, it is underscored that these standards are "self-imposed." Does that really justify departure from the rules? Have the Department's lawyers never read the US Supreme Court on *Service vs. Dulles*? I recall that, from that decision, once a Department sets regulations, even those it does not have to set, i.e., "self-imposed" regulations, then it must follow them. The State Department seems to take the view that since they are "self-imposed" rules, they can be violated whenever the spirit moves them. Have they learned nothing since *Service vs. Dulles*?

Even the new statistics presented by Mr. Abshire are suspect, however. They bear no date. A date is important. To be valid under the regulations, a tested ability in a language must be tested within a specified period, i.e., five years, unless an officer is exempt. Mr. Abshire does not mention this in his letter. Perhaps he does not know this. Let me cite the regulations:

3 FAM 876.2 Time Limit.

"To meet the requirements set forth in various sections of these regulations, the tested proficiency must have been attained not more than 5 years before the assumption of the duties for which the proficiency is required, unless the officer has met the standards cited in section 867.1 [tested twice very high at the S-4/R-4 level through two FSI tests 2 yrs apart or tested as bilingual.]

If the Committee were to ask that the language testing scores submitted be dated, it might discover that many of the rated abilities claimed are out of date and, again, the officer does not meet the required standard. Further, there are other requirements under statute that must be met. These im-

ply a greater sense of responsibility than is indicated by "self-imposed" regulations to be broken at will. Certain legal requirements go back at least to December 31, 1963:

Sect. 968 Foreign Language Knowledge prerequisite to assignment.

"The Secretary shall designate every Foreign Service officer position in a foreign country whose incumbent should have a useful knowledge of a language or dialect common to such country. After December 31, 1963, each position so designated shall be filled only by an incumbent having such knowledge. Provided: that the Secretary or Deputy Under Secretary for Administration may make exceptions to this requirement for individuals or when special or emergency conditions exist. The Secretary shall establish foreign language standards for assignment abroad of officers and employees of the Service, and shall arrange for appropriate language training of such officers and employees at the Foreign Service Institute or elsewhere."

It should be noted in passing that if regulations are considered "self imposed" and not to implement the law cited above, the Secretary will be forced to make a large number of "exceptions" for persons inadequately qualified. Our competitors in foreign diplomatic services require languages upon entrance—can we require less during an entire career?

By the language grading system of the Department of State, anything lower than S-3, R-3 is not a passing grade. Yet, in Mr. Abshire's letter, the Department has leaned on these low grades as if they really represented accomplishment. In this twisted world, two "Ds" make a "C", so to speak.

However, the Department claims that there is more to promotions than language skills. I agree, I used that as an indicator merely because it is so completely objective a measure. In fact, Mr. Chairman, on 25 April I asked your Committee to consider also the matter of professional competence. Admittedly that is difficult to measure objectively in the diplomatic service. I used, as an example, the Executive Director of the Bureau of African Affairs at the time of the widely publicized Erdos/Leahy murder trial. That particular Executive Director is on the promotion list to FSO-1, a violation of the regulations and propriety, I think. I offered the name of one witness to support my own testimony. In fact there are several such witnesses, should the Senate wish to investigate this matter thoroughly. In rebuttal, the Department simply asserts (see bottom of page three) that "the facts simply do not support this extraordinary charge." Is the charge really so extraordinary when compared to the bizarre facts of the murder itself? I mention the case because a man is on the promotion list to FSO-1 who evidently does not belong there. He was executive director in a critical situation which I happen to know he knew about. There is at present a grievance case under way in the Department of State relating to the murdered man's predecessor at the very same post. The Department knows this. I wonder if Mr. Abshire knew it when he signed the letter to you, Mr. Chairman? If the Senate were to investigate, abundant witnesses would be available to establish the professional laxity of this man who now is recommended for promotion to FSO-1. And, to boot, he does not even qualify from the language standpoint—our only truly objective standard. He does not qualify in a single tested language at the "useful" level (R-3, S-3). (Please recall that two languages are said to be the objective for "senior officers".)

With respect to other factors affecting promotion, on April 25 I also mentioned the need for basic integrity or honesty. I also cited an example in this category. For its part, the Department attempted to rebut

this example, too. (see first paragraph, page four)

Very late last night I spoke to the officer concerned. After listening to the pertinent paragraphs of Mr. Abshire's letter, he characterized the statements in the letter concerning his affairs as untrue. This employee of the Department of State is prepared to testify before your Committee under oath, Mr. Chairman, as I told you on 25 April. Mr. Abshire said the matter was investigated. The officer concerned told me the matter was not investigated—at least not in a satisfactory fashion. It was whitewashed and the officer concerned was not permitted to face his accusers. Mr. Abshire says that the officer was granted redress. This is not true. The officer concerned says that he requested, but was denied, redress. Mr. Abshire writes that a grievance was filed. This also is not true, according to the officer concerned who says that no grievance was filed. Yet the officer who participated in this unresolved dispute involving a question of integrity appears on the promotion list. As I noted on 25 April, he also fails to meet minimal language objectives set out in regulation.

With respect to law and regulations concerning language requirements and other requirements for promotion, I must note that I am not a lawyer. I must fall back on common sense. However, happily many members of your Committee, Mr. Chairman, may be lawyers or have colleagues in the Senate who are. They will recognize the legerdemain and pettifoggery in Mr. Abshire's letter for what it is. I came to you with a simple question. If people in the Foreign Service do not meet the "minimal professional level" set as the "objective", then why promote them? The Foreign Service already is top heavy in these two top ranks. Why complicate the matter by advancing persons known not to meet the standards? Even if it is not downright illegal or improper, is it not simply unwise? I have to leave this to you, Mr. Chairman, and to the Senate, whose advice and consent to this list is sought. I can only raise the question.

Similarly, I shall not attempt to judge the impropriety at this late date of the promotion of the Director General mentioned on page three. I am sorry I touched on such a sensitive point. It is a fact that Director General Hall received special extra-legal consideration for promotion when others, far junior, were not granted that consideration. I note in passing that the propriety of Director General Hall's promotion was sufficiently complex that he felt that he had to turn to the Legal Advisor for an "immediate opinion" to determine whether his promotion "had been accomplished legally." Most Foreign Service officers would have known without asking anyone. My own guess is that Director General Hall knew too. How can you expect propriety or legality or "sanctity of the promotion system" in such an environment of "one time exceptions."

Regarding my references on 25 April to the proliferation of State Department files, compare the statements on the top of page three of Mr. Abshire's reply concerning files to which there was access with Mr. Abshire's statements in the same paragraph about the need for Board members to get a "feel" for the strictness or leniency of any particular officer! Seen in the light of admitted improprieties of the recent past (see the second paragraph on page 3) does this inspire confidence in the present? Personally I believe that there are misrepresentations here, although it is difficult for me to establish this, in the time I have had to reply to this letter.

Page five of the Abshire letter, like many of the others, contains self-serving statements calculated to justify the lack of established standards, uniformly enforced. There are also many untrue statements which press of time forces me to pass by.

One, however, I should like to single out, look at, and identify, for it is typical of the kind of correspondence which the Department of State has been writing about me and other officers which have incurred the displeasure of certain members of the in-house management clique. Nowhere in my testimony to you, Mr. Chairman, will you find the statement attributed to me on page five of Mr. Abshire's letter to you of May 8, 1972: "The witness [John Hemenway] also registers his belief that persons without formal academic degrees are unqualified for officer rank." That is not a true statement and I do not even believe that. In fact, I myself was an officer at age 18 (in the infantry) when, of course, I had no formal academic degrees of any kind. Your Committee might wish to inquire why the State Department would write letters for Mr. Abshire to sign that contain untrue statements. It might help explain why they forward promotion lists containing unqualified senior officers.

Mr. Chairman, your Committee staff provided me with a copy of Mr. Abshire's letter to you at 1:15 today (May 15). Since I was told that your Committee would meet this morning at 10:00 am to consider the matter of the Foreign Service list, I have spent the night writing this letter. Many of the points at which I testified are conceded, in effect, but, surprisingly, the letter concludes with the request that "all officers included in the list are qualified for and deserving of promotion." This is patently untrue.

To invite the US Senate to endorse with its advice and consent a list known to contain unqualified persons is to call into question the role of the Senate in these matters. If the list is imperfect, why should it not be sent back until the obvious imperfections are removed? Either the Foreign Service has high standards or it does not. As able men are dismissed, the pretense is that these standards are very high. I and my colleagues look to you and the Senate, Mr. Chairman, to see that standards are enforced and that the Foreign Service myth becomes reality.

Sincerely,

JOHN D. HEMENWAY.

#### A FOREIGN SERVICE EMPLOYEE'S RIGHT OF ACCESS TO HIS PERSONNEL RECORDS

To: M—Mr. Macomber.

From: L—John R. Stevenson.

This memorandum examines the extent to which a Foreign Service officer is legally entitled to access to the Department's personnel records, including memoranda, files, correspondence and miscellaneous materials relating to him. It deals specifically with the Director General's files, suitability files and career development and counseling files, but does not discuss employee access to security or medical files.

#### DISCUSSION

Sections 601, 611 and 612 of Title 6 of the Foreign Service Act of 1946 (22 U.S.C. §§ 981, 986-87), as amended, principally govern a Foreign Service officer's access to material maintained by the Department regarding his performance or efficiency. In the definitions portion of Title 6, section 601 (22 U.S.C. 2981) defines "efficiency record" as follows:

(1) "Efficiency record" is the term which describes those materials considered by the Director General\* to be pertinent to the preparation of an evaluation of the performance of an officer or employee of the Service.

This concept is broader than that of "efficiency report," which is defined in the same section as follows:

\*Amended by 22 U.S.C. 311a which vests in the Secretary of State or persons designated by him, any authority granted to the Director General.

(2) "Efficiency report" is the term which designates the analysis of the performance of an officer or employee made by his supervising officer or by a Foreign Service Inspector in accordance with such regulations as may be prescribed by the Secretary.

Part B of Title 6 is entitled *Efficiency Records*. It defines the responsibility of the Director General for the keeping of efficiency records. Section 611 (22 U.S.C. § 986) says:

"The Director General, acting under the general direction of the Board of the Foreign Service, shall be responsible for the keeping of accurate and impartial efficiency records. Under his direction there shall be assembled, recorded, and preserved all available information in regard to the character, ability, conduct, quality of work, industry, experience, dependability, and general usefulness of all officers and employees of the Service including the reports of Foreign Service inspectors and the efficiency reports of supervising officers. The Director General shall undertake such statistical and other analyses as may be necessary to develop the validity and reliability of efficiency reporting forms and procedures."

The second portion of Part B, entitled *To Whom Records Shall be Available*, states in Section 612 (22 U.S.C. § 987):

"The correspondence and records of the Department relating to the officers and employees of the Service, including efficiency records as defined in section 601 (1) but not including records pertaining to the receipt, disbursement, and accounting for public funds, shall be confidential and subject to inspection only by the President, the Secretary, the Under Secretary, the Counselor of the Department, the legislative and appropriations committees of the Congress charged with considering legislation and appropriations for the Service or representatives duly authorized by such committees, the members of the Board of the Foreign Service, the Director General, and such officers and employees of the Government as may be assigned by the Secretary to work on such records. Under such regulations as the Secretary may prescribe and in the interest of efficient personnel administration, the whole or any portion of an efficiency record shall, upon written request, be divulged to the officer or employee to whom such record relates." (Emphasis added.)

These sections read together require the Department to make available to an employee any material retained in the Department's files which can reasonably be said to be pertinent to the preparation of an evaluation of his performance, including information regarding the officer's character, ability, conduct, quality of work, industry, experience, dependability, and general usefulness. This is in keeping with the intent of Congress, expressed by the House Committee on Foreign Affairs in its report on the Reorganization of the Foreign Service (Report No. 2508, 79th Cong., 2d Session, attached), that there is a "need for keeping officers and employees informed as fully as possible concerning their personal standing in the Service" and that the performance of the Service as a whole can best be improved "by enabling employees to have knowledge of their shortcomings."

The Department's regulations implementing the foregoing statutory provisions are found in 3 FAM, Section 1055 (Access and Accountability):

"Personnel folders are official in nature and only those persons whose duties so require may have access to them. No employee is permitted to withdraw his own personnel folder. If, however, he wishes to obtain information from his own folder for legitimate purposes, he may make the request through his administrative office which will be responsible for withdrawing the folder and providing the employee with the desired information."

3 FAM 1051 (Types and Contents of Fold-

ers) defines official personnel folders as follows:

"Official Personnel Folders consist of the Civil Service Official Personnel Folder, the Foreign Service Official (Administrative) Personnel Folder (see Exhibit 1051.3), the Foreign Service Performance Folder (see Exhibit 1051.4), and the Development Appraisal Report (DAR) Folder of Foreign Service personnel."

Under 3 FAM 1052 only the following materials are to be excluded from these folders:

"a. Medical files in the custody of the Medical Division (PER/MED).

"b. Investigative files maintained by the Office of Security.

"c. Classified documents retained in the Office responsible for generating the material. (Classified documents when found in the Official Personnel Folders shall be removed by the Personnel Service Division (PER/PSD), and returned to the originating office.)

"d. Material maintained by the Board of Examiners of the Foreign Service containing documents up to the entrance on duty of Foreign Service officers."

These regulations appear to accord with the Foreign Service Act as far as they go. However, they do not account for three types of files which the Department for some years has made a practice of keeping, though they have not been expressly authorized by the FAM: (1) career development and counseling files (CDC); (2) the Director General's file; and (3) the SRS suitability file. These files heretofore have in varying degrees contained material or information pertinent to an evaluation of the performance of an officer which have not actually been placed in the official personnel folders provided for in the regulations and made available to officers. In addition to these three types of standard folders there are believed to be other, usually less formal personnel files maintained in various bureaus and offices. The recent Committee on Files found that with respect to many Foreign Service officers twelve to fourteen different files are maintained.

It thus appears that action is necessary to rationalize the organization and maintenance of the Department's personnel files, and to bring the regulations on employee access into full conformity with the Foreign Service Act. The basic authority to do so, apart from what is provided in the Foreign Service Act, is found in Section 301 of Title 5 of the United States Code:

"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."

As a first step, and pending the formulation of more detailed recommendations, I address myself to the most immediate problem, that of the Director General's files.

In order to maintain the confidentiality and privileged character of the Director General's files for essential administrative purposes, particularly communications with Ambassadors in the field, and yet to comply with the intent of the Foreign Service Act that the whole or any portion of the "efficiency records" of a Foreign Service Officer or employee be divulged upon written request I would suggest the following general guidelines be observed in the future. In doing so I am taking particular note of the comment in the Report of the House Committee on Foreign Affairs on the Foreign Service Act Amendment of 1955 to the effect that "the Director General is required to evaluate materials going into the record so

that so far as possible personnel decisions will not be based on irresponsible allegations or reports contrary to fact."

1. A distinction should be made between two types of documents: (a) correspondence and other materials which are basically administrative in nature, such as decisions or actions by the Director General and recommendations from Ambassadors with respect to particular assignments or actions; and (b) material which can reasonably be said to be pertinent to the preparation of an evaluation of an officer's performance, including information regarding his character, ability, conduct, quality of work, industry, experience, dependability and general usefulness.

Materials included in (b) which the Director General deems to be pertinent to an evaluation of the performance of an officer or employee should be transferred to the appropriate personnel file where they will be available for general personnel purposes and subject to inspection by the officer or employee concerned as an efficiency record within the meaning of the Foreign Service Act. Material in this category which the Director General determines should not go into the record should be destroyed.\* Accordingly, what will be retained in the Director General's file will be essentially a record of administrative action and recommendations with respect to such specific actions.

2. With respect to documents retained in the Director General's file, the Department will wish to maintain the position that this material is classified or privileged and not generally available to officers or employees. However, the Director General could make available in the informal stage of a grievance proceeding or otherwise information that was contained in the Director General's file, but the presumption would be against such disclosure. The Director General's file should be physically separated from other personnel files and not made available to anyone other than the Director General and his personal staff without his express consent.

3. Where the Director General decided against making material in the Director General's file available in the informal stage of a grievance proceeding, the grievant would have the right under the Foreign Service Interim Grievance Procedures to have access to such material if the Grievance Board made an express finding that such disclosure was "required to achieve justice in the case" and was "not detrimental to the public interest."

In conclusion, I believe it is necessary that we discuss at an early date the necessity and modalities of revamping the Department's personnel records system, and amending the FAM accordingly, so as to bring the Department's procedures into greater accord with the provisions of the Foreign Service Act. While the preliminary views I have expressed regarding the Director General's file will, I trust, be of immediate utility in a limited area, a much larger job remains to be done. I look forward to reviewing this with you.

JOHN D. HEMENWAY,

Washington, D.C., February 28, 1972.

Chairman PAUL A. TOUSSAINT,  
Hemenway Hearing Committee,  
U.S. Department of State,  
Washington, D.C.

DEAR MR. CHAIRMAN: A memorandum written by the United States Ambassador to the Organization of American States, Joseph

\*If the Director General's discretion is exercised at the outset to exclude an item, that item never becomes a part of the Department's records, and hence the statutory regime for filekeeping (44 U.S.C. §§ 3301 et. seq.) does not apply and destruction of the excluded item is lawful (18 U.S.C. § 2071). We are examining the question of destruction of existing records, which will be the subject of a separate memorandum.

John Jova, dated January 25, 1972, came to my attention today. Entitled, "Case of John D. Hemenway", it directly concerns me. This memorandum, entered as exhibit E-5 of the Hemenway Hearing record by Department of State lawyers, was never previously known to me.

Ambassador Jova's memorandum seems to be an expansion of material found in the Parson/Penfield Report of January 14, 1969—the very same phrases are used in it—yet Ambassador Jova states in his memorandum that he has written from memory. If that is true, Ambassador Jova possesses a remarkable memory—almost photographic. There are contradictions contained in his memorandum which seem to me to be serious and noteworthy.

The memorandum raises more questions than existed before it was written. Accordingly, I respectfully request that Ambassador Jova's name be added to the list of witnesses submitted with my offer of proof to the Hearing Committee on 22 January 1972 in the event the Committee desires to hear more evidence before acting concerning the Finding of Facts outlined by me in draft form with my offer of proof.

Prior to Ambassador Jova's testimony under oath, it would be helpful for the Committee to provide me (and itself) with information relating to the following questions prompted by Exhibit E-5 of my Hearing record:

(1) Why was this memorandum written?

Specifically at whose request and authority, when, and for what purpose?

Are other memoranda in existence responsive to the same authority making requests for a similar purpose?

(2) It does not seem credible to me, as stated by Ambassador Jova, that his memorandum is based on his memory. Therefore I must ask:

What documents were given to Ambassador Jova for his own information in connection with the preparation of his memorandum of January 25, 1972?

Additionally, since one must presume that an authoritative, high-level request underlies Ambassador Jova's effort to reconstruct the matter he entitles, "Case of John D. Hemenway", it will be useful to know:

By whom and by whose authority were such materials transferred?

Why was Ambassador Jova's testimony not entered into the record under oath where the penalties of perjury would prevail and opportunities for cross-examination exist?

(3) On page 2 of TAB D of the Parsons/Penfield Report to the Secretary of State, it is written that "the Board" (presumably Amb. Jova) asked for supplementary information from PER and Hemenway's "supervisor" (presumably Johnpoll). Yet Ambassador Jova states in his memorandum of January 25, 1972, that he was approached first by Alex Johnpoll. Two questions arise at once:

Is Ambassador Jova putting a good face on an otherwise improper act by suggesting that the initiative—at least the first time—came from Mr. Johnpoll?

Is Ambassador Jova suggesting that Ambassador Parsons—U.S. Deputy Representative to the SALT talks—misrepresented the facts of the Jova/Parsons/Penfield conversation?

In any event, it seems to me that this material is more appropriately entered into the record under oath. Clearly, either someone has lied or unwittingly told an untruth, i.e., Amb. Parsons/Penfield and Amb. Jova do not agree as to the facts.

(4) Why was the Hearing Committee not informed that a further related investigation of this matter—apparently at the instance of the Department of State—was taking place outside of the Hearing Room? (I note in passing that Hemenway never has been provided information, as requested, concerning

the second investigation subsequent to the Parsons/Penfield Report.)

This preliminary informal approach, not under oath, may possibly prejudice witnesses and certainly permits off-the-record discussion of the Hemenway Grievance matter that is not permitted by the regulations governing the Hemenway Hearing.

Why was my attorney not informed of this procedure?

(5) Three (3) illegal contacts between the Promotion Board in 1967 and unauthorized persons are documented by Ambassador Jova's memorandum. Were any records made of these contacts, as required by regulations?

We have had no response from our earlier request for a full disclosure of other contacts made by persons similarly in contact with promotion boards considering Mr. Hemenway.

If no record was made, how did the rest of the Board become aware of the information obtained by Amb. Jova so that it could consider it?

Why does Ambassador Jova feel that code words or, as he puts it, "hints of weaknesses" confirmed by a supervisor, helped Hemenway? For example, Jova records, as if it were a fact that Johnpoll "when pressed" confirmed that Hemenway "tended to see things in black and white." How could this have helped Hemenway's chances for consideration?

Did Ambassador Jova ask Mr. Johnpoll about any of the policy differences between Hemenway and Johnpoll/Puhan? Did he even know of them? Does he know of them now, or at the date of the writing of his memorandum?

Ambassador Jova must know that the allegation that an FSO sees issues in "black and white" is one of the most damaging signals that can be introduced into a personnel file. Why did he feel that he had to "press" for confirmation of this information from Alex Johnpoll in the "further conversation" he initiated. Had Amb. Jova spoken with PER in the meantime, to get further leads as to lines of questioning?

Why does Ambassador Jova call Mr. Johnpoll "Alex" in his memorandum of January 25. This is what Mr. Johnpoll was called by his close colleagues. Does Ambassador Jova have this relationship with Mr. Johnpoll? We would like to know more about this relationship.

(6) Contact with "a placement officer in PER/CMD" is recorded. Who was this person?

What did he say to whomever contacted him?

Who contacted him? Under what authority was this done?

Was he contacted directly—or through his supervisor? Who was his supervisor?

(7) What were the specific "hints of weakness" that caused the Board to "anguish" and caused the Board to recognize other files as "better" than the Hemenway file? These alleged "hints" were said to be in "the file"—but which file or files? We would like to know specifically, for there are between 12 and 14 files maintained on every Foreign Service Officer, according to the October 1971 memorandum from the Department's Legal Advisor Mr. Stephenson to Mr. Macomber, introduced into the Hearing Record. The Boards regularly consulted several of these files, at least, despite the obvious impropriety of such acts, unless properly recorded. Catch words or "key" phrases, or the lack of such phrases (to which reference already has been made) could be described in Ambassador Jova's terms as "hints of weakness". We want to know specifically which phrases Amb. Jova felt these were because we shall add them to the specific phrases already identified in the record that are directly attributable to policy differences between Mr. Hemenway and his supervisors, who have introduced untruths into the

record against him. We believe these were introduced deliberately and maliciously to injure the career advancement (and therefore to cause the ultimate expulsion of Hemenway from the Foreign Service.) Statements in Ambassador Jova's memorandum must be added to others of record that have been proved untrue, false, misleading and malicious or slanderous.

(8) It is not at all clear what is meant by Amb. Jova in the third paragraph of his memorandum of January 25, 1972 when, in describing contact with PER he records "the opinion that Hemenway could be assigned to another position in the Service when his tour expired." I would like to know what the implications of this remark are. Was Jova already discussing my expulsion from the Service? Without a promotion, this is the only assumption that makes sense—otherwise there would be no need to consider assignments after Hemenway's tour as Berlin Desk Officer "expired."

(9) What is the basis for the assertion that Mr. Johnpoll's intervention—if it was Mr. Johnpoll's and not Amb. Jova's—resulted in Mr. Hemenway "receiving a higher ranking than he otherwise would have received based solely upon his file?" Had Hemenway already been ranked prior to this illegal intervention, so that such a comparison might be made?

What other contracts were made during which Hemenway's name or affairs was mentioned in any context whatsoever?

What was the role of Idar Rimestad in this specific connection? Of Jules Bassin? John Steeves?

How many officers in their last year in grade actually were promoted by this Board which Jova claims was "particularly concerned" over officers in their last year? Is it not a fact that promotion results prove that officers in their last year were offered by that very Board far fewer promotions than their competitors of the same grade specifically because of their seniority, rather than as Ambassador Jova claims?

Exactly who were the officers whose files were said to be "better" than Hemenway's file? (Note that the reference is to files, demonstrating again the fatal damage to one's career of inserted "key phrases" or "hints of weakness" that are masking the real problem of policy differences.)

Did Jova make any attempt whatsoever to see whether the file matched the man, i.e., that Hemenway was not the victim of his supervisor? He does not state. If Jova felt he could interview the supervisor, why did he not feel he could interview the man concerned? Did he feel this would be "unfair"?

(10) Is it really true, as Amb. Jova states, that under the precepts in existence for the 1967 Boards, Hemenway had one "last chance" remaining for promotion—1968? How does this square with the written statement of Mr. Rimestad (written prior to the convening of the 1968 Boards or even the writing of the 1968 efficiency report) referred to on page 4 of TAB A of the Parsons/Penfield Report (Line A-4.4).

(11) We would like to know the names of all persons with whom Mr. Jova had contact in the Management/Personnel/Administrative area in connection with the Hemenway case at any time. Specifically, through whom did Mr. Jova operate to establish contact with persons outside of the Board while deliberations over promotions were in progress? How many contacts during this period did he have with persons in connection with others being considered for promotion, or with:

Mr. William B. Macomber, Jr.  
Mr. Howard P. Mace.

Mr. Chairman, I would like you to inform the Hearing Committee that I can prove that Mr. Jova's memorandum, like the Parsons/Penfield Report before it, is a deliber-

ate web of fabrication contrived to shore up an otherwise unconvincing facade of "fairness" and "objective examination" of "objective records" by "objective boards." Frankly, it reminds me of the Congressman who always had the Civil Service Commission administer a "fair" examination to all candidates interested in an appointment to West Point or Annapolis. The exam was "fair". The trouble was that the appointments were not given to the persons achieving the highest marks. The candidates, of course, did not know this.

You may wish to inform the other members of the Hearing Committee that, at this late date, the scope of this grievance hearing may be widened by the Department of State initiatives of this kind. It certainly does illustrate the continuing "growth" or "life" of a grievance until something suitable is done. Personally, I believe that, by writing his memorandum, Ambassador Jova has documented further his unwise and illegal act—the fact that this improper kind of contact between promotion boards and unauthorized persons and records is widespread does not legitimize the action.

I was hoping that certain persons in the Department of State really were beginning to see the need for reform. Clearly Ambassador Jova is not one of them. He must have known that his memorandum contained deliberate untruths, misleading omissions and inaccuracies at the time he wrote it, i.e., on 25 January 1972.

Sincerely yours,

JOHN D. HEMENWAY.

DEPARTMENT OF STATE,  
Washington, D.C., January 25, 1972.

MEMORANDUM

From: USOAS—Ambassador Joseph John Jova.

Subject: Case of John D. Hemenway.

As Chairman of Selection Board IV which considered "the case of John D. Hemenway in 1967, I have been asked to comment on the consideration given Mr. Hemenway by that Board. The following is a reconstruction of the matter based on memory some five years later.

We were very interested in the Hemenway case, as he had such an unusual background. As I remember, he had been a graduate of Annapolis, but had served in the Army and Air Force as well as the Navy, and has been (I think) a Rhodes Scholar. In spite of this background, and in spite of many favorable comments, the file also contained hints of relative weaknesses.

To the best of my recollection, during the earlier sessions of the Board I was approached by Alex Johnpoll, who was at that time or had previously been the supervisor of Mr. Hemenway. Mr. Johnpoll urged that the Board look favorably on this case, pointing out that Hemenway was nearing time-in-class and urged that he be promoted since if he were selected out it would be a loss to the Service. In view of the Board's interest in this case and the fact that the time-in-class situation (penultimate year) made our recommendation of importance, I initiated a further conversation with Alex Johnpoll after a study of the file. He repeated strongly his recommendations that Hemenway be promoted. On being pressed, he did confirm a criticism that he tended to see things in black and white, but maintained that his other good qualities more than compensated for this and that there was a real need in the Service for someone with his background. An inquiry was also made to a placement officer in PER/CMD, who expressed the opinion that Hemenway could be assigned to another position in the Service when his tour expired.

The Board anguished over this case but found that the hints of weakness apparent in the file did not permit ranking Mr. Hemenway higher than we actually did in view of the very strong competition from others

whose files were better. As I recall, he was placed in the upper middle of the class. A higher ranking would have meant placing him above officers whose files were better than his solely on the ground that he was approaching time-in-class. We also recognized that he would have still one more chance for promotion and felt that a decision to place him above officers whose files were actually better on "compassionate grounds" was an action which might more appropriately be considered by a final Board.

I should stress that the intervention in his favor by Mr. Johnpoll resulted in his receiving a higher ranking than he otherwise would have based solely upon his file.

We were particularly concerned regarding those officers who were in their last year and for whom this was a last chance; we were also concerned about those who were approaching this stage. For this reason I asked the entire membership of Board IV to review informally the findings of the respective panels in those cases involving all officers who were in either their last year or penultimate (as was Mr. Hemenway) year of time-in-class.

PROMOTION OF OFFICERS AFFECTED BY MAXIMUM TIME-IN-CLASS OR AGE

On October 14 Ambassador Steeves, Mr. Lyerly, Mr. Zimmerman and Mr. Lutkins discussed the problems posed by the cases of 1) officers who will either pass the mandatory retirement age or exceed the specified time-in-class limit prior to the processing of the 1969 promotion list, and 2) officers currently serving as Chiefs of Mission who have either passed the mandatory retirement age or exceeded the specified time-in-class limit.

Mr. Lyerly perceived no legal obstacle to the promotion of an officer certified to the Selection Boards who subsequently reached maximum time-in-class before the final processing of the promotion list. In such cases we would send the officer the usual time-in-class letter, but we would grant him a sufficient "grace period" under 3 FAM 737.1 to cover the time required for the processing of the promotion list. This policy would be applicable at all grades, though in practical terms the problem would normally occur only in cases of promotions from Class 1 to Career Minister.

The case of a Class 1 officer recommended for promotion to Career Minister who would reach the mandatory retirement age of 60 prior to the processing of the Career Minister list was also considered. Mr. Lyerly believed that in such a case it would be necessary for the Secretary to take a formal action, under the authority given him by Section 632 of the Foreign Service Act, extending the officer in the Service.

With respect to officers holding Presidential appointments as Chiefs of Mission, it was agreed that Ambassador Steeves would recommend to the Board of the Foreign Service next year that in the future any such officer would be regarded as moving to a political status at the time he reached mandatory retirement age or exceeded the specified time-in-class limit. In any case where such an individual reached mandatory retirement age or exceeded his maximum time-in-class prior to the convening of the annual Selection Boards he would not be certified for review by the Boards.

Special attention was devoted to the cases of Ambassadors William Hall, Raymond Thurston, and Howard Cottam who were certified for review by the Twenty-Second Selection Boards although they exceeded the specified time-in-class for Class 1 on July 30, 1968. It was decided that if one or more of these officers were recommended for promotion by Board 1 and the subsequent Career Minister Review Board, it would be left for the Foreign Service to determine whether they should be promoted. If the Board of the Foreign Service should adopt the policy

recommended in the preceding paragraph, its approval of the recommendation that one or more of these Ambassadors be promoted would constitute a single exception not constituting a precedent for the future.

LARUE R. LUTKINS,  
Chief, Performance Evaluation Division.

## POLLUTED ESTUARY

### HON. GILBERT GUDE

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. GUDE. Mr. Speaker, the Washington Metropolitan Area is facing the realization that the Potomac Estuary will be used for water supply purposes in the near future. This is necessitated by the fact that the quality of the river at low flow may be exceeded by the consumption requirements of the metropolitan area. At normal periods our area's water comes from further up the river—above the estuarine line.

If we are to use estuary water for drinking purposes, we must redouble our efforts to get the river cleaned up. We must not allow the expansion of the Blue Plains waste treatment plant to be held up further for lack of funds. We must devise a method to handle the sewage overflow and storm runoff problem that comes with heavy rainfall.

Finally, we must press on with our studies of recycling waste water for the purposes of consumption. This is the inevitable solution to Washington's water supply problems and as well as for many other cities around the country.

I submit for the information of my colleagues three articles on this matter which appeared in the Washington Star on May 7, 8, and 9, 1972.

The articles follow:

#### DRY DOOMSDAY—THE DAY THE WATER RUNS OUT (By John Flalka)

One day soon, a day coming with a mathematical certainty, the Potomac River will run virtually dry.

It will most likely be a hot summer day in a period of prolonged drought. At first, Washington suburban jurisdictions won't feel the crisis because they have some water storage capacity.

But the District of Columbia will be in serious trouble.

At best, Washington has a 12-hour reserve supply of water. After that, parts of the system simply will have to be shut off to supply water to more vital areas. Some sink taps, toilets and fire hydrants will be empty.

This waterless doomsday already has occurred—on paper. On a hot day in 1966, Sept. 10, the flow in the river above Great Falls fell to a new low of 388 million gallons a day (mgd) before it reached the first of the area's water intakes.

Last summer, on July 17, another hot day, those intakes drew 402 mgd from the river. Another record.

Engineers from a variety of local and federal agencies concerned with the problem are now praying that these conditions will not coincide on one day this summer.

They say the crisis is inevitable. It could occur sporadically in the 1970s. It will happen frequently in the 1980s, when the area's daily appetite for water is expected to soar to above 900 mgd.

The crisis is so near that the engineers are now considering making Washington one of the first major cities in the world to recycle water from its own sewage system.

They are already preparing the hardware for drawing water from the upper end of the Potomac estuary, parts of which are grossly polluted.

This use of treated estuary water could begin under emergency conditions this summer, although the U.S. Army Corps of Engineers is still conducting research on how to identify and kill the large concentrations of viruses it believes exist in the estuary, which is the same body of water that receives most of the area's sewage.

How did Washington get into this predicament?

The Capital is located in one of the most water-rich areas of the nation. On an average day, the Potomac has about 7 billion gallons in it, or, as one engineer put it, "enough water for the whole East Coast."

But all of this largess flows by, unhindered by dams, from the tributaries into the Potomac, over Great Falls and Little Falls, and into the river's broad estuary, where it sloshes back and forth under the influence of the tides on its way to the sea.

While other cities have planned to store water—Baltimore has a one-year reserve supply, New York City has a three-year supply—the Washington area is still dependent on the presumed abundance of its river.

The Metropolitan Area Council of Governments estimates that 75 percent of the area's present and future water \* \* \* the Washington Suburban Sanitary Commission, which supplies Montgomery and Prince Georges Counties; Washington Aqueduct, operated by the Corps of Engineers, which supplies the District, Arlington and Falls Church; and the city of Rockville, Md. Water authorities for Fairfax City and Fairfax County, which also supplies Alexandria, obtain most of their water from impoundments on Goose Creek and Occoquan River.)

It is not that the Washington area suffers from a lack of planners. The water supply has been one of the most planned, argued, calculated and arbitrated problems among all of its urban concerns.

Specifically, the question of whether to dam the Potomac may be the oldest standing political feud in Washington.

And it is not that the Corps of Engineers, which is responsible for collecting and purifying the District's water, hasn't tried.

In 1948 it presented Congress with an ambitious plan to discipline the Potomac with a series of massive hydroelectric dams.

The proposal was attacked by a small army of farmers, conservationists and friends of the coal mining industry and, eventually, was shelved.

In 1963 the corps gave birth to a new \$500 million plan for a system of 16 dams on the upper Potomac and its tributaries. These, the corps said, would provide water for fishing, swimming, boating, for municipal water supplies, and for flushing sewage down the Potomac during low water levels.

The presentation of the plan was the occasion for one of the area's all-time great civic hearings. More than 1200 people jammed an auditorium, most of them to complain about dams.

At that point CITPERCON, the Citizens Permanent Conference on the Potomac, a heterogeneous coalition of conservationist groups, farm groups, labor unions, garden clubs, canoeists and citizen associations, formed to keep a constant watch on proposals to tamper with the Potomac.

Every two years since then, CITPERCON has clashed with the corps when Congress prepares its omnibus water resources authorization bill, which has been described as a huge "pork barrel" of dam projects for individual representatives.

Only one of the 16 dams has been author-

ized by Congress. It is the Bloomington Dam, about to be constructed near Keyser, W. Va., on the North Branch of the Potomac.

Plans for the others have been repeatedly torpedoed by CITPERCON and other conservationist-minded groups who have argued that the Potomac is "The National River," and should be preserved in its natural, unfettered state.

Over the years, the corps has performed a slow, grudging retreat from its original plan, cutting the request to six dams and, most recently, to two.

In Senate hearings to be scheduled this month or in early June, the corps will ask for funds to construct a dam on the Middle River near Staunton, Va., and to dam the Monocacy above Frederick, Md., at a point called Six Bridge.

According to Gen. Kenneth R. Cooper, deputy director of civil works for the corps, the two dams were picked because they have generated the most local enthusiasm from among the 16.

"Frankly, we picked the ones where we have the most backing. It's a start, anyway," he said, noting that the corps still hopes to build 6 of the original 16.

Washington is the only place in the world where the corps is charged with purifying a metropolitan water supply. The dams, Cooper believes, are vitally needed to supplement the Potomac flow during dry spells.

"Normally we try not to be specific advocates for projects," the general said, referring to the corps' repeated battles with CITPERCON. "Here we are in a little bit different position."

"They (the conservationists) are not responsible for the final quality of the water," he added. "We are."

Thinking about the one dam that has been authorized irritates Dr. Spencer Smith, the chairman and registered lobbyist for CITPERCON, who is proud of the group's record. "I still don't know how that got through. It was a fluke, that's all."

Smith, a former administrator for the Office of Price Administration during the Truman era, estimates that CITPERCON can get support from 20,000 people in times of crisis, when letters opposing dams have been known to shower down on key committee members.

Driving through much of Virginia and Maryland to pass out leaflets and speak at citizen meetings, he has worn out two station wagons in ten years.

"I've grown old testifying against this thing," he added.

This year, the battle is continuing. On April 5, a spokesman for CITPERCON appeared before Junior Jaycees of Waynesboro, Va., which was holding a forum on the proposed dam near Staunton.

In working paper CITPERCON left the Jaycees, it pointed out that the major beneficiary of the dam would be the Washington area water supply system.

"Have local residents really considered the fact that they are being asked to sacrifice farms, fields and a free-flowing river for the benefit of an area more than 100 miles (as the crow flies) distant?" the working paper asks.

"In the case of Washington, D.C., it is entirely possible that by the time the Verona Dam at Staunton is completed, technology will have been developed to provide for the recycling of waste water," it adds.

Smith and other CITPERCON spokesmen also have attacked the Corp's claim that localities near the dams will be able to use reservoirs for recreation. They point out that in the late summer, when water is needed for Washington, the level of the reservoirs will be lowered, leaving wide stretches of parched, cracked mud to greet fishing and boating enthusiasts.

Smith blames most of the local enthusiasm for dams on potential contractors, land speculators and recreational lobbyists, including the "fishing tackle lobby."

He has repeatedly argued that it would be much cheaper for Washington to take water from the Potomac Estuary, which begins just below Chain Bridge.

"Once they (the Corps) argued that it (the estuary) was saline. We brought in an expert and showed that the salt water didn't begin until below Ft. Belvoir."

Recently, Smith has been wondering about the latest reason for the Corps's reluctance to pipe water from the estuary: possible contamination from viruses.

"I've had an almost Pavlovian response up to this time. Whatever they say, you look for the gimmick. I usually find it. But I hope that some day, if they ever come in with a legitimate reason, I'll see it," he said.

Smith believes the Corps is growing weary of the battle, but it is obligated to continue proposing dams every two years because of local support generated from previous years.

"It's too bad you can't get them the hell out of the way so you can plan for the area," he added.

Late this spring, the Corps and CITPERCON will come before a Senate subcommittee like two aged pugilists who have studied and battered each Council of Governments and a team of others over the years.

This year the metropolitan area's other business and civic leaders, being organized by the Metropolitan Board of Trade, will be backing the Corps's plan.

"We have no selfish interest in this at all," said William G. Russell, head of the Board of Trade's effort. "We just think it is too bad when a city has come to the point where it has to drink water from its own sewage system."

While the battle continues, there is mounting evidence that it has lasted so long that the dams are no longer feasible as an immediate solution to the problem.

It takes from five to eleven years to build a dam, according to the Corps. Assuming Congress approves the Staunton and Six Bridge dams this year, it could be 1980 before they are built.

Projections made by the federal Environmental Protection Agency and by the District's Department of Environmental Services, show the area is likely to have water shortages before that.

And according to a recent report by EPA, the two dam projects being pushed by the Corps would provide the smallest proportion of water for Washington.

Because of the distance of the dam from the city, Washington would have to anticipate a water crisis at least two weeks in advance. It would take that long for extra water to reach the city from the nearest reservoir, the one behind the proposed dam at Six Bridge.

Water from the Bloomington dam, which has the most storage capacity, would take 28 days to reach Washington. The dam will not be ready until 1977, at the earliest.

Furthermore, according to a study released by the District's Department of Environmental Services, assuming the Bloomington dam and the other two dams pending before Congress are built and operating by 1980, the area will face another water crisis by 1984 because of the continuing increase in water use.

Finally, assuming that three dams will be built to protect Washington's supply of fresh water, there may be still another problem. Montgomery County, weary of fighting with the District and Prince Georges County over where it should pump its sewage, has let it be known that it is looking for locations for one or two sewage treatment plants on the Potomac, above the District's water intakes.

The county has assured interested parties that the plant or plants will provide the most up-to-date form of tertiary treatment, which means an effluent of almost drinking water quality.

If and when the waterless doomsday approaches, area governments have agreed upon a water restriction plan, which will go into effect when the flow in the river drops to within 100 mgd of the demand.

At that point, voluntary controls will be suggested, including the curtailment of lawn sprinkling and car washing. When the flow decreases to within 50 mgd of demand, the controls will become mandatory.

The Corp's Gen. Cooper is somewhat optimistic about the restrictions:

"People could paint rings on their bathtubs, reminding them to use only so much water, they could take Navy showers (using water only for final rinse). You could cut consumption quite a bit."

What if water rationing doesn't work and the engineers do not come up with a safe way of purifying water from the estuary or of recycling water from the Blue Plains sewage treatment plant?

All the agencies who "planned" Washington's water supply system including Congress, the Corps of Engineers, area governments and an assortment of conservationists, have not come up with an answer to this question.

There is an obscure hint in one engineering study of the problem that the matter may then rest upon the whim of even a more powerful agency:

"This situation is now. There is no margin of safety except that as may be provided by heavenly benediction in the form of . . . rainfall . . ."

#### POLLUTED ESTUARY—OUR EMERGENCY WATER SOURCE

(By John Fialka)

The broad expanse of water that most Washingtonians refer to as the Potomac River is really not a river.

From Chain Bridge downstream it is technically the Potomac Estuary. Instead of flowing like a river, it sloshes back and forth, governed by the tides.

Area residents may be drinking from it soon. Government engineers warn that Washington's increasing demands for water soon will exhaust the river during prolonged dry spells. They point to the estuary as the next major source of drinking water.

The problem is that the Nation's Capital has fouled its own nest. Parts of the estuary, which receives most of the area's sewage, are grossly polluted.

The solution to the problem will have national implications. The estuary is now the base for a critical, unprecedented study on the detection and removal of disease-causing viruses from drinking water, a problem which nearly every major city may have to face.

In theory, at least, the estuary would be a likely place to look for drinking water. It can be considered a natural reservoir, containing more than 100 billion gallons of fresh water in the 35-mile stretch between Chain Bridge and a point below Ft. Belvoir, where the water turns salty.

The U.S. Army Corps of Engineers which is charged with collecting and purifying the water used by the District, Arlington and parts of Falls Church, has always looked to the river for water.

In 1963, and every two years since, the corps has gone to Congress for money to build a network of dams on the upper Potomac and its tributaries to help supplement the river's flow during dry months.

Except for emergencies, one corps general told Congress early in these hearings, the estuary would be unfit for use because it "consists of a mixture of the effluents from several sewage treatment plants, local drainage from urban areas, raw sewage from combined sewer overflows, discharges from recreational and commercial craft, backwash from the water purification plant and the unused water of the Potomac River."

#### NOW IS THE TIME

The emergency has arrived. The area's appetite for water on a peak day now exceeds the lowest recorded flow of the river, although the two events have not, as yet occurred on the same day.

Since 1969, the corps has been ready to pump from the estuary on an emergency basis during the driest part of the summer. The makeshift emergency system will be completed this summer.

An intake pipe will be situated on a barge moored near Chain Bridge. The water will be pumped into the C&O Canal and then sucked back out of the canal behind the Dalecarlia Filter Plant, where it will be given an extra dose of chlorine and then blended with the city's water supply.

By the summer of 1974, a permanent intake system will be installed, with a capacity to take up to 100 million gallons a day from the estuary.

#### RUNNING UPSTREAM

Among the long-range plans for estuary use now being weighed by government engineers is the possibility of piping the water upstream, to a point above the Washington Suburban Sanitary Commission's intake. (The commission supplies most of the water for suburban Montgomery and Prince Georges Counties.)

This would dilute the estuary water and give the natural elements which tend to purify a river's water—the sun, certain bacteria and algae—time to work before it reaches the purification plants.

"It would also give the suburbs a shot at the estuary water," one engineer added.

The estuary has become the focal point of water supply planning because the corp's dream of a network of 16 dams on the upper Potomac and its tributaries has never materialized.

Influenced by stubborn opposition from conservationists and others interested in preserving the historic beauties of the river, Congress has only authorized one dam, which will not be ready until 1977.

#### HOW MUCH TO PUMP?

Now the engineers, and other federal and local agencies that have become involved, are frantically trying to untie a host of knotty problems involved in estuary use.

First, how much water can you pump from the estuary? According to Gary Baltis, an engineer-planner for the Corps, the pumping will begin in 1974 by drawing a total of about 10 or 15 million gallons a day.

Based on a mathematical model of the estuary developed by the Environmental Protection Agency, there will come a point—somewhere beyond 3 billion gallons—where the major "slug" of sewage emitted by the area's largest treatment plant at Blue Plains will be sucked upstream to the intake.

"What we hope to do is simply draw off water from the relatively clean upper end of the estuary. After that we'll stop," Baltis explained.

One problem is that in the dry summer months, when the estuary water may be needed, what current there is in the estuary diminishes. The 270 million gallons a day of dark gray liquid emitted by the Blue Plains plant tends to remain longer in the estuary, feeding massive blankets of green, foul-smelling algae.

A ping-pong ball, dropped into the water at Blue Plains during a lowflow period, will go back and forth in the estuary approximately 41 times, coming as far upstream as Hains Point, before it is washed into the salty water below Ft. Belvoir.

#### MORE SALT WATER

The corps' planners have even considered pumping Blue Plains sewage downstream as far as the Route 301 bridge. However, the mathematical model of the Potomac shows that this would simply move the saltwater

front in the river upstream, further fouling the water supply.

This problem will be somewhat alleviated after 1975, when Blue Plains and other area treatment plants which discharge into the Potomac are scheduled to begin tertiary treatment which produces an effluent that is much cleaner.

Second, assuming the District and other area jurisdictions can clean up the estuary using tertiary sewage treatment, will it stay that way?

The short answer to this question is no. The District, like most older cities, has a combined storm and sanitary sewer system. If it rains during a low flow period when water is being pumped from the estuary, raw sewage will be leaking into the water supply from at least 65 overflow points, according to Paul V. Freese, head of the District's water resources management office.

#### OVERFLOW TO RIVER

The sewage treatment plant keeps running at its rated capacity and the rest of the millions or even billions of gallons of mixed sewage and storm runoff goes directly into the Potomac.

According to Freese, the cost of separating the two systems would be about \$500 million and would require digging up a good part of the city.

Other cities, faced with this problem, are considering storing storm runoffs in huge underground reservoirs. Some, including the District, have experimented with huge, floating plastic bags that would store the runoff until it could be processed through the treatment plant during less than peak periods.

"Whatever we look at takes two things, time and money," Freese added. "We're running out of time and we don't seem to get the money."

(If the rain continues long enough, however, this problem would become moot because the flow in the river would be restored and the District could take all of its water from its two regular pumping stations at Great Falls and Little Falls.)

#### VIRUS PROBLEM

The third major knotty problem involved in the use of estuary water concerns viruses.

Until ten years ago, there was almost no research on whether the presence of viruses in public water supplies was harmful to man.

Then a few scientists began to point out that in waters which had a heavy concentration of human or animal fecal matter, there could be as many as 100 different types of enteric viruses.

(Enteric viruses cause a number of human diseases, including polio, infectious hepatitis and intestinal flu.)

In the late sixties, when it became apparent to the Corps of Engineers that it would have to consider the estuary as a temporary source of water in the 1970's and 1980's, and, perhaps, as a permanent source after that, it asked the U.S. Public Health Service to study viruses in the Potomac.

#### RESULTS STILL PENDING

The project, still under way, has been taken over by the Environmental Protection Agency (EPA).

So far, according to the Baltis, the Corps' planner, the results have been "inconclusive." A total of 25 different viruses have been grown in Potomac water and then subjected to chlorination. "We've found that some strains are far more resistant (to chlorination) than others," he added.

J. H. McDermott, head of EPA's water supply program's division is conducting the testing, explained that so little work has been done on viruses that scientists are still trying to perfect ways to detect them.

Because laboratory methods could not find the minute quantities of viruses living in

small samples of Potomac water, scientists have first had to "spike" the water with sizable concentrations of viruses.

Once the water is spiked, scientists try to track down and identify the virus they put in the water. Then they observe how much chlorination will kill it.

"We have gotten it up to being able to find 60 percent of the known quantity (of viruses) that was spiked in it," said McDermott, who added that a scientist working at Baylor University in Texas may have found a way to identify up to 90 percent of the virus population in a given water sample.

#### POLIO VIRUS IS TOUGH

One type of polio virus was found to have survived 120 minutes of chlorination. (The average dose given to municipal tap water lasts between 15 and 30 minutes.)

Polio viruses have become common inhabitants of sewage water, McDermott pointed out, since most people have been immunized with some type of polio virus.

While the estuary testing continues, other EPA studies have isolated viruses that have survived chlorination in the drinking water of Lawrence, Mass., and Billerica, Mass., a Boston suburb.

"It is quite conceivable that we have detected the tip of an iceberg," McDermott says.

The highly complicated questions of how to find and eliminate viruses in the public water supply seems to have set off a controversy among the scientists themselves. Some argue that huge amounts of money should now be earmarked for virus research, pointing out that, heretofore, most water supply money has gone into sewage treatment.

#### WE'RE DRINKING IT

Others, including one EPA water quality scientist (who asked that his name be withheld) take a more conservative stance:

"Look, whatever is in the water has been there for a long time. Some cities on the Mississippi and the Ohio have been making tap water out of each other's sewage for years. So far, we've survived."

The virus controversy is somewhat confusing to traditional Potomac watchers, men like Dr. Spencer Smith, the head of the Citizens Permanent Conference on the Potomac (CITPERCON), a coalition of conservationists and like-minded groups who have battled against the Corps' plans to dam the Potomac for years.

CITPERCON has argued long and consistently that the cheapest and best solution to the area's water problems would be to clean up the Potomac Estuary.

This also would fulfill the group's major goal, which is to keep the upper Potomac, "The National River," in its natural state.

#### HOW MANY UPSTREAM?

Smith sometimes worries about viruses, but because the corps has raised so many objections to alternatives to dams, he often wonders whether the question is a red herring.

"Hell, there are viruses coming down the river. They tell you there's viruses in the estuary, ask them how many they've looked for in the river," he said.

"There should be an answer to that," Gen. Kenneth B. Cooper, the corps' deputy director for civil works, replies. He has asked his staff to come up with an answer.

"At the moment, there isn't an answer to your question," a corps spokesman said later. He said that virological tests of the river may begin this year.

#### RECYCLED SEWAGE MAY SOLVE WATER PROBLEM (By John Flalka)

What might be the ultimate solution to Washington's approaching water shortage can be found today in a square, open metal tank in a new unmarked building on the shores of the Potomac.

It smells like water. It looks like water. The tiniest spots of rust on the bottom of the tank are clearly visible through 5 feet of the liquid.

Poured into a tumbler, its clarity could deceive almost anybody. But nobody is drinking it, yet.

It is treated sewage, processed through a pilot plant operated by the Environmental Protection Agency at the site of the District's sewage treatment facility at Blue Plains, in Anacostia.

Doloff F. Bishop, the chemical engineer who oversees the complex process, which begins with raw D.C. sewage, runs his hand through the tank. He splashes it around a little and lets the droplets run off his fingers. "This," he says, proudly, "is good stuff."

As far as the Potomac's future is concerned, it is indeed good stuff. The machinery that produced the liquid is scheduled to be installed at Blue Plains by 1975.

Then, 309 million gallons a day (mgd) of the new, sparkling effluent will replace the approximately 250 mgd of smelly, black-grey fluid that now goes into the Potomac at Blue Plains.

Bishop is thinking of the few additional steps that he estimates would be necessary to bring the effluent up to drinking water quality. Research along these lines has begun.

"We are doing these studies in anticipation that somebody might come down and ask us about that one of these days," Bishop explained.

That somebody might be the District government. The city's Department of Environmental Services recently released a report showing that within the next few years the flow in the river above Chain Bridge—the current source of most area drinking water—may not be enough to meet the demand during dry spells.

By the late 1980s, according to the department's projections, the area may be short as much as 400 million gallons a day during prolonged dry periods.

To prevent such a crisis, Washington has three options.

Over the years, most of the District and federal engineers who have wrestled with the problem have preferred storing water behind a series of dams on the Potomac. Efforts in this direction, however, largely have been stymied by opposition from conservationists who wish to keep the river in its natural state.

It also could draw water from the Potomac Estuary or recycle water from its sewage treatment plant. District engineers tend to favor recycling over estuary use for two reasons:

If the technology can be worked out, recycled effluent would give the city a water source of more consistent quality than water taken from the Potomac Estuary. Because the District's storm and sanitary sewer system are combined, a heavy rain flushes a considerable load of storm runoff and raw sewage into the estuary from various overflow points once the sewer plant's capacity is exceeded.

Recycling is one answer to the problem that the District can carry out by itself, without having to form an agreement on water and sewer matters with other area jurisdictions.

"If people won't allow you to build dams, you've got to rely on recycling. But I'm not sure the public is ready to do that yet," said Paul V. Freese, head of the District's water resources management office.

The District will continue to push for dams on the upper Potomac as the best feasible solution to the city's water crisis. If the dams are not built, the city's engineers favor direct recycling rather than pumping water out of the estuary as the next best solution.

Freese disagrees with the U.S. Army Corps of Engineers, which is preparing to install a permanent pipeline into the Potomac Estuary

in 1974 to augment the city's water supply during dry spells.

The combined sewer problem, he argues, makes the estuary (which begins below Chain Bridge) a less reliable source than recycled effluent, which could be produced in a water purification plant attached to Blue Plains.

Some engineers believe recycling will become commonplace in the next 50 years. At least one other American city, Denver, is reported to be looking into the possibility.

And the 61,260 citizens of Windhoek, South Africa, have been drinking water reclaimed from their sewage system for four years without any reported ill effects.

The South African government, which foresees a major water shortage problem in some parts of the country, is now building a larger recycling plant that will serve the area of Pretoria, which has more than a half a million residents.

The recycling project at Windhoek was begun in 1968 with a considerable public relations effort. South Africa's prime minister, B. J. Vorster, celebrated the opening of the plant by unveiling a plaque and drinking a glass of the finished product.

According to *Scientiae*, a South African scientific journal, "The staid Windhoek citizens welcomed the scheme—naturally with numerous witty remarks which are still being retold with relish."

"I am told that people come from other cities to drink it," a spokesman for the South African Embassy said. "It's supposed to taste better than ordinary tap water."

Ordinarily, municipal sewage is treated in two steps before it is released. Solids are removed through the use of a screen and a settling tank. Then the liquid is aerated.

The effluent that results from these processes is still laden with nitrates and phosphates, two of the major problems in the nation's rivers and streams.

At Windhoek, the South Africans further purify the water by filtration and by placing it in maturation ponds where algae eat most of the remaining pollutants.

Then the water is chlorinated, piped through sand and activated carbon filters, and dumped in Windhoek's water supply reservoir. What comes out of the tap is actually a blend of fresh and recycled water.

Unlike Washington, Windhoek is located in arid country. Annual rainfall is less than 16 inches. During dry months, nearby rivers dry up. Underground water is often salty and reservoirs suffer from a high rate of evaporation.

Windhoek's water crisis was apparent from the early 1950s. But Washington's approaching water crisis is still not apparent. The area is water rich. The problem is that there are not enough dams or reservoirs to save more than a one-day supply.

Because of the substantial opposition to dams and the time necessary to build a sufficient system of reservoirs, the answer to Washington's problem may well be in the square metal tank at Blue Plains.

The District's new treatment process will remove nitrates by passing the effluent through tanks containing two highly efficient strains of bacteria, which convert nitrates into nitrogen gas. Phosphates are settled out by injecting alum into the water.

According to Bishop, what is left in the process, after a final filtration, is still a puzzle.

"Fish will live in it," he said, pointing to his experimental tank.

There is a strong likelihood, however, that it contains viruses and some organic chemicals.

How to remove the remaining chemicals, which could include traces of heavy metals, is the major remaining obstacle, Bishop believes.

"It's the residual organics that will be the real toughies," he concludes.

Some engineers and scientists, including

Bishop, believe that proper chlorination will remove viruses. Viruses, they argue, are not a new problem. Many municipalities in the U.S. use water that receives sewage from major upstream cities, especially on the Ohio and Mississippi rivers.

Some strongly disagree.

"Some people think the latest thing to do is to take the sewage and drink it," grumbles William N. Long, deputy director of EPA's division of water supply programs.

Long has visited Windhoek. He claims that, during some periods, the recycled water becomes undrinkable. He is co-author of a paper on the subject which argues that if a process is found that removes 99 percent of all viruses, recycled water could still infect up to 600 people in a medium-sized city.

Long's superior, James H. McDermott, agrees. "As a matter of philosophy, we can't advocate recycling water at the present time," he said.

In a closed recycling system, he explained, there is no "fail-safe." If something goes wrong and a harmful ingredient passes through the treatment-purification process, there would be no time to catch it before it goes back into the water system.

If the hazards to public health in recycled water cannot be eliminated, there is still another way for a water-short city to get some benefit from water reclaimed from sewage.

This would require the installation of two separate water distribution systems. Chlorinated, highly treated effluent would circulate in one set of pipes and could be used for flushing toilets, operating air-conditioning systems, for fire hydrant and sprinkling systems and other purposes that do not involve human contact.

In a recent study on water reuse, stamped "tentative proposals for discussion only," the D.C. Department of Environmental Services suggests that such a dual system could begin "first in the federal office building sector of the city and gradually spread throughout the high-intensity office building sector of the city."

The study estimates that the costs of a dual system, which would be "borne by the water utility," would be high, ranging from \$185 million for installing a dual system in the inner city, to \$560 million, for extending it to the entire District.

Dual systems, the study adds, also could be put to good use in the suburbs, where most of the increase in water demand is taking place. Builders of new houses and buildings could simply be required to install dual systems.

EPA could begin by testing the feasibility of such a system on federal facilities in the neighborhood of Blue Plains, the study points out. Recycled water could be used to water a golf course contemplated by the National Park Service at Oxon Cove and for non-consumptive uses at the Naval Research Laboratory and Andrews Air Force Base.

One strikingly simple way out of the approaching water crisis that is discussed in the study would be to increase the price of water during periods of high demand to discourage nonessential uses such as car washing and lawn watering.

Some conservationists have suggested another simple way: Stop all growth in the metropolitan area and encourage people to change their habits to conserve water.

"Anti-growth is a philosophy that's foreign to the engineer," said the District's Freese. "I would much prefer to supply whatever the city wants."

"I would say the solution is going to be a combination of things. We're going to have to have some dams. We're going to have to recycle some," he concludes.

In an age that is preoccupied with such complex problems as poverty, race, the war and tax reform, how do you focus attention

on water, something that most people have taken for granted all of their lives?

"That's the simplest question of all," one engineer replied. "All we need now is one hell of a good draught."

## THEY MUST NOT BE FORGOTTEN

### HON. STEWART B. MCKINNEY

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. MCKINNEY. Mr. Speaker, within the next few weeks, the House Committee on the Judiciary will begin hearings on a series of bills, all with the same specific goal: To provide benefits to the survivors of police and firemen killed in the line of duty. I am hopeful that the committee will hear broad support for this proposal and that the members will be able to bring a bill to the House floor which will gain immediate and overwhelming passage.

In a timely article, the New York Times recently interviewed the widows of five New York City police and firemen and the headline on the story read, "They Say Nobody Cares." I would hope that we can demonstrate, in some small way, that we do care. At this point, I would like to share Judy Klemesrud's poignant feature with my colleagues:

WIDOWS OF POLICE AND FIREMEN—THEY SAY NOBODY CARES

(By Judy Klemesrud)

They call themselves "New York's forgotten women." They break into tears easily, they proudly wear their husbands' medals of bravery pinned to their dresses, and they receive a pension check once a month—a check they feel is not nearly enough for the family of a man who gave his life protecting the residents of New York City.

The women, 432 in all, are members of the Police and Fire Line of Duty Widows of New York City, Inc.

Founded in April, 1961, for the "mutual benefit" of the members, the group now numbers 236 widows of firemen and 196 widows of policemen. They range from modily dressed, long-haired women in their early 20's to 90-year-olds who reside in nursing homes. Ten of the widows are black.

"Sometimes you feel that nobody even cares about you," said Mrs. Doris Campisi, 40 years old, of Glendale, Queens, whose policeman husband, Anthony, was stabbed to death six years ago while making an arrest at 38th Street and Eighth Avenue.

"In the beginning, the city gives you medals," the yellow-haired mother of two went on, "but after a while you begin to feel like just a number on a pension check."

The city hasn't forgotten entirely. Once a year, there are separate memorial services for deceased policemen and firemen. The police memorial service will be held tomorrow at 11 A.M. in the Police Academy auditorium, 235 East 20th Street. An official contingent of 14 police widows from the widows' association plan to attend.

And the pension situation, as of last week, isn't quite as bleak as it was. Mrs. Campisi and 21 other members of the Police and Fire Line of Duty Widows went to Albany last week and lobbied successfully for the passage of a bill that would increase their \$4,420 yearly pensions by about \$1,000 a year, their first cost-of-living increase since 1965. The bill passed both houses last Friday, and now awaits the signature of Governor Rockefeller.

In another development, Mayor Lindsay yesterday instructed his legislative representative in Albany, Richard Brown, to send a memo to the Governor urging him to sign the "widow's bill," as it is known, into law. The Mayor also issued a separate statement supporting the bill.

The widows' group was founded by Mrs. Florence Churchill, now 75, of Manhattan, a policeman's widow, at a time when the majority of the widows were receiving only \$28 a week. While the group's major objective has always been to better the members' financial condition, it also serves as a social organization.

The members, who pay \$5 in annual dues, meet four times a year, in October, November, April and May. Their projects include writing letters to politicians, pointing out such things as the fact that police and fire widows in San Francisco and Boston receive their husbands' full pay, as opposed to the half-pay they get in New York presently based on the 1965 pay scale, and baking cookies for the members who live in nursing homes. There is also an annual Christmas party, "where we pay some guy \$20 to come and play the accordion," one member said.

The widows frequently talk of their struggles to make ends meet, their loneliness, how hard it is for them to get a loan or credit, and the indifference of former friends. But in this respect, how are their lives any different from those of other widows?

"There is one big difference," said Mrs. Helen Venturelli, 58, of the Bronx, a policeman's widow who is the group's vice president. "Someone killed our husbands, and that's a very difficult thing to bear." (Most of the firemen, of course, were killed while fighting fires.)

Like many of the widows, Mrs. Venturelli altered her life-style drastically after the death of her husband. She went to work part-time for the Honest Ballot Association for 16 years, and then, when she left, found it rather difficult for a woman her age to find a job.

#### NECESSARY ECONOMIES

Living entirely on her pension, she gave up reading newspapers, because she couldn't afford them, as well as loin lamb chops, English muffins and bananas. She said today she eats mostly spaghetti or hamburger ("A pound and a half makes five patties"), makes her own clothes and gives herself her own home permanents.

The pension plans are financed by deductions from the men's paychecks. Some of the widows are also eligible for Social Security benefits—if their husbands signed up after the plan was first offered to them in 1958.

The police and fire widows generally receive the same benefits—with one exception. In 1964, a group of anonymous businessmen founded an organization called the Hundred Club of the City of New York, Inc., to help the widows and children of policemen killed in the line of duty.

Headed by Michael J. Murphy, a former Police Commissioner of New York, the group has distributed about \$165,000 among 30 families since its formation. Each widow received \$1,000 for immediate expenses—often invaluable as it can take months for a pension check to arrive.

The Hundred Club, at 654 Madison Avenue, also pays outstanding debts, "whether it be a \$15,000 mortgage, a \$500 furniture loan, or both," Mr. Murphy said. At Christmas, the club sends each child under the age of 18 a \$100 savings bond.

Widows who remarry automatically relinquish their membership in the Police and Fire Line of Duty Widows, and they lose their pensions as well. However their children continue to receive them. The group has no statistics on the number of widows who have remarried.

"I just don't know whether I could get married again," said Mrs. Carol Cosgrove, of Massapequa, L.I., an attractive 29-year-old mother of four who "occasionally" dates. "It would really be a gamble—you'd always worry how the new husband is going to treat your children. How do you know he won't start beating them up?"

Several of the women mentioned that their husbands' deaths had had tragic effects on their children. Mrs. Esther Weisse, 62, of the Bronx, a fireman's widow, said that her 26-year-old daughter, a secretary, telephoned from her office at noon every day to see if Mrs. Weisse is all right.

"If I'm going out, I have to phone her before I leave," Mrs. Weisse said. "She goes out of her mind that something might happen to me, too."

Nothing angers these women quite as much as the insults and epithets and rocks and bottles that have been hurled at New York's finest and firemen lately.

"These men are prepared to go through hell for the people," said Mrs. Cecelia Meyer, 59, of Cambria Heights, Queens, a policeman's widow. "All right, so maybe they have a few bad eggs. But the public just does not appreciate them the way that they should."

Most of the widows seemed opposed to the idea of having a son go into the same line of work as his late father.

#### KILLED IN FIRE

"Over my dead body would my son be a fireman!" said Mrs. Kathleen Roche, 56, of the Bronx, a seamstress whose husband was killed in a fire in an abandoned building in 1951. "I'd rather have my son dig ditches—and I wouldn't let my daughter marry a fireman, either."

And although some of the widows have married men who, like their first husbands, were policemen or firemen, the sentiment seems to be against this practice.

"I would never, never want to go through all that again," said Doris Campisi, "the bell ringing in the middle of the night, the priest standing there, the shock, the nightmares. I tell you, it is just awful."

#### NATIONAL DEAF BASKETBALL CHAMPIONS

#### HON. JOHN J. DUNCAN

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. DUNCAN. Mr. Speaker, the citizens of my district are extremely proud of the Tennessee School for the Deaf's selection as the National Deaf Basketball Champions.

The dedication and determination displayed by Coach David Bailey and his team are a source of pride and inspiration to all athletes in Tennessee. These men have made the sacrifices necessary of all athletes in order to achieve high goals. This year's team has now set a standard for their school which will be a tough record to match in the future.

Excellence in the world of sports is a most elusive quality. However, in the case of the Tennessee School for the Deaf's basketball team excellence has been obtained.

The Tennessee School for the Deaf has proven that it is second to none when it comes to the demanding game of basketball.

#### THE LATE J. EDGAR HOOVER AND FBI—AN INTERVIEW AT "FACE THE NATION"

#### HON. LAWRENCE J. HOGAN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. HOGAN. Mr. Speaker, I appeared recently on the CBS public affairs news program "Face the Nation" along with the gentleman from California (Mr. EDWARDS). I hope that in the process I helped to set the record straight about some matters regarding the late J. Edgar Hoover and the Federal Bureau of Investigation.

I now insert a transcript of the "Face the Nation" program into the RECORD:

TRANSCRIPT OF "FACE THE NATION," SUNDAY, MAY 7, 1972

(Guests: Representative DON EDWARDS of California; Representative LAWRENCE HOGAN of Maryland.)

(Reporters: George Herman, CBS News; Robert Novak, Chicago Sun-Times; Robert Pierpoint, CBS News.)

GEORGE HERMAN. Congressman Edwards, Congressman Hogan, President Nixon has indicated that he plans to leave L. Patrick Gray III as Acting Director of the FBI until after the election next November. That means the Senate will have no chance to question Mr. Gray, and it will leave an old friend and advisor to the President in charge of the FBI through the political season. Is this causing any concern in Congress?

Rep. EDWARDS. Yes, it's causing concern to me. I think that Mr. Nixon's plans will circumvent the will of Congress, because the law provides now that the appointee should be confirmed or not confirmed by the United States Senate, and so leaving Mr. Gray in there for a number of months is not in the congressional intention.

HERMAN. Mr. Hogan?

Representative HOGAN. I don't agree with that. I think that under the circumstances, it's the appropriate and proper thing to do, because I think it would be a disservice to the American people if we were to allow the FBI to now become a political football because it is an election year. I think President Nixon did the right thing in taking it and insulating it from politics until after the election, then he or whoever else is elected President has the opportunity to appoint the Director of the FBI.

ANNOUNCER. From CBS Washington, "Face the Nation," a spontaneous and unhearsd news interview with two members of the House Judiciary Committee, who were formerly FBI agents, Representative Don Edwards, Democrat of California, and Representative Lawrence Hogan, Republican of Maryland. They will be questioned by CBS News White House Correspondent Robert Pierpoint, Robert Novak, Syndicated Columnist for the Chicago Sun Times, and CBS News Correspondent George Herman.

HERMAN. Both of you gentlemen have served as former FBI agents. One of the points to the question—I think Mr. Hogan said quite clearly that he's removed it from the area of politics as far as confirming is concerned, but still the FBI as an investigatory body can have some impact on politics, one way or another. The question or part of the question still remains—is it fair to have a political advisor to the President in charge of our national investigating body during a campaign period? Mr. Hogan?

Rep. HOGAN. Well, the FBI is and always has been under the Department of Justice, which has always been under a political ap-

pointe of the incumbent President, so I don't see what the difference is. As a matter of fact, Mr. Gray's confirmation as Deputy Attorney General has been pending before the Senate while the Kleindienst investigation has been going on, so in fact the Senate already has an opportunity to probe and assess his background for the job. So I think that under all things considered, he was probably the ideal choice for the job, at least on an interim basis until we can piece together what the transition from the Hoover years to the new years should be.

NOVAK. Mr. Hogan, do you envision that Mr. Gray is going to last forever and ever as FBI Director if Mr. Nixon is reelected, or whoever Mr. Nixon names if he is reelected is going to act in that role for many years, as Mr. Hoover, or is this going to become an appointment, do you think, that will change as the Presidency changes?

Rep. HOGAN. Well, it's difficult to answer that, Bob. I don't think that we can expect or even that it would be a good thing to have somebody serve as Director of the FBI for 48 years, but we have to recognize that J. Edgar Hoover, in effect, created the FBI, at its inception, as a young man of 29, and we're not going to have those parameters in the current situation. I would hope that the directorship of the FBI would not become a political football where the incumbent President would appoint a political hack to run the FBI. I think that would be a tragedy, and with all the criticism that's been leveled at Mr. Hoover, one thing has to be recognized—he was completely nonpartisan, and the very fact that he did have independence of judgment and action, where Presidents and Attorneys General were afraid to fire him because of the rapport he had with the American people, this was a built-in protection for the American people that the FBI would not be used or mis-used, I should say, in a political way.

PIERPONT. Mr. Edwards, you seem to feel that the President's appointing Mr. Gray as an interim director was somehow wrong, and that in this—we all agree this is going to be a highly political year, that Mr. Gray should have been submitted to the Senate for approval. Do you think that the Senate would in fact have approved Mr. Gray without a strong political fight?

Rep. EDWARDS. I have no way of answering that question because Mr. Gray is somebody that no one knows anything about. I had hardly heard of him before he was appointed interim Director, but I reiterate the plans of the President are to have Mr. Gray as Director, interim or not, for nearly an indefinite period of time, more than half a year, and this is not what Congress intended in the Omnibus Crime Bill. It said that any Director of the FBI has to be confirmed by the Senate, and it is being circumvented by this procedure.

PIERPONT. But the legalities of the case aside, what is it that really bothers you about this method of operation? After all, that's the way FBI Director Hoover was appointed many, many years ago and the way he stayed in office all the time, that is, without the Congress' approval. Why is it that for six months you are worried about Mr. Gray staying in that job? Are you afraid that he may use his office in a political way?

Rep. EDWARDS. Not necessarily. However, I think that it must be admitted that Mr. Gray's appointment is a political appointment. He is an old and valued friend of the President, the relationship going back to when Mr. Nixon was a congressman, so it is a political appointment. It is not in the realm of possibilities that I would consider appropriate for this job.

NOVAK. In that connection, Mr. Hogan, as a former agent, would you have preferred to have seen Mr. Hoover's successor come from within the ranks of the Bureau?

Rep. HOGAN. I'm not sure that I would. I've been talked to myself as a possible replacement for the job because I was there and then I was out.

NOVAK. Who talked to you on that basis? Rep. HOGAN. Well, some of my colleagues in the Congress have proposed this and discussed it with me, and in times past I have discussed it with other people in the administration, but I don't expect that that is going to happen. But I do think that there is an advantage in having someone within the organization, who knows how it operates, but I also think there is an advantage in having an infusion of cross-pollination from the outside world with the FBI. I think that this is the kind of balance we need. I think the President's appointment of Mr. Gray was a good one. He's a political friend and associate of the President. Well, you could hardly expect the President to appoint a political enemy to that job. I mean, obviously—

NOVAK. What about the permanent successor to Mr. Gray—would you rather see someone with some expertise in the law enforcement field succeed Mr. Gray if Mr. Nixon is reelected?

Rep. HOGAN. I don't think that police work is necessarily the best—I'm talking about a local police department now—because the police department's responsibility is protection, not investigation primarily, and it's riot control; it's parade control and so forth. So I don't think that that's the best preparation. Someone ought to be a lawyer; he ought to be able to meet the qualifications for an FBI agent, as Mr. Gray does. I think if Mr. Gray does the job well in this interim period, then he probably will be the one appointed and perhaps should be the one appointed.

HERMAN. We've left hanging—between both of you gentlemen—we've left hanging the question of how long an FBI Director should serve. Do you have some ideas on the subject, either of you?

Rep. EDWARDS. Yes, I don't think that the FBI Director should serve more than six years. There are too many built-in machineries for excessive power in the FBI as it is run today, and I do not think definitely that the new Director should be of the family of the FBI, trained in the organization and a protege of the late Mr. Hoover.

HERMAN. Well, let me get back to that machine for excesses in a moment, but first I want to find out what Mr. Hogan thinks about length of term.

Rep. HOGAN. I don't think that it's really appropriate to put a fixed number of years on a term. I mean, he's not a politician running for office as we, Don and I are. I think it ought to be someone who can serve at the will of the President, yes, but I would hope that the Presidents in succession would recognize that this ought to be a position that's aloof from politics, as Mr. Hoover has always kept it. I think that's essential.

HERMAN. But in other words, the Director should submit his resignation pro forma when there's a change of administration, and then the President should make up his mind?

Rep. HOGAN. I would say so, but I would hope that the Presidents would leave a—I've got a great deal of confidence in the men who survive and become Presidents of the United States, regardless of party, and I think most of them are genuinely concerned with protecting the liberties of Americans. So I would hope that that would be the case, that they would appoint someone who, if he were in politics, or as Mr. Gray—and Mr. Gray is making great efforts now to completely disassociate himself from politics, as he should.

PIERPONT. Now I want to ask Congressman Edwards about this statement which is made frequently. You didn't make it; Congressman Hogan did just now, but that is that the FBI under Director Hoover has been aloof from politics. In view of the—well, let's

take for instance the heavy investigation of anti-war groups of the past few years. Do you agree with that, that it's always been aloof from politics?

Rep. EDWARDS. I wish I could say that it has been entirely aloof from politics; and it was, I believe, when I was an FBI agent more than 25 years ago. However, in the past few years, it has become rather—not closely connected, but connected with politics. The late Director wrote two letters that were used as recommendations in senatorial races. The—the—as you say, the nearly obsessive concentration on conservative domestic politics, student unrest, black unrest, rather than on the problems of international communism and the international situation, do have a flavor of politics about them.

HERMAN. You said— Rep. HOGAN. Could I—could I comment on that? I just can't let that go unchallenged. Now is it politics when anti-war groups bomb the Capitol Building? Is it politics when they blow up ROTC buildings or blow up banks? That's not politics; those are violations of the law. And the FBI not only has the right—has the obligation—to investigate these violations; whether they happen to be anti-war groups is completely immaterial. But the FBI has been completely aloof from politics. The—J. Edgar Hoover served under eight different Presidents—four Republicans, four Democrats.

HERMAN. Isn't the key word partisan politics?

Rep. HOGAN. Well— HERMAN. It has been aloof from the problems of the Republican and Democratic Parties, but the—the Director has indicated a political stance.

Rep. HOGAN. Well, if you define anti-war radical activities as politics, then yes, the FBI has been involved in politics. But I don't think violence is politics.

NOVAK. Mr. Hogan, does your definition of aloof from politics take into consideration the very close relationship that the late Director had with several Presidents, including Lyndon Johnson—the fact that he was on intimate terms with his staff and was operating closely with them—is that aloof from politics, on political considerations?

Rep. HOGAN. I think it's aloof from partisan politics, yes, would—I mean, it would be perfectly normal for a man of Mr. Hoover's stature to be friendly with a number of Presidents.

NOVAK. Well, I don't think it's a matter of friendliness; I mean in making political discussions and discussing what's in the best interests of the President. And there's—there's much information on that.

Rep. HOGAN. Well, there—there's rumors about a lot of things, Mr. Novak, but I know of no incidents of my personal knowledge where Mr. Hoover has in any way been involved in helping the political fortunes of any incumbent President.

HERMAN. Gentlemen, I want to get back to the tantalizing hint that Mr. Edwards dropped a few moments ago when you said the possibilities for excesses are so great. I'd like you to develop that theme a little bit, and also tell us whether these possibilities have been at any time, in any way, utilized.

Rep. EDWARDS. The responsibilities, by statute of the FBI, are rather immense—internal subversion in the United States, espionage and counter-espionage, as well as the criminal codes of the United States. There are 25 to 30 thousand fingerprints coming in a day—and information into the data bank of the FBI. And the need for respect and for the defense of constitutional liberties is huge. And so any organization with this kind of power has to be carefully scrutinized and there—Congress should maintain constant oversight on its activities, which Congress does not do today.

PIERPONT. Why does Congress not do it,

and why has it not done it for the past 40-years?

Rep. EDWARDS. I regret to say that it has much to do with our procedures in Congress, the seniority system and—and in addition, the real fear that taking on Mr. Hoover is a little bit like taking on motherhood.

HERMAN. The second half of the question is, is such a possibility for exploitation or unfairness being utilized? Is—has the FBI done the kind of things you think it might do?

Rep. EDWARDS. The FBI is like every other agency—it is good, and there're aspects where it has not done particularly well.

HERMAN. Such as?

Rep. EDWARDS. Such as in its data processing it—and fingerprint identification files, to use the recent Minard(?) judge's decision, it has been inaccurate, and the system is out of control. It has been very bad insofar as race relations in the United States are concerned. Out of 9,000 agents, less—fewer than a hundred are brown or black—not a single woman FBI agent. When I was in the FBI, I thought it was 20 years ahead of its time. I'm afraid now that it's 20 years behind its time.

PIERPOINT. Congressman Hogan, would you say that the FBI has kept up with the times?

Rep. HOGAN. I would say that it has, but I'd like to comment on the excesses because I don't think that ought to go unchallenged, because it's just not true. The FBI has been zealous in protecting the civil rights and the liberties of Americans, and to have the things happen which the FBI is accused of presupposes that there's a conspiracy of 20,000 loyal Americans who are somehow involved in this activity. But I'd like to cite one thing—Mr. Hoover was involved in a commission—a committee that the President set up to study the problems of campus radicalism. And everyone on that committee recommended rampant wire-tapping to try to get to the root of campus unrest. Mr. Hoover, who was chairman, was the sole opponent of this rampant wiretapping, and went to the Attorney General and the President, and it was not done. But this is the kind of thing; he—by his very nature, he was dedicated to personal liberty. So it's paradoxical that he would be criticized for the thing he's been strong—

PIERPOINT. But didn't he in fact order that his agents infiltrate black student unions on all campuses in the country, and black student unions are a fairly common thing and simply an organization of blacks. And yet he did not order the infiltration of white student unions.

Rep. HOGAN. Well, I can't believe that. He certainly, I'm sure, has tried to infiltrate the SDS and other radical revolutionary organizations. That's part of the responsibility in trying to protect the United States against revolution. We have to recognize that in virtually every nation in the world where there has been a successful revolution, the seeds of it were on college campuses.

HERMAN. Among the blacks?

Rep. HOGAN. Pardon?

HERMAN. Among the blacks?

Rep. HOGAN. Well, I don't know among blacks—I don't know that this is true. But I'm sure that it hasn't been exclusively. If there are black power groups who are dedicated to revolutionary activities and bombings and police sniping, I think the FBI ought to know what's going on.

PIERPOINT. But you're not accusing black student unions of that?

Rep. HOGAN. I'm not accusing anyone, but I'm just saying that for the FBI to carry out its responsibilities, it ought to know what—what radical revolutionaries are doing, whether they be black, red or white.

NOVAK. Mr. Edwards, I'd like to find out from you, what you, as a liberal, think the FBI ought to be doing. Number one, do

you think the FBI should maintain surveillance over the Black Panthers?

Rep. EDWARDS. The FBI should maintain appropriate surveillance, in accordance with the statutes that we have enacted, over any group that is—could—that has as its object the overthrow of the United States government.

NOVAK. Well, can you answer my specific question, sir? Do you think the FBI should maintain surveillance over the Black Panthers, try to infiltrate the Black Panthers, get informers in the organization?

Rep. EDWARDS. No. I—I don't think it's necessary. I don't think that the organization is that dangerous.

PIERPOINT. Well, how do you know what organizations are dangerous until you infiltrate them? These organizations are not going to advertise that they're in favor of the revolutionary overthrow of the United States government, so you've got to look into them some way.

Rep. EDWARDS. Well, there should be appropriate surveillance made of any organization that would be of danger to the American republic, yes.

NOVAK. Do you think that the FBI should maintain surveillance over the Socialist Workers Party and other groups dedicated to the overthrow of the government when they plan peace marches in Washington?

Rep. EDWARDS. I think that the FBI has acted reasonably responsible in its surveillance of these groups and, yes, of course, the Congress has ordered them to do it; they have to comply with the law.

NOVAK. So you think, sir, that unlike some of your colleagues in the ADA, that the FBI does have a legitimate function in the—in the political and security area, apart from catching bank robbers and auto thieves.

Rep. EDWARDS. Of course it has, and by federal law it has that responsibility and it must comply.

HERMAN. Do you think that the FBI should maintain surveillance over members of Congress who may be in some way connected with any of these organizations—who may be speakers, for example, at their rallies?

Rep. EDWARDS. No, I—I think that members of Congress are not entitled to any privileges that are not those of the American public generally. So if a congressman is involved in any possible illegal activity, then certainly he should be investigated by the FBI.

PIERPOINT. Congressman Hogan, do you feel that the FBI should be allowed to investigate the private lives of leaders of civil rights groups, such as the private life of Martin Luther King, which we know was investigated by the FBI?

Rep. HOGAN. No, I don't think they should, and I think what we have to recognize here is the information to which you are alluding came as the result of a wiretap in an internal security type case, which was—

NOVAK. Much more than a wiretap, sir.

Rep. HOGAN. No, I don't think they should, I do, then. But I don't think that anyone, because they are prominent, ought to be exempt from the same kind of investigative scrutiny that the average citizen has. Why should someone, because they are prominent, be exempt from it?

HERMAN. No, but I think the point of Bob's question is should that kind of material then be widely disseminated and circulated?

Rep. HOGAN. Absolutely not, under no circumstances should it be, but you have to recognize that the only time the FBI should conduct any investigation is where there is a violation of federal law or a potential violation of federal law or falls within the other responsibilities of the agency. And during the course of that investigation, you might gather information which is not vital to the prosecutive action, but you don't discard that.

NOVAK. What can the Congress do to stop this passing along of juicy tidbits of gossip by special agents in charge in the field to the Director, which then went to—in the recent past—to the President of the United States? Do you think that Congress ought to establish some safeguards so that the powers of the FBI are not so misused?

Rep. HOGAN. If that is done, I think it's reprehensible. I don't think it should go on. I don't know how Congress would control that—I mean that's a human frailty, like women gossiping over the backyard fence. It's deplorable, but I don't see how we can legislate to protect against it.

NOVAK. Well, it's been common knowledge in the Bureau that that's been done for years. Isn't that true, Mr. Hogan?

Rep. HOGAN. It's not common knowledge to me. I was only in ten years.

PIERPOINT. Mr. Edwards, do you have any suggestions as to what Congress might do to put a stop to what is common knowledge to many of us, but apparently not to Congressman Hogan, namely, the dissemination of private sex information on the private sex lives of some of our civil rights leaders and of some of our sports figures and of some of our actors and actresses in this country?

Rep. EDWARDS. Well, if that is taking place, and I have heard of an instance or two, but not widespread violations—

PIERPOINT. But presumably one instance is bad enough.

Rep. EDWARDS. Yes, it is bad enough, and I reiterate that Congress has been derelict in its oversight of the FBI. The House Judiciary Committee should have hearings from time to time and ask them what they're doing, what their practices are, and call individual agents before the committee.

PIERPOINT. Is your problem your chairman, the committee chairman—is that why you're not getting anywhere with legislative oversight of the FBI?

Rep. EDWARDS. Well, up until the death of Mr. Hoover, a portion of it was that Mr. Hoover refused to come to Congress except to Mr. Rooney's subcommittee of the House Appropriations Committee. He refused to go to the Senate, and he insisted on having his testimony in secret, and I might add that most of the employees—65 per cent of this particular committee—goes to the FBI—their money—the employees of the committee are 65 per cent FBI employees.

Rep. HOGAN. Could I comment on that? I, as a member of Congress, resent the implication that we are somehow not doing what we're supposed to do in regard to a government agency. The appropriations committee has to approve the FBI's budget every year as part of the Department of Justice's. Now, do we have this kind of scrutiny with the Bureau of Narcotics, the Bureau of Customs, with the Office of Equal Opportunity? You know, we don't hone in and pinpoint every activity of other agencies.

HERMAN. Others have found their budgets steadily cut—

Rep. HOGAN. That's not the question. He's talking about wholesale scrutiny and surveillance over the FBI's activities. We don't do that with any other agency. We do approve appropriations.

NOVAK. But isn't that a tremendous neglect of duty by Congress that you have never even had one line of testimony about the international operations of the FBI, which they have no legislative mandate for. Isn't that a falling?

Rep. HOGAN. Well, I don't know that that's true. We have liaison now with the police agencies in various governments. Why do we need legislative authority for this? It's part of the FBI administrative activities. But I'm on the Post Office and Civil Service Committee, and I've only been in Congress three years, but we've had on at least five occasions representatives of the FBI testify

ing, and I'm sure other agencies—other committees do as well.

HERMAN. A question that must philosophically trouble a lot of people visiting Washington—we watched the FBI building going up on Pennsylvania Avenue; it is going to be the second largest—the third largest government building in Washington, smaller only than the Pentagon and the Rayburn Office Building. Do we need such an enormous national police building in operation in this country for our safety and our well-being?

Rep. HOGAN. Well, I resent the words national police. We've always opposed national police.

HERMAN. I'll strike the word—the Federal Bureau.

Rep. HOGAN. Okay. But you have to recognize that we have billions of fingerprints on file, and that's occupying one separate building, and the FBI facilities are now divided into about four different buildings—

PIERPOINT. Did you say billions?

Rep. HOGAN. Billions—fingerprint cards—yes.

PIERPOINT. That's more people than there are in the United States today, I assume.

Rep. HOGAN. Well, there are some there for—there are multiple people there, and there are also people in there who are dead, and there are also aliens in there. This all puts it in one building.

HERMAN. I'd like to have Mr. Edwards' answer also.

Rep. EDWARDS. I think it's a mistake to have in the nation's capital an FBI building that dwarfs the Department of Justice. The Department of Justice is the boss; the FBI is a part of it; and I think it would have been better if it had been a less pretentious building.

PIERPOINT. Well, the building isn't really what's important here, though. It's the function of the organization itself. I mean, after all if you're going to have a large national police or whatever you want to call the FBI, you do need a decent place for them to work, don't you?

Rep. EDWARDS. Yes, that is correct.

HERMAN. We have one minute left. Do you think, though, that the FBI operation is dwarfing the Justice Department operation, and should it?

Rep. EDWARDS. No, it certainly should not.

HERMAN. Is it?

Rep. EDWARDS. To a great extent it has in the past few years. It has operated independently from the Justice Department, and that is a great mistake. During the last six months of Robert Kennedy's tenure as Attorney General he did not have any words at all with Mr. Hoover. Relations were—

HERMAN. We have less than 30 seconds left. I just want to ask you sort of a one-word answer. Do you think now that with this changeover the Justice Department will get more control over the FBI than it has had in the past, Mr. Edwards?

Rep. EDWARDS. I think it is essential that it does.

Rep. HOGAN. I think we are contradicting the point that was made earlier. You are saying now that it should have more control under a political appointee, which was the converse of what we said when we opened this program.

HERMAN. Okay, and on that rather complex note, we have to sign off. Thank you, gentlemen, very much for being with us today on Face the Nation.

ANNOUNCER. Today on Face the Nation, two members of Congress who were formerly FBI agents, Representative Don Edwards, Democrat of California, and Representative Lawrence Hogan, Republican of Maryland, were interviewed by CBS News White House Correspondent Robert Pierpoint, Robert Novak, Syndicated Columnist for the Chicago Sun-Times, and CBS News Correspondent George Herman. Next week, in his first televi-

sion appearance after spending two weeks in China where he conferred at length with Premier Chou En-lai, the Republican leader of the Senate, Senator Hugh Scott of Pennsylvania, will "Face the Nation."

STATEMENT BY U.S. REPRESENTATIVE SILVIO O. CONTE INTRODUCING A BILL TO EXPEDITE RESOLUTION OF SMALL BUSINESS GOVERNMENT PROCUREMENT CONTRACT DISPUTES

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 1972

Mr. CONTE. Mr. Speaker, today I am proud to introduce legislation which I believe can do a great deal to alleviate the problems which small businessmen face in performing Federal contracts. My bill would set up a number of regional small contract claims divisions within the various existing boards of contract appeals to handle claims in amounts not to exceed \$50,000 for any particular contract. Next week I will reintroduce this bill when I expect it will attract a great many cosponsors. Today I am pleased to file the bill with my colleague from Maine (Mr. KYROS).

Those familiar with present procedures realize that something must be done to promote fairer adjustment of contract disputes. It is simply shocking that the average appeal at present costs over \$5,000 and takes 12 to 18 months to prosecute, during which time the contractor is deprived of the use of funds to which he may be entitled. A chief cause of the delays and the expense is that nearly all such claims are now heard only in Washington. It is obvious that this burdensome effort also serves to deter many potentially valid small claims from ever being pursued. This, of course, defeats the very purpose of the appeal procedure.

Mr. Speaker, the source of the proposal I introduce today is the Smaller Business Association of New England. SBANE is a private, nonprofit, nonpartisan association of New England small companies. Founded in 1938, SBANE now boasts over 900 members. Today, in the midst of various activities marking this as National Small Business Week, SBANE hosted a luncheon for House members during which it made its annual legislative presentation to the Congress. As usual, its recommendations are based on thorough research and deserve the serious consideration of all my colleagues. I want to commend SBANE's President Roland Sutton and presentation chairman attorney Ronald Kehoe for an outstanding job.

Let me add one final note on this proposed legislation. It is clear that the reforms I seek can be made administratively. I also recognize that the Federal Procurement Commission is concerned about this problem and may well have its own recommendations when it makes its report at the end of the year. This bill, it is hoped, will serve to stimulate

these reforms. Should these reforms not take place, however, I urge all my colleagues to support this bill.

I include the text of SBANE's presentation and the text of my bill at this point in the RECORD.

The materials referred to follow:

Memo to: U.S. Congress from: SBANE, Smaller Business Association of New England, Inc.

1972 ACTION PROPOSALS!

1972 SBANE Washington Presentation-Proposals for Congressional Action Committee:

Chairman—Ronald F. Kehoe, Esquire, Haussermann, Davison & Shattuck.  
Co-ordinator—Joseph Butare, State Street Bank & Trust Company.

Committee—Donal F. Barry, Container Services, Inc.; Dr. Arthur S. Obermayer, Moleculon Research Corporation; Elinor Selame, Selame Design Associates; Roger Travis, Medi, Inc.; Joseph Weinrebe, Republic Travel Service, Ltd.; Richard M. Glennon, Peat, Marwick, Mitchell & Company; Eleanor Monahan, 128 World Publishing Company; Edward H. Pendergast, Jr., Anthony, Pendergast & Creelman; Bernard Soep Associates; Oliver O. Ward, Athbro Precision Engineering Corp; and Jack H. Westerbeke, Jr., J. H. Westerbeke Company.

ABOUT SBANE

The Smaller Business Association of New England, Inc., is a private, non-profit, non-partisan association of New England small companies. It was founded in 1938 to promote and protect the welfare of small business throughout the six-state region. This is accomplished by:

- (1) grouping together, articulating the needs of small business, and taking common action;
- (2) promoting and supporting legislation and government activities beneficial to small business and opposing those activities and legislation detrimental to the interest of the smaller business;
- (3) cooperating with other small business groups; and
- (4) the education of the small businessman and others in the problems which they must face in order to be successful, and the education of the small businessman as to matters which both threaten and preserve the system of free, profit-incentive, private, competitive enterprise.

The major emphasis in the programs offered to the membership are in the areas of legislation on the national level and education programs.

Besides appearances before various Congressional committees, the Association appears on Capitol Hill once a year for a Washington Presentation of specific proposals designed to assist small business.

The Association is also a member of the Small Business Economic Council, which was formed at the request of President Nixon in September, 1970, to promote awareness of small business problems with key administrative officials.

The education activities are many and varied. They include seminars and conferences held throughout New England often sponsored in conjunction with leading New England universities and Federal agencies such as the Small Business Administration.

Best known of SBANE's educational programs for the past 13 years has been the annual "Live-In" Seminar on the campus of the Harvard Business School.

The Association also publishes a monthly magazine, New England Business, containing information and educational features for the small business executive and news about SBANE's monthly activities.

The Association's services also extend to counselling its members on small business

problems and serving as a source of business information. Furthermore, the Association provides government liaison, procurement assistance and offers its members group insurance programs and trade missions.

SBANE offices are located at 69 Hickory Drive, Waltham, Massachusetts 02154.

#### I—SBANE 1972 PROPOSAL FOR PROCUREMENT

First, to promote fairer adjustment of contract disputes with the Government, SBANE proposes legislation creating regional small claims divisions within the Boards of Contract Appeals. We aim to provide a speedy and inexpensive vehicle for settling claims up to \$50,000, as an alternative to the undue delay and cost of a BCA proceeding. We also recommend that prime contractors be required to incorporate dispute clauses in their contracts, giving subcontractors a means of appeal to the Government.

Second, to help smaller businesses obtain their fair share of Government spending, we support: (1) the transfer of DOD's small business specialists to the SBA, (2) a program of mandatory small business subcontract set-asides, and (3) enactment of H.R. 9551, authorizing an SBA certificate of competency where a low bidder is alleged to lack "integrity, tenacity and perseverance."

#### Regional small claims divisions

Government contractors often become involved in disputes with contracting officers. Typically, such disputes arise in connection with contract changes, the interpretation of contract clauses, drawings and specifications, or the allowable amounts of costs in cases where a contract has been terminated for the convenience of the Government. The contracts provide that such disputes shall be determined by the appropriate Board of Contract Appeals. The purpose of the BCA proceeding is to provide a quick, inexpensive and efficient administrative remedy as an alternative to court litigation, which (to quote from the Supreme Court's decisions in the Kihlberg and S. & E. Contractors decisions) can be "vexatious and expensive and, to the contractor oftentimes, ruinous."

In the years since the enactment of the Wunderlich Act (41 U.S.C. Secs. 321-322), court decisions have held that BCA hearings must conform to formal litigation procedures. As a result, the process of obtaining a decision from a Board of Contract Appeals normally costs over \$5,000 and takes 12-18 months, during which time the contractor is deprived of the use of the funds to which he may be entitled. Moreover, witnesses must travel to Washington, at considerable cost in lost time and travel expense.

We recognize that these delays and expenses are inherent in any full-blown litigation. They may be tolerable to a contractor who is claiming a large sum. But if the amount claimed is small, the contractor is often deterred from prosecuting his claim and is left to the mercies of the contracting officer. He simply cannot afford to seek a remedy, even if his claim is wholly valid. This defeats the initial purpose of providing an administrative review, and results in gross unfairness.

SBANE proposes the enactment of legislation to establish, within the existing Boards of Contract Appeals, regional small claims divisions for the speedy, inexpensive resolution of small contract claims. The salient features of our proposal are as follows:

1. Jurisdiction would be limited to claims totalling no more than \$50,000, per contract.
2. Resort to the small claims procedure would be at the contractor's election; he would retain his right to utilize the existing procedure as at present. The contracting agency would not have this option.
3. The small claims divisions would be em-

powered to make findings of fact and rulings of law.

4. A division's decision would be final and binding upon both parties.

5. The divisions would be staffed by personnel (lawyers and procurement experts) of the same high caliber as the existing Boards of Contract Appeals.

6. All claims would be processed regionally rather than in Washington.

7. Attorneys and other professionals would not appear before the small claims divisions. Cases would be presented by the contractor's employees and the contracting officer.

8. The statute should require the administrative adoption of implementing regulations designed to assure the speedy, informal and inexpensive resolution of disputes.

These procedural rules should include:

(a) elimination of all formal pleadings, to be replaced by a simplified statement and counterstatement of the matters in dispute;

(b) discovery proceedings would not be available;

(c) technical rules of evidence would not apply, and would be replaced by informal methods of proof;

(d) a decision must be rendered within 30 days after the close of hearings.

To further reduce the delays which characterize the present system, we propose that contracting officers be required to render their decisions on small claims within 60 days after notification that a dispute exists.

#### SBANE's Bill

SBANE believes that these reforms would eliminate the unfairness of the present system. Their adoption would greatly benefit many Government contractors, both large and small, without jeopardizing any legitimate interest of the Government.

SBANE has prepared a bill to carry out its proposal for a small claims procedure. This bill will be filed for us in both Houses of Congress, and we intend to work for its passage and/or for the administrative creation of small claims divisions.

#### Contract disputes clause

SBANE again urges that Government prime contractors be required to include a contract disputes clause in their purchase orders and subcontracts, giving subcontractors access to the appropriate Government contracting officer and Board of Contract Appeals (including the proposed small claims divisions) for the settlement of disputes between sub and prime. We recognize that Government agencies are reluctant to become involved in disputes to which they are not parties. But many subcontractor claims are directly or indirectly caused by agency action (e.g. termination of the prime contract). At least in those cases, and as a beginning, subcontractors should have recourse to the BCA as an alternative to a lawsuit.

Approximately 400,000 small companies offer products and services which the Federal Government needs. Congress has declared as policy that the Government, acting through the SBA, should insure that a "fair proportion" of its purchases, contracts and subcontracts be placed with small business enterprises.

#### Declining small business procurement

Yet in fiscal 1971 the small business share of Government procurement spending fell to its lowest levels in 18 years. The volume of state and local procurement through small business is now almost equal to the Federal Government's volume! In 1971 only 17% of prime contract dollars, and less than 35% of subcontracting spending, went to small business. These percentages have been declining steadily since 1967. The following table illustrates that reductions in federal spending have their heaviest impact on those least able to bear it, small businessmen.

#### THE SMALL BUSINESS SHARE OF THE SUBCONTRACT DOLLAR (MILITARY)

(Dollar amounts in billions)

Fiscal year	Total amount subcontracted	Amount subcontracted to small business	Percentage for small business
1964.....	\$9.3	\$3.6	38.7
1965.....	8.5	3.5	41.2
1966.....	12.2	5.1	41.8
1967.....	15.5	6.7	43.2
1968.....	15.2	6.5	42.8
1969.....	14.9	6.0	40.3
1970.....	11.9	4.4	37.0
1971.....	9.5	3.3	34.7

The SBA is not likely to be able to reverse this trend because it has been reducing the manpower allocated to its procurement program. Administrator Kleppe has testified before the House Small Business Committee that loan administration is the agency's Number One priority and that personnel are being transferred from procurement and other programs to the loan program. Of its more than 4,000 employees, SBA has only 143 working on procurement, including 43 Procurement Center Representatives. Obviously, such a handful cannot monitor the Government's millions of procurement transactions each year so as to protect the interests of small business.

#### Transfer of DOD's small business specialists to SBA

But a ready source of additional help is at hand. The procuring agencies themselves, most notably the Department of Defense, have hundreds of "small business specialists" whose primary job is to represent small business. But at the same time their primary responsibility is to the agency which employs them. In such a split role, these specialists are rendered far less effective than they would be in an independent status.

SBANE believes that DOD's small business specialists should be working primarily to help small business gain a fair share of the defense contract dollar. Accordingly, we recommend that they be transferred from DOD to SBA.

#### Mandatory subcontracting

Another SBA activity—its voluntary small business subcontracting program—has not been working well. This effort is too important to be allowed to falter. The answer, as SBANE sees it, is to make it mandatory.

A Navy Department experiment proves the feasibility of mandatory subcontract procurement. The Navy invited bids on a fixed price contract for the MS 56 mine, with the requirement that the prime contractor place first tier subcontracts with small firms in amounts totalling 25% of the contract price. The prime contractor had to identify its proposed first tier small business subcontractors by name, describing each item to be subcontracted and the estimated dollar amount of each subcontract. The result? The Department of the Navy reports that the prime contractor exceeded the contractual requirements without increased cost, and that the mandatory provision did not diminish competition or increase the problems of contract administration.

SBANE therefore recommends that Congress require Government procurement agencies to develop and test mandatory small business subcontracting procedures in order to determine their feasibility in each instance.

#### Certificates of competency

SBANE supports H.R. 9551, introduced by Chairman Evins of the House Small Business Committee and by Congressmen Corman and Conte. This bill would expand SBA's power to issue certificates of competency to cover the case where a low bidder is unjustifiably

rejected by a procuring agency on the amorphous grounds that he lacks "integrity, tenacity and perseverance." These vague criteria have been used to unfairly exclude small businesses. Such inequities can and should be cured by binding SBA review. H.R. 9551 ought to pass.

#### II—SBANE 1972 PROPOSAL FOR OCCUPATIONAL HEALTH

Small businessmen want to be safe and to provide a healthy work environment for their employees, as mandated by the Occupational Safety & Health Act. But we believe that this legislation is needlessly harsh and burdensome to small business in several respects. We recommend Congressional action to temper the Labor Department's rigid implementation of OSHA, and the enactment of some portions of S. 3262 so as to grant a moratorium to small companies, to provide compliance assistance, and to introduce badly needed flexibility into the enforcement of the Act.

The Occupational Safety and Health Act of 1970, commonly known as "OSHA" (Public Law 91-596) was intended to promote safe and healthful working conditions for the nation's working men and women. SBANE heartily supports that goal, but we believe that OSHA is seriously defective in its present form.

#### Complex regulations

First, the regulations are too complex and voluminous for the small employer to cope with. When published, they filled up 744 columns of the Federal Register. There are seven pages dealing with stepladders alone! The Labor Department's handbook is nearly 300 pages in length, and offers no help in figuring out which regulations are applicable and which are not. Every conceivable detail is covered. The small employer has never faced any regulatory scheme so demanding and bewildering. He may not even know that the law exists. Even if he does, he typically lacks the skill, manpower and expertise needed to inform himself of its requirements. Yet those requirements apply to him as much as to the largest industrial plant in America.

#### Rigid enforcement

Second, if the employer seeks help and advice from the Department of Labor he is faced instead with a prompt walk-around inspection of his premises, and a mandatory citation is issued on the spot, carrying a penalty of up to \$1,000, for each serious violation alleged. This is the fault of both the Labor Department and the Act itself. This statute is peculiar in our law for the Draconian rigidity that is written into it on matters both substantive and procedural. Rigid, insensitive implementation by the Labor Department has only made matters worse.

To illustrate statistically how voluminous the citations are becoming, consider the following box score compiled by the National Safety Council:

In the seven-month period, July 1, 1971 through January 31, 1972, the OSH Administration conducted 16,162 inspections in 14,741 establishments. Of these, only 3,089 (21% of the total) were found to be in compliance with the OSH standards. As for the remainder, 11,856 citations were issued alleging 42,942 violations. The proposed penalties amount to \$1,003,250. The number of employee complaints regarding occupational safety and health hazards submitted to the OSH Administration through the end of January totaled 1,519. The number of cases contested before the Occupational Safety and Health Review Commission is nearing 700.

#### Lawmaking without hearings

Third, the Act very unwisely adopts whole bodies of pre-existing criteria and guidelines, set up by private organizations and called

"national consensus standards." Under OSHA, these were put into effect wholesale, without any review in legislative hearings or in administrative rule-making proceedings. The Administrative Procedure Act was explicitly bypassed. As a result, many small businessmen must try to comply with requirements that have no applicability or feasibility as applied to them, and regarding which they have never had a chance to be heard.

#### The financial burden

Fourth, a good-faith effort to obey all of OSHA's requirements could literally bankrupt a small company. The SBA has the responsibility for administering special 5% 30-year loans to help small businesses to comply with OSHA. Its Administrator, Thomas S. Kleppe, foresees that many small businesses will be forced to borrow SBA funds beyond their capacity to repay: "The size of the loan for upgrading to the new standards might be just enough to break the back of the small business." Moreover, we are concerned that only 3 such loans had been granted as of April 15, 1972. It appears that SBA and the Department of Labor could better publicize their availability.

#### SBANE's role

SBANE believes that major changes are in order. To that end, our organization is collaborating with the staff of the Senate Labor and Public Welfare Committee by polling our members to document the Labor Department's harsh inspection practices.

#### Senator Curtis' bill

Legislative relief is also needed. Some 40 bills have been filed, most notably S. 3262—H.R. 13943, initially introduced by Senator Curtis and now awaiting committee action. The Curtis bill is specifically designed to enable smaller businessmen to live with OSHA. SBANE endorses some of its features, including:

(1) delaying the effective date of OSHA for one year for employers having fewer than 100 employees. This will provide small businessmen with the time they need for familiarizing themselves with the applicable requirements and for making their plans to comply.

(2) requiring the Secretary of Labor to determine the applicability of each OSHA standard to each class of business in each industry. If the Secretary determines that the application of a given standard to a particular class of business would be unreasonable, it will not be applied.

(3) providing technical assistance to small employers to help them comply with OSHA.

(4) permitting the Secretary of Labor to enter into compliance agreements with violators. This will replace a vindictive mandatory penalty for first offenses with some essential flexibility in the administration of the law.

These provisions and others like them should have been written into OSHA in the first place. We are dismayed that they were not, and we urge that the defect be cured. The alternative is the forced closing of small businesses and increased unemployment. Confusion and unnecessary expense are not the hallmarks of good legislation and they do nothing to further its desirable objectives.

In summary, we quote from a letter recently addressed to SBANE by a concerned member. It is representative of many similar comments:

"In attempting to operate safely as now defined, I have obtained two publications that are guidelines for self-inspection. Each guideline runs to several hundred pages. I would suggest [changes] with an eye to protecting the shop that cannot afford staff people specifically for attention to such details. We want to be safe. We want to comply with the new law. We need time. The "one man band" small operation is sure to come up a loser under the present set up."

#### III—SBANE 1972 PROPOSAL FOR THE SMALL BUSINESS ADMINISTRATION

Since 1953 Congress has vastly multiplied the SBA's responsibilities without giving it corresponding increases in its manpower and funds. The agency must be strengthened in these respects. The SBA's assistance to small business is being increasingly diverted to minority enterprises to the exclusion of others. Congress should separate the 8(a) program from SBA's other programs and establish guidelines to protect small businesses as a whole from becoming the victims of a well-intended desire to promote minority ventures, particularly with respect to 8(a) contracts and loan guaranty funds. Small business specialists should be transferred from the Department of Defense to SBA, where they can function more effectively.

#### Small business trends

There has been a widespread trend during the last few years toward small business. A leading magazine poll of high school students reveals that over 70% expressed an interest in either owning their own business or working for a small company. Business schools are finding small business courses over-subscribed and students demanding more. College placement departments reveal intense interest among graduates toward small business employment. More and more people in this country today want to "do their own thing."

Publications and consumer studies point out the abuses of concentrated power in American industry. Books like America, Inc. and the revelations of such consumer groups as Nader's Raiders clearly signal the dangers inherent in corporate concentration. It has become quite fashionable to shake a finger at the giant corporation. Unfortunately, the whole American free enterprise system is sharing the blame for the abuses of the few. It is equally unfortunate that everyone talks about the problem without defining the obvious solution. The answer, as we see it, is to launch a massive program to foster the healthy growth of small business and encourage the creation of new competitive enterprises.

#### The erosion of SBA's role

When the Small Business Act was passed in 1953, it seemed clear that Congress intended the Small Business Administration to be the organization that would work to ensure a healthy, competitive business environment. And yet there has been a constant process of departure from the initial commitment. There are several factors in this process.

First, the agency has been loaded with numerous additional responsibilities but without additional manpower allocations needed to carry out its new programs.

Second, larger business has been "getting into the act" and crowding out the smaller businesses from the very programs that were established specifically to aid small business. For example, the size standards for the small business set-aside program have been increased, notably in the aircraft and munitions industries—a company with as many as 1,500 employees can use SBA's limited resources and can compete with little companies for what is supposed to be the guaranteed small business share of the procurement dollar.

Third, Congress simply refused to grant SBA's requests for additional manpower while other segments of the economy get all the staff they need, and more.

#### SBA and Agriculture Dept.

To illustrate this last point, we cite the following census statistics, furnished to us at our request by the SBA. Here is a graphic demonstration of disproportionate support given to the Department of Agriculture over that given to the SBA.

Total U.S. labor force—August 31, 1971—81,000,000.

Farms, 2,895,000.  
 Farm Employment, 4,528,000.  
 Percent of Total Labor Force in Agriculture, 5.6.  
 Dept. of Agriculture Employees (9/15/71), 123,589.  
 Small Businesses, 5,000,000.  
 Small Business Employees, 35,000,000.  
 Percent of Total Labor Force in Small Business, 43.2.  
 SBA Employees (9/15/71), 4,026.

Note the shocking disparity between SBA's manpower and Agriculture's. Agriculture represents less than one-seventh as many workers as SBA, yet it has 30 times the number of employees! In fiscal 1972, the Agriculture Department will spend \$37 per farm for every dollar SBA spends per small business!

The SBA's massive efforts to help minority group enterprises—while certainly worthy and long supported by SBANE—have resulted in the diversion of so much manpower and money that other vital programs of the SBA (e.g., Procurement and Management Assistance) have suffered terribly. The House Small Business Committee has recently held hearings on this situation.

#### Overemphasis on 8(a) assistance

For example, for the past 2-3 years the Government has heavily emphasized the 8(a) program. Under Section 8(a) of the Small Business Act, the SBA is empowered to step into any procurement program of any federal agency and become the prime contractor, letting all subcontracts. Section 8(a) was intended to benefit all small business, but SBA has used it exclusively for the benefit of minority business. The SBA has devoted some 30-50% of its procurement efforts to arranging 8(a) subcontracts for minority enterprise—at a time when its procurement program was already seriously understaffed. 174 SBA personnel work exclusively on 8(a) procurement, while many others are carrying heavy support duties. The remaining Procurement and Management Assistance staff are unable to function effectively. And many Government agencies—notably the Federal Aviation Agency, the General Services Administration, Department of Defense and the Veterans Administration—have been following SBA's lead with considerable fervor, by taking the initiative to recommend 8(a) treatment of more and more of their contracts.

Even more distressingly, the procurement dollars expended on 8(a) contracts are not new funds. They are primarily taken from the small business set-aside program, at the expense of nonminority smaller firms. Result: one small business advances at the expense of another. Net gain to small business as a whole: nil.

To illustrate this mushrooming 8(a) activity, consider the following statistics:

Fiscal year	Number of 8(a) contracts	8(a) dollars
1968	8	\$10,493,000
1969	29	8,840,000
1970	199	22,520,000
1971	811	66,120,000
1972 (1st 8 months)	660	51,000,000
1972 (12 months goal)	1,600	100,000,000
1973 (goal)	2,500	175,000,000

Thus, from 1968 to 1973, the 8(a) contracts will have increased over 300 times in number and more than 16 times in dollar volume—virtually all of it diverted from small-business set-asides.

Minority assistance was conceived as seed money to help new enterprises get started. Instead, the funds have been repeatedly funneled as subsidies to a handful of companies long after they should have made way for other, newer ventures. Of the 582 companies receiving 8(a) contracts 1968-1971, 10 firms have received \$31,000,000.—nearly 29% of the

total contract funds—and a single company has been awarded \$9,500,000, almost 9%!

Similarly, the general economic slowdown of the past 2 years has caused banks and other financial institutions to restrict their lending to ever fewer and "safer" products and management, particularly in the high-technology field. In such times SBA should be providing loan guaranty funds to fill this gap, as it has in the past. Instead, it has favored minority companies to the virtual exclusion of others. Because of this approach, small businesses in general will continue to encounter difficulty in obtaining secondary financing, despite help from Congress via P.L. 92-213, empowering SBA to guarantee the loans and debentures of all SBICs.

SBA's lack of personnel and narrowly focused emphasis means that the agency is doing little more than servicing its borrowers and its programs geared to minority businesses. Both of these activities primarily help new businesses in their early, formative stages. Older small businesses have different needs and problems as they reach higher levels of maturity. Such companies, having emerged as competitive factors in the marketplace, should also be assisted by SBA. But as its Procurement and Management Assistance program dwindles, SBA is becoming unable to provide the badly needed expertise. So, ironically, the minority enterprises will eventually suffer along with everyone else.

Unless remedial action is taken promptly, we foresee that the Government's assistance to small business will be more imagined than real, and that there will be a continuing decline in small business opportunities to do business with the Government.

#### SBANE's Rx

SBANE strongly recommends the following corrective measures:

1. The SBA's 8(a) program should become a separate department within the SBA with proper manpower of its own.
2. Guidelines should be established by Congress to define the amount of set-aside and loan guaranty funds which SBA can divert to 8(a) subcontractors.
3. The SBA's procurement experts should be re-allocated to its overall procurement program where they were originally assigned and where they have the training and experience to provide invaluable assistance.
4. The small business specialists currently serving the Department of Defense should be transferred to the Small Business Administration (see SBANE's proposal on Procurement).
5. Congress should take a serious look at SBA's requests for increased funds and manpower.

#### IV—SBANE 1972 PROPOSAL FOR RESEARCH & DEVELOPMENT

Sbane endorses, with certain reservations, three proposals made in the President's Message on Science and Technology. These include:

- (1) The new Experimental R&D Technology Incentives Program.
- (2) A revitalization of the role of the Small Business Investment Corporation, and a lengthening of the time for certain small business tax incentives.
- (3) Realistic attitudes on patent rights.

#### President's message on science and technology

The New England economy has been dependent upon its small, high technology companies for much of its growth and prosperity since World War II. During the past few years defense and aerospace cutbacks have severely affected this segment of our economy and resulted in widespread professional unemployment. Alternative opportunities to redirect our technological resources have been grossly insufficient. Finally, in the 1973 Federal Budget and the President's re-

cent Message to Congress on Science and Technology, we see some indication of positive steps that could benefit our floundering high technology businesses.

Over the past three decades government-sponsored research in military and aerospace have produced the most sophisticated defense capability in the world and have allowed us to be the first nation to send men to the moon. However, the Government has assumed that research and development directed toward domestic needs would take care of itself in a free enterprise economy. We are now finally becoming aware that the normal economic incentives are frequently insufficient to encourage industry to increase productivity and to meet societal needs.

#### NSF-NBS experimental incentives programs

The 1973 Federal Budget contains \$40 million for a new program to provide incentives for non-Federal investment in research and development. The program is to be administered jointly by the National Science Foundation and the National Bureau of Standards, with the lion's share of the money going to the National Science Foundation. The NBS part is called the Experimental Technology Incentives Program and NSF calls it the Experimental R&D Incentives Program. The objective of this program is "to experiment with incentives for increasing non-federal investments in R&D and for increasing the efficiency and speed of conversion of R&D to new or improved products, processes, and services which contribute to improvements in the quality of life, employment opportunities, economic growth, productivity, and foreign trade." We heartily support these objectives and most of the suggested mechanisms for achieving them.

However, this program represents the only budgetary outgrowth of a major effort conducted last fall and winter by the White House staff to redirect our technological capabilities to address civilian needs. The public had been led to expect funding in the billions for civilian-oriented new technological initiatives, but only \$40 million appears in the budget. Not only were many other sound programs dropped from consideration, but also the \$40 million to provide new incentives to industry is grossly inadequate for the scope of this program. The \$40 million budget for this program looks even more insignificant when one recognizes that

(1) most of the funding is through the National Science Foundation which both traditionally and by program design will be contracting principally with universities, and

(2) the budgetary figure is a proposed allocation, not an expenditure.

Thus, assuming an average three-year contract, the total expenditures, including both administration and contracting with industry at the National Bureau of Standards, will be less than \$5 million in the fiscal year 1973. That seems like a lot of hoopla for such small funding. We suspect that the public relations cost of this program to the taxpayer exceeds the funding available to industry.

It is small wonder that the program is directed toward finding incentives for non-Federal funding of R&D; the proposed Federal contribution for fiscal 1973 is clearly inadequate. An explanation for NBS's emphasis on non-Federal funding is that "industry's willingness to invest is the best assurance that the opportunity has realistic commercial applications." Most businessmen do not make investment decisions based on whether there are realistic commercial applications. Most businessmen do not make investment decisions based on whether there are realistic commercial applications, but rather on whether they can get a reasonable return on their investment. They consider factors such as risk, lack of a proprietary

position, capital requirements, and difficulties in penetrating the market. We believe that the emphasis on non-Federal contributions may seriously restrict the utility of this program as a means for making American industry more productive.

#### *Investment and tax incentives*

In the President's Message to Congress on Science and Technology he also proposes investment and tax incentives that SBANE actively supports. Over a decade ago, legislation was passed permitting the Small Business Administration to loan money to Small Business Investment Corporations (SBIC). However, the upper limit of \$10 million of outstanding loans was soon reached, and the limit was not subsequently increased, thus reducing the effectiveness of this Act. The President has now recommended that the upper limit be increased to \$20 million and that the ratio of this Government support to an SBIC's equity be increased in order to encourage investment in high technology and processes. We feel that this is a sound approach to encouraging new ventures, but that \$10 million additional funding can only be considered an interim amount. We also support the following proposals:

(1) Extension of eligibility to exercise qualified stock options from five years to eight or ten years.

(2) Reduction of the holding period of non-registered stock from three years to one year, and

(3) Extension of tax-loss carry-forwards from five years to ten years.

We hope the legislative process can move fast enough to see these proposals become law before the end of 1972.

#### *Liberalized patents policy*

In his recent message to Congress the President also indicated that the Government patent policy toward private use of Government-owned patents is being liberalized, so that exclusive licenses will sometimes be granted to private firms. This is certainly a step in the right direction; we only hope that the intent will not be thwarted by bureaucratic conservatism. In general, the small business man is extremely reluctant to be the first to develop and exploit new technologies unless he has a protected proprietary position. If he does not have patent protection or proprietary "know-how", he recognizes that, if the market proves to be good, the giant company with tremendous marketing and manufacturing resources will jump in and easily undercut his business. We feel that not only with Government-owned patents, but also with all Government-Industrial contracting, the Government should decide on patent rights based on what will best allow the effective exploitation of the invention rather than what will best preserve the Government's rights.

In summary, sound and creative new programs to stimulate R&D in private enterprise are before the Congress this year. However, the funding levels requested are unrealistically low, and certain parts of these programs should be changed or reoriented. We now urge both the Congress and the Administration to convert their words into meaningful action.

#### *V—SBANE 1972 PROPOSAL FOR TAXATION*

SBANE calls for favorable action on the Bible-Evins Tax Bill (S. 1615 and H.R. 7692), especially its provisions for additional first-year depreciation, for equalized treatment of fringe benefits, and for operating loss carryovers for electing small business corporations. It urges enactment of the Interstate Taxation Act as a first step toward tax simplification, via a uniform method of state taxation. We also support S. 544 in part, insofar as it would extend the availability of deductions for net operating losses to 10 years. SBANE recommends creation of the

post of small business analyst in the Treasury Department to ensure that the small businessman's viewpoint will be considered. We also propose that small corporations be offered a special status to help them avoid double taxation.

#### *Bible-Evins bill*

Senate Bill 1615, introduced by Senator Alan Bible, is a comprehensive plan for tax reform and simplification. It encompasses a total package of meaningful change which will give significant tax incentives to small business without creating serious adverse revenue effects.

In the past we have recommended the passage of a number of Senator Bible's proposals. We are gratified that some of the more important proposals, such as the restoration of the investment credit and adoption of the ADR depreciation system, have been implemented.

#### *Increased additional first-year depreciation*

One of the most pressing problems facing smaller business is the ability to generate the necessary capital funds for expansion. For this reason SBANE supports the proposal to increase the amount of additional first-year depreciation from \$10,000 to \$20,000.

#### *Equalized fringe benefit treatment*

Recent taxation legislation has resulted in a major disparity between the fringe benefits afforded the employees of unincorporated businesses and electing small business corporations vis-a-vis the employees of large corporations. A ceiling of \$2,500 has been placed on the amount that can be taken. Senate Bill 1615 proposes equalized treatment of fringe benefits and SBANE urges its enactment.

#### *SBANE's sliding scale surtax exemption*

SBANE does not favor Senator Bible's proposal for adjusting normal corporate tax rates so as to shift a larger portion of the burden to large companies. Instead, we again call for the enactment of our proposed sliding scale surtax exemption. Under the SBANE plan, there would be a basic \$50,000 exemption from the present surtax for corporations with earnings of \$50,000 or less. This exemption would gradually be reduced to the current level of \$25,000, for companies having taxable incomes in excess of \$100,000. SBANE's plan offers the advantage of providing meaningful tax reductions for smaller businesses without significantly increasing the tax of larger corporations.

The Bible-Evins bill also contains a number of proposals that only conform the tax treatment of similar items between corporations, electing small business corporations, and partnerships. Of these, the most significant and worthy of support allows for the carryover of unused operating losses of electing small business corporations. This proposal has considerable merit. In the past, shareholders of these corporations have not been allowed to utilize operating losses in excess of basis. In subsequent periods when the shareholder had positive basis, the unused losses were not available for deduction. This is contrary to the rules which apply to partnerships, where a current deduction is allowed for any unused operating loss not claimed in prior years due to insufficient basis.

#### *Interstate Taxation Act*

SBANE strongly supports enactment of the Interstate Taxation Act, designed to provide a uniform method of state taxation as a first step toward tax simplification. This legislation would have a decided, positive effect in encouraging interstate commerce, in that it would remove the single largest roadblock facing small businesses wishing to engage in such commerce. As things stand now, small businesses encounter a virtual jungle

of uncertainty in determining if they are indeed subject to state tax, and if so, in computing the tax. A single example illustrates the almost incredible nature of the problem: due to varying methods for determining taxable property, it is not uncommon for the aggregate of the allocation factors for all the states in which a corporation does business to total more than 100%; accordingly, many corporations actually pay state taxes on more than their entire income or capital! The Interstate Taxation Act would help put a stop to situations such as this. In prior years this bill has passed the House, only to die in committee in the Senate. Our Association feels that it deserves to be reported out of committee and enacted into law.

#### *The paperwork flood*

A related problem is the proliferation of federally required tax forms. We are all literally buried in piles of paper. Each attempt at simplification of paper flow seems to result in the addition of a simple new form to cure the ills. This form, although intended to help, is usually added to the already existing forms and actually increases paper work! In time the simplified form becomes more and more complex until someone comes along with a further simplification idea and the cycle resumes. Senator McIntyre of New Hampshire has been holding hearings on this serious burden. SBANE has participated in those hearings because we have seen new businesses drowning in a flood of paper requirements that severely interferes with the drive toward becoming a healthy small business. We hope that members of Congress will recognize that the best approach to resolving this mounting problem is to examine the necessity, rather than the mere utility, of every Government form.

#### *10 year loss carryover*

The Administration's small business tax relief bill (S. 544) strikes us as being "too little, too late." However, we re-emphasize our strong support for its proposal to extend from 5 to 10 years the period during which a net operating loss can be carried forward by individuals and by small business corporations. The present 5-year limit is exceedingly unfair to certain small companies. As an example, we cite the plight of small technical products firms, formed in the mid 1960s. Typically, such enterprises experienced several years of losses while becoming established. Then they encountered the economic downturn of 1970-1971, which particularly affected sales of capital equipment. As conditions began to improve in late 1971 and early 1972, these companies began to realize profits, only to find that they no longer have a loss carryover deduction from their start-up years. Congress should recognize their plight and extend this needed relief.

#### *Small business tax analyst*

Although many believe that America's economy is dominated by large national and multi-national industrial companies, the fact is that without the small businessman our economy would not provide the average American with the life style we all so eagerly strive for. We are all well aware of the ability of big business to make its position known to government. By contrast, it is extremely difficult for the small businessman to have his thoughts and desires heard. We believe that the small businessman can be given an effective voice in the councils of government by establishing the position of Small Business Tax Analyst in the Treasury Department. The main function of such an official would be to review tax legislation and problems from the viewpoint of small business, and to articulate that point of view in the day-to-day workings of the Treasury. We emphatically endorse this feature of the Bible-Evins bill.

*Double taxation*

SBANE proposes the adoption of legislation which would enable a small business to elect to be treated as a regulated small business corporation, which would be defined as any domestic corporation (other than a personal holding company) whose stock was owned at least 90% by individuals, with net assets of \$1,000,000, or less determined as of the end of the prior year. An electing regulated small business corporation would be exempt from taxation of its income so long as at least 90% of its taxable income was distributed to its shareholders during the current year or before the filing date of its Federal income tax return. The taxable income of a regulated small business corporation would be computed in the normal manner except for the elimination of the dividends received deduction for nonaffiliated corporations.

SBANE urges the adoption of this legislation to negate the stifling effects of double taxation on small businesses. This classification of corporations would further the congressional intent demonstrated in the enactment of the Subchapter S Selection. There are many small business corporations which do not qualify for Subchapter S status or whose stockholders do not need or cannot avail themselves of the loss deductions because of their small original investment in the corporation. By electing to be treated as a regulated small business corporation, the stockholders would be taxed on the taxable income of the corporation after deduction of net operating loss carryovers. Since this proposal reduces the present incentive to maximize corporate compensation and other related deductions, we believe it would provide the further advantage of reducing controversies with the Internal Revenue Service.

*The disc program*

We cannot leave the subject of taxation without expressing our appreciation to Congress for its wisdom in enacting the export tax deferral program. By means of Domestic International Sales Corporations, many small companies can now gain entry to foreign markets that would otherwise have remained closed to them.

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## H.R. 15045

A bill to provide for the prompt resolution of certain disputes relating to Government contracts, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any determination of a dispute concerning a question of fact arising under a contract between a contractor and any department or agency of the Federal Government involving an amount not exceeding \$50,000 shall be made by the contracting officer or procuring agent of that department or agency who is responsible for that contract prior to the conclusion of the 60 day period beginning on the date of notification by the contractor of the dispute, unless such period is extended at the request of the contractor.*

SEC. 2. The head of any department or agency of the Federal Government shall establish regional small contract claims divisions of the Board of Contract Appeals of that department or agency for the consideration of a final decision of a contracting offi-

cer or procuring agent under the first section of this Act.

SEC. 3. (a) Any small contract claims division established under section 2 of this Act shall be subject to the following rules of procedure:

(1) Parties in any dispute before a small contract claims division shall be represented by their employees who are involved in the administration or performance of the contract.

(2) The parties may not be required to file formal pleadings.

(3) No procedure for the discovery or production of evidence other than a hearing shall be utilized by any small contract claims division.

(4) All hearings and other proceedings of any small contract claims division shall be informal and not subject to technical rules of evidence.

(5) A small contract claims division must decide each dispute not later than 30 days following the conclusion of hearings with respect to any dispute.

(b) The head of each department and agency of the Federal Government is authorized to prescribe such rules and regulations relating to the establishment, operation, and procedures of small contract claims divisions as may be necessary or appropriate to assure the prompt and informal resolution of small contract claims disputes.

THE RECLAMATION LANDS  
AUTHORITY ACT

## HON. FRED R. HARRIS

OF OKLAHOMA

IN THE SENATE OF THE UNITED STATES

Wednesday, May 17, 1972

Mr. HARRIS. Mr. President, last November, I, along with Senator BAYH, Senator CRANSTON, and Senator HART, introduced legislation known as "the Reclamation Lands Authority Act," S. 2863. Recently, in order to collect information concerning land monopoly in America, I held a public hearing in Los Angeles, Calif., on the subject of land and resource monopoly.

The testimony given at this hearing reveals a great deal about the scandalous situation our Government has allowed to develop in the area of land monopoly, particularly in the federally irrigated agricultural lands of California. It is an outrage that our Government has failed to vigorously enforce that very important piece of legislation: "The Federal Reclamation Act of 1902," which stipulates that landowners can receive federally subsidized water for farms of 160 acres or less, provided they live on, or very near their land. The 1902 law was strengthened by amendments in 1926 which provide that any federally irrigated holdings in excess of the 160-acre limitation had to be sold within 10 years at preirrigation prices. This legislation was enacted for the very purpose of preventing land monopoly in the hands of the wealthy few. The intent of Congress, as well as President Theodore Roosevelt who signed the 1902 act into law, was to protect the small farmer and encourage the use of federally irrigated land by as many people as possible.

Since that time, we have seen an intolerable concentration of these federally irrigated lands at the great expense of the small farmers driven off the land;

the urban areas of America which have been forced to absorb the millions migrating there; and, the American taxpayer who has had to pay billions to alleviate the poor social conditions caused by the urban crush, as well as pay additional billions in subsidies.

Attempts to enforce the 1902 law through court suits initiated by the Johnson administration have been virtually ignored by the present administration. I am aware, Mr. President, of the recent decision by the Justice Department to appeal an adverse decision of the Government's case in the United States against the Tulare Lake Canal Co. suit. While I applaud this decision, it is a little like running only half of the race. The Justice Department declined to appeal an earlier case in the Imperial Valley of California when they lost a suit to enforce the 160-acre limitation. If there is any doubt in anyone's mind about the intentions and motivations of the administration in that matter, they need only to refer to a letter from Solicitor General Griswold where he stated that, "we should not win" the case. Additionally, the Justice Department has failed to file a suit against the landowner giants concerning the residency requirements of the 1902 Land Reclamation Act. They have, by neglect, left the job of enforcing this portion of the law to a private citizen in California, Mr. Ben Yellen, who filed a suit against the Government, specifically the Secretary of the Interior, to force the Government to enforce the residency portion of the law.

Mr. President, today I submit the testimony given at the public hearings in Los Angeles. I call the attention of my colleagues to this testimony and urge their inquiry into this situation. I believe they will recognize, as I and others have, that this situation is growing steadily worse—it is not getting better and it is not even remaining static.

Given the administration's failure to adequately protect the American small landowner and farmer with the laws they have, it is up to Congress to move quickly and forcefully to make this Government active in the interest of the people. Passage of "the Reclamation Lands Authority Act" will be a step in this direction. This legislation, as proposed, will require the Federal Government to purchase "excess" land at pre-project market prices, and resell, or release, the land at post project market prices.

Before entering the testimony in the RECORD, I want to acknowledge the work of Mr. Andrew Schuman, formerly of my staff, who organized the hearing, along with the assistance of Mr. Dave Weiman of the National Coalition for Land Reform. Also I want to thank Mrs. Ruth Matthews and Mrs. Debbi Duffy of my staff who have spent long hours transcribing and preparing the testimony.

I ask unanimous consent that the transcript be printed in the Extensions of Remarks.

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

OPENING STATEMENT OF SENATOR FRED R. HARRIS, PUBLIC HEARING ON LAND AND RESOURCE MONOPOLY, LOS ANGELES, CALIF., MARCH, 9, 1972

I have come to California today to hold an open public hearing on the issues of land and resource monopoly. The hearing will be transcribed, published in the Congressional Record and presented to the relevant committees in the Congress. Since California is a Presidential primary state, we hope that these hearings may cause the issues involved to become issues in the Presidential campaign.

Here in the United States we are supposed to have a free enterprise system, an economy which provides opportunities for men and women to earn a decent living through hard work, and a political system which protects the interests of the public. Instead, we more and more have a system in which concentrated economic power has become concentrated political power, in which the rich receive both profits and subsidies, while working men and women pay the bills.

If the federal government would move aggressively against monopoly power, prices would fall by as much as 20 percent. With real market pressures, our economy would move toward full employment and price stability without the inordinate government controls we now have.

But the government does not move against monopolies because the government is, in a real sense, under the influence of monopolies. We have only to look at the recent decision by the Justice Department to drop its antitrust suit against ITT. Though this is the example now in the news, it is not an isolated example. It is a part of a consistent pattern.

There are, of course, many types of monopoly, but today in California I would like to focus on a special kind of monopoly.

Winston Churchill once said: "Land monopoly is not the only monopoly, but it is by far the greatest monopoly. It is a perpetual monopoly and it is the mother of all other forms of monopoly."

Nineteen large corporations now own about 35 percent of California's timberland, and 29 large corporations own about 21 percent of California's cropland. Forty-five giant corporations own more than 3.7 million acres of farmland. This means that a minuscule percentage of the people of California control nearly half the harvested cropland in the state. Actually, many of the corporations that were included in this survey are not even based in California. They are part of huge conglomerates that are headquartered in New York, Texas and other states.

These statewide figures, as shocking as they are, do not convey the full impact of land monopoly in particular local areas. In Kings County, for example, a single company—the J. G. Boswell Company—owns more than 20 percent of the land. In Kern County, three giant companies—Tenneco, Standard Oil of California, and the Tejon Ranch, which is controlled by the Los Angeles Times—own nearly half the land. Many of these companies receive millions of dollars in federal subsidies and tax breaks, while thousands of landless residents of these counties are unemployed and impoverished.

Closely associated with monopolization of land is monopolization of water. Because of the state's dry climate, most land in California has little value unless it is irrigated or receives water for residential and industrial use. The state and federal governments have spent billions of dollars building dams and canals to bring water to land that would otherwise be arid and worthless. Who gets the benefit of these water deliveries that the taxpayers so generously subsidize? Once again,

it is primarily a handful of large corporations and wealthy individuals.

I believe it is time to bring an end to land and water monopoly, and to the invasion of agriculture by large absentee corporations. The corporate domination of rural America contributes to the exploitation of rural labor; to the denial of opportunity for young people and poor people to get a start in agriculture; to the overriding of our cities and the degradation of our environment.

These problems are particularly acute in California, but I have seen them elsewhere—in Appalachia, where absentee-owned coal companies are destroying the landscape and siphoning wealth out of the area; in the South, where giant paper companies have made virtual peons out of black and white woodcutters, in the Midwest, where vertical integration of the poultry and livestock industries has reduced once proud and independent farmers to the stature of helpless cogs in a corporate hierarchy.

If we are to have a healthy democracy and a healthy economy, we must begin right now to redistribute income and redistribute power. We must break the corporate stranglehold over our economy and our political system. In rural areas, we must develop a land policy that considers people, not corporate profits, as its highest priority. We must assure that the land belongs to those who work and live on it, and that landholdings are of reasonable size. We must make small-scale farming economically viable so that we can stop the tragic outmigration from rural America to our already overcrowded cities.

There is a related issue of monopoly that I would like to consider today, and that is the monopolization of vital natural resources in addition to land and water.

California has been blessed with an abundance of resources of all sorts: vast stretches of timber, enormous deposits of oil, a great number of hydroelectric power sites, and the most potentially productive sources of geothermal power in the country.

These natural resources were not created by the efforts of any one man or group of men; they were here even before man arrived in California. Like the land itself, these natural resources should be used for the benefit of all the people, not just a privileged few.

I am concerned that there are too many layers of private profit between the people of California and the natural resources that properly belong to them. The oil companies, the El Paso Natural Gas Company, and private utilities such as Pacific Gas and Electric, have used their economic and political power to gain control of the people's resources and to overcharge the public for use of its own resources. We will hear testimony today describing how this is done, and how this problem might be remedied.

Let me conclude by noting that this is an election year. It is also a year in which the California primary will play a major role in determining who will be the Democratic nominee for President.

I think that each of the candidates who puts his name before the people of California should give frank and unequivocal answers to the following questions:

What can be done to redistribute income and power in this country?

What can be done to break up the concentrated ownership of land in California?

What can be done to enforce the federal law which says that no water shall be delivered to an absentee landowner or to properties in excess of 160 acres?

What can be done to control the profits of giant resource companies such as El Paso Natural Gas, PG & E, and the major oil companies?

These are vital issues, fundamental to real

change in America. They are a part of the New Populism which can turn this country around.

STATEMENT OF PETER BARNES, NATIONAL COALITION FOR LAND REFORM, SAN FRANCISCO, CALIF.

I would like to direct my testimony today to the problem of land monopoly in California. I would like to proceed both in a critical way—describing and analyzing the problem—and in a constructive way—suggesting steps that can be taken to distribute the land more equitably.

It might be beneficial to begin by looking briefly at the history of land ownership patterns in California.

California has never been a state in which land has been equitably distributed. In this respect it differs sharply from the Midwest and New England states, and resembles in many ways the Southern states.

Concentration of land ownership began even before California became part of the United States. The Spanish and then the Mexican governments granted vast acreages of California land to a few hundred favored individuals. After California joined the Union, most of the Mexican land grants soon fell prey to wily speculators and defrauders, who either bought out the heirs of the grantees or forged phony title papers and bluffed their way through the courts. Several of the original Spanish land grants are embodied in giant holdings today—for example, the Irvine Ranch (88,000 acres in Orange County), and the Tejon Ranch (about 300,000 acres northeast of Los Angeles).

Vast landed empires continued to be built in California throughout the Nineteenth Century. For some reason American history books are filled with tales about the robber barons of finance and industry—the Rockefellers, Morgans, Carnegies and Harrimans—but almost always neglect to mention the great cattle barons of the West.

One of the most notorious of the latter breed was Henry Miller, a German immigrant who arrived in San Francisco with six dollars in his pocket and amassed an empire of 14 million acres—about three times the size of Belgium—before he died. It was said of Henry Miller that he could ride by horseback from Oregon down to Arizona and sleep every night on his own land. His empire disintegrated after his death, but Miller and Lux, Inc. is still one of California's largest landowners, with at least 93,000 acres.

On a par with Henry Miller in deviousness and ambition was the team of James Haggin and Lloyd Tevis, a pair of San Francisco tycoons who, among other things, had interests in the Southern Pacific Railroad and Senator George Hearst's mining ventures. Their empire building was capped in 1877 by a masterfully engineered land-grab that must rank among the classics of the genre.

Under the impetus of California's Senator Sargent, who was acting on behalf of Haggin and Tevis, Congress in 1877 hurriedly approved a land giveaway known as the Desert Land Act. President Grant signed it in the last week of his administration. Under the law, lands which were allegedly worthless deserts were to be sold at \$1.25 an acre, in 640 acre sections to any individual who would promise to provide irrigation.

Haggin and Tevis had their eyes on a big chunk of land near the Kern River that was hardly worthless desert, but which qualified under the terms of the act. They also had cronies in the federal Land Office. President Grant's signature on the Desert Land Act was barely dry when Haggin and Tevis arranged to have the San Francisco Land Office open its doors on Saturday, March 31, 1877, exclusively so that they could purchase hundreds of thousands of acres in Kern County by hiring vagabonds to enter phony claims for 640 acres each.

Haggin and Tevis were able to acquire title to approximately 150 square miles of Central Valley land before anyone else in California had even heard of the Desert Land Act. In the process they dislodged settlers who had not yet perfected their titles under old laws and who were caught unawares by the new one. The San Francisco *Chronicle*, which in those days was a fairly populist newspaper, called the whole maneuver an "atrocious villainy" and demanded return of the stolen lands. A federal investigation followed, but Haggin and Tevis emerged triumphant.

This monumental land grab nearly a century ago would be of little interest today were it not for the fact that Haggin and Tevis' vast empire is still with us in slightly different garb. In 1890 Haggin and Tevis incorporated their holdings under the name of the Kern County Land Company. In 1936 their heirs were fortunate enough to discover an enormous supply of oil beneath their land, so that a share of Kern County Land Company stock worth \$33 in 1933 was worth \$2,680 (after splits) in 1965, and had paid \$1,883 in dividends. In 1967, Kern County Land Company was bought by Tenneco, a Houston-based conglomerate that is one of the main threats to small farmers in the San Joaquin valley today.

At about the same time that Haggin and Tevis were building their empire, the Southern Pacific Railroad was establishing its stranglehold over the state's economy and politics. The railroad's lobbyists were successful in persuading Congress not only to directly subsidize construction of its tracks, but to grant it, in addition, alternate sections (square miles) of land on both sides of its lines for a width of 20 miles in each direction. In this manner the Southern Pacific and its subsidiaries received from the federal government a total of 11,588,000 acres, about one-fifth of all the land that is now in private ownership in California. Over the course of the years the Southern Pacific has sold much of that land, but it still owns, according to the Nader report, at least 2.4 million acres, which is slightly more than three times the size of the state of Rhode Island. A large portion of this land is located along the west side of the San Joaquin Valley, where it has recently benefited from the construction of a new interstate highway (Route 5), and deliveries of subsidized water from both the federal and state governments.

To sum up the historical background; California never was a state where the Jeffersonian vision had much meaning. It began as a state of large landholdings, developed as a state of large landholdings, and remains a state of large landholdings. This pattern of concentrated land ownership has contributed to the great disparities of income that persist in California, and to a long history of racial exploitation; first native Americans, then Chinese, Japanese, Filipinos, Asian Indians and Mexicans have toiled as virtual serfs to the big landowning masters.

Californians did not always passively accept this heritage of land monopoly. In the Nineteenth Century it was fought by the San Francisco *Chronicle*, the McClatchy newspapers, Henry George and the Grangers. In the Twentieth Century such men as Upton Sinclair, Carey McWilliams and Paul Taylor have led the fight. At one point Congress was persuaded to enact a law specifically designed to break up land monopoly in the West—the Reclamation Act of 1902. But this law has never been effectively enforced—federal water continues to be delivered to landholdings of vast size—and the concentration of land ownership in California has, if anything, increased in recent years.

What are the social consequences of land monopoly? Racial exploitation and extreme rural poverty are, as I have mentioned, two very important ones. Professor Walter Goldschmidt, who conducted the famous Arvin-Dinuba study in 1946, will describe some of

the consequences to rural communities. Another consequence has been the inability of large numbers of willing workers to find gainful employment in rural areas, with a consequent outmigration to cities that are already overcrowded. A further consequence, as the recent Nader report pointed out, has been the domination of the political process by large landed interests. This has not only contributed to the environmental deterioration of California, but to the frequent use of government money and power to further enrich the already rich and powerful.

Perhaps the best way to understand some of the consequences of land monopoly is to look at a specific example. Let me briefly describe the situation in the Imperial Valley, an area that is far from the worst in California in terms of concentrated land ownership.

The Imperial Valley lies just north of the Mexican border and covers an area about the size of Rhode Island. It is one of the richest agricultural areas in the world, producing \$250 million annually of cotton, sugar, beets, lettuce, alfalfa and other crops.

The Imperial Valley would be a wasteland, instead of a grower's paradise, were it not for water brought in from the Colorado River. Originally, efforts were made by private landowners to irrigate the Imperial Valley, but these efforts were not very successful. At one point a levee broke and the entire valley was flooded—what is now the Salton Sea is a result of that 1906 mishap. Even when the canals were working properly there were several problems: first, the major canal passed through Mexican territory, and thus was not secure from political cut-off; and second, without a dam on the Colorado, there could not be a steady flow of water year-round.

In 1926 the Imperial Valley landowners persuaded the federal government to help them out. Congress passed the Boulder Canyon Act, which authorized construction of Hoover Dam and the All-American Canal. The difficulty, from the standpoint of the Imperial Valley landowners, was that the Boulder Canyon project fell within the terms of the 1902 Reclamation Act. This meant that no water could be delivered to any single landowner owning more than 160 acres, or to any landowner who did not live on or near his land.

At this point the political muscle of the Imperial Valley landowners came into play. Ray Lyman Wilbur, Herbert Hoover's Secretary of the Interior, was persuaded to sign a letter in 1933—just days before the Roosevelt Administration took over—expressing his opinion that the Imperial Valley was exempt from the 160-acre limitation. Wilbur was persuaded to make this last-minute ruling by an aide who shortly thereafter became a paid consultant to Imperial Valley growers.

As a result of Wilbur's letter and the subsequent non-enforcement of the 1902 Reclamation Act, more than half the irrigated acreage in the Imperial Valley is today held by owners of more than 160 acres, and two-thirds of it by absentees.

These privileged landowners receive a multitude of unearned subsidies. First is the water subsidy. Hoover Dam, completed in 1935, cost \$175 million; the All-American Canal cost \$30 million. Most of this mammoth investment is repaid from the general treasury and by hydroelectric power consumers in Los Angeles and other southern California cities.

Second is the labor subsidy. Between 1952 and 1964, millions of braceros toiled in the Imperial Valley at wages lower than any others paid in America. Today thousands of Mexicans stream across the border each morning with permit cards, and many others enter the valley illegally. Their presence impedes the effort to unionize farmworkers and keeps field wages down to unconscionable levels.

Then there's the agricultural subsidy. The same federal government that spends millions to make the Imperial Valley fertile also pays millions to landowners not to grow crops. According to a recent article in the Los Angeles Times, 500 large growers in the Imperial Valley receive some \$12 million annually in farm subsidies, while 10,000 landless residents of the valley must eke out an existence on welfare payments totalling less than \$8 million.

By far the largest windfall is in the form of land appreciation. Irrigated land in the Imperial Valley is worth, conservatively, \$700 an acre more than the same land would be without water. A landowner with 2,000 acres thus gets a \$1.4 million windfall from the federal government, merely because his land is in the right place.

When Stewart Udall was Secretary of the Interior, an effort was begun to enforce the 160-acre limitation in the Imperial Valley. The big landowners fought Udall in the courts, and last January received a favorable ruling from U.S. District Judge Howard B. Turrentine in San Diego. The Nixon Administration could have and should have appealed the Turrentine decision all the way up to the Supreme Court if necessary; it is, after all, a "law and order" Administration. It was not urged not to appeal the decision by Governor Reagan, Senator Tunney and other friends of the Imperial Valley growers. Finally, it let the Turrentine decision stand.

About three months ago another U.S. District Judge, William D. Murray of Butte, Montana, made a contrary ruling to Turrentine's. He held, in a lawsuit brought by Dr. Ben Yellen and others, that the residency requirement of the 1902 Reclamation Act does in fact apply to the Imperial Valley. If Judge Murray's decision stands or is upheld, it could result in a redistribution of land in the Imperial Valley to small resident farmers and farmworkers. The Justice Department has not yet announced its position on this particular case, but I doubt very much that it will go against the big absentee landowners.

At this point I would like to introduce a memorandum with regard to this particular case submitted by Arthur Brunwasser, who is an attorney in San Francisco who is representing landless residents in the Imperial Valley. Mr. Brunwasser makes a very good analogy between this Imperial Valley case and the ITT case which is now making headlines. In both cases, we have a situation where the government initially attempted to enforce anti-monopoly laws against big economic interests. In one case, it was the Sherman Act they tried to enforce against the ITT, and in another case it was the Reclamation Act they tried to enforce in the Imperial Valley. In both of these cases the government lost the initial decision at the District Court level and should have appealed this to higher courts. In both cases, after the initial District Court decision great political pressure, and perhaps some inducements also, were brought to bear on the Nixon Administration not to appeal these lower court decisions, and in both instances the Nixon Administration did not appeal. The public interest was harmed and the big special interests were not broken up as they should have been and the public domain was in effect given away.

Senator HARRIS. That memorandum will be made a part of our record at the end of your testimony.

PETER BARNES. Thus far I have talked a good deal about unearned wealth accumulated by land monopolists through political and economic power. The Senator is quite familiar, I am sure, with numerous other instances of powerful economic interests further enriching themselves through influence over government policies. I would like to conclude my testimony by emphasizing that there is another very vital issue at stake in this consideration of land monopoly, and

that is the kind of society we are going to have in rural California and throughout rural America.

The alternatives are clear-cut. Are we to have a rural America that is little more than a colonial hunting ground for absentee corporations to exploit; a rural America that is characterized by enormous disparities between rich and poor; a rural America that is steadily losing sons to the ghettos and barrios of our cities? Or are we to have a rural society in which wealth and power and opportunity for self-improvement are equitably distributed, in which working men and women can earn a decent living, close to the land, without being exploited and without losing control over their own lives and livelihoods?

To me the choice is clear: it must be a rural society which is economically and politically democratic. Yet the policies of both the federal and our state government, I am sorry to say, are consciously or unconsciously operating to bring about just the opposite. Water subsidies, crop subsidies, labor policies, tax policies, research policies at land grant colleges, the failure to enforce anti-trust laws or the anti-monopoly provisions of the 1902 Reclamation Act—all of these are highly adverse to the building of a democratic rural society.

What can be done to achieve the kind of rural society I have been talking about? First, we must preserve what is best in rural society today. This means we must stop the corporate invasion of agriculture, and help existing family farmers to survive. Second, we must put an end to other forms of corporate exploitations—for example, the exploitation by paper companies of woodcutters in the South. Third, we must enable more people—particularly farmworkers, sharecroppers, woodcutters and miners—to earn a decent living from the land and its resources.

To accomplish all this it will be necessary to change a broad spectrum of government policies. Tax laws, price support programs and research policies should be changed to favor efficient family farm units and worker-owned cooperatives rather than large absentee corporations. Anti-trust laws and anti-monopoly laws must be enforced. And—let us be frank about it—land will have to be redistributed from those who own too much to those who don't own any, especially in California and the South. In other countries this is called "land reform," and the United States government has ardently promoted it.

Clearly, such changes will take a considerable period of time to bring about, but we must start right away. Two important pieces of legislation have already been introduced. One is the Family Farm Act, which has been sponsored in the Senate by Senators Nelson, Harris, Mondale, Hughes and others. The Family Farm Act would amend the Clayton Act so as to prohibit vertically integrated conglomerates from engaging in agriculture. Conglomerates presently engaged in agriculture would have to divest their agricultural operations over a five year period. Perhaps the act could be expanded to specify ways in which divestiture would take place, in order to insure that one big corporation doesn't simply sell to another, but that its agricultural operations are in fact broken up and sold to independent family farmers and farmworkers.

The second important piece of legislation is the Reclamation Lands Authority Act, sponsored in the Senate by Senators Harris, Cranston and others, and in the House by Congressmen Walde, Dellums, Kastenmeier and others. This bill would authorize the federal government to purchase excess landholdings in federal reclamation areas, and re-sell them to resident family farmers and farmworkers.

In addition to these two measures, other important changes are needed. We need new tax laws that don't reward speculators, tax-loss farmers and giant conglomerates. We should eliminate the preferential treatment for capital gains, the oil depletion allowance and other major loopholes. On the state level, we should have a progressive state-wide property tax that falls most heavily on large landowners, and lightens the burden on owner-occupied homes and small farms.

We also need a Railroad Land Reversion Act, to reclaim for the people some of the lands that were given away for free to the railroads a hundred years ago. If railroad passenger service is going to be nationalized, and if, as I suspect, freight service will eventually be nationalized too, we should make absolutely certain that the railroad lands are nationalized as well, and put to better social use than the mere creation of profit for private corporations.

In addition to all these measures, I believe another major piece of legislation, as yet unwritten, ought to be pursued. This would be a Twentieth Century equivalent of the Homestead Act. The government can't give out free land any more, but it can purchase and re-sell lands in rural areas, just as it does in urban areas (where it's called "urban renewal"). This new homestead act would be of nationwide application: it would benefit the rural poor in Appalachia, in the South, in northern New England, as well as in California. It would enable those who work the land or harvest its resources to acquire, cooperatively or individually, ownership or leasehold rights to the land on which they work. It would enable farmworkers, sharecroppers, and other rural Americans to get started in agriculture. It would provide for re-sale of land to poor persons on credit terms that are not prohibitive. This might be done the way some colleges make loans for tuition: the student agrees to pay back a fixed percentage of his future earnings. If he gets rich, he pays back a lot; if not, he isn't overburdened with debt.

Of course there will be opposition to measures such as these. It will be claimed that they are impractical, or radical, or unnecessary. I would say that they are workable, urgently needed, and squarely in the American tradition.

America is, presumably, a country of free private enterprise. But we ought to stop and ask what free private enterprise means. Free enterprise, to me, does not merely imply the right to get big. It also implies the right to start. When the land and water of the nation's most populous state are increasingly controlled by a few giant landowners, when agribusiness conglomerates like Tenneco gain control of agriculture "from seedling to supermarket", the right to get a start in farming will be obliterated—as it almost is today.

Americans must decide whether they want the rich to get richer or the poor to have a chance. Agriculture is one of the few places where the poor can have a chance. If it is closed off, if the profits of the few are given precedence over the needs and desires of the many, the consequences can only be unpleasant.

Senator HARRIS. Thank you very much for an excellent statement, Peter. Why is it that there is a climate or feeling in America that bigness is necessary for efficiency in agriculture? What is your response to that?

PETER BARNES. Well, I think there have been studies made with regard to agriculture as to what is the most efficient size, and you don't need land holdings of 100,000 acres in order to be efficient. It has been shown that you can survive very well on relatively small acreages. It depends, of course, on the particular crop. But there are farmers that I personally know, for example in Fresno County, that are grape farmers with 150 acres who are doing very nicely. In Merced County, I

am friends with a walnut grower who has only 40 acres, and he is doing very well. And in citrus, for example, you can do extremely well on quite small acreage. But I think this is a myth that has been propagated by some of the big agribusinesses, and also the U.S. Department of Agriculture contributes to the propagation of this myth that you have to be enormous in order to be efficient.

Senator HARRIS. In my home state lately some land, which has been used, I think, for a training school, became surplus, and a man who heads up the State Office of Economic Opportunity came up with the idea for people who were unemployed or on welfare, that this land might be offered to them on sort of a new Homestead Act basis if they would go in there and plant orchards, etc. They don't know what sort of response they would get, but they were just absolutely overwhelmed by people who wanted a chance to own their own land and farm it. That ties in exactly with our policy in the past of driving people like that off the land into the cities. I served on the Kerner Commission and we found that government policies had driven people off the land into the cities as late as the '50's and some even now. The government policy indicated that that kind of policy was probably good for those who moved, and the idea was to encourage people to do so. For example, I think Secretary Benson had a conscious policy of seeing that people like that moved into the cities, where the problems turned out to be a lot worse. I really like that idea of some kind of a new Homestead Act. Have you followed that up yet with any kind of specific detail on legislation? I would be very interested.

PETER BARNES. We're working on that. It's going to take a little while to draw it up, but as we do we'll keep in touch.

Senator HARRIS. That kind of decentralization of people, I think is highly important in regard to protection of the environment as well as a lot of other problems that come from concentration of land ownership.

PETER BARNES. I don't know if you ever saw, Senator, an article that appeared in the February 1970 issue of *National Geographic* which shows the ultimate meaning of all this concentration of land and development of corporate agribusiness in rural areas. It is a very interesting article which I will show you if I have an opportunity, and the one thing that's most dramatic in it is a picture which has been sketched by an artist guided by the U. S. Department of Agriculture of what rural America will look like in about the year 2000. And it shows these enormous 20-mile long fields that have been leveled by nuclear explosives, and these huge automated combines that are going down these fields, and jet powered helicopters overhead that are spraying insecticides and skyscrapers which are actually feedlots for cattle. And it's all controlled by computers and only one man runs this vast many hundred square mile farm—they call it a farm. What does this? If this actually comes about and at present, as things are going now, I think this will come about because this is what people like Secretary Butz want. This will be an ecological disaster for rural America. It will mean that all the people will be forced off the land into the cities and that only huge corporations with enormous amounts of capital will be able to produce our food. And they also wonder about the quality of our food that will be produced in such a way with chemicals and mass automation. I think you can see the case of the tomato, as we have already, which is an automated tomato. It doesn't taste nearly as good as the vine-ripened tomato.

Senator HARRIS. But it has been developed because it can be picked by machines and is hard, isn't that it?

PETER BARNES. That was the idea.

Senator HARRIS. You mentioned about the Colorado River and the Imperial Valley. I've

been very interested in Indian Affairs, among other things, and I think more and more water rights are going to become really crucial kinds of rights for American Indians and for people generally here out in the West and Southwest. I think the day is surely coming when people are not going to stand for the kind of exploitation of public water rights, as for example the Colorado River. There's going to be more and more contention about who owns that water, and how much of it. I doubt that people are going to stand much longer for the kind of exploitation that is now taking place. The water, if it's just going to put more profits into the coffers of those big corporations and those big landowners in the Imperial Valley, I think that's going to come under increasing question and I hope it will. What about these two cases, the one involving Judge William Murray from Montana and the one in regard to the Reclamation Act of 1902, and the requirement against owning more than 160 acres if one receives water from publicly built irrigation systems? Is there any way the general public or anybody else can go forward with those cases if they're not appealed, or what can be done about that? Are we pretty much stymied by the Justice Department's decision to stand on the side of the large landowners?

PETER BARNES. Well, of course, it would be nice if the government itself were defending the interest of the people in these cases. Unfortunately, the Administration, I would say, has sold out the people. However, I'm not a lawyer but I understand there are some private citizens who are attempting to intervene in these cases and to pick up the ball where the Nixon Administration has let it drop. As I understand it, this intervention is now before the 9th Circuit here in California and is awaiting outcome. First on the question of standing, whether a private citizen does have standing to pick up a case which the government has dropped, and second, on the merits.

Senator HARRIS. One of the basic premises of the Alliance for Progress is that there should not be great concentration of land ownership in Latin America; and one of the things most progressives say is wrong with the situation in South Viet Nam is concentration of land ownership there. Just to emphasize the point you made, doesn't it seem strange to you that even a lot of progressives are willing to talk about land reform everywhere else except here in the United States?

PETER BARNES. Well, it's always easier to go after the other guy than to start swallowing some of your own medicine. As you said, the Alliance for Progress in the Kennedy Administration—this is one of the big things that we are pushing. In fact—I don't have exact figures—but the AID has spent millions of dollars actually providing technical assistance, and even money to enable foreign governments to buy up land and redistribute it to peasants, and why we do that in foreign countries and fail to see the need to do similar things in this country is a very interesting subject.

Senator HARRIS. Do you think that there is a chance by occurrences like this and the activities of the National Coalition for Land Reform and other such efforts that we might be successful in the Democratic presidential primary here in getting land reform and the monopolization of water resources elevated to the level of an important presidential campaign issue?

PETER BARNES. I very much appreciate your opening statement, Senator, in which you asked the other presidential candidates to take clear-cut and unequivocal positions on these issues. To my knowledge they have yet to do so, and I think these issues are of supreme importance in the State of California and in other states, but particularly here. I would like to see all of the presidential candidates who come to the State for our primary take stands on this issue.

Senator HARRIS. I'm going to be holding additional hearings like this throughout the country with special emphasis on primary states. Some of the presidential candidates have indicated an interest in appearing before the hearings and actually testifying. I think that would be good and I hope that that would force others to have to react. I think it is important that we talk about inflation and jobs and health care and housing, among other things, but I believe unless we are going to talk about fundamental issues, such as maldistribution of income and power, and the concentration of economic and political power, we are not going to change these things and obviously land reform, water law reform—those are issues which are vital to the whole question of redistribution of income and power.

Well, I appreciate very much, Peter, what you have done in this field, and are doing, and I appreciate your excellent statement this morning.

PETER BARNES. If I may just add one thought which has occurred to me in relation to what you have just said, in the '60's we were very concerned with poverty and thought the way which we ought to go about reducing poverty was to focus attention on poor people, and their inadequacies—their lack of education, their materialistic family structure which Moynihan was always talking about. And the war on poverty, so called, which was not really a war on poverty because it didn't get at all to the redistribution of income, was just designed to provide a little job training or early child education for poor people. Whether it was meritorious in its own right was completely beside the point. I think in the '70's, we have to turn the telescope around. Instead of looking at the poor people and wondering why they are poor, we should look in the other direction and look at the concentrations of economic wealth and wondering why people are so rich. Instead of a war on poverty, I think we should start having a war on wealth, and then we'll get somewhere.

Senator HARRIS. Let me ask you one more thing. Somebody asked me awhile ago when you are talking about land reform, are you talking about a form of socialism? Your statement indicates, as I answered, that what we are talking about is really trying to make the free enterprise system work a little better. Would you agree with that?

PETER BARNES. By socialism, I guess those critics would mean the Soviet system where you have these large state farms. That's hardly at all what we have in mind. We mean the...

Senator HARRIS. As a matter of fact, that is sort of what we have now in a way, isn't it? We've got large corporate socialism, where the corporation, backed up by the government with the public's money—either tax subsidy, farm subsidy, water subsidy, or labor law subsidy—is able to exploit land and people and to do it with the government's approval or acquiescence.

PETER BARNES. And we have all the bad effects of socialism and none of the good effects. What we're talking about is, as I have said, squarely an American tradition—a very Jeffersonian concept—of having the people own the land that they live and work on.

Senator HARRIS. Very good, thank you very much Peter.

(Document submitted by Peter Barnes follows:)

MEMORANDUM RE UNITED STATES VERSUS IMPERIAL IRRIGATION DISTRICT

Former Attorney General Mitchell and Attorney General Designate Kleindienst are accused of having accepted a \$400,000 political contribution from International Telephone and Telegraph in return for the settlement of an anti-trust case. A similar incident occurred last year when the government decided not to appeal a case it lost in the

United States District Court in San Diego, California. This latter case sought enforcement of the 160 acre limitation of the Reclamation Act in the Imperial Valley of California. The following questions come to mind:

1. Why didn't the government appeal a decision of a single federal judge in a case that was in the courts for four years and involved the important issue of land monopoly under the biggest reclamation project in the Western United States (and, according to the land owners in the Imperial Valley, the biggest reclamation project in the world)?

2. Did the large landowners of the Imperial Valley (Irvine Company, Purex, Tenneco, Kaiser Industries, Southern Pacific Land Company) offer political contributions to the Republican Party in return for abandoning the case at this level of the litigation?

3. Are there any other cases like this involving the expenditure of millions of dollars of taxpayers' money, where the government did not carry its case to the highest court in the land?

4. Does the government intend to appeal an adverse decision of a single federal judge in the U.S. District Court for the Eastern District of California in Fresno, California, where it was held that the 160 acre limitation did not apply to the Tulare Lake region under the Flood Control Act? *United States of America v. Tulare Lake Canal Company*, Civil No. 2483. (Decided: January 1972)

#### Facts on the Imperial Valley:

The Valley is located just north of the Mexican border. To the east is the State of Arizona and to the west is San Diego County. To the north is Riverside County, California (the location of Palm Springs).

The total value of crops harvested in 1969 in the Imperial Valley was \$246,731,000.00. The entire irrigated acreage of 437,500 acres is irrigated with Colorado River water carried to the Valley in canals from Boulder Dam. Two hundred Thirty-Three Thousand of these irrigated acres are held in individual ownerships in excess of 160 acres. 91.5% of the land is cultivated and farmed in units exceeding 160 acres in size. It is estimated that 60-70% of the irrigated land is owned by absentee landowners—persons and corporations who do not live on their land.

The climate is warm year round, as in Palm Springs. There is high intensity farming (i.e., one crop is harvested after another on the same acreage) because the area is irrigated and thus the water supply is steady and dependable.

Facts of the Case: *United States v. Imperial Irrigation District*, 322 F. Supp. 11 (S.D. Cal. 1961):

The Reclamation Act states that water from reclamation projects is not to be provided to more than 160 acres of land belonging to a single owner, 43 U.S.C. § 431, 43 U.S.C. § 423e. As a condition of receiving Project water, a landowner must sign a recordable contract in which he promises to sell all lands in excess of 160 acres. 43 U.S.C. § 423e.

The Boulder Canyon Project Act of December 21, 1928, 43 U.S.C. §§ 617 et seq., was enacted at the request of Imperial Valley interests in order to have a means of controlling the Colorado River. Prior to enactment of the B.C.P.A., the Valley used the Colorado River for irrigation purposes, but such use was not satisfactory because the River often flooded and harvests could not be planned and organized. The BCPA provided:

"This Act shall be deemed a supplement to the reclamation law, which said reclamation law shall govern the construction, operation and management of the works therein authorized, except as otherwise herein provided." § 14 of the BCPA, 42 U.S.C. § 617m.

Prior to the institution of the litigation in 1967, there were conflicting administrative rulings on the applicability of acreage limitation to the Imperial Valley. On February 24,

1933, Secretary of the Interior Ray Lyman Wilbur wrote a letter stating that acreage limitation did not apply. 71 I.D. 49<sup>c</sup>, 529, Appendix E. On December 31, 1964, Solicitor of the Department of the Interior Frank J. Barry, rendered an opinion in which the Wilbur letter was rejected and Solicitor Barry concluded that acreage limitation did in fact apply in the Imperial Valley 71 I.D. 496.

On January 5, 1971, the District Court held that the BCPA "otherwise provided" and therefore the land limitation provisions of reclamation law did not apply.

#### The Boulder Canyon Project:

The cost of Boulder [or Hoover] Dam was \$174,732,000.00. The only portion of the construction charges for the All American Canal system to carry the water to the Imperial Valley which were to be repaid by water users was \$25,000,000.00. Payment was to be over a 40 year period, later extended to 50 years, interest free. In practice, the Imperial Irrigation District (established under State law) sells electrical power from a generator constructed on the government canal and uses the proceeds to repay the construction charges. The water users, in effect, pay nothing.

#### The Failure to Appeal:

As the time for the government to file its Notice of Appeal approached expiration, the following occurred:

1. The attorneys in the Justice Department who were familiar with the case were ordered not to talk to the press about the possible appeal.

2. The Interior Department said it would only make a recommendation: the final decision on whether to appeal was said to be with the Justice Department. *The Sacramento Bee*, February 25, 1971.

3. The Justice Department said it had "no comment" on the case. "We only make a recommendation. The final decision will be made in Interior". *The Sacramento Bee*, February 25, 1971.

4. Representative Victor V. Veysey, Republican who represents the Imperial Valley, "promised he will go to the White House to block an appeal." *The Sacramento Bee*, February 25, 1971. Veysey is an excess landowner in the Valley who was decertified from using Braceros under Public Law 78 because he permitted them to operate machinery contrary to the law.

5. An Imperial Valley newspaper reported in 1949 that Congressman Richard Nixon, then running for a seat in the United States Senate, had "declared he is against the 160 acre limitation." *The Brawley News*, October 31, 1949.

6. 123 landless persons in the Imperial Valley moved to intervene in order to appeal the final judgment entered against the government. At the hearing on the intervention motion on March 29, 1971, the Asst. U.S. Attorney stated to the court:

"I have been told that that decision [whether or not to appeal] has not yet been made... it would be improper to infer from, based on newspaper articles [*The Sacramento Bee*, February 25, 1971] or other kinds of speculation, that the government will not take an appeal."

7. Eleven days later, the time to appeal expired on April 9, 1971. The "speculation" proved to be correct.

8. Intervention was denied. An appeal was taken to the Court of Appeals for the 9th Circuit and that appeal is now pending [docket number 71-2124]. The applicants for intervention have also briefed the acreage limitation question as well as the intervention question. If they are unsuccessful, the judgment against the government will become final and will, of necessity, have an adverse effect on the enforcement of acreage limitation in other reclamation areas.

9. On March 26, 1971, Senator Clinton P. Anderson, Chairman, Subcommittee on Wa-

ter and Power Resources, wrote to Attorney General Mitchell and Solicitor of the Department of the Interior Mitchell Melich urging them to appeal the case.

10. Asst. Attorney General Shiro Kashiwa of the Land & Natural Resources Division answered Senator Anderson and explained that the 1933 Wilbur letter was undisturbed until 1964 when Solicitor Barry wrote his opinion and "under these circumstances, it would be inappropriate for the Government further to pursue the matter by seeking appellate review of the District Court judgment." Solicitor General Griswold repeated this explanation and added that since Imperial Valley lands were already irrigated [by private means] before the BCPA, no new lands were brought under cultivation by the BCPA. (Griswold's letter of explanation was directed to a lady in Kansas and is reproduced in the Congressional Record, vol. 117, pt. 35, p. 46228.)

11. The shortcomings of the reasoning advanced by Asst. Atty. Genl. Kashiwa and Solicitor General Griswold are:

a. Secretary Wilbur wrote his letter less than 10 days before the expiration of the Hoover Administration and the inauguration of President Roosevelt.

b. On May 31, 1945, Solicitor of the Dept. of the Interior Fowler Harper, commented on the Wilbur letter by stating:

"Furthermore, an examination of the files revealed that the letter of the Former Secretary [Wilbur] was written at the request of counsel of the Imperial Irrigation District who wanted a ruling on the applicability of the excess land provisions provided that such ruling would be that the 160 acre limitation did not apply. Purposely the letter of Secretary Wilbur never took the form of a formal decision. It was written solely for the purpose of giving partisan help to the Imperial Water District, as the delay of the final confirmation of the contract held up the construction of the All American Canal. Besides, the time of the Hoover Administration was near its close. In less than ten days after the date of Secretary Wilbur's letter (February 21, 1933), President Roosevelt was inaugurated." 71 I.D. 496, 533, 547-48 Appendix H.

c. The law does not distinguish between land reclaimed through a reclamation project and the supply of supplementary water to land already under cultivation. *Ivanhoe Irrigation District v. McCracken*, 357 U.S. 275, 290-291 (1958).

Reasons to Criticize the Actions of the Justice Department:

1. The acreage limitation provision is the cornerstone of the anti-monopoly policy of Congress when it enacted the Reclamation Act. The purpose of the Act was to encourage settlement by small family farmers and Congress sought to prevent a few large landowners from monopolizing the benefits of the Federal subsidy of water.

2. It is very unusual for the government not to appeal a case such as this and I can think of no other instances where this has occurred. In the recent case against the *New York Times* to prevent publication of the Pentagon Papers, the government lost before more than a dozen federal judges at both the District Court and Court of Appeals levels in two judicial circuits, the District of Columbia Circuit and the 2nd Circuit. These numerous defeats did not prevent the government from going all the way to the Supreme Court.

3. Before the case was tried, the trial judge who ultimately ruled against the government was quoted in the newspapers as stating that he wanted to get the case on its way to the Supreme Court. Apparently the government did not want the case to get that far.

4. I think it unlikely that any lawyer in the Justice Department who worked on the case approves of the decision not to appeal. This decision was obviously made for political considerations and the result is that the

government is giving away the public domain.

STATEMENT OF GEORGE BALLIS, SANTA FE, N. MEX.

Senator HARRIS. We will next hear from George Ballis of Santa Fe, New Mexico. George, would you state your interest in this subject, and then we would be glad to hear from you. I do appreciate all you have done to help in regard to the hearings and your long-time interest and activity in this field. George Ballis:

George BALLIS. My name is George Ballis. I really reside in Fresno. I just happen to be in Santa Fe for a few months on a job. I went to Fresno, California, when Eisenhower went to the White House in 1953 and I've been in Fresno more or less since that time. I went to Fresno to edit an AFL-CIO weekly newspaper called the Valley Labor-Citizen and in that position I became acquainted with a number of political labor leaders, land owners, etc., and I got to wondering—because at that time I'd just gotten out of college—I got to wondering why some people in the San Joaquin Valley were both Democrats and Republicans, when I'd read in all my civic books and been told by the professors that somehow the Democrats were supposed to hate the Republicans. And what happened is, I studied a lot of the things that Peter Barnes talked about and discovered that the large landowners there, the economic interest in California, control both parties, and that as far as the certain interests they are interested in, there are no political parties. I think two anecdotes really underlined that for me. When I first went to Fresno, there was a joke in town—a political joke about a man named Jack O'Neill who was in control of about 125,000 acres at that time. He is now deceased. The joke was that there were really three Jack O'Neills. There was a Republican Jack O'Neill, a Democratic Jack O'Neill, and the real Jack O'Neill, and as a matter of fact he had one of his vice presidents working in the Republican Party, and it didn't make any difference whether the Republicans were running Kuchel or Rafferty, this man was sitting at the head table and raising money. And he had another man who was active in the Democratic Party, and it didn't make any difference who the Democrats were running, as that man was raising money and sitting at the head table and participating on Finance Committees for the Democratic candidate. And then there was the real Jack O'Neill. As a matter of fact, Jack O'Neill even lent his own name to a political campaign, and it didn't make any difference whether he won or lost, he always won.

And 1958 is an example. In 1958 he got so hot and bothered about the idea that the State of California was on the verge of electing a liberal Democrat Governor, namely, Pat Brown, that he lent his name to William Knowland, a very conservative Republican, and he became the Northern California Chairman for William Knowland. I remember very distinctly in the Court House park in 1958 in Fresno when Mr. O'Neill got up and introduced Pat Brown—I mean he introduced William Knowland at a rally—and of course Pat Brown wiped out William Knowland and you would figure that according to the rules of the game the spoils belong to the victor, or whatever they say, that Jack O'Neill would be out. But as soon as Pat Brown took office, Jack O'Neill was reappointed to the local Fare Board, which was sort of just an honorary position, and then he and Pat Brown together flew back to Washington where they testified in favor of water legislation which would give Jack O'Neill's large holdings some of the things that Peter Barnes talked about, this heavily subsidized water. Now I think it's important if we're going to understand what's really happening in America—that these people get what they want out of the government, and sometimes they get it

legally and sometimes they get it illegally, but they always get it. And it doesn't make any difference whether it's water resources or cheap labor, and I think that's been the history of our country since the beginning. It's been a constant warfare—and we're sort of on the losing side, those of us who are in favor of people rather than money—a constant warfare against exploitation of land and of people on the one side, and development of our human resources on the other. I think slavery is just, you know, an exaggerated example of our long standing—not policy—but of our long standing actions in this country.

Now, it's my basic contention that all these problems are interwoven and that there is no black problem, there's no Chicano problem, there's no public utility problem, there's a human problem and all those issues are interwoven. I think that was brought out where people say there are a lot of poor black people in Oakland, because they have been run off the land in the South and in the San Joaquin Valley in California, and they're run off the land because of the policies that our government follows, both legally and illegally in the water development and farm labor fields and almost any other field you can think of. And even when the general welfare has been specifically legislated, the administration of the law is turned upside down in a few years so that the exploiters gain control of the benefits of that particular legislation, or the legislation is totally emasculated. I'll just use a couple of examples.

The crop subsidy program, for example, was legislated during the days of Roosevelt, the second Roosevelt, with the idea that you were going to guarantee income to small farmers, keep them on the land and they wouldn't run off to the cities and create slums and unemployment in places where they wouldn't be able to get jobs and get a decent living. Now in a few years that subsidy program was turned upside down so that now, for the past thirty years, it is used as a tool by the large landowners to run small farmers out of business and to maintain a tighter and tighter control over the land. Now, I would like to cite one specific instance of that, and I'd like to talk about it based on a story of the Los Angeles Times of Wednesday. The Los Angeles Times of Wednesday on the Business page has a headline which says two sugar plantations lead in farm subsidies with \$1 million payoffs. Now the story goes on and talks about how the sugar companies are getting all of these subsidies, and the implication of the article is that somehow these large landowners like J. G. Boswell are not getting the subsidies they used to. About the third paragraph it says there are no 1971 listings for the J. C. Boswell Company which led all farm recipients in subsidies in 1970 with \$4.4 million. Now if you remember what happened in 1970 after the furor by the city congressmen, we were going to put a \$55,000 limitation on crop subsidies. So what J. G. Boswell did with just one of its holdings in Kern County—I don't know what it did with all of the others—they somehow set up a partnership of 20 people. They hired a farm manager to manage the farm, these 20 partnerships, and then the farm manager turned around and hired J. G. Boswell to farm the land they had farmed the year before. (Laughter) Now there was a slight scandal in Kern County about crop subsidies a couple of months ago, and the scandal was based on the fact that somehow some out-of-state people who didn't know how California operated came in to check on the subsidies in Kern County. They made spot checks around the country. They went to Iowa, Georgia and Kern County. In Iowa, they found apparent violations of the crop subsidies regulations of about 1½ percent. In Georgia, they found violations of approximately 7 percent, and in Kern County

they found violations of approximately 40 percent, and one of the violators was the director of the national crop subsidy program who owns a farm in Kern County and was appointed by President Nixon. Nixon just happens to be a Republican—you know this guy Frick could have been appointed by a Democrat just as well. What happened was that there were a lot of newspaper stories—especially in the Fresno Bee—but there were virtually no newspaper stories in the city newspapers and around the state or around the country. Now there was a great furor, and finally the Senate Agriculture Committee sent out two investigators to Kern County and they confirmed that there were wholesale violations. They found out that between the time the crop limitation law of \$55,000 had been passed in 1970 to the time the law went into operation in 1971, 500 farms in Kern County alone had changed their corporate structure to evade the law. These investigators then issued a press release when they left Kern County saying the Committee is going to be back and we're going to get to the bottom of all this.

So what happened about two months later is that a Senate Committee spokesman announced that it wouldn't do any good to come to Kern County, so the Senate Committee is going to hold informal hearings in the South and in the Midwest where there are virtually no violations at all. Nixon's not protesting this, of course, neither of California's Democratic Senators are protesting this, none of California's Republican Congressmen are protesting this—because all of them to a man on these particular issues are owned by the economic interest which control this state.

Now some journalists a few years ago said that there never has been a great U.S. Senator from the State of California—Republican, Democrat or otherwise—simply because these interests have an ironclad control of the economics and politics of this state. I would like to turn out the lights, just for a second, to illustrate something graphically with a slide which Peter Barnes made earlier, and then I'll talk about a couple of other things. We can't turn the lights off; I guess we can't see them.

Senator HARRIS. No, I'm afraid not.

GEORGE BALLIS. If we find the light switch, I'll talk about it later.

Senator HARRIS. Some places, such as in the East, we could count on a brown-out now and then. Maybe if that happens, we can be ready to show these slides at a moment's notice.

GEORGE BALLIS. I would like to mention maybe three other things. I submitted for the record four documents. One is on the Imperial Valley, which goes into slightly more detail than Peter Barnes did. Another is on the power structure of the San Joaquin Valley—who controls the land, and how they got most of that. Another is on Del Monte Corporation, which indicates how the Del Monte Corporation is really the corporate structure in America and how they are interrelated to the Bank of America and the utilities and all that, which I think is important to understand if we're going to believe my argument that all our problems are, in fact, one problem. You will never be able to see this except with a configuration but I'll enter it for the record.

Senator HARRIS. O.K.

GEORGE BALLIS. What we have along the top of the chart are the names of the Board of Directors of the Del Monte Corporation. Underneath the names are other companies on which they hold directorships or have a financial interest of one sort or another. Below is the listing of these corporations and how they interlock with other corporations, including the Los Angeles Times and all the others. It's one corporation.

The other study is a reference manual on the film called "The Dispossessed," which is

on the Pit River Indians in Shasta County. There is a chart in that book, and the chart just happens to have the large land owners in Shasta County listed across the top. If you look closely at the chart, the names at the top are different but the names underneath are not. The Indians have a problem in Shasta County in that their land was taken without treaty—without any agreement on their part—and the interests which control Shasta County are, for instance, the Pacific Gas and Electric Company which is the biggest business there. The Los Angeles Times has cut trees down there to make paper. So the Indian problem is here in the civic center of Los Angeles, although the specific location of the issue might be in Shasta County which is seven or eight hundred miles away.

What's happening, I think, another thing which hasn't been discussed specifically, is that what's happening in California and I think in parts of Texas and the South although I'm not sure about that, is that we're setting up a sort of system of land ownership comparable to what we had in the Middle Ages in Europe called "mort main." Now "mort main," the Latin scholars tell me, means "dead hand." The way that law was operated was that a man could not sell his land or anything, it just passed from generation to generation in one control. Now part of the revolution in Europe at that time was to break that land monopoly. Now that's slowly—not so slowly—taking over in California. One of the corporations which is doing that is Kaiser in partnership with Kaiser-Aetna, with the Aetna Insurance Company. It's called the Kaiser-Aetna Corporation. One of their operations is a Black Butte Farm up in Northern California, near Sacramento. Now what they do is to buy bare land. They plant walnut trees on it. Then they advertise through their own agents, themselves. I have some of those ads which I could submit for the record. They advertise in city newspapers for people who want a tax loss so they get doctors and businessmen who have made a killing in some other business and they want some red ink on their tax returns. So they sell them the title. They give them a piece of paper which says that the doctor, for instance, owns this land. But then the doctor leases it back to Kaiser-Aetna, and Kaiser-Aetna farms it. Well after five or six years when the walnut trees come into production, they start making money. So then they act as the agent to sell that property for the person who no longer wants a tax loss to somebody who wants to make some money on it. That person who then buys the property—the second buyer—also leases it back to Kaiser-Aetna. Now Kaiser-Aetna in that partnership formed in 1969, on this one operation alone, they are now up to nearly 4,000 acres. That's the dead end—that means that nobody else can get in on that operation. Kaiser has a number of other real estate promotions similar to that. One over in Riverside County, and one in Ventura County. They bought 18,000 acres above the San Luis Reservoir which is a part of the State Project, which they are going to hold until they can subdivide it and make a lot of money on it. Right now they are running cows on it. But that sort of operation if extended—I talked with a PR man of Kaiser-Aetna, and he says the reason they do that is that money is somewhat fluid. In other words, they don't tie up a whole lot of money in land, but at the same time they make more money than they would if they just held it in a bank where it wasn't fluid. They don't make quite as much money as if they held a long term investment but they want a short term investment like that with continuing control of the land so that they have—they make money—and also they have the fluid cash on hand for other ventures they want to go into. One of the problems, for instance in New Mexico, just to relate

California to New Mexico, is that one of the big operators in New Mexico in gypsum and coal, etc. is Kaiser Industries. Now there's a big fracas going on in New Mexico about buying a big ranch to save it from exploitation, and people have discovered—the ecologists who proposed this thing did a little investigating and found out that it didn't make any difference whether the state bought the land or not because Kaiser already holds long-term leases to mine the coal. So they can't save the property.

What does it really mean, in dollars and cents, when somebody talks about the Kern County Land Company which owns in Kern County 400,000 acres of land? Now I can't conceive of 400,000 acres—what is it? Well it's a one-mile wide strip of land extending from San Francisco to Los Angeles, if you want to get a picture of it. But that still doesn't mean anything. And if all these guys control all that stuff, you know I figure they're worse off than I am. I don't want to live their lives anyway—let them control the land. The important issue is how does that affect people, and I would like to cite a couple of examples in the San Joaquin Valley.

On the west side of the San Joaquin Valley on that large map I was trying to show you, which is dominated by the large land holders, are several small communities, mainly farm workers because the owners reside in Fresno, San Francisco, Los Angeles or Houston. These people live quite a ways from Fresno and they wanted a hospital out there. Now the way the law is set up, the majority of the property owners have to agree to setting up a hospital district. So the voters are ready and a bunch of the folks from these communities went into the board of supervisors and said we want a hospital. So the supervisor set up a hearing and three of the large land owners appeared who controlled the majority of the property in that district, and they said, "We don't want a hospital." And there was no hospital built. There is no hospital built.

Now about 55 miles west of Fresno, there is what at one time was a model rural settlement. It was created in 1956 by an enterprising grocery store-gas station operator. He had a grocery store and a gas station at this place called Three Rocks, and there wasn't much else around. He decided he wanted some customers, and just about that time the large growers were converting from human cotton pickers to machine cotton pickers. For about 35 or 40 years they had those one-room shacks on their plantations, which is what they are for all practical purposes, although we don't call them that in California, and nobody said anything about these shacks because they wanted folks there every fall. Well, somehow when they didn't need the shacks any more, the Fresno County Health Department said these shacks had to be removed from the property because they weren't fit for human habitation. So the grocery store operator got about 40 or 50 of these shacks, hauled them over behind his grocery store and started renting them to the folks, and they had about 70 or 80 families in there. So the well went dry after about four months. The people started hauling water into the place—this was in 1956, while I was on this newspaper I mentioned earlier—and being an enterprising reporter, it only took me three years to find that place. So by 1959, I had gotten 55 miles out of Fresno and I was attracted by this place. Here were all of these run-down shacks with shiny garbage cans and I couldn't figure out why the Hell have these people got shiny garbage cans. They had shiny water cans because they hauled the water, not the garbage. So the old man has to go out and put his garbage can in the back of the car and go off to some irrigation ditch to get water. And I did the liberal Christian thing and I took some pictures, you know the leaves and the dust and the kids play-

ing . . . and I print them in this newspaper, and lo and behold nothing happens. So I sent them off to a left wing friend of mine in Berkeley, and he sent them off to a left wing friend of his who works for the New York Times.

Presently the New York Times came by and they did the liberal Christian thing, only in a more dignified way than I'd done it. And nothing happened, except it turns out that there is some guy in Moscow, who edits a farm journal in Moscow, who reads the New York Times. And they picked up the story, and you know what they did. They did the dirty Communist thing. It turns out that nothing much happened after that either. You know, no world revolution or anything, except that one of the approximately hundred editorial employees at the Fresno Bee somehow got ahold of the Moscow farm journal, and the Fresno Bee discovered Three Rocks. The Fresno Bee, until after the Moscow farm journal had been printed, had never once printed a word about what the conditions were at Three Rocks. My excuse was that there was only one person out there. Well, the Fresno Bee went out there and pointed out—they did the liberal Christian thing—but also pointed out how the Communists were doing their dirty thing with it. Nothing happened, except that the Chronicle reads the Bee and the San Francisco Chronicle sent somebody down and they printed a story, and a couple of non-violent people who belonged to the American Friends Service Committee read the Chronicle and they said there must be some way in this Christian democratic society to provide housing for poor farm workers. So they sent a man down there named Bart McAlester, who does a lot of whittling and soft talk, and he went around and organized the folks and made some proposals. He went to Russell Giffen, who farms approximately 130,000 acres, and Russell Giffen agreed to donate 20 acres so that the farm workers could somehow build housing on these 20 acres. Immediately after getting this promise, Bart McAlester went to Washington where he testified that farm workers should have a minimum wage and Russell Giffen withdrew the offer. And that's also the way it happens in a Christian democratic nation. So by that time we are up to about 1964, and the American Friends Service Committee sent a guy in there full time. In about three years after he had worked there, they started building houses. They started building houses in 1967. In about 8 months some of the houses were finished, but then the folks were not allowed to move in because the Bureau of Reclamation, the large land owner's water agency, complained that somehow the cesspools that the folks had were going to contaminate the irrigation water. So they couldn't move into the houses for several months while they got some more money to build some sort of a sewage system.

About 15 miles down the road from Three Rocks is the West Bridge Country Club. Now the West Bridge Country Club was organized in 1965, with approximately 200 people for \$250 each to become charter members. To my knowledge none of the folks who lived in the shacks joined the country club. But within sixty days after that country club was organized, they had a \$300,000 loan from the Farmers Home Administration of the U.S. Department of Agriculture to build a country club, and in less than two years the country club was finished. You can drive by and there are palm trees and grass and the whole works out there. Now the Farmers Home Administration is the same agency which is supposed to help poor farm workers build houses, and it took them 60 days to get a country club together and four years to get housing for farm workers.

Now it seems to me that all the pleadings of liberal Democrats or Christian Republicans ain't going to change that situation, be-

cause the situation in California is aggravated by the liberal Democrats and the conservative Republicans. On these issues of farm labor, water development and land monopoly in California, it doesn't make any difference whether Ronald Reagan is the Governor or Pat Brown is the Governor, and on the national level it doesn't make any difference whether Jack Kennedy is President or whether Nixon is President. The completion of the State Water Project—the final legal and illegal acts which brought that program to construction stage—were performed under the Administration of Jack Kennedy. The papers—the illegal legal opinions—were signed by Robert Kennedy. The state legislation was passed under Pat Brown when the Democrats held good majorities in both houses of the state legislature.

Now that brings me to my final point, which is that a radical friend of mine was asked in 1968, "Who are you going to vote for, Nixon or Humphrey?" He said, "It doesn't make any difference." And the guy said, "What do you mean?" He said, "Look at it this way, if you go down to the ocean and you watch a guy riding the surf, you don't say look at that guy pushing the ocean around. You say look at that guy ride that surfboard." And a politician is going to ride the waves, the waves of poverty. And the issue is not to put another politician on the surfboard, but to create a new wave. Somehow we have got to create a new power base, because the power bases that are established in this country own the government and all of the problems that we have in America, and all of the problems we have in South America or in Vietnam are related to that structure. That map of the San Joaquin Valley which I wanted to show you is the map of South America, is a map of Mexico, is a map of Mississippi, is a map of the South China Sea. Because those corporations which control the land in the San Joaquin Valley already have the South China Sea divided up on who's going to get the oil leases. All those old familiar names—Standard Oil, Tenneco, Shell, Texaco, and right down the line. Those are the issues—in Brazil, or wherever you want to name it, whether it's black, brown, red or white—those are the issues and they are not going to be changed by using the same old structure, unless we change that structure whether it's the Democratic Party or the Republican Party.

Senator HARRIS. George, thank you for a highly interesting and effective statement in helping us to see how concentration of economic power translates into political power that cuts across party lines. I think, as you have indicated, that the farm subsidy program is a scandal and an outrage. Mr. Frick, who is head of that program in the Federal Government now, ought to have to resign as a result of what's going on right there in Kern County, his home county for which he bears some particular and personal responsibility.

GEORGE BALLIS. He says he doesn't, because his part of the farm is in trust to the Bank of America. If any of you know what the Bank of America is, you know that it finances most of the agriculture in California and controls a lot of banks in Southeast Asia, and you know that's a joke.

Senator HARRIS. We tried to amend the Sugar Act this last summer to make the present limit of \$55,000, which is too high—it ought to be \$20,000—apply to the sugar growers as well as other kinds of farmers, and it is amazing what great reasons technocrats and others give you for keeping things the way they are. We ought to make that \$55,000 limit \$20,000, and it ought to be enforceable rather than filled with loopholes as it is presently. It is important to know how law and order is a lot better phrase when applied to poor people than it is when applied to those who presently benefit by evading tax and other laws. John Wayne, as I

understand it, is one of those who gets quite a large farm subsidy. Did you know that?

GEORGE BALLIS. I don't know anything about that. I know he shoots straight, that's all I know. (Laughter)

Senator HARRIS. George, thank you very much.

(Documents submitted by George Ballis follow:)

A DISCUSSION MANUAL FOR THE DISPOSSESSED; A 16-MILLIMETER DOCUMENTARY FILM ON THE PIT RIVER INDIANS STRUGGLE TO REGAIN THEIR LANDS

THE DISPOSSESSED: COMPLETE SCRIPT OF FILM

Picture: *Italic.*

Sound: Roman.

*Handcuffed Indians, Police Crossing Screen, Pit Indian Sign and Officer Pulling Indian.*

Buffy Sainte Marie: Chant.

*Grace Thorpe sitting on ground surrounded by cops.*

Grace Thorpe: "Why aren't you in here asking PG&E to leave. They're the ones that are trespassing on the land, not the Indians."

*Raymond Lego, close up.*

Raymond Lego: "We have certain rights that have never been extinguished here by due process of law. The land is ours. The land was originally ours, and is still ours. Nothing has ever happened to change that."

*PG&E Power Line, PG&E Private Road.*

Buzzing powerline.

*Cop with back to camera facing Lego.*

Cop: "Mr. Lego, you're under arrest charged with Section 602L of the Penal Code which is occupying real property without permission of the owner."

Lego: "I submit to your authority under protest."

*Lego holding card with name and number for mug shot.*

St. Marie, singing and chanting: "Standing up to the sheriff and his guns . . . my heart is there with you . . ."

*St. Marie at campfire.*

St. Marie chanting.

*Rain on water, rain on plants.*

Rain falling.

*Dew on leaf.*

Birds chirping.

*Meadow, close up.*

Birds chirping.

*Stream in meadow.*

Birds chirping fades to stream noise.

*Small waterfall pan to large waterfall.*

Stream noise swells to waterfall roar.

*Rainbow on Water.*

Waterfall roar fades to silence.

*Padlock on PG&E dam.*

Roar of water coming out of dam.

*PG&E warning sign on sudden rises in river.*

Water roar.

*Water spouting out of dam.*

Water roar.

*PG&E Pit River Powerhouse.*

Water roar.

*Whirlpool at base of PG&E dam.*

Water roar.

*Pan from Indian bed outside, around house to man washing and drinking from stream.*

Water roar.

*Pan from water dipper to PGE powerline.*

Water roar dissolves to buzzing powerline with Charlie Edwardson's voice starting over the buzz "They are real. They are so real it . . ."

*Charlie Edwardson, chart showing corporate relationships.*

Edwardson: ". . . hurts. In our education has been very painful. We have been taught that there is democracy, you know. We have been taught of these things ever since I was a student. And as a student I kept—I was amazed of how fancy our Constitution is. And along with this amazement, I look around and see it was not the case. This is not the America that I was taught to be. And I kept wondering . . ."

*Baby outside Indian house.*

Edwardson: ". . . why. Why it is this way? Why must people face this type of a situation?"

*PGE powerline insulator.*

Power line buzz.

*Lego medium shot, cuts of PG&E facilities including dried up Pit River.*

Lego: "Pacific Gas and Electric Company went and they persuaded the government that they wanted the franchise and the concession by the government to build power sites along and up and down the Pit River. As I understand it, the PG&E at this time is one of the richest corporations in the state, possibly the whole nation. They have large holdings here, and they are making money; but the thing is, on our side of it, as Indian people, none of these things were ever—ah—or none of our people were ever approached to get our consent or agreement that any of our tribal assets should be taken by this corporation. And all up and down the river we had, originally, our salmon runs. Our people lived on the natural food provided by the rivers as well as the forests. And eventually because of the chain of powerhouses, the diversion of the river, and the drying up of the rivers in large parts, finally destroyed our fishing—our natural food of fish, and our people began to deteriorate."

*Mickey Gimmell, Pit tribal chairman, close up, cuts of Kleenex, LA Times masthead, Pit Indian area map, San Francisco Examiner masthead.*

Mickey Gimmell: "I'm talking about the federal forests whereby we haven't been paid a dime for timber rights either. And, today, they're making millions of dollars off of us. And today, our people are, again, unemployed most of the year 'round, again, among the poorest people in the country; whereby large logging companies make millions of dollars. We want people to know that we aren't going to be pushed around any longer." St. Marie chant comes in.

*Five close ups of Indians.*

St. Marie chants.

*House number on PG&E camp building, Indians entering property and building campfire.*

St. Marie chants.

*Lego at campfire, medium shot, cut to old photo of Indian.*

Lego: "Well, as a councilman of the Pit River tribe, one of the areas, I feel kind of honored to welcome all of you people here. We have occupied our land. We have taken a position in this specific place which is part of our land. We have carried the challenge to the corporation."

*Richard Oakes, Indian organizer, medium shot.*

Richard Oakes: "Basically, the newness that you feel here on the land itself is a newness that's sort of—it's been hidden from you—it's a fence that's been around you for so long. This land is yours. The buildings here are yours. There's one that's lit up. For the women that want to cook, go over there and cook. The rest of you people that are on security, get on security. And patrol it like it's yours. Right now I think the only thing we can do until the morning is to go out and find yourself a place where you can sleep."

*Man and woman in doorway.*

Talbert Wilson chants.

*Man gives V sign in doorway.*

Wilson chants.

*Sun through trees, smoking campfire ashes.*

Birds chirp.

*Pan from cop car to sign "Pit River Indians Welcome Indians of all Tribes."*

Birds chirp. Wilson chant comes in toward end of shot.

*Group in front of PG&E house.*

Wilson chants.

*Two cops surrounded by group of Indians.*

One cop: "Mr. Oakes. Gentlemen. I've been instructed to advise you that you people are

in violation of the trespass laws of the Penal Code of the State of California in that you are entering and occupying dwellings and real property belonging to the Pacific Gas and Electric Corporation. You will be given adequate time to peacefully vacate the premises. If you fail to vacate, arrests for the law violations will occur. We would like to have you out as soon as possible and preferably this evening. Thank you very much." Lego: (off camera) "Well, you come back tomorrow, and you'll find us here."

*Sun through trees.*

Bird chirps.

*Crowd of cops and cars.*

Cop: (off camera) "Get your squads together men."

Shasta Sheriff John Balma: "But I believe we have 60 to 65 officers here."

Reporter: "Could I ask why so many?"

Balma: "Whenever we go on a detail of this kind we go with sufficient force to handle any situation that we may be confronted with."

*Police marching across screen, arrested Indian.*

Reporter: (off camera) "Why do you deliberately want to be arrested?"

Arrested Indian: (off camera) "Well, the more cases we get into court, the more likely they ain't going to throw our case out of court so fast."

Reporter: "In other words, you're trying to make a test case out of this?"

Indian: "Yes. We ain't going to be on trial. It's going to be the United States government, not us."

Reporter: "I guess in some senses the entire United States belongs to the Indians."

Indian: "Right."

Reporter: "Do you plan to take the whole country back?"

Indian: "Nope. Just some of it. We know what we're up to. We know what we're going to face, and we're going to do it. We're going to stand by our decision."

Reporter: "Do you want to be prosecuted?"

Indian: "Yes."

Reporter: "How will you plead?"

Indian: "Not guilty."

*Pan from Shasta County patch on cop's arm to his face.*

Indian (off camera): "You've always been trespassing all over the world, now you're trespassing right here in your own backyard."

*Indian woman close up, pan to child in front of house.*

Indian woman, Morningstar: "You'll pay for it. It's not the last of it."

Cop (off camera): "Let's move 'em out men. Let's go. We haven't got all day."

Morningstar: "Yeah, arrest the children. That's all you're good for . . . Oh, you've got it coming. You've got children and you're going to pay for it, too. You're going to know what it's like. You should be ashamed, ashamed that you're living on our land."

*Pan to cop in front of cabin.*

Cop: "All right, let's start with the next cabins, men. Anybody in this cabin? Start arresting these people here."

Balma: "Start getting these people."

Cop: "Hey, fellas, start arresting these people. Escort 'em over. Load 'em up."

*Cop brings Oakes out of cabin, cut to chart showing interlocking directorships of large corporations, Pit welcome sign, cop pulling Indian, arrest line, Thorpe.*

Gimmell: "There can be little argument that large corporations and the rich control and run most of our government's policies and that they dictate the American way of life. This big business, big business get rich syndrome has corrupted America's value system to the point that no one, today, any longer can trust his own brother or his neighbor. Violence, money, position of power are the white man's way.

The American Indian can no longer allow his values and culture to be destroyed and

corrupted by a society that does not relate to one's fellow man except to see what they can get from him."

*Thorpe on ground surrounded by cops.*

Thorpe: "Why aren't you in here asking PG&E to leave? They're the ones that are trespassing on the land, not the Indians."

*Lego close up, cut to various arrest scenes and back to Lego facing cop.*

Lego: "Our ancestors started right around about 1920. Hopefully they had filed a petition for redress of grievances against the United States government for the taking of our land, dispossession of our people and the general abuse that was suffered by our people in the process of removing Indians. The result of that work was brought to a head in 1963. And this was all done beyond our control and not to our knowledge. And later on they came and told us we'd have to vote on whether we accepted this formula of compromise settlement, one package, consolidated agreement for—well, it was stipulated that it would be 47 cents an acre. And, so, today, we feel that the claims case was mishandled it was compromised and brought to a conclusion without our authority or consent. We hadn't agreed to anything. And, at this time, we re-assert and reclaim our land."

*Lego facing cop.*

Cop: "Mr. Lego, you're under arrest charged with Section 602L of the Penal Code which is occupying real property without permission of the owner."

Lego: "I submit to your authority under protest."

*Lego mug shot.*

Crowd noise.

*Cop shakes down Indian.*

Cop: "Spread your legs out there please. You have any weapons on you at all?"

Indian: "Might have a small pocket knife."

Cop: "You want to take it out?"

St. Marie chant fades in.

*Handcuffed Indians in bus, bus pulls away, cop closes wagon door on handcuffed Indians, wagon pulls away into trees.*

St. Marie chants and sings: "By the trestle in the cove, standing up to the sheriff and his guns . . . my heart is there with you."

*Cops carry away Pit Indian welcome sign. Silence.*

*Man behind jail bars.*

Background noise.

*Aubry Grossman, attorney for Pit Indians.*

Reporter: "Mr. Grossman, isn't it a little late to make a claim on these lands for these people you represent?"

Grossman: "Well if it's late, it's the responsibility of the United States government. Took them 117 years to declare, finally, that the land had been illegally taken in 1853, so most of the delay has been due to the United States government."

Reporter: "What are you going to advise them to do now?"

Grossman: "I'm going into the meeting with them . . ."

St. Marie chant fades in.

*Grossman in jail meeting with arrested Indians, cut to "Evict PG&E" picket sign and man's chest painted, "Let My People Go," cuts and pan of Pit Indian area map, cut to Grossman in tribal meeting.*

St. Marie chants. Grossman: "All of that land within these confines was Indian title in 1853. It was your land, taken away illegally. So, let 'em come in and say, 'OK, we took the land illegally, we're going to give 'em 47 cents an acre to take care of it.' They got to say to you—by bringing you into court—they got to say to you that though you've got a decision by the highest body that exists in this country to decide these things—that Congress intended to decide it—nevertheless, some private corporation, PG&E, can get you arrested, not only—how many?—34 of you, the same way they could get 3400 of you arrested. And they could not only get you arrested once, they could get you arrested 100 times if you went back. You see the big questions that are

raised; that radicals are supposed to be the only ones that raise: who runs the country? (power line buzz comes in under voice) And what does law and order mean?"

*Handcuffed Indians, close up on hands.*

Power line buzz.

*Jack Fallon, PG&E attorney, close up.*

Power line buzz fades out. Jack Fallon: "PG&E paid money for record title to this parcel. Our title dates back in each instance to the United States government. In other words, this company has paid money for record title directly from the United States government for this land."

*Cuts of PG&E Pit River facilities, Pit Indian area map, chart showing interlocking ties between PG&E and other large corporations.*

Narrator: "The largest business in Shasta County is the Pacific Gas and Electric Company. PG&E owns in Shasta County, 52,525 acres with an assessed valuation of \$320,000,000. PG&E has interlocking ownerships and directorships with a number of the largest corporations in America including (powerline buzz and water roar under cuts from big business chart) . . . and Stanford Research Institute."

*Farm worker adjusting irrigation in huge field.*

Narrator: "One of the biggest shareholders in PG&E is a man named Russell Giffen who farms in the San Joaquin Valley 130,000 acres of land. Russell Giffen over the past several years has been the second largest recipient of public welfare in the State of California. For instance, in 1969, Giffen received over \$3,000,000 for growing cotton and for not growing cotton."

*Lego close up, cut to William Bennett, former member of the California Public Utilities Commission.*

William Bennett: "The plight of the Indians is symptomatic and typical of the manner in which a monopoly such as Pacific Gas & Electric Company treats people whether they be ratepayers or in some cases even small shareholders. (Intercut of handcuffed Indians.) The attitude of PG&E which is exemplified, I think, by the testimony of the president of PG&E, Mr. Shermer Sibley, given under oath. When I said to him, 'Is the \$67,000,000 rate increase you're seeking inflationary or non-inflationary?'—he said, 'It is deflationary,' and I said, 'Well, how is that?' and he said, 'Because it gives people less money for discretionary spending.' (Intercut man looking out of PG&E building.) Now he's deciding that one way to meet inflation is to raise your utility bill, giving you less money to spend for things you decide as an individual you might need, whether they're foolish or not foolish. It is interesting to note that Mr. Sibley's salary was raised \$20,000 last year so he's now making \$150,000 per year. He considers his salary increase to be deflationary as well. (Intercut San Francisco Bay fill.) Just for the sake of the establishment itself—if you believe in saving it—the establishment has to be saved from its own excesses. What's going on at Pit River should illustrate to people how difficult the task is toward achieving economic justice in the United States of America in the year 1970. When I talk about the PG&E, it's—I could do the same thing about U.S. Steel or General Motors or whatever. They're all basically the same: the same type of narrow corporate thinking—an almost calloused indifference to the spiritual nature of man as a beautiful creature and animal, the great preoccupation with profit for the sake of profit to the neglect of human values. (Intercut man on street, high angle.) But the important thing to know is you and I, in a sense, don't have the power to correct those except through organization, union and numbers. Individually we can't do it, and that's what has to be done. And this is why people whether they are black or brown or red or white; students, intellectuals, oppressed third layer

corporate utility executives, have something in common. (*Interact handcuffed Indians.*) They're being had. (Power line buzz under voice) And unless they realize it they will continue to be had or exploited."

*PG&E Powerline pan to old Indian house, cut to Pit Indian area map, man on porch, close ups of porch and road out.*

Narrator: "PG&E is also interlocked with the second largest private business in Shasta County which is the Pacific Telephone. Pacific Telephone on only six acres of land holds an assessed valuation of \$27,000,000. Pacific Telephone is also interlocked with Levi Strauss, Stanford Research Institute and the Bank of America. Also a number of other corporations including Broadway Hale, W. T. Grant, Wells Fargo, DiGiorgio Fruit Corporation, Tenneco, Bank of California, U.S. Plywood and the Southern Pacific Railroad."

*Three oranges, Pit Indian area map, Lego washing up.*

Narrator: "The third largest business in Shasta County is the Fruit Growers Corporation which is affiliated with the Sunkist growers. Fruit Growers owns in Shasta County 82,217 acres with an assessed valuation of \$23,000,000."

*SP train, Pit Indian area map, Indian boy taking water into house.*

Narrator: "The fourth largest business in Shasta County is the Southern Pacific Railroad which owns 165,617 acres with an assessed valuation of \$15,000,000 for Shasta County alone. Southern Pacific is the single largest holder of private land in the State of California. Southern Pacific is also affiliated with other big businesses in Shasta County including Pacific Telephone. Southern Pacific has interlocking ownerships with Stanford Research Institute, Del Monte, Union Oil, Fibre-board Corporation, IBM, Equitable Life Insurance, Texaco Oil, Tenneco, Southern California Edison, Bank of California, Marineland of California, Caterpillar Tractor, New York Life Insurance, Con Edison of New York and the Ford Foundation."

*Sign on California Water Project canal, tractor in huge field.*

Narrator: "One of the big owners in Southern Pacific is a man named J. G. Boswell. J. G. Boswell in the San Joaquin Valley owns approximately 125,000 acres of land. Over the past several years J. G. Boswell has been the single largest recipient of public welfare in the entire state. Boswell received, for example, in 1969 nearly \$5,000,000 for growing cotton and for not growing cotton."

*Lego, close up, pile of logs, San Francisco Examiner masthead, Pit Indian area map.*

Narrator: "Another large land owner in Shasta County is Hearst Publications. (sound of chain saw and tree falling) Hearst Publications owns in Shasta County 38,823 acres with an assessed valuation of nearly \$7,000,000."

*Times-Mirror Lumber Mill, Los Angeles Times masthead, logging truck, Pit Indian area map, Times-Mirror Lumber yard.*

(Sound of chain saw and falling tree) Narrator: "Publishers Forest Products owns in Shasta County 25,515 acres with an assessed valuation of nearly 2,000,000."

*Kimberly-Clark Mill, Pit Indian area map, Kleeniz labels.*

Narrator: "Another big business in Shasta County is Kimberly-Clark. Kimberly-Clark owns in Shasta County, 82,806 acres with an assessed valuation of \$8,500,000. Kimberly-Clark has interlocking ownerships with a number of national corporations including Pan American, the First National Bank of New York and Miller High Life Beer. Kimberly-Clark is one of the largest manufacturers and distributors of paper products in America." (Sound of chain saw and falling tree.)

*Pit Indian area map, polluted stream sign, man felling tree, pile of logs.*

Narrator: "Now about half of Shasta County is owned by the federal government

but most of the economic benefits from this public land are enjoyed mainly by the big businesses in the area and not by the public. These companies like Kimberly-Clark, LA Times, Sunkist and U.S. Plywood contract with the federal government to buy the timber. They cut the trees for paper and lumber products which they sell at a profit. They make money off the public land without accepting any of the direct responsibility of land ownership such as paying property taxes."

*Chart showing interlocking corporations, Kleeniz label, Safeway sign, grape pickers, Viet Cong dead, Examiner masthead, Pit Indian area map, LA Times masthead, doorbells, mayor's door, war dead, man behind barbed wire.*

Narrator: "The rules of Shasta County are an intricate part of the vast yet tightly controlled military and industrial complex which runs the country and much of the world. The key interest of this complex is control: control of products, control of markets, control of people and control of countries. Key elements in their systems of control are information gathering and propaganda. This vital function is performed in part by the Stanford Research Institute. The Stanford Research Institute writes reports on urban problems and long range planning for various governmental agencies. It also does warfare research for the federal government."

*Boycott Safeway Picket, Pit Indian area map, grape picker, farm labor housing.*

Narrator: "One example of the complex's attempts at domestic social control is Safeway Stores. Safeway is the second largest chain in America. It is interlocked with the PG&E, the LA Times, the Southern Pacific Railroad and the Stanford Research Institute. Safeway has been one of the chief roadblocks to efforts of farmworkers to organize and improve their economic conditions. While other chain stores agreed to purchase only union grapes, Safeway continued to buy non-union grapes."

*Handcuffed Indians, close up.*

*St. Marie chanting.*

*Lego, medium shot, dry Pit River bed below PGE dam.*

Lego: "And in our legends and in the teaching of our forefathers we know that Mother Nature was the best—it carried out the will of the Great Spirit. It was not our place to dictate or change. It was not our place to impress upon—to inject or to impress or to put forth our ideas to control nature. So, today, that is one reason why we're so concerned about the present plight of Mother Nature itself—ecology, pollution, pollution of the rivers, bad air and everything else—because we somehow wished that the people, today, that is in power could only learn like we had to learn; because they have impressed their own thinking—they have begun to remake the nature itself, to the extent right now we are all worried about the environment and everything else. This is why we have such a strong feeling about this as Indian people. An Indian is not an Indian unless he has a land base, because our people has always been close to nature, close to the land. Our whole lives was provided and sustained by that which came from the land. And looking at it from that point of view, we Indian people are not too many at this point, and we feel that we are fast disappearing from this land of ours, and it's about time that we tried to take a stand. And we feel this is an opportune time. We have many people that are concerned of the very things which we are concerned—ecology and many other things, environmental conditions and many things like that. And we are also concerned; but the fact of the matter is we have been rendered powerless. We have lost our voice in matters of this kind. And we want to rebuild this. We would like to preserve our land. We would like to build our people again on the strength of land."

*Pit Indian area map.*

*Chain saw sound and falling tree.*

*Stump zooming out to cut over area.*

St. Marie chanting. Oakes: "The Indian Claims Commission found that the U.S. government took possession of the land illegally. After conceding to the illegality of the act the Indian Claims Commission offered to pay to each tribe 47 cents per acre, but this money was refused by the Pit River tribe of Indians with the contention that as the legal holders of title to the land that all the land within the boundaries in the findings of the California—of Indian Claims Commission was to be immediately returned to the tribe. The contention, then, that the Pit River Indians and other Indians for being their guests are trespassers, as stated indirectly by the U.S. Government and directly by PG&E is ludicrous. The trespassers are, indeed, the U.S. government—there was no treaty signed—PG&E and other large corporations as well as the State of California."

*Chart of interlocking corporations.*

Oakes: "It has to be remembered big business and government are almost synonymous terms. Big business and its pressures exert policies emanating out of government affect not only Indians, but poor whites, blacks and other minorities."

*"Evict PG&E" sign, "Return Indian Land To Indians" sign.*

Oakes: "The Indian Claims Commission conceded that the land was taken illegally in 1853 and by that admission alone it would seem that clearly the Indians are not the transgressors of law and order, but the upholders was what law and order stands for."

*Blackboard: "Big business and government are synonymous—they are only right as long as they can get away with it"*

*St. Marie chant.*

*Oakes close up.*

Oakes: "The Indians have never sold the land. They still maintain that they own it. They do not want to sell it. They want the land back and they want to live on this land according to the ways of their ancestors and according to the ways that they see fit."

*Gimmell close up, Pit Indian area map.*

Gimmell: "We believe that money cannot buy the Mother Earth. She has sheltered, clothed, nourished and protected us. We have endured. We are Indian. We are the rightful and legal owners of the land. Therefore, we reclaim all of the resourceful land that has traditionally been ours with that exception of land now owned by private individuals. On this land we will set up our own economic and social structure retaining all of the values which are commensurate with Indian life. We will encourage and help other Indian tribes and groups to establish structures across the country in order to establish intertribal economic and cultural ties, basing the economy on the barter system. Therefore, let it be known by all concerned that the Pit River tribe makes the following demands: number one, that the U.S. government and the large corporations including PG&E, PT&T, the Southern Pacific Railroad, Kimberly-Clark, Hearst Publications and the Los Angeles Times-Mirror Corporation among others return all of our land to us immediately. No amount of money can buy the Mother Earth. Therefore, the California land claims case has no meaning. The earth is our mother and we cannot sell her."

*Zoom out from handcuffed Indians, zoom out from mountain peak, credits.*

St. Marie singing and chanting: "By the trestle in the cove, standing up to the sheriff and his guns . . . my heart is there with you . . ."

#### FINDING OUT

If you are into any sort of community involvement in your area, you should be aware of the controlling forces or you will have no conception of what might be required to make change.

Most of the information you need is pub-

lic; it can be found in libraries and various public offices. For instance, you can find out who the biggest landowners are by checking records in the county assessor's office. These records are public. The employees there are obligated to help you find what you want. From these records, you can determine, the size, location and value of land. Also past owners and sale prices.

Public and college libraries—in their business sections—have directories of public corporations and corporation executives (Standard & Poor's, for example). From these records you can determine interlocking business relationships. Libraries also may have a file of corporation annual reports—or you can contact companies directly for these documents.

The local newspaper files, although they are not public, may be helpful. By being cool, courteous and persistent you will probably be able to find out almost anything you want to know about the real powers in your community, how they are inter-related and how they operate.

For a detailed outline of how to do community research, write for: "Where It's At," Department of Social Justice, National Council of Churches, 475 Riverside Drive, New York, N.Y. 10027.

"Research Methodology Guide," NACLA, Box 226, Berkeley, Calif. 94701.

#### NORTHERN CALIFORNIA: PIT RIVER INDIAN AREA

The dotted line on the above map (not reproduced) outlines the nearly 3.5 million acres taken illegally from the Pit River Indians in Northern California. The basis for this Indian claim is spelled out on the following pages by a legal memorandum filed in Burney Judicial Court by Pit River attorneys June 22, 1970, following mass arrests of Indians for allegedly trespassing on PG&E property. After the court denied the Indian motions to dismiss the trespass charges and refused to initiate charges against PG&E, the Indians filed in U.S. District Court a \$10,000,000,000 civil rights suit against the State of California, PG&E and Shasta County.

#### Pit Indian legal claim

The following memorandum was filed June 22, 1970, in Burney Judicial District Court by Aubrey Grossman, attorney for the Pit River Indians.

#### Introductory Remarks

A few introductory words in explanation of the title page of our Memorandum. As you can see, we reject the title of People of the State of California versus the Indians, as defendants. The People of the state of California are not against the Indians, and the Indians are not defendants.

The Pit River Indians have decided that they are not, and never again will be, defendants, because they will never again be on the defensive—on the taking of Indian land.

The process of systematically taking Indian land away from Indians—to quote the Alcatraz Declaration (May 31, 1970):

"How did we lose our land? Wars, massacres, other violence, fraud, occupation, expropriation, forced sale, division of tribal lands, deprivation of water, flooding" is going to be stopped here and now and a reverse process begun, say the Pit River Indians.

The Indians know, and the Government knows, that every single year for well over 200 years, large amounts of Indian land were taken away, or made worthless (by deprivation of water). The process still goes on (Pyramid Lake, termination of Colville reservation, etc.) An appropriate metaphor is that the land question for the Indians is similar to an automobile going up a steep hill. Until now the force of gravity has been greater than the power of the automobile's engine. However, now for the first time, Indian power is at least equal to the force of

gravity and undoubtedly the Indian power engine will start, albeit gradually, to ascend the hill by stopping the diminution of Indian land and obtaining the return of some Indian land.

The other reason for our changing the title is to state in the title (what the Courts have held) that the United States, and now PG&E, are withholding this illegally taken land from the true owners. To call this trespass by Indians is to believe the thief who cries "stop thief."

State of California, County of Shasta Justice Court for Burney Judicial District (An incorrect and improper title selected by prosecuting authorities)

People of the State of California (Plaintiffs) vs. Mickey Gemmill, Raymond Lego, Charles Buckskin, Richard Oakes, et al., Defendants.

Memorandum in support of motion to dismiss charges, motion to acquit, demurrer, motion to establish the unconstitutionality of this prosecution, motion to prosecute Pacific Gas and Electric Company.

Alternative correct and proper titles would be: The Pit River Indians of California, Plaintiffs, vs. Pacific Gas and Electric Co., Defendants.

The Pit River Indians of California, Petitioner, vs. the United States of America, Defendant.

This is a political case. The proof is the use of governmental force to keep the Indians from regaining their land which was stolen from them. This case points up rather spectacularly and dramatically who it is that uses constitutional and legal methods, and on the other hand who it is that uses force and violence instead of following proper legal procedures.

On the one hand the Indians use the procedure created by Congress, by filing a petition with the Indian Claims Commission. On the other hand, the government used the force and violence of a) forcible arrest, b) carrying off to jail, c) holding in jail, d) manacled. This force and violence was visited upon the Indians because they, having waited one hundred and seventeen years, and having obtained a decision by the "highest court in the land," finally, in desperation, used "self-help" when the Government manifested no intention of enforcing this decision by the return of their land.

The arrest of these Indians, coupled with the refusal to arrest Pacific Gas & Electric Company, demonstrates, conclusively, an unconstitutional functioning of the legal and judicial system in Shasta County (unless they shall be corrected, as we hope they will be, by this Judge in deciding this Motion). We refer to the control by PG&E of the legal machinery and public officials; and the lack of any control or influence, and the lack of rights, possessed by the Indians. We refer next to the "fish of one and fowl of another" activities of the public officials.

All PG&E had to do was to wave its finger and the sheriff arrested 50 or so Indians on the charge of trespassing, despite the fact that there could be no trespass committed unless two elements were present: 1) the ownership or right of possession in PG&E, and 2) the lack of the most minute ownership or possessory rights in the Indians. PG&E made no showing to the Sheriff or District Attorney of their right to ownership or possession, and the Indians had title established by the Indian Claims Commission, strengthened (if there were any need for strengthening) by 25 U.S. Code 4, which provides:

"In all trials about the right of property in which an Indian may be a party on one side, and a white person on the other, the burden of proof shall rest upon the white person, whenever the Indian shall make out a presumption of title in himself from the fact of previous possession or ownership."

The Indian Claims Commission adjudged

that the Indians had "previous possession or ownership."

The Sheriff and the District Attorney were put on notice of these facts a little less than a day before the arrests of the Indians by receipt of the telegram which is attached as Exhibit A (page 15). They ignored this notice and did nothing to contact the sender of the telegram or to verify the facts stated.

The optimum defense that the Sheriff and the District Attorney can muster to our charges against them is the claim that the occupation of the 52,000, or so, acres for many years constituted some kind of practical evidence of PG&E's ownership of large amounts of land.

Even if there were not the notice given them by Exhibit A, this cannot possibly provide any justification of the arrest of the Indians for two reasons: the fact that PG&E had a right to ownership and/or possession would not be evidence that the Indians did not have a right to ownership or possession; the question is not whether PG&E had the right to ownership or possession of a great deal of land but whether they had it in the precise area where the trespass occurred.

On the day our Motion was presented, in open court, we offered a sworn statement of Indian ownership and the right to possession, relying on the decision of the Indian Claims Commission and 25 U.S. Code 194—and requested the initiation of a prosecution for trespass against PG&E. In response, District Attorney Robert Baker asserted that he would not permit a prosecution against PG&E, because he was not personally convinced that the Indians had title, whilst admitting that PG&E had furnished him no evidence whatsoever of its title; and he admitted that he had never read the Indian Claims Commission decision of which we had given him notice. In response, Judge Billy Covert tentatively refused to accept the offered sworn statement and issue a warrant. Later he definitively refused to issue the warrant, stating that he was advised by the Court not to do so.

We want it specifically understood that our demand for dismissal and acquittal of the "defendants" and for prosecution of PG&E is based upon the Fourteenth Amendment to the Constitution, being a denial of the equal protection of the laws. In support of this constitutional claim we ask leave of the Court to produce evidence in support of the statements made in this Memorandum. We request permission (our constitutional right in support of this claim) to place on the witness stand and question Sheriff John Balma, District Attorney Robert Baker and Judge Billy Covert as to their relations with PG&E, its representatives, lawyers or otherwise; and as to their knowledge, before the arrests of facts showing the right to ownership and possession of the land in question by PG&E and by the Indians. We assume that the examination of these witnesses will have to be calendared as to time and place, and we so request.

We now proceed to the merits of our claim which is that, as a matter of law, the Indians were possessed of such rights of ownership and/or possession as would legalize their entry on the property and void any right to prosecute them for trespassing.

At the outset, we note a curious omission from Section 602 of the Penal Code. Reading it literally, a person could be guilty of occupying his own land, if someone else had any ownership or possessory right to it. This is obviously not what the Legislature intended, so we will read into this statute the following words:

"A person cannot be found guilty of trespass under this statute if he has any measure of ownership or possessory rights to the land in question."

It flows from what we have said that to justify dismissal or acquittal we need not establish the absence of PG&E's right to

ownership or possession, but need establish only that the Indians have a right to ownership or possession.

The Indians' right derives from thousands of years of "Indian title" to the land shown in the map which is Appendix A to the Motion (page 10). It further derives from 25 U.S.C. 70 et. sequ., which established the Indians Claims Commission. It further derives from the decision of the Indian Claims Commission in "The Pit River Indians of California vs. the U.S. of America," Docket No. 347 before the Indian Claims Commission.

"Following hearings in 1956 on the question of title and liability, we made findings of fact and entered an interlocutory order on July 29, 1959 holding that the Pit River Indians, as an over-all identifiable group, had established original Indian title to eleven tracts aggregating approximately 3,386,000 acres of land in parts of Lassen, Shasta, and Modoc Counties, California, which had been used and occupied by eleven autonomous groups or bands and that the original Indian title to that land had been taken by the United States without compensation as of March 3, 1853, by the Act of March 1853 (10 Stat. 244). We directed the parties to present evidence of the acreage of the tracts concerned and the value as of the date of the taking (7 Ind. Cl. Com. 815). This docket number has been inactive since said above date until the present proceedings were initiated." (13 Indian Claim Commission Reports 369, 381)

For Congress' purpose in establishing the Commission, and the authority it intended to vest in the Commission, we quote from the Commission's 1968 Annual Report, as follows:

**"Function and Description"**

"The Indian Claims Commission is an independent agency established by Act of Congress on August 13, 1946 (Public Law 79-726). It is a judicial arm of the Congress created for one special purpose: the hearing and determining of Indian claims against the United States which came into existence prior to the approval of the Claims Commission Act of 1946."

As the Report demonstrates, Congress was creating a judicial body to establish the facts, and determine the law, on the subject of deprivation of Indian property by the U.S. Government. With the exception of Court of Claims jurisdiction (based upon statutes passed by Congress for disposing of specific Indian claims, which are of no further significance), the Commission is the only body having jurisdiction, and it has exclusive jurisdiction, on the illegal taking of Indian land by the United States.

The Pit River Indians of California have in their favor a final Decision, Order and Judgment that in 1853 they were the exclusive owners of this land and that this title was taken away from them illegally without compensation in 1853, by the passage of a federal statute.

The United States Supreme Court has held, unequivocally, that when the United States has taken land from an Indian tribe without agreement or compensation, it thereby violates the Fifth Amendment to the United States Constitution. *Shoshone vs. United States* (1936) 299 U.S. 476, 81 L. Ed. 360. Also see *Miami v. U.S.* (1960) 28 F. (2) 202.

No other court has jurisdiction to do anything on this illegal taking of the Pit River Indians' land in 1853 except to enforce or implement the Commission's decision. Therefore this Justice Court must dismiss these actions and acquit these "defendants." To deny this is to declare that a Justice Court Judge or jury has the power to reverse a decision of the Indian Claims Commission. Even more, it declares that a Justice Court judge or jury can reverse the United States Supreme Court because a Commission decision, since it could have been appealed to the United

States Supreme Court and was not, has the finality of a Supreme Court decision. The situation is identical to one in which Congress has declared certain land to be owned by the United States. In such a case, obviously, a federal employee could not be charged with trespass for entering on the government land. Similarly, if one were charged with trespassing on another's land he would have an absolute legal defense if there was a judgment in his favor in a quiet title suit.

Having stated that the appropriate and exclusive tribunal has rendered a final decision that this land was illegally taken from the Indians we have said enough to justify the granting of our motion. However, because of public statements by the District Attorney and PG&E we can anticipate what position they will take. We will address some remarks to their position. They claim that the Pit River Indians of California have somehow given up their right to the return of their land because there was a consent or stipulation or agreement to the money aspect of the Commission's judgment.

Let us analyze the position of PG&E and the District Attorney in its naked form, admitting for the sake of argument, that the Pit River Indians had agreed to the money aspect of the judgment. Remember, we have a solemn judgment that the land was illegally taken away and we have an unchallenged and unchallengeable principle that land illegally taken must be returned. How adequate was the consideration for which the Pit River Indians gave up their right to their land (if they did)?

It is assumed that the Commission had valued the land at 47 cents an acre. However, that valuation was based upon the average for all California Indians. Since the Pit River Indians had owned more than twice as much land per Indian (if tribal land were divided up) they are (it would seem) being offered 20 cents an acre. But this is also not a correct statement. It vastly overstates the offer. Actually, the Pit River Indians—for land and improvements and profits from the land which are conservatively valued now at \$5,000,000,000—are being offered the munificent sum of 1/12 of one cent an acre. How do we calculate this? Very simple. The Supreme Court has held that when there has been such an illegal taking as this there is a constitutional right to interest; therefore, in our case, to the 1853 value must be added compound interest. If this is compounded at a 5% interest rate from 1853 to 1964 (date of judgment) it will be multiplied 250 times. Expressed another way the \$29,100,000 judgment (for all California Indians including the Pit River Indians) should be increased to \$7,275,000,000. Though this sounds large, it is actually less than 1% of the value of the greater part of the State of California.

The Indian Claims Commission based its consent judgment upon (1) a stipulation signed by the Government and all the attorneys for the Indians except the attorney for the Pit River tribe; and (2) a purported agreement by vote of the various Indian groupings. The Pit River Indians never agreed to the stipulation, rejected the settlement at an official tribal meeting which was held for this purpose; and consistently advised the Commission that they would not accept the settlement, the stipulation, or the consent judgment or the payment of the checks, or any payments under the judgment. By official tribal action the Pit River Indians of California have decided that they will not accept their shares of the checks.

In any event, Congress has determined, in the Indian Claims Act, that nothing short of the actual payment of the claim will discharge the United States of its liability:

"The payment of any claim, after its determination in accordance with this chapter, shall be a full discharge of the United States of all claims and demands touching

any of the matters involved in the controversy." 25 U.S. Code 70 (u).

Incidentally, it has been uniformly accepted by every agency of the Government and by all courts that where Indian land is concerned, the only way it can be transferred or sold or given up is by official tribal action. No action of the members of the tribe, or assent, if expressed individually, have ever been accepted by the Government as legal or binding.

In conclusion, we point out that the Pit River Indians of California have "exhausted their legal remedies," have obtained a decision of the "highest court of the land" that the United States Government took their land in 1853 in violation of their right not to be deprived of their property without due process of law (Fifth Amendment).

If this Court is willing to defy such legal and constitutional authorities, it must be at least recognized that a settlement paying 1/12th of a cent per acre for this valuable land is confiscatory.

Respectfully submitted.

Grossman, Ackerman & Peters; Casandra Dunn, Fresno, Ca.; Fred Gabouri, Sherman Oaks, Ca.; Gary Bass, Seattle, Wash.; Joe Muskrat, Fresno, Ca.; George Duke, Berkeley, Ca.; Richard B. Collins, Jr., Berkeley, Ca.; Robert S. Donovan, Berkeley, Ca.; Pano Stephens, San Francisco, Ca.; Patrick Coyle, San Francisco, Ca.; Geoffrey A. Braun, San Francisco, Ca.; Monroe E. Price, Westwood, Ca.; Stephen F. Kunkel, Redding, Ca.; Daniel M. Rosenfelt, Los Angeles, Ca.; David H. Getches, Escondido, Ca.; and Robert S. Pelcygur, Escondido, Ca. By Aubrey Grossman.

Dated: June 22, 1970.

JUNE 5, 1970.

Exhibit A—Telegram to Sheriff, District Attorney, and All Superior Court Judges, Shasta County, Calif.

This office represents the Pit River Indians who have just occupied some portions of their land which is claimed without legal justification by Pacific Gas and Electric Company. In the event that you contemplate any type of legal action, civil or criminal against the Pit River Indians, or any of them, be advised of the following. Number one: The Government of the United States, acting through the Indian Claims Commission, has determined that the Pit River Indians had title to this land in 1853 and in that year it was illegally taken from them, Docket No. 347. Number two: Since 1853 the Pit River Indians have never conveyed, sold or given up title to this land. Number three: The Federal Government has the exclusive right to legislate and administer in the field of Indian affairs in general, and the ownership of land illegally taken from Indians in particular. Therefore any action against the Pit River Indians taken by any representative of the State of California or any of its subdivisions would violate the exclusive authority of the Federal Government. Number Four: If you should act in any way against the Pit River Indians you would be in violation of the Federal Civil Rights Act in that you would be depriving them of their rights under federal law. As you know, the Civil Rights Act established the illegality of state action, and also establishes individual responsibility of any state officer or official who participates in such a violation.

GROSSMAN, ACKERMAN & PETERS,  
By AUBREY GROSSMAN.  
1095 MARKET STREET, SAN FRANCISCO, CALIF.  
SHASTA ANSWERS INDIAN CLAIM

(The following memorandum was filed in Burney Judicial District Court June 22, 1970, by Shasta County District Attorney Robert W. Baker.)

In the Justice Court of Burney Judicial District, County of Shasta, State of California.

The People of the State of California, Plaintiff, vs. Richard Oakes, et al., Defendants.

Memorandum of points and authorities  
in opposition to motion to dismiss

## I. Introduction

Defendants have filed a so-called "Motion to Dismiss Charges, Motion to Acquit, Demurrer, Motion to Establish Unconstitutionality of this Prosecution, Motion to Prosecute Pacific Gas & Electric Company." The captioned title of the motion is representative of its ludicrousness. A motion to dismiss can only be granted upon motion of the District Attorney or by the court on its own motion. (Penal Code No. 1835). A motion to acquit is a motion only recently recognized by the Penal Code but can only be granted by the court at trial either after the District Attorney has rested his case or after the presentation of all the evidence (see Penal Code No. 1118.1) and then only under specific conditions not here relevant. A demurrer, of course, can only be granted for one of the reasons set forth in Penal Code No. 1004. It is also basic law that such defect must appear on the face of the complaint. Moreover a demurrer must "distinctly specify the grounds of objection to the accusatory pleading..." (Penal Code No. 1005). This, of course, defendants have failed to do.

The Motion to Establish Unconstitutionality of this Prosecution is of course not recognized in the Penal Code and the basis of this motion or why this prosecution is "unconstitutional" is nowhere set forth in defendants' motion. The last motion, the one to prosecute Pacific Gas & Electric Company is equally ridiculous. It would make just as much sense and based on the same legal grounds set forth in defendants' motion to prosecute every landowner, tenant invitee, licensee or other person occupying or owning property in the northeastern section of this County as well as large sections of Modoc, Lassen and Plumas Counties.

## II. Law of the Case

The entire legal argument advanced by the defendants is based on a complete misinterpretation of a claim of the Pit River Indians filed with the Indian Claims Commission. 7 Ind. Cl. Comm. 815 (1959); 13 Ind. Cl. Comm. 369 (1964). Defendants assert that case held (1) the Pit River Indians held "Indian title and exclusive title" to the subject property and (2) that the land was illegally taken by the United States Government, by the adoption of a statute in 1853. This is a complete misstatement of this case. In fact the Indian Claims Commission held (7 Ind. Cl. Comm. at p. 862)

"It was not until the Battle of the Infernal Caverns on September 26-28, 1867, when petitioner Indians were decisively overcome and their power to resist white domination was broken. While this probably as accurately as any date marks the physical taking of petitioners' title, the expiration of the period for registration of land titles in California under the Private Land Claims Act, . . . and the passage on that date of an 'Act to Provide for the Survey of the Public Lands of California and the Granting of Preemption Rights to Settlers' legally terminated petitioners' right to assert land claims, effectively classed the land here involved as part of the public domain and thus constitutes the date of taking of Indian title to the land described in our Finding of Fact No. 25."

That Commission at no time indicated there was any illegality in the taking; in fact it said title passed into the public domain by virtue of U.S. Statute (9 Stat. 631). The Indian Claims Commission also approved a settlement between the United States and the Pit River Indians. This decision became final in 1964 (13 Ind. Cl. Comm. 369) and was never appealed to the Court of Claims or the United States Supreme Court which was the right of the Pit River Indians at that time (see 25 U.S.C.A. No. 705).

Moreover, it is clear that Indian title is

not exclusive in the absence of a treaty with the United States or a grant from the United States. *U.S. vs. Santa Fe Ry. Co.*, 314 U.S. 339; 86 L.Ed. 260. In the absence of such a treaty or grant, Indians have only a right of occupancy which is not a property right and such right "... may be terminated and such lands fully disposed of by the sovereign itself without any legally enforceable obligation to compensate the Indians . . . taking by the United States of unrecognized Indian title is not compensable under the Fifth Amendment." *Tee-Hit-Ton Indians v. U.S.*, 348 U.S. 272 at 279, 285; 99 L.Ed. 314; See also 41 Am.Jur. 2nd, Indians No. 23.

It is surprising counsel for the defendants overlooked a California Supreme Court decision that specifically held that a party claiming under a patent holds title free of an Indian possessory title when the Indian claimant failed to file a claim with the Lands Commission pursuant to the 1851 statute above cited. *Harvey v. Barker*, 126 Ca. 262 (1899). In a well written opinion which is conclusive on this court the United States Supreme Court affirmed this decision. *Barker v. Harvey*, 181 U.S. 481 45 L.Ed. 963 (1900). See also *Botiller v. Dominguez*, 130 U.S. 238; 32 L.Ed. 926. The *Botiller* case incidentally specifically upheld the constitutionality of the 1851 statute.

The statement of defendants that the prosecution has no evidence that Pacific Gas & Electric Company owns the subject property is false.

## Conclusion

Defendants' motions should be denied.

Dated: June 22, 1970.

Respectfully submitted,

ROBERT W. BAKER,  
District Attorney and Attorney for  
Plaintiff.

## PACIFIC GAS AND ELECTRIC COMPANY

PG&E is the largest business in Shasta County. It owns 52,525 acres with an assessed valuation of over \$320,000,000. This great wealth is concentrated in the series of dams and powerhouses along the Pit River. PG&E is the largest privately-owned power company in the world. It has close ties with the giants in banking and oil. PG&E directors and the other companies and organizations in which they hold directorships are:

John F. Bonner, Deltona Corporation, Macro Island Dev. Corporation.

K. C. Christensen, Gas Lines, Inc., Natural Gas Corp. of Calif., Standard Pacific Gas Lines, Pacific Gas Transmission Co., Alberta Natural Gas, Alberta & Southern Gas Co., Ltd.

Ransom M. Cook, Wells Fargo Bank, Wells Fargo International Corp., Cutter Labs, Industrial Indemnity, Litton Industries, Wells Fargo & Co.

James F. Crafts, Firemen's Fund Insurance, California State Chamber of Commerce, Children's Hospital, SF, National Industrial Conference Board, National Newark & Essex Bank, United California Bank, American Express Co., Amex Holding Corp., Standard Calif. Bank.

Charles de Bretteville, Bank of California, Shell Oil, Safeway Stores, Western Union.

Robert H. Gerdes, Gas Lines, Inc., Standard Pacific Gas Lines, Natural Gas Corp. of Calif., Pacific Gas Transmission Co., Alberta Natural Gas Corp., Pacific Gas Communications Co., Fund America.

Russell Giffen, Giffen, Inc., farmer of 130,000 acres in San Joaquin Valley and second biggest recipient of public welfare in state. In 1969 over \$3 million for growing crops and not growing crops.

Walter A. Haas, Levi Strauss, Pacific Inter-mountain Express, Iris Securities, Levi Strauss Realty, Mills College.

James M. Hait, Food Machinery Corp., In-

terpace Corp., Wells Fargo Bank, Varian Associates, Georgia Pacific.

Red O. Hunt, Crown Zellerbach, Pacific National Bank, Crocker-Citizens Bank, General Reinsurance Co., Singer, Union Oil, Canadian Imperial Bank, National Industrial Conference Board, Crocker National Corp. Elliott McAllister, Bank of Calif. International, Del Monte, Rhodes Stores, Cypress Lawn Cemetery.

Porter Sesnon, Fibreboard, State Auto Association, State Taxpayers Association, Cate School, Cypress Lawn Cemetery, Mills College, Porter Estate Co., Watkins Johnson, Air California.

Emmett G. Solomon, Crocker-Citizens Bank, Provident Securities, Stanford Research Institute, Mills Hospital, Crocker Estate Co., Fibreboard, Sierra Railroad, Crocker Land Co., Clorox, Merced Water Co., West Bay Community Association, Suburban Realty, Universal Land Co., Mills College, U.C. School of Business Administration, Pacific Telephone, Metropolitan Life Insurance. Carl F. Wente, Bank of America National Trust Savings Assn., Foremost-McKesson.

## PACIFIC TELEPHONE

Pacific Telephone is the second largest business in Shasta County. On only six acres of land it holds an assessed valuation of over \$27,000,000. PTT is owned by ATT, the largest phone company in the world, the largest corporation in the world. The corporation is into such things as manufacturing communications equipment, transmitting network television programs, handling top secret government communications, space satellites, anti-Ballistic missiles. PTT directors and the other companies and organizations in which they hold directorships are:

Jerome W. Hull, Crocker-Citizens Bank, PSA (airline), New York Life Insurance, Occidental College, LA & Calif. Academy of Science.

E. Hornsby Wasson, Standard Oil of Calif., Stanford Research Institute, Emporium Capwell, Bekins Van, American Potato, U.S. Chamber of Commerce, McCallie School, University of Chattanooga, Bell Telephone of Nevada, Prudential Insurance, Bank of America, Bankamerica Corp.

Robert M. Cunningham, Security Pacific Bank, Bell Telephone of Nevada.

Angus S. Alston, ATT.

Daniel P. Bryant, Bekins Van, Bank of America, LA Chamber of Commerce, Pacific Lighting Corp., Bankamerica Corp., Occidental College.

Peter Cook, Wells Fargo Bank, Emporium Capwell, Western Pacific Railroad.

Christian de Guigne III, Stauffer Chemical, Bank of California, Stanford Research Institute.

Charles E. Ducommun, Ducommun, Inc., Lockheed Aircraft, Security Pacific Bank, Investment Corp. of America, Stanford University, Claremont College.

Walter A. Haas, (see PGE page).

Robert DiGiorgio, DiGiorgio Corp., Bank of America, Bankamerica Corp., Broadway Hale Stores, Union Oil, NY Fruit Auction Corp., Philadelphia Fruit Exchange, Newhall Land & Farming.

William French Smith, chairman UC regents, Pacific Mutual Life Insurance.

Emmett G. Solomon, (see PGE page).

## KLEENEX

Kimberly-Clark owns in Shasta County 82,806 acres with an assessed valuation of over \$8,500,000. It is one of the largest distributors of paper products in the world. It has plants in Japan, South Africa, Holland, Mexico, England, Puerto Rico, Australia, Singapore, Germany, Colombia, Italy, France, El Salvador, Canada, Thailand, Philippines. Between 1968 and 1969 its sales in Japan increased by 50%; Mexico, 30%, Philippines, 30%; and England, 20%. Kimberly-Clark directors and the other companies and organizations in which they hold directorships are:

J. R. Kimberly, First National Bank of Neenah, Wis. First National Bank of New York.

G. M. Minard, Kimberly-Clark, Canada, Kimberly-Clark Pulp & Paper, Spruce Falls Power & Paper, Kimberly-Clark Lumber Canada, Slate Island Mining.

D. C. Slichter, Rex Chainbelt, Northwestern Mutual Insurance, Mauty Paint & Varnish, First Wisconsin Bankshares Corp., Lawrence University, Wisconsin Electric Power, First Wisconsin National Bank, American Appraisal, Western Publishing, Pelton Steel Casting.

A. G. Sharp, First National Bank of Appleton, Wis., Irving Pulp & Paper Ltd.

J. S. Rockefeller, First National City Bank, N.Y., National Pacific Railroad, Monsanto, National Cash Register, Pan Am World Airways, Indian Spring Land, Cranston Print Work, American Museum of Natural History, First National City Trust Co. Memorial Hospital for Cancer.

Louis Charles, Miller Brewing Co., Milwaukee, Chicago, St. Paul & Pacific Railroad, Mariner Realty, Peter Cooper Corp., Allen Bradley, Oyite Corp., Marshall & Isley Bank Stock Corp., Oilgear Co.

E. B. Fitzgerald, Cutler Hammer, First Wisconsin Trust, First Wisconsin National Bank, First Wisconsin Bankshares Corp.

#### SOUTHERN PACIFIC

SP owns in Shasta County 165,000 acres with an assessed valuation of \$15,000,000. Throughout the West, SP holds nearly 4 million acres of other forest, grazing, agricultural and commercial land. As it eases out of the rail passenger business, its freight hauling goes up and this "railroad" is moving into related fields such as trucking and marine transport—and such unrelated ventures as non-rail real estate development, data processing and communications.

The Fontana luxury apartments at the foot of Van Ness and the Holiday Inn at Fisherman's Wharf in San Francisco are on SP land. SP land hosts an office building in Beverly Hills. The company has a microwave communications subsidiary which serves other businesses and a data processing company. SP directors and the other companies and organizations in which they hold directorships are:

S. D. Bechtel, Bechtel International Corp., Industrial Indemnity, Lakeside Corp., Canadian Bechtel Ltd., Stanford Research Institute, Ford Foundation, Morgan Guaranty Trust.

Don J. Russell, St. Louis Southwestern Railroad, Stanford Research Institute, Tenneco, Chubb Corp., Federal Insurance Corp., University of San Francisco, Tulane University.

Malcomb P. Aldrich, American Museum of Natural History, Presbyterian Hospital, Metropolitan Museum of Art, Equitable Life Insurance, American Electric Power Co.

Henry Mudd, Cyprus Mines, Marcona Corp., Kicking Horse Forest Products, Canada, United California Bank, Pima Mining, S. Calif. Edison, Pacific Mutual Insurance, Western Bancorporation, Union Oil, Hawaiian Cement, N. American Rockwell.

Paul Davis, Food Machinery Corp., Lehman Corp., Caterpillar, IBM, Stanford Research Institute, Lehman Brothers of N.Y.

T. M. Evans, H. K. Porter, Crane Ltd., Canada, Crane Ltd., Great Britain, Pittsburgh Opera, Crane Co., Evans & Co., Children's Hospital, Pittsburgh, Boys' Club, Evans Investment Corp., Midwest Rubber Reclaiming.

Henry Harris, Harris Upham, Texaco, Chemical Bank, Marineland of the Pacific, Stone & Webber, Tenneco.

Ken Isaacs, Mass. Investors Growth Stock Fund, Mass. Investors Fund, Fiduciary Exchange Fund, Second Fiduciary Exchange Fund, Leverage Fund, Children's Hospital, Dexter School, Suffolk Franklin Bank, Phelps Dodge, Canada General Fund, Depositors

Fund of Boston, Exchange Fund of Boston, Diversification Fund, General Public Utilities Corp., Lehigh University, Capitol Exchange Fund.

Robert Magowan, Safeway Stores, Bank of California, Caterpillar Tractor, Fibreboard, Del Monte, J. G. Boswell.

Stephen Bechtel Jr., Bechtel Corp., Bechtel International Corp., Canadian Bechtel Ltd., Industrial Indemnity, Crocker-Citizens Bank, Tenneco, Hanna Mining, National Industrial Conference Board, Crocker National Corp.

Richard S. Perkins, First National City Bank, N.Y., Seeing Eye, NY Life Insurance, ITT, Royal Globe Insurance, Chapin School Ltd., International Executive Service Corp., Boys Club, YMCA, Metropolitan Museum of Art, Allied Chemical Corp., Carnegie Institute of Washington, Con. Edison of NY, Miss Porter's School.

Gardiner Symonds, Tenneco, General Telephone & Electronics, Midwestern Gas Transmission, Packaging Corp., East Tennessee Natural Gas, Tenneco Chemicals, Tenneco Oil, Philadelphia Life Insurance, Tennessee Gas Transmission, J. I. Case Farm Equipment, Kern County Land Co., Tennessee Gas Pipeline, Walker Manufacturing, Newport News Shipbuilding, Dry Dock Co., Houston National Co., Houston National Bank.

#### LOS ANGELES TIMES

Times-Mirror Corporation (through Publishers Forest Products) owns in Shasta County 25,515 acres with an assessed valuation of \$2,000,000. Times-Mirror publishes the Los Angeles Times, second largest daily newspaper in the United States. It also owns four other dailies plus being merged with the Dallas Times and a Dallas TV station. Times-Mirror controls lumber and paper mills, 190,000 acres of timberlands, a cable TV company (California, New York and Florida), a 263,000-acre ranch, a huge commercial printing plant, a direct mail business, a film production outfit. Times-Mirror companies print phone books for 800 communities, election ballots, charts and maps, medical and legal books, such popular titles (hard and softback) as Mailer's *Armies of the Night*, Dr. Spock's baby book, the Beatles' *Yellow Submarine*—and *Popular Science* and *Outdoor Life* magazines. Times-Mirror International, marketing arm of the publishing subsidiaries, last year expanded to Japan, Far East, Central and South America, India and Pakistan. This year, the Australian and European activities are being expanded. Times-Mirror directors and the other companies and organizations in which they hold directorships are:

Frank D. Murphy, (former UC chancellor), Hallmark Cards, Norton Simon Inc., Bank of America, Ford.

Norman Chandler, Emett & Chandler, Bufum's, Chandis Securities, Chandler Sherman Corp., Dresser Industries, Security First National Bank, Safeway Stores, Kaiser Steel, Pan Am World Airways, Santa Fe Railroad, Pacific Western Industries, Boys Club, Calif. Institute of Technology, Pfaffinger Foundation, American Mutual Fund.

Otis Chandler, TRW Inc., Orange Coast Publishing, American Newspaper Publishers Assoc., Unionamerica, Tejon Ranch, Associated Press, Western Airlines.

Albert J. Casey, Bank of California, Tejon Ranch, Merchant & Manufacturers Assoc.

J. L. Atwood, North American Rockwell, Pacific Indemnity, Equitable Life Insurance, State Chamber of Commerce.

Harrison Chandler, Chandis Securities.

F. David Frost, Avery Products, Ralph M. Parsons, Signal Co., Rohr Corp., Tejon Ranch.

Thomas V. Jones, Northrop Corp., Calif. Institute of Technology, LA World Affairs Council, Stanford University, Aerospace Industrial Assoc., Industrial College of the Armed Forces.

Dorothy B. Chandler, US regent, Center Theatre Group, Performing Arts Council.

G. Keith Funston, Olin-Matheson Chemicals, Metropolitan Life Insurance, Trinity College, Beekman Hospital, NY State Chamber of Commerce, Westover School, Seabury House, IBM, Republic Steel, National Aviation, Illinois Central Industries, Putnam Trust, Hartford Steam Boiler & Insurance, Avco Corp., Chemical Bank.

Frank L. King, United California Bank, Western Bancorporation, U.S. Borax, Pacific Mutual Life Insurance, Pacific Indemnity, Cyprus Mines, El Paso Natural Gas, United California Bank International.

Harry J. Volk, Union Bancorporation, Western Airlines, Pacific Lighting Corp.

Simon Ramo, TRW Inc., TRW Semiconductors, Unionamerica, Union Bank.

Lowell S. Dillingham, Bank of Hawaii, Pioneer Mill, Hawaiian Cement, Hawaiian Land Co., Oahu Sugar, Bank of America, Bankamerica Corp., Western Airlines.

Robert F. Erburu, Pickett Industries, New American Library, Publishers' Paper, World Publishing, Pfaffinger Foundation, Times-Mirror Foundation, Matthew Bender, Harry N. Abrams, Yearbook Medical Publishing, C. V. Mosby, Popular Science, Spaulding Pulp & Paper, Plan Hold Corp., Fuller & Dees Marketing Group, Publishers' Forest Products, Sanderson Films, Southwestern Co., Times-Mirror Co. of New York, Times-Mirror School & Library Services, TM Communications.

#### PG&E—SQUATTER ON THE PUBLIC DOMAIN

(By Peter L. Petrakis)

In early June of 1970, a group of Pit River Indians occupied a campground along the Pit River in Northern California that was controlled by Pacific Gas & Electric Company. The Indians were reoccupying a small part of ancestral lands which had been stolen from their tribe. They were trespassing, said PG&E.

The campground lies within a 3.5 million acre parcel of land spreading over parts of four counties that, according to the Federal Indian Claims Commission, was unlawfully occupied by white settlers who drove out the native Pit River Indians in the late 19th century.

After that, the Federal Government took over some of the land and, in 1923, granted PG&E a license to erect power plants along the Pit River.

The nominal license fee did not grant ownership to PG&E. But PG&E nevertheless has tried mightily to create the impression that it does own the sites. A typical part of its characteristic "public relations" approach to disputing the Indians' claim:

1. Having them arrested for "trespassing," in collusion with the sheriff, district attorney and justice of the peace of Shasta County.

2. Asking the publisher of Hearsy's San Francisco Examiner to send a reporter to Redding to cover the story when it became clear the Indians were getting sympathetic treatment by other papers (the Hearst Corporation has large holdings in the area).

3. Discovering a "tame" Indian, Ike Leaf, then writing a statement for him condemning the Indian militants, flying him to Redding on a company-chartered plane and arranging a press conference for him in the sheriff's office (invitations to the press sent out by a PG&E public relations man, who also presided over the meeting).

#### The owner?

Under white man's law, the existence of a license to occupy land is reasonable evidence. Why, then, didn't PG&E produce the government license to back up its assertions that it had a right to be on the Pit River? Why did it instead keep talking as if it actually owned the disputed property?

The probable answer: To bring up the matter of licenses in such a dramatic story, the subject of intense public interest, would have exposed a cover story that PG&E and the other private utility companies have been fostering for more than 50 years.

This is that they are bastions of individual initiative, "taxpayers" carrying their own weight in society, competing under adverse circumstances with a government that intrudes unfairly in the domain of "private enterprise."

The plain fact is that the U.S. Government set up the private power companies in the power business. PG&E, staunch defender of "private initiative."

1. Has built its entire hydroelectric generating system on public lands and waterways under federal licenses which allow it to operate but own none of the power-generating sites.

2. Has captured the power generation of irrigation districts, water agencies and municipal, state and federal projects—representing a public investment of billions of dollars—and got power dirt cheap from the agencies and sold it back to the public at a large mark-up.

3. Has utilized a nuclear technology developed by the public at a cost of billions, uses nuclear fuel produced at expensive government plants by a publicly developed process that uses huge quantities of cheap public power, and has its nuclear power plants insured by the taxpayers because no private insurer will risk coverage.

#### River grab

It started in the early part of the century, when technological advances were making it possible to generate power at locations remote from marketing areas. Private power companies were grabbing up power sites on the nation's rivers, despite efforts by President Theodore Roosevelt and others to develop the sites in the public interest.

By 1920, the private power lobby turned the tide in Congress. It passed the Federal Water Power Act, which vested ownership of water power sites in the people but also created the Federal Power Commission with authority to grant 50-year licenses to private and public utilities for power development on the nation's rivers. Only token charges were fixed for the use of the water, and public recapture of sites held by private power companies was made difficult.

Many licenses were issued to private power companies and public agencies over the next few years. So now, 50 years later, many licenses are due to expire. This means that 18 percent of PG&E's hydroelectric capacity is subject to recapture by the public by 1975, and all of it by 2013.

To anticipate the license expirations, the Federal Power Commission in 1964 set up procedures to recapture or relicense power sites that made an already difficult recapture procedure even more difficult.

The FPC issued the original licenses on its own authority. But now it will send its recommendations to Congress for action, at least two years before a license expires. If Congress does not recommend recapture, a new license would be issued. The new procedure has been challenged, but not tested legally. So, for the present, a mere licensing arrangement has, through private power lobbying, been perverted into a virtual grant in perpetuity of public property to private corporations.

Over the past 70 years, several public agencies also have secured water and power rights on California rivers and, in 1913, Congress tried to keep private utilities from benefiting from this granting of public rights.

That came in the Raker Act, which prohibited the city of San Francisco from selling private utilities the power it developed on the Tuolumne River from the city's Hetch Hetchy project while operating under a Federal grant.

But when Congress passed the Federal Water Power Act in 1920, it buckled under severe pressures from utility lobbyists and deserted the public power principles of the Raker Act.

Under the Water Power Act, several irrigation districts and water agencies, as well as the State of California, are free to sell public power from public projects on public rivers to PG&E for resale to the public.

#### Water act

PG&E is making a killing off this public power, precisely the sort of thing the Raker Act was designed to prevent. Thus, PG&E exploits the public, not only through its own plants, built on the public domain under its own FPC licenses, but also by capturing the power generated by public agencies at plants built on the public domain under their FPC licenses or federal grants.

Historically, any time a public agency has wanted to dam a California stream, PG&E has followed a consistent pattern: Get the power into the PG&E system, or fight the project.

For example, PG&E and other private utilities fought the formation of the East Bay Municipal Utilities District in 1923. But PG&E and EBMUD have since worked out a cozy relationship.

Since EBMUD completed Pardee dam in 1928, PG&E has been getting all EBMUD power. EBMUD has never made even a gesture toward getting into the power business, even though the Municipal Utility District Act of 1921, which permitted the creation of EBMUD, authorized the district to go into the power, water and even the telephone business.

#### Two exceptions

Over the years, PG&E has captured every power-generating irrigation district and water agency in northern California, with the exception of two—the Turlock Irrigation District and the Modesto Irrigation District.

In 1952, PG&E commissioned an official 367-page company history, titled "PG&E of California: The Centennial Story of Pacific Gas and Electric Company, 1852-1952," written by C. M. Coleman. In it is found this pithy summation of PG&E's attitude toward public developments on the public rivers:

"Although the Company fought hard to preserve itself from government competition, it always willingly gave cooperation to worthy public water projects."

To PG&E, a "worthy public water project" is one in which the public surrenders its most lucrative product, electrical energy, to PG&E.

This, then, is the historic PG&E pattern: 1. Let a public agency build the most expensive parts of a hydroelectric project—the dams and canals—which PG&E would otherwise have to build and pay taxes on, then contract with that agency to deliver the falling water to the nearest PG&E power plant.

2. Or, better yet, let the public build hydro power plants too, then get the power into the PG&E system at low, fixed annual rates, under long-term exclusive contracts.

3. Make it clear to irrigationists and municipalities that PG&E will block public projects if the power contracts are not signed with PG&E.

4. All the while, wage vigorous publicity campaigns to convince the public that public water and energy from public water are logically and ideologically separable—that the public impoundment of water on a public river, and its distribution through public systems, is "a worthy public water project," while the distribution of the inevitable by-product of the release of that public water—public power—is the expression of an alien and subversive philosophy.

5. Pose as an altruist and argue that PG&E's piddling payments for this public power are helping irrigationists and municipalities to pay for their water projects, which could not otherwise be built.

6. Condition the public to ignore the fact that, if PG&E had exercised its self-celebrated "individual initiative" and built these projects for its power purposes, water users

would still be getting the benefits from stored water that they now enjoy.

Today, 10 public agencies in California generate power for PG&E. Seven of them are under exclusive long-term contracts to PG&E, delivering all their electricity at low fixed annual fees to the company. One of them, the State Department of Water Resources, is under contract to deliver 56 percent of the power generated at the \$500 million Oroville Dam to PG&E and the rest to Southern California Edison and San Diego Gas and Electric Co. until 1984. After that, all the power from Oroville Dam will go to PG&E.

#### Big profit

From all these public agencies, PG&E gets 10 percent of the electricity it sells to the public. PG&E gets this power so cheap, and marks it up so high, that public power accounts for 25 percent of the company's annual profits from electricity sales.

The Turlock and Modesto Irrigation Districts, the only two in California to do their own electrical retelling, charge 33 percent less for electricity than PG&E does in the irrigation districts the company has captured. And the Turlock and Modesto Irrigation Districts pay for their projects without any "help" from PG&E, of course.

In reality, water at the tap and water power at the wall plug are merely different manifestations of the potential energy of water stored at high elevations. Yet, because of PG&E-generated confusion, citizens who would become enraged to learn that all the water behind a public dam had been diverted to a private corporation for resale to the public are not at all shocked to learn a private company is selling them their own electricity.

PG&E confuses the public at every turn. When PG&E builds a dam on a public river, it is called a "power dam," even though downstream water users may benefit from the resulting year-round water supply. When irrigationists, or municipalities, or the state or the federal government build a dam, PG&E propaganda conditions people to think of it as a "water supply," though electricity, in vast amounts, may be produced from it—for PG&E.

#### "Water" project

Today's multi-billion dollar California Water Project should be called a "power and water project," since an immense amount of electricity will result from the state's impounding of Feather River water behind Oroville dam.

But PG&E and the other private utilities aren't openly fighting this project, for the simple reason that they are getting all the electricity from the public water project's \$500 million Oroville facilities and selling it back to the public at exorbitant rates. That according to the classic PG&E line, makes it a "water plan."

The State Water Resources Department is more than a generator of power for private utilities. It also will buy power from them to help pump water through the California Aqueduct that will carry water from north to south in the California Water Project.

The Water Resources Department has contracted to sell the power output of Oroville Dam—3 billion kilowatt hours a year—to the private utilities for a low fixed annual fee of around \$20 million.

#### More money

The utilities, in turn, will sell this hydro-power to the public during the peak daylight and early evening hours—and get an estimated \$42 million a year in revenue for doing it.

Then to supply the Water Project with the power for its pumps, the utilities will turn around and deliver 10 billion kilowatt hours of their thermal power to the state during the off-peak hours. That will cost the state \$26 million a year.

The utilities will sell the pumping power to

the state at cost, but they nonetheless will profit greatly from it. For it will enable them to keep their power plants running steadily and not just during the peak hours of general public demand, and thus avoid the heavy costs involved in shutting down and starting up steam generating plants.

There's an ecological aspect to this, too. Since the amount of water to be let out of the water project's Oroville reservoir will increase as Southern California's population grows, more water will pass through the powerhouses to generate electricity. And since the private utilities have contracted for all of the power from Oroville Dam, the more overcrowded Southern California becomes, the more PG&E and the others will profit.

#### Can't lose

Even if political opposition or legal injunction were to stop the badly conceived and possibly illegal California Water Project, the private utilities will come out on top.

Oroville Dam already is built, the contracts for power have been signed, and the utilities are getting Oroville power.

Should the Project be blocked, or even delayed, the state would be relieved of part of its responsibility to husband water at Oroville, and would be able to make large water releases for power generation to the private utilities.

If the Delta Peripheral Canal, last link between Oroville water and the California Aqueduct, is not built, political pressures will develop to find alternative sources of water to send south.

There would be a strong possibility that water would come from sea-water desalination plants, operated by the private utilities.

PG&E and other coastal utility companies are moving fast to get into that field and, with the Department of Water Resources, are now studying desalination in connection with thermal power generation, under an order from Gov. Reagan.

PG&E also has offered the U.S. Interior Department the use of its steam plants at Moss Landing and Morro Bay for experiments in desalination in connection with power production.

#### Nuclear plants

Nuclear power plants are enormous heat producers, and studies by the Atomic Energy Commission show that this heat can be used to convert sea water.

When President Johnson announced this in 1964 and indicated that the government would enter that area, shock waves were set up in the private power industry. The industry's trade publication, *Electrical World*, saw an "insidious" threat. "The alternative," said *Electrical World*, "is for electric utilities to assume a response role in the supply of potable water."

In other words, the private power companies are planning to get into the water business. Thus, historic trends are demolishing PG&E's carefully contrived cover story that water projects are public business and power projects are private business. To maintain their monopoly, PG&E and other private power companies must now get into the water business, too.

A further advantage to private power companies is that seawater desalination could be done during those off-peak hours when shutdowns are so expensive.

The implication for principled ecologist-conservationist foes of the Water Project is that they may be getting some covert, and unprincipled, support from the giant utility corporations of California.

Because of their strategic position in the economic life of the state and their enormous political power, the private utilities have been able to rig things so that, whatever the fate of the Water Project, the net result will be a public capital investment for their benefit.

Although Gov. Reagan has stopped the

Upper Eel River Development, the study is continuing. This project on the north coast river has a direct relationship to the Oroville power contract with the private utilities, and is specifically mentioned in the contract.

Section B-8 of the contract provides that, after 1985, the Department of Water Resources can release, for power generation, an amount of water from Oroville Reservoir greater than that to be released from the Upper Eel River Development.

#### More water

The Upper Eel River Development would build a 700-foot high dam at Dos Rios in the Coast Range in Mendocino County, about 20 miles north of Willits, and would create a vast reservoir that would drown 30-square-mile Round Valley with its Indian reservation and the town of Covelo, 30 miles upstream.

The plan for the Upper Eel River Development is to feed its water into the California Aqueduct at the Aqueduct's point of origin in the Sacramento-San Joaquin Delta and send it to Southern California.

This could relieve Oroville Reservoir of its role as "key conservation unit" of water for Southern California and allow the state to make greater releases of water through Oroville's powerhouses—not to meet water demands in the south, but to generate power for PG&E.

The development also could counteract conservationist opposition to the Delta Peripheral Canal. By using water from the Eel River to supply Southern California, the Sacramento River can be permitted to flow at higher volume, flushing out the Delta and preventing stagnation in San Francisco Bay. This will mean maximum releases of water through the powerhouses at Oroville, for maximum generation of power for PG&E.

#### "Or else"

Politically, this would be the alternative presented to the public: "Let us build the Upper Eel River Development, or the Delta and San Francisco Bay will be destroyed by diminished flow of the Sacramento River."

PG&E will have maneuvered the state of California into building a hydropower facility for PG&E at Oroville whose generating potential nearly equals that of all the PG&E dams in California, plus a new source of public power for PG&E at Dos Rios, plus an off-peak market for PG&E's thermal power.

Alternatively, if the Eel River is not developed, there will be a brand new product to be sold by PG&E—desalinated sea-water for the California Aqueduct, generated at PG&E's nuclear power plants.

The key to the control PG&E and the other private utilities have over public water power projects in California, apart from their ability to buy politicians and dominate newspapers, is their monopoly on thermal electric generating plants.

Hydro power, which is all PG&E permits the public to generate is variable. It fluctuates daily and seasonally, as well as from year to year, depending on annual precipitation. Therefore, to make it salable for modern power demands, which are comparatively steady, it must be firmed by thermal power.

Since private companies have a monopoly on steam plants in California, it gives them enormous coercive powers over public agencies in disposing of public power. The companies tell the public in effect, "You will sell your power to us, and on our terms, or you won't sell it at all."

#### PG&E in control

In 1941, when the Bureau of Reclamation first asked Congress for funds to construct a steam electric plant at Antioch to firm the power from Shasta dam, and build transmission lines down the Sacramento Valley, the result was a parade of PG&E executives, lobbyists and attorneys that has never stopped. Result: The Central Valleys Project

still has no steam plants, the federal project still is at the mercy of PG&E.

The California Water Project was originally designed to include a state-owned nuclear power plant, which together with the hydro power, would have made the project independent of outside sources of power to operate its pumps. The plant has not yet been authorized, though any observer of the private utilities in action knows that is intended to mean forever. Result: The private utilities will get \$39 million from Water Project power, plus an additional \$26 million payment for power from the Project itself, plus more economical performance of their steam plants and therefore greater profits.

More recently, PG&E blocked legislation which would have given the Northern California Power Agency, an association of 11 small municipal power cities, authority to jointly finance and construct a thermal power plant to serve their growing power demands. The bill had been passed by the State Senate, 21 to 4. Originally scheduled for the Assembly Local Government Committee, where proponents thought their bill had a chance, PG&E lobbyists got the bill switched at the last minute to the heavily pro-private utility Commerce and Public Utilities Committee by Assembly Speaker Robert T. Monagan (R-Tracy).

Observers on the scene saw evidence that the private power lobby had done an advance job on the committee members. The lobbyists were well represented in the audience. Assemblyman Kent Stacy of Kern County wryly asked the bill's author, Sen. Fred Marler of Shasta County, how he felt about changing the bill to add a provision to tax all publicly owned utilities, "as private utilities are." He was referring, of course, to the private utilities' pet project, the Bagley bill to tax public power cities, AB 908, recently withdrawn for the time being by its nominal author, William T. Bagley.

The committee, made up entirely of southern California conservatives, and headed by Robert Badham of Orange County, did not give the northern California cities a single vote.

Having fought successfully for decades to keep the United States government and the government of California from building steam plants in the state, the private utilities are not about to let 11 little cities do it.

The cities' desperate search for new power sources is based on the fact that the Central Valleys Project cannot supply additional power to its preferred customers (public power cities) after 1980. In 1967, PG&E forced the Bureau of Reclamation into an agreement that prevents the Bureau from accepting new preference customers or any new source of supply without the consent of PG&E and limits the amount of power CVP can supply to its existing preference customers to their estimated 1980 requirements.

The leverage PG&E used to get this lopsided agreement out of CVP was its monopoly on steam plants, on which the CVP is forced to rely for firming and making salable its Shasta hydro power. The multi-billion dollar federal CVP, and the preferred customers that are eligible to receive its power, are securely in PG&E's vest pocket, barring future lawsuits for anti-trust violations.

#### FCC stacked

The Federal Power Commission has retained jurisdiction to modify the 1967 PG&E-CVP agreement, but little hope lies in that direction: The chairman of the FPC is private utility, and a vice-president of the Arizona Public Service Company is about to be appointed head of the FPC Bureau of Power (he will also continue on the company payroll).

Meanwhile, PG&E continues to encircle the 11 cities. During recent hearings before Sen. Philip Hart's Anti-Trust and Monopoly

Subcommittee, R. W. Cowden, NCPA secretary, disclosed that PG&E has 1) refused to wheel public power to NCPA cities, 2) grabbed up all potential sources of non-PG&E power that the cities could use, including public power from irrigation districts and water agencies, surplus power from the Sacramento Municipal Utility District's Rancho Seco nuclear power plant under construction, also Union Oil's geothermal steam fields, 3) refused to join with the cities to construct power plants, 4) sponsored the Bagley bill, 5) opposed legislation permitting cities whose charters are silent on the matter to issue revenue bonds for public electric systems, 6) had the NCPA banned from membership in regional utility councils. To this list must now be added PG&E's maneuvers to block the HUD loan, and the lobbying effort to block the cities from building their own thermal power plants.

PG&E's obvious intention is to put the 11 public power cities out of business and consolidate its historic theft of the public domain.

Suggestion to NCPA: Move to recapture some PG&E licenses coming up for expiration in the next few years, under provisions of the Water Power Act of 1920.

#### Atomic power

And PG&E has even more ambitious plans for the future—a future of nuclear power.

PG&E already has one nuclear power plant at Humboldt Bay near Eureka, and another nearing completion at Diablo Canyon near San Luis Obispo. Several more are being planned. In late September, PG&E announced it will purchase a quarter billion dollars worth of uranium fuel in 1971.

The company will buy crude, un-enriched uranium fuel from mining companies and turn it over to the Atomic Energy Commission, which will purify it to increase the proportion of fissionable uranium-235, then turn it back to PG&E.

The enrichment process is carried out at three AEC plants, including those at Oak Ridge, Tenn., and Paducah, Ky., that are in the service area of the Tennessee Valley Authority.

According to the FPC, industrial TVA power costs about half as much as PG&E and other private power. So the cost to PG&E for having its uranium fuel prepared by the government will be greatly reduced by the government's use of cheap federal power from the TVA.

If the government had to buy power from a private utility to enrich uranium for PG&E, its power bills would practically double, and this would be reflected substantially in the cost of nuclear fuel for PG&E.

Thus PG&E will receive another indirect public subsidy in the form of cheaper nuclear fuel, processed with cheap public TVA power that PG&E and other private utilities condemn as "socialistic" when it is used directly by the public.

It will be just another typical chapter in the story of PG&E, a huge public parasite that dominates the political life of the state, compels the public to create vast public works in its behalf, usurps the public's lands, rivers and technology, buys off and intimidates the press and even picks the men who "regulate" it on the state Utilities Commission and the Federal Power Commission.

PG&E doesn't see it that way, however. Its official biographer writes:

"PG&E's position at all times has remained essentially the same—that of a staunch defender against political invasion of a business successfully created and maintained by individual initiative and developed according to the needs of a growing state."

HOW PG&E GETS \$67 MILLION OF PUBLIC POWER

D. L. Bell, PG&E's vice president and treasurer, recently put on a poor-mouth act for the State Public Utilities Commission.

PG&E, he maintained, must be granted \$67 million more a year in electrical revenues so that it can "maintain its credit and financial standing" with major investors.

The Guardian examined PG&E's rate application exhibit and discovered that, although Bell hadn't said so, PG&E already gets a public subsidy of \$67 million worth of public power.

The \$67 million—\$67.4 million to be precise—is that part of PG&E's annual revenue which comes from its sale of public power. This is power generated at public facilities such as dams, sold to PG&E cheaply and then transmitted and sold to the public by the giant utility.

It is by far the most profitable phase of PG&E's extremely profitable operations.

PG&E's own exhibits show the company made an incredible after-tax profit of 22 percent in 1969 from the power it generated itself. However, its profits from the public power sales were even greater—a staggering 54 percent.

In dollar terms, that was a profit of \$138,357,000 on PG&E-generated power and \$36,482,000 on the public power sales.

That made total profits of \$175 million—a figure that would rise by \$40 million if PG&E is granted its plea for \$67 million more in revenue.

None of this would be passed on the public agencies which have created huge tax-free capital investment and profit windfalls for PG&E. Their fees are fixed under long-term contracts.

#### PGE PLANTS ON PUBLIC RIVERS

Total installed capacity: PG&E hydro plants: 2,074,000 kilowatts.

PG&E-captured public hydro plants: 2,497,000 kilowatts.

California's rivers belong to all of us—and so do the sites where dams are built and electrical power is generated. But who occupies many of the sites, generates power and sells it to us? PG&E and other private utilities.

The utilities don't even pay much for this lucrative privilege. They operate under federal licenses which are granted for a nominal fee and are good for 50 years.

After the licenses expire, the public could take back the power generating sites—but only theoretically, thanks to private utility pressure on the Federal Power Commission that has subverted temporary licenses into grants in perpetuity.

Private utility holdings straddle almost all California rivers. The dates listed are the expiration dates of all 19 licenses held by PG&E and some held by Southern California Edison.

1 Humboldt Bay PG&E nuclear power plant, first of many contemplated by PG&E and other private companies along the California coast. These plants utilize fuel manufactured in government plants, and a technology developed by publicly financed research at a cost of billions. Public also insures these plants, because no private insurance carrier will take the risk.

2 McCloud and Pit Rivers Installed capacity: 656,000 kw. Oct. 23, 1973. July 31, 2011.

3 Pit River Indian Lands The government grabbed 3.5 million acres in Siskiyou, Modoc, Shasta and Lassen Counties from the Pit River Indians between 1854 and 1890. In June, Pit River Indians reclaimed their land and PG&E arrested them for "trespassing" on PG&E-operated campground. Arresting agents never asked PG&E to produce proof of ownership, and PG&E has never produced it. PG&E operates its Pit River powerplants on a federal license that expires Oct. 23, 1973. License is now subject to capture by public agencies. If not captured PG&E's license will be renewed for another 50 years.

4 North Fork Feather River Installed capacity: 628,000 kw. Sept. 30, 1982, Sept. 30, 2003, Oct. 31, 2004.

5 Bucks Creek Installed capacity: 52,500 kw. Dec. 31, 1968.

6 Eel River Installed capacity: 52,500 kw. Dec. 31, 1968.

7 Yuba River, North Fork Yuba River, South Fork Yuba River, Bear River and North Fork American River Installed capacity: 139,000 kw. April 22, 1973, July 1, 1991, April 30, 2013.

8 Bodega Bay Area set aside for a state park was grabbed by PG&E for a nuclear power plant. Bitter public opposition arose. Application withdrawn when it was revealed that plant would be within one mile of the San Andreas earthquake fault.

9 Arena Cove Proposed PG&E nuclear power plant.

10 Mokelumne River Installed capacity: 190,000 kw. Nov. 23, 1975.

11 Stanislaus River Installed capacity: 119,000 kw. Dec. 31, 2004.

12 Lee Vining Creek (Southern California Edison) installed capacity: 10,360 kw. Nov. 30, 1986.

13 San Joaquin River Installed capacity: 63,000 kw. Dec. 1, 1972, April 30, 1989.

14 San Joaquin River Installed capacity: 33,000 kw. Feb. 11, 1973.

15 San Joaquin River (Southern California Edison) installed capacity: 155,000 kw. March 2, 1971. Feb. 28, 1999.

16 Collinsville Proposed PG&E nuclear power plant.

17 Davenport Proposed PG&E nuclear power plant.

18 Moss Landing Large PG&E steam plant. Army Corps of Engineers developed harbor largely to bring in oil tankers to supply the plant with oil.

19 Kings River Installed capacity: 315,000 kw. Feb. 27, 1972, March 31, 1985.

20 Diablo Canyon PG&E nuclear power plant, under construction.

21 Tule River Installed capacity: 5300 kw. April 30, 1989.

22 Tule River (Southern California Edison.) Installed capacity: 2200 kw. June 15, 1970.

23 Kern River Installed capacity: 11,000 kw. April 29, 1975.

24 Kern River (Southern California Edison.) Installed capacity 42,000 kw. Feb. 27, 1975. April 30, 1996.

25 Owens River Tributaries Bishop, Birch and McGee Creeks. (Southern California Edison.) Installed capacity: 30,000 kw. Nov. 30, 1986.

26 Hollister Ranch SCE nuclear power plant, under construction.

Sources: PG&E rate application, 11970 PG&E annual reports to the state PUC Bonneville Power Authority, U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, California Department of Water Resources, California Irrigation Districts Association, San Francisco's Hetch Hetchy Annual Report, California Power Users Association, PG&E promotional brochures, Federal Power Commission.

#### PGE'S CAPTIVE PUBLIC POWER AGENCIES

PG&E, that grand old champion of free enterprise, has a new motto: Let the Public Build Them. That is, let us build the dams and powerhouses which generate power, then let PG&E grab the power and resell it to us.

This map shows the public facilities PG&E uses to get dirt-cheap power which it sells at exorbitant rates. (It is only 10 percent of the power which PG&E sells, but it accounts for 25 percent of PG&E's annual power profit of \$175 million.)

PG&E already has captured the public power generation of five irrigation districts, two county water agencies, a municipal utilities district of the California Water Project. It also gets cheap federal power from the Bonneville Power Authority.

But wait till 1984. By then, PG&E will be getting the entire power output of the state's huge 500 million Oroville Dam.

1. Columbia River Bonneville Power Authority Federal power sold to PG&E, SCE, SDG&E, Los Angeles Department of Water and Power, Central Valleys Project and State Department of Water Resources. BPA sells 763,000,000 kwh to PG&E for \$1,526,000. PG&E resells to public for \$12,972,000.

2. North Coast Rivers Legislation now pending would create 20 state and federal dams on the Eel, Trinity and Klamath Rivers—to divert water to southern California and the southern San Joaquin valley. Inevitably: More public electric power for private utilities, including PG&E to sell back to the public.

3. Sacramento River U. S. Bureau of Reclamation, Central Valleys Project. PG&E gets surplus power from USBR's power plants on Sacramento, Trinity, and American River watersheds, uses it to meet peak demands. Sells the thermal power to USBR when USBR cannot meet its load demands. Reason USBR can't meet its load demands: PG&E has blocked construction of federal steam plants in California. PG&E has also blocked construction of federal transmission lines, forcing USBR to pay PG&E to transmit power to its consumers, i.e., public agencies.

4. Upper Eel River Development. Department of Water Resources. Proposed expansion of the California Water Project. After 1985, Eel River water would be fed into the California Aqueduct. Water from this source, plus other north coast rivers, would reduce need for water conservation at Oroville Reservoir on the Feather River, permitting greater water releases for power generation at Oroville dam on demand by PG&E.

5. Feather River. California State Department of Water Resources. Sells 2,846,000,000 kwh to PG&E. SCE, EDG&E for \$16,000,000. Companies resell to public for \$48,382,000. After 1984, all Oroville Dam power will go to PG&E Jan. 31, 2007.

6. South Fork Feather River. Oroville-Wyandotte Irrigation Districts. Sell 386,000,000 kwh to PG&E for \$3,488,000. PG&E resells to public for \$6,562,000. Mar. 31, 2009.

7. Yuba River. Yuba County Water Agency. Sells 89,000,000 kwh to PG&E for \$240,000. PG&E resells to public for \$1,513,000. Apr. 30, 2013.

8. Yuba River. Nevada Irrigation District. Sells 350,000,000 kwh to PG&E for \$1,577,000. PG&E resells to public for \$5,950,000. April 30, 2013.

9. Middle Fork American River. Placer County Water Agency. Sells 839,000,000 kwh to PG&E for \$5,225,000. PG&E resells to public for \$14,263,000. Feb. 28, 2013.

10. South Fork American River. Sacramento Municipal Utility District. PG&E gets peaking power from SMUD's hydroelectric plants, sells thermal power to SMUD to supply district's base load. PG&E will get thermal power from SMUD's nuclear power plant at Rancho Seco, now under construction. July 31, 2007, March 31, 2007.

11. Mokelumne River. East Bay Municipal Utilities District. Sells 90,000,000 kwh to PG&E for \$487,000. PG&E resells to public for \$1,530,000. Power rights granted to EBMUD in 1925, in perpetuity, by special act of Congress.

12. Stanislaus River. Oakdale-South San Joaquin Irrigation Districts. Sell 374,000,000 kwh to PG&E for \$2,542,000. PG&E resells to public for \$6,358,000. Dec. 31, 2004.

13. Tuolumne River San Francisco Hetch Hetchy water and power projects. Congress in 1913 grants unprecedented rights to San Francisco to dam Hetch Hetchy Valley in Yosemite National Park for water and power development. Purpose: Public water and power for San Francisco through publicly owned distribution systems. Sale to private utilities expressly prohibited. For 15 years, SF openly sold power to PG&E for resale to the public, in violation of the Raker Act. S.F. also sells power wholesale to Turlock and Modesto Irrigation Districts, which then re-

tall it to their residents over public systems.

14. Tuolumne River Turlock and Modesto Irrigation Districts. Don Pedro Dam and reservoir. Power and water for districts' residents over publicly owned systems. San Francisco paid for half the cost of Don Pedro dam, but let the districts have all the power. S.F. has enough trouble getting rid of its Hetch Hetchy power to preserve PG&E's illegal monopoly in the city, without adding Don Pedro power.

15. University of California. A preference customer for the federal Central Valleys Project. The Berkeley campus could save \$5 million in 10 years by buying cheap CVP power instead of expensive PG&E power, a 1963 study showed. But PG&E refuses to wheel the CVP power to Berkeley, in violation of congressional power policy, and Cal Regents refuse to buck PG&E.

16. Santa Clara Headquarters of Northern California Power Agency, a group of 11 public power cities in Northern California—Santa Clara, Palo Alto, Lodi, Lompoc, Ukiah, Healdsburg, Gridley, Biggs, Roseville, Alameda and Redding. PG&E is trying to drive them out of the public power business by refusing to wheel cheap federal power to them from the Central Valleys Project and lobbying against them in Sacramento and Washington.

17. Newark End of the line for San Francisco's Hetch Hetchy power. There it passes through a PG&E tollgate and into PG&E's system. PG&E transmits it 35-50 miles to supply SF municipal services (22%) and out-of-town industrial users (38%) assigned to city by PG&E as a dumping ground to keep SF from selling its own power to its own residences and businesses. PG&E's annual wheeling charge to SF: \$2,000,000. SF's annual loss of revenue: \$30,000,000.

18. Merced River. Merced Irrigation District. Sells 345,000,000 kwh to PG&E for \$1,937,000. PG&E resells to public for \$5,865,000. June 9, 1974, Feb. 28, 2014.

19. California Aqueduct. San Luis Dam and power plant. Built jointly by State Department of Water Resources and U.S. Bureau of Reclamation. Power for water project pumps, surplus to PG&E, SCE and SDG&E. Supplemental power will be purchased from private companies, including PG&E.

20. San Luis Obispo Power Plant. Water flow from northern California will generate power for water project pumps.

21. Pyramid Power Plant. Water flow from northern California will generate power for SCE, Los Angeles, and Water Project pumps. Being built jointly by SCE and LA Dept. of Water and Power.

22. Castaic Power Plant. Built jointly by State Department of Water Resources and City of Los Angeles. Power for water project pumps and Los Angeles Department of Water and Power.

23. Owens River. (Los Angeles Department of Water and Power) Water and power rights granted to City of Los Angeles by a special act of Congress.

24. Kings River. Army Corps of Engineers, Pine Flat Dam. Federal government built a large dam, reservoir and powerhouse, but did not install generators.

25. Corral Canyon. Proposed Los Angeles Dept. Water and Power nuclear power plant.

#### LOGGING ON SHASTA FOREST SERVICE LAND

About 40% of Shasta County, nearly 1,000,000 acres, is held by the federal government. The economic fruits from this public land are enjoyed mainly by big business and not the public or the Indians. The following table compiled from government figures lists the amounts of timber in board feet bought and cut in Shasta National Forest by logging companies. These firms pay the forest service for the right to cut trees which they process into wood and paper products. They make money off the public land without any of the

responsibility of property ownership such as paying property taxes.

1965: Kimberly-Clark, 86,333,000; Nead Lumber, 6,490,000; Rochlin, 14,800,000; Brightwood Lumber, 16,500,000; Lorenz Lumber, 15,340,000; Trinco, 25,000,000; Diamond National, 23,000,000; International Paper, 14,100,000; U.S. Plywood, 45,670,000; Main Lumber, 28,500,000; South Fork Timber, 15,480,000; Cowning Lumber, 3,640,000; Trinity Alps Lumber, 35,800,000; Moss Lumber, 28,700,000; Frank Halbert, 315,000; PGE, 900,000.

1966: Nead Lumber, 6,260,000; Scott Lumber, 4,600,000; Humboldt Fir, 13,400,000; Diamond National 26,400,000; Cheney-Grant, 15,400,000; Continental, 15,400,000; Lorenz Lumber, 246,000; Rochlin, 10,300,000; Emerson, 22,200,000; Kimberly-Clark, 55,719,000; PGE, 2,300,000; Main Lumber, 4,500,000; S. Fork Timber, 47,100,000; S. Fork Salvage, 1,880,000; Carolina-Pac., 14,700,000; Tefco, 32,500,000; B & D Lumber, 3,600,000; International Paper, 17,000,000; U.S. Plywood, 24,800,000.

1967: Lorenz Lumber, 29,700,000; Kimberly-Clark, 73,287,000; Bunke, 406,000; Nead Lumber, 5,500,000; Twin Harbors, 2,000,000; International Paper, 43,800,000; Eagle Lake, 13,400,000; Talco, 21,000,000; Dinsmore Lumber, 43,600,000; Trinco, 12,000,000; Main Lumber, 45,940,000; B & D Lumber, 4,300,000; SP, 425,000; Crawford, 9,100,000; Emerson, 23,200,000; Lake Mt. Logging, 1,430,000; Scott Lumber, 14,800,000; S. Fork Timber, 2,040,000; Malaby, 520,000; U.S. Plywood, 166,000.

1968: Eagle Lake, 38,800,000; Carolina-Pac., 15,180,000; Paul Bunyan, 5,500,000; Cheney-Grant, 22,600,000; Lorenz Lumber, 35,829,000; Lazy J, 398,000; Trinco, 250,000; Diamond National, 21,000,000; Kimberly-Clark, 57,600,000; Lake Mt. Logging, 900,000; Bratton, 7,300,000; Crawford, 41,600,000; Main Lumber, 12,300,000; B & D, 5,000,000; Halbert, 702,000.

1969: Eagle Lake, 42,000,000; Commander, 23,400,000; Lake Mt. Logging, 2,500,000; Diamond Nat., 12,300,000; Paul Bunyan, 23,600,000; Cheney-Grant, 42,900,000; Klamath Ply., 2,850,000; Sierra-Pac., 19,000,000; U.S. Plywood, 16,544,000; Pub. For. Prod., 10,800,000; Stange Lumber, 500,000; Kimberly-Clark, 38,959,000; Lazy J, 390,000; Arney, 115,000.

1970: Moore, 4,157,000; Sierra-Pac., 36,800,000; Lorenz Lumber, 3,800,000; Main Lumber, 8,500,000; U.S. Plywood, 10,400,000; Carolina-Pac., 33,019,000; Cheney-Grant, 16,700,000; Inatl Paper, 3,800,000; AC Logging, 5,500,000; Pub. For. Prod., 13,868,000; SP, 972,000; Hyampan, 10,500,000; Commander, 9,000,000; Georgia-Pac., 38,000,000; Kimberly-Clark, 19,984,000; Trinco, 508,000; Schwartz, 269,000; Varwig, 184,000.

#### DEL MONTE CORPORATION

##### General information

Del Monte Corporation (until 1967 called California Packing Corporation) claims to be the largest producer and distributor of canned fruits and vegetables in the world. It markets 250 different styles and packs of food.

Del Monte has 17,000 year-round employees and seasonal employment ranges from 6,000 to a peak of over 39,000 (in 1969).

Del Monte's 23,000 stockholders own 12,260,323 shares. Its interlocking corporate links are illustrated on a chart which will be completed about February 20, 1971. It has major loans of \$30 million with Equitable Life Assurance and New York Life Insurance.

In February 1969, Del Monte claimed to own 32,000 acres of farmland and operate additionally 77,600 acres through leases in California, Hawaii, Northwest, Southwest, Midwest and Mountain States in the U.S. and in Canada, Kenya, Philippines and Latin America. (Lease holdings are difficult to research because they do not have to be recorded.) Processing plants are located throughout the U.S. and in Canada, England,

Italy, Kenya, Mexico, Puerto Rico, Philippines, South Africa and Venezuela.

DEL MONTE AND SUBSIDIARY COMPANIES—OPERATING FACILITIES AND SERVICES

	Domes- tic	Foreign	Total
<b>Food processing plants:</b>			
Canned foods.....	38	21	59
Dried fruits.....	3		3
Snack foods.....	4	4	8
Specialties and frozen foods..	6	1	7
<b>Related facilities:</b>			
Alcohol and vinegar.....	2	2	4
Apricot pit and kernel.....	1		1
Banana freighters.....		6	6
Banana terminals.....	3	1	4
Can manufacture.....	11	3	14
Canning machinery.....		1	1
Cattle feeding.....	5	1	6
Distribution centers.....	9	1	10
Farms, ranches, plantations..	28	12	40
Label printing.....	1		1
Research labs.....	4	1	5
Seed farming and processing..	6	1	7
Tuna freezing and storage.....		1	1
Tuna seiners and transport vessels.....		6	6
<b>Public transportation facilities and services:</b>			
Air freight forwarding stations.....	14		14
Ocean terminals.....	1		1
Trucking operations.....	4	1	5
Warehousing.....	4		4
<b>Other services and activities:</b>			
Building maintenance ac- counts.....	238	6	244
Food service accounts.....	617		617
Food vending accounts.....	218		218
Land sites under develop- ment.....	2		2
Public restaurants.....	24		24

Del Monte either owns outright or controls subsidiaries in Belgium, Brazil, Canada (3), Costa Rica, Ecuador, France, Greece, Guatemala, Italy, Japan, Kenya, Mexico (4), Panama, Philippines, Puerto Rico (4), South Africa, United Kingdom (2), Venezuela. They produce and distribute canned fruits, vegetables and specialties. Also canned meat products (Venezuela); canned tuna (Ecuador, Puerto Rico) fresh and frozen fruits and vegetables (Costa Rica, Mexico, Philippines), and snack foods (Canada, Mexico). Its brand names besides Del Monte include Award and Grand Tour frozen foods, Perky frozen meats and fruit pies, Granny Goose, Lin-Can in England, Alymer in Canada. In recent years the corporation has pushed diversification into some fresh fruit and vegetable promotion particularly asparagus, pineapple and bananas. Also institutional foods (airlines, restaurants and schools—a \$1 million contract through subsidiary Service Systems Corps. to provide lunches for 11,000 low income students in Buffalo during 1970-71), food and vending machines, building maintenance, land development, public warehousing, air forwarding and trucking. In November of 1970, Del Monte received ICC approval to buy four more trucking firms in California, Washington and Arkansas.

Largest canner in Canada

Del Monte owns the largest canner in Canada, Canadian Canners Limited.

West Sacramento, Calif., Port

Two of Del Monte's subsidiaries are West Sacramento Port Center, Inc., and Del-Pac Properties (Cal Pak Properties) which combined own in Yolo County, California, 3,106 acres of land with a market value of over \$7.7 million. As can be seen from the Yolo County maps, these properties are around the docking facilities of the Sacramento-Yolo Port District and the deep water channel leading from this port to the San Francisco Bay and the Pacific. West Sacramento Port Center, Inc., (see photos) is actively promoting its business properties between the port facilities and Interstate 80, the freeway linking Sacramento, the state capitol,

just across the river, with San Francisco Bay area. The port's deep channel can handle about 75% of the freighters now afloat.

The Port is a public agency financed by local taxes, federal money through the Corps of Engineers and Port fees.

In 1968 a group of citizens tried to have the West Sacramento area including the port and much of Del Monte's properties incorporated into a city to assure more orderly development and police protection. At that time, Del Monte took out its own petition against incorporation. When the issue finally came to a vote, Del Monte did nothing openly to oppose incorporation which lost by about 2-1.

In 1970 there was a move to set up a park and recreation service area. Del Monte officials repeatedly appeared at hearings to ask that their land be excluded. Board of Supervisors finally established the area anyway, but with two zones of benefit: one general which was to pay full tax fare on one, agricultural which would pay less. Opponents have filed a petition to kill the service area by the ballot and as of December 1970 were about to succeed. Del Monte did nothing publicly on the petition.

Some of Del Monte's West Sacramento land is in pears, some in field crops, some vacant and some subdivided for commercial purposes. There is some talk in the community of a possible Del Monte housing subdivision on some of its property below the Port near the deep water channel.

Granny Goose, are you grown up enough?

Del Monte acquired ownership of Granny Goose in 1966 for 300,000 shares. At the time Granny Goose operated five plants employing about 700 people and had annual sales of \$20 million.

In May of 1970, a federal grand jury in Los Angeles indicted four firms including Granny Goose for conspiring to raise and fix retail prices of potato chips, corn chips and other snacks in California, Arizona and Nevada. The others charged were Frito-Lay (owned by Pepsi), Dell Brand (owned by Sunshine Biscuits and American Brands) and Pet, Inc. At the time of the indictment, Del Monte said in the Wall Street Journal, "We understand, however, that the period mentioned in the complaint is prior to the time present top management took office." (I.E.: before Del Monte bought Granny Goose) The indictment dated May 26, 1970, stated: "Beginning sometime in early fall of 1959, the exact date being unknown to the grand jurors, and continuing thereafter up to and including the date of the return of this indictment the defendants and co-conspirators have engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in snack food products . . ."

On November 2, 1970, the four alleged conspirators pleaded nolo contendere, and on December 9, 1970, were each fined \$35,000 for 11 years of price-fixing. Still pending in Los Angeles district court are about 20 civil suits seeking triple damages. Plaintiffs include retail stores, school districts and the Zoological Society of San Diego.

Del Monte's California farmland

The corporation's principal landholdings in California I have been able to locate are in Merced, San Joaquin, Sutter and Yolo Counties. Each county map has on its face a small state map locating the county and with Del Monte's holdings colored in. Each county map is attached to a collection of assessor's maps for that county. These sheets illustrate the specific holdings. Del Monte apparently also holds some land in Yuba and possibly in Sonoma, but these have not been located. There are some leases possibly, but these are difficult to locate because they need not be recorded.

San Joaquin County, Calif.

Del Monte owns in San Joaquin County over 3,300 acres with a market value of over \$11.6 million. Included in this total is one piece of 3,125 acres with five labor camps and another several-block-long section of central Stockton with a canning factory and can plant, formerly owned by Continental Can. One large piece of city property was purchased last year in the name of Del Monte de Puerto Rico.

According to neighboring farmers the 3,125-acre piece is used mainly for asparagus but it was difficult to tell when I was there in December. The five labor camps on the property (see photos and San Joaquin assessor's map C33-4) with the exception of (5) the headquarters camp are surrounded by high barbed wire. One has high wire and a wooden fence facing the road. In December all camps with the exception of (5) were empty. It has come to me in years past and I was told again in December that when the other camps are occupied during the season, armed guards are posted to keep out "unauthorized" folks.

The block of land on assessor's page BKS 26, I figure was purchased for a future plant or warehouse site because it is located on a railroad and near an interchange of Highway 99, a main California highway, at the edge of the City of Stockton.

Sutter County, Calif.

Del Monte owns in Sutter County 1,448 acres with a market value of \$6.7 million. Included is a canning factory in Yuba City (assessor's page 2-12) and scattered acreages of peaches. At the center of one of these holdings—all peaches—assessor's page 19-07, is located a well painted frame farm labor camp with central toilet and shower. Several families were living there this winter. The county recorder's office has on file a number of financing contracts between Del Monte and growers wherein as part of the mortgage agreement the grower must deliver his crops to Del Monte for the life of the contract. The scattered nature of the holdings in this county seems to indicate that some of the properties were acquired through foreclosures.

Merced County, Calif.

Del Monte owns in Merced County 5,100 acres with a market value of \$6.9 million. It is mostly in peaches with some 1200 acres in figs . . . and numerous farm labor camps. On assessor's page 42-05 surrounded by peaches in one camp (10) plus some scattered houses and a load dock (9). Camp (10) seems to be basically a single man's facility with some guys around doing pruning in January.

None of the camps on page 53-09 were occupied in January except for caretakers. On assessor's page 53-12 camp (1) has single men in it year round, (5) is the HQ camp with offices and some houses, (6) is empty in winter, (2) is empty. On assessor's page 37-01, camp (8) is occupied year round with families and has been since it was constructed about 1953. Some 25 families live there this winter. A few have lived there since 1953. The places—of cement blocks—don't look too bad—see photos—except for the whole prison camp feel: high wire fence topped with barbed wire (a Del Monte trademark), huge no trespassing sign at the gate. The grounds are one big mudhole in the winter rains. There is no hot water in the units. No baths. No toilets. No heat. When the workers complain, they are told the camp was made for summer use only even though it has been used year round for over 16 years. Each building is a duplex. Each duplex, two rooms: a cold water kitchen with stove and refrigerator furnished, and a living room-bedroom. I have talked with families with up to eight people who have lived—and still live here—One man said for two years he slept in an overstuffed chair while his wife slept with the kids crossways on the bed and the baby was in the kitchen

in a crib. The central-toilets-showers have hot water but no heat. Daily low winter temperatures in this area commonly range in the 30s and 40s with maybe 20 mornings of hard freeze every year. The families heat their two rooms by turning up the cooking stove. Some long time regular employees and straw bosses get two of these two room units for their families. The units are rentfree as long as the men work for Del Monte. If they are laid off by the company they can work for other farmers in the area and remain in the camp. The only stipulation is that they must be available when Del Monte wants them back.

The camp has a company store run by the camp manager. Credit is available. Charges are deducted from an employee's check. From various current and former Del Monte workers I heard the usual range of company store honors, none of which are verifiable:

(1) the camp manager has some say over who goes to work in the slack season. He favors those who buy at the company store and/or have charges there.

(2) a destitute traveling family sometimes never gets out of debt. They arrive broke, start work and charging at the company store at the same time. And they charge away most of every paycheck before they get it.

(3) charges in the company store are slightly higher than stores in town.

The arguments for the store—and the high fence—were: The fence and the store keep the kids from running across the highway and getting killed which supposedly happened to a little girl before the store was opened. The whole truth is that Del Monte had a store in another camp which now is not open all year. Del Monte has high barbed wire around all its camps except HQ camps whether they house little girls or just single men.

Del Monte is paranoid about the farm workers union. They're super uptight about any "strangers" entering the camps. In the fall of 1970, a Merced County public health nurse was thrown out of camp (8) and ordered to check with the main office every time before she went back. Now she calls the ranch HQ every time before she visits anyone at the camp. A self help housing organizer was not allowed to put up a poster for the program in the Del Monte office or the company store.

In 1964 Del Monte in cooperation with a local school district sponsored a tutoring program at one of the camps for some six weeks in August and September. The program attracted so much interest that in 1965 the county school district obtained a \$100,000 federal grant for a large scale program also in a Del Monte camp. In September, community workers under the grant passed out leaflets in all the local farm labor camps including Del Monte's. The leaflets announced that the state law requires all school age children to attend school and not work in the fields during school hours. The next day (Saturday) the top county school officials were rolled out of bed early when a posse of about 10 growers including a representative of Del Monte stormed into Merced to complain that the leaflets had frightened away some of their workers, that families were packing up and leaving. When the school officials said they were only publicizing the state law, the growers answered that, state law or no state law, they didn't want anybody in their camps in the future unless they had specific permission from the owners to be there. Figs (the late crop picked after school starts) tend to be harvested more by families because there's work for almost any age. The fig trees at Del Monte's in Planada are very short and require no ladder work like peaches and other tree crops. This makes it somewhat easier for a family to pick up extra money. Fig orchards are picked several times. After the first picking there are fewer figs each time through and more work is required to get the same amount of boxes.

The piece rate is boosted on these later pickings to provide another incentive to work whole families.

Everybody I've talked to about Del Monte confirms the residue in my memory that the company uses many wetbacks; neighboring farmers, folks in town, locals now working at Del Monte, former Del Monte employees. A local worker on a pruning crew in January said that 15 of 20 men were wetbacks. A man who worked a pruning crew in December said 18 of 21 were wetbacks. He said wetbacks are actively recruited on the other side of the border by coyotes who charge the men \$250 a head to get them up here and in jobs with forged papers and social security cards. Other workers insisted to me that the company fixes wetbacks up with the papers and the social security cards. A farmer who used to own land near Del Monte's said that he has no doubt that Del Monte encourages the recruitment of wetbacks but is sure that it is done in such a manner that Del Monte cannot be held directly responsible. He says that Del Monte has an intensive recruiting program on the border and in Texas and also is not above stealing other farmer's workers. This farmer said Del Monte brings in workers by the busload, one time even a busload of Chicanos from Nebraska! Still other workers insisted that the company doesn't do anything to recruit wetbacks but just hires whoever comes along. Wetbacks, according to my informants, are paid the same as the locals and receive checks directly from the company. Some of the locals claimed to me that the presence of the wetbacks does lower the wages. The wetback being illegal has to accept any wages and conditions. The local to work alongside of a wetback has to do the same. Several of the locals told me that the immigration makes periodic raids, like at the end of harvesting and at the end of pruning—to prove they're doing their job.

These workers said they think the company knows when the raids are coming. Maybe they're ordered. That's my idea. That way the wetbacks would get a free ride back to the border. Local workers claim they don't like the idea of wetbacks, but "they need jobs, too, and I wouldn't feel right turning them in all the time."

Documentation of the raids awaits reports from the immigration on activities over the past several years.

In the fall of 1967, during a farm labor shortage scare, Del Monte was one of less than 10 growers in California who through the courtesy of Governor Ronald Reagan had the use of 200 prisoners to harvest figs. They were available for about a month beginning in early October. A state appeals court has since ruled use of prisoners in private employment is unconstitutional. Presumably they were paid the "going rate," but I found no one who knew this for sure.

All the local workers I talked with are Chicanos up to the rank of straw boss and foreman. They all felt what one described as a subtle discrimination. They claimed there was only one Chicano on salary, that all others were paid by time and/or piece work. One young Chicano with a year of college worked for the company five years in the office and in the fields. He lived for some time in the camp described above and finally in a company house. He said they kept promising him good promotions, but he said he could feel a subtle discrimination against Chicanos rising above a certain level regardless of ability or education. Finally he became convinced he wasn't going anywhere and quit, last summer. He now works full time in a Planada liquor store. He said all the upper supervisors are not from the ranks but moved in from the outside.

All workers complained to me about the fluctuating wage policies of the company. Most work is on contract or piece rate.

Workers are not sure day to day what the rate will be. On some occasions they are told the next day what the rate was on the previous day—after the office does some figuring. Sometimes they are told in the middle of the day what the rate is for that day, after one of the supers from the office checks how the work is going. Workers say the company likes to keep the rate so a man's daily pay does not get too high—or presumably too low although workers did not complain about that. They said that sometimes if the men make too much in one day, the rate is lowered for the next day or the men may be moved to another block, another crew moved in where they were yesterday and the rate lowered. Sometimes the rate is raised if the work goes slow but most often they are just given a pep talk. One man told me that the piece rate is kept so that a man makes right close to \$2 an hour. They are paid the \$2 an hour for eight hours if they prune, for example, a certain number of trees, and then a "bonus" is added for each tree over that amount in one day. He said the rate is fixed and changed whenever and however the company unilaterally decides. The aim is to keep the men working like hell to make the quota with small chance of getting one or two extra trees at the end of the day . . . at best.

All Del Monte present and past workers and neighboring farmers agreed that Del Monte pays slightly better and that conditions in the fields (water and toilets) are slightly better than other growers in the area, although the consensus seems to be that Del Monte works a man like hell.

A number of workers complained about getting sick with pesticides. One man reportedly even spent some time in the hospital. Another said that even now two years after he got sick he still occasionally wakes up at night in a sweat with that pesticide rash. The impression I got from most guys is they can't see pesticides as a big issue.

An ex-farmer who operated near Del Monte around Planada said the company goes out of its way to be a good neighbor, cooperating, on the distribution of irrigation water, loaning machinery and selling old machinery at low prices after they have depreciated it on their books. This same grower said the peaches on the Planada ranch are a marginal operation. They have shown a profit only two or three years since World War I. The figs are profitable, however, he said. He also pointed out that the peach deficit may be a bookkeeping operation because all of Del Monte's farming is geared to the canneries—to make the processing and efficient money-earning deal. Del Monte can afford to "lose" money on farming and make it up on canning. Such a set up might even be desirable because if Del Monte pays less for its peaches, it also pays less for peaches bought from other growers. Their farming operations may be used to regulate the market, as well as regulate the operation of their canneries. This same farmer reported that Del Monte makes an effort to keep its contract growers happy and loyal by financing their entire farming operations and making payments to them "under the table" in excess of contract terms in certain cases. The same farmer said that when he was in on the operation of a co-op cannery Del Monte once gave him a load of peaches because it couldn't be worked into the schedule of one of its factories.

Another ex-grower who sold Del Monte his 840 acres near Ballico in Merced County said Del Monte gave him a good deal and paid a fair price. The man said he wouldn't have been able to survive the present wave of "labor unrest and mechanization." At the time of the sale he also was faced with the problem of his partner's death and an impending divorce. He said Del Monte took over all his workers and was "too" loyal to some who did not produce for them. Del Monte fixed up his old labor camp. Within the con-

text of its operation, Del Monte is good, this grower said; but he's not sure he's in sympathy with large corporate operations in agriculture. "It does things to the market to destroy competition and efficiency." This man also complained about the trend with corporate and government control which is squeezing out the individual in farming. He noted the Cling Peach Advisory Board, a state sponsored group which controls the production of canning peaches. Estimates are made on projected crop needs and possible production in the spring, and a certain percentage of green drop is ordered. A grower must strip a set percentage of his green peaches off his trees—or cut out an equivalent of trees. At harvest time, more projections are made and, based on these figures, some peaches may be "diverted" at the canneries. The aim of the program is to maintain prices by limiting supplies. The individual grower is at a decided disadvantage in relation to the canners in this system. About 50 per cent of his costs are tied up in the current crop—irrigation, labor, fertilizers, sprays. If after that he has to drop some of his green fruit—or even worse pay to have peaches picked and then diverted—he's up against it.

Another grower, small operator who went broke growing tomatoes, told me it is his opinion that the basic canner-grower relationship, Del Monte or anyone else, leaves the grower at a disadvantage. The natural interest of the canner is to encourage overabundance of whatever crop to drive down the price. In this relationship the small grower is in the weaker position especially when so many of them depend on the canners for financing. The make up and control of the Cling Peach Advisory Board awaits receipt of some more information.

#### San Jose, California, dried fruit plant

The business agent of the International Longshoremen's Union which has jurisdiction of the Del Monte dried fruit plant in San Jose, California, told me that last fall management stopped the union from collecting food for the lettuce strikers in the plant and openly pushed in-plant collections for the United Fund. Management told the union that collections for the striking farm workers were not in the best interest of the company. At the start of the United Fund drive, the plant superintendent stepped out of his office into the plant and in a loud voice said, "If anybody doesn't want to contribute send him to the office so he can explain it to me." The union wrote a letter of protest saying that if collections for the farm workers were forbidden so should the United Fund solicitations. The company answered, "Denial of access to such a widely accepted charitable agency such as United Fund would be a sharp departure from contemporary business and community standards."

For years, this union has had with Del Monte in San Jose an informal hiring hall agreement whereby after calling back all workers previously with the company, the bosses would contact the union for any additional people needed. In 1969, Del Monte backed out of this arrangement because an official from the San Francisco office of federal contract compliance said Del Monte would have to advertise more widely for job openings to provide fair employment. Now, according to the union, there are more Anglos and fewer Chicanos and Blacks being hired than when the company dealt directly with the union.

#### Del Monte bananas

Following item from the October 30, 1970, issue of Moody's Industrials:

"Del Monte Corp.

"Proposed acquisition of Guatemala banana operations of United Brands Co. will be effected for over \$10,000,000 cash, subject to approval of Guatemalan and U.S. authorities. Under agreement, Co. will not acquire title to United Brand's holdings until 1972.

Before that time and subject to Govt. approval, United Brands would supply Co. with a substantial quantity of bananas which would more than double Co.'s banana marketing operations. Increased production would be marketed under Co. name by West Indies Fruit Co., Co.'s subsidiary. United Brand's banana production which Co. does not acquire will continue to be marketed under Chiquita brand name. Agreement will help United Brands satisfy part of conditions of a 1958 consent agreement in an anti-trust action under which it agreed to form a competitor to handle about 35% of its import volume."

In that area of the world Del Monte already owns—in part—100% of Del Monte International, Inc., a Panamanian company. In 1968 Del Monte went into the banana business by buying West Indies Fruit Co. of New York, West Indies Fruit Company International, Atlantic Banana, Federal Transport Co. of Panama, Bananas SA Ecuador, Penn Shipping of Panama and Southern Stevedoring.

#### San Francisco urban renewal

Del Monte plans to build a 35-story \$30 million international headquarters building in the Yerba Buena Center, a questionable redevelopment project in San Francisco. This particular project started out in the mid-50s as a small scale, light industrial spot clearance project near downtown. Under press from the city's private promoters, it was gradually shifted geographically and conceptually until it became a major clearance project for office buildings, a big hotel, arena and shopping center. At one point the city was sued for ignoring the folks and had to agree out of court that it would plan 1500 new housing units which it had not wanted to do. There have been loud and continuing screams from liberals about the project. The edifice complex and all that. One of the beneficiaries of this program is to be Del Monte through the purchase of choice downtown land at a cheap price, fully cleared for building. The Del Monte deal is now being challenged in the courts by Alvin Duskin, the San Francisco dressmaker, who has been fighting skyscrapers generally and the state water plan. In the court case, Duskin is claiming the redevelopment agency sold the land to Del Monte at way below market value. Duskin also has launched a signature collection drive for a city ballot initiative to require direct voter approval for all buildings over six stories.

#### IMPERIAL VALLEY

Imperial County, California, on the U.S.-Mexican border, is the sixth richest agricultural County in the United States. This wealth is 100% dependent on a heavily subsidized federal irrigation system (welfare plan) which illegally delivers water to large landowners. These farmers get additional welfare support in the form of:

Subsidies for growing and not growing crops.  
Soil conservation funds for improving their lands.

Land management and crop advice.  
Illegally low farm assessments.  
Cheap labor, most of it foreign, much of it illegal.

One of their welfare programs—cotton-grain subsidies—in 1969 paid 252 Imperial growers \$8 million compared to the \$7.8 million received by the 17,760 local residents on poor people's welfare.

About 24 per cent of the Imperial County population is on poor people's welfare. The official county unemployment figure is over 11 per cent—nearly 50 per cent above the state-wide rate. According to the local director of the state employment office, 90 per cent of Imperial farm jobs are held by Mexican commuters who cross the border daily. In the past 10 years, one of every two farm jobs has disappeared. Farm employment has

plummeted from 14,700 to 7,500. In the peak season, jobs are scarce; in the off-season, non-existent.

Poor people's welfare, in contrast to what is available to the landowners, is meager, and many times not readily at hand (especially for those who are not up-to-date articulate on their rights.) So folks get hungry.

Soothing the abrasive Imperial gap between the few rich and the many poor is the "war on poverty". One of the local ointments in this war is the Rural Development Corporation (RDC) which has set out to promote housing, educate the farm workers, and develop jobs. It has an English and citizenship program in which students receive a stipend of \$20 a week—hardly more than gas money to get to school in a rural area. This winter as the classes progressed on the long range benefits of citizen participation and learning English, RDC students, teachers and administrators became overwhelmed with the blowing-in-the-wind futility of trying to talk away the rising tide of unemployment, deprivation, and hunger. The end of February 1971 (beginning of the farm slump season in Imperial) RDC was able to release \$5,000 for emergency food distribution. The money was passed out in \$30 food orders per family; 166 families were helped. Perhaps, hardly more than another futile gesture, but RDC couldn't stand there talking about democracy and conjugating verbs without trying to do "something" immediate for starving people. The citizenship classes of RDC were used for outreach to contact hungry families. This is some of what they found on the first day of food distribution:

A family with eight children. The father breaks his leg and then can't find work for several months. In January he disappears. The wife and kids live in a small trailer. There is no table in the kitchen and the rest of the trailer is laid out as a haphazard sleeping quarters.

A widow with eight children pays over \$100 monthly for four rooms with no inside running water.

A family with 13 kids. Last year, the man joins the farm workers strike to improve wages. He is blacklisted by Imperial Valley ranches.

Numerous farm workers with families cannot find work during the February-June off-season in Imperial. Welfare is increasingly hard to come by, so they migrate to Texas or the San Joaquin Valley of California (sometimes without their families).

A farm worker's widow with five children lives in a one-bedroom house.

A family with six children. Wife is dying of cancer. As the woman gets weaker, her husband stays at home to take care of her last three months of life, (he can't afford to do this.) He can't afford any kind of help. One week after receiving their food voucher, the wife dies. As this is being written, the husband is taking up a collection among his neighbors and friends to pay burial expenses.

A family with three kids. Husband falls off tractor, and an operation at the county hospital leaves him almost paralyzed. His disability runs out, but his scar from mid-stomach to mid-back swells painfully whenever he exerts himself. He works occasionally when a job is available, but he doesn't think he can continue.

A family with six children has been living in a three room house for six years (rent: \$45) No inside toilet or bathroom. No money for school clothes.

RDC distributed \$5,000 worth of \$30 food order vouchers. A few hundred people were fed. RC is planning to pass out an additional \$10,000 this spring—a few hundred people will be fed a couple of more times. How far does a \$30 food order go with six to 13 kids??? It takes some of the edge off the hunger. Draws some of the fire out of the anger, but

nothing will have changed in Imperial Valley. The rich will continue to be very rich. Very powerful. Very subsidized. Very illegally subsidized. The poor will continue to be deprived, powerless and effectively ignored, and all the kids will once again be hungry a week after the last food voucher is issued.

The poor will continue to be poor because the rich are hogging the public welfare.

Nothing will ever change in Imperial County until the basic priorities of that society are radically altered to conform to the democratic principles and laws of this land. The first step in that direction is a recognition that Imperial County is a corporate-socialistic province in which the ruler's claims to wealth and power rest on the questionable laurels of unfair and oft times illegal subsidies (welfare) payments and the bald exploitation of the poor, particularly those of Mexican heritage. Let us now look at these laurels.

#### The water subsidy

Imperial County is a hot, dry, low desert. The annual rainfall ranges between two and three inches. The soil is rich from Colorado River silt deposited over the eons, but farming would be impossible without irrigation. The big Colorado is the source. In 1901 the first irrigation water was brought to Imperial from the river 60 miles away. Four years later, a roaring flood washed away the diversion works, and water poured into the Valley for two years until 1907 when the Southern Pacific Railroad finally filled the breach. Even after that irrigation in Imperial was a chancy business. The Colorado was untamed. The flow was seasonal. The Alamo Canal which fed water into the valley from the river traversed part of northern Mexico first. The U.S. Bureau of Reclamation said these conditions "severely impaired the full economic development of the area."

Imperial landowners wanted an American Canal and a harnessed Colorado. They got both with the Boulder Canyon Project: Hoover, Parker, Davis, General Wash Dams and the first delivery of irrigation water through the All-American Canal in 1940. "It now may be said with confidence," bragged the Imperial Irrigation District, "that no section of our nation is more assured of a permanent and prosperous future than is this valley." In other words, the Boulder project financed by the U.S. taxpayers and built by the Bureau of Reclamation saved the Imperial Valley from recurring disastrous floods and now delivers into perpetuity and on order the irrigation water required to make that desert a garden. The subsidies built into this system would stagger the conniving imagination of that mythical welfare mother who continues to produce kids so she can collect more dole.

#### (1) Free dams

The Imperial farmers who use irrigation water from the Colorado project do not pay one red cent for the cost of the three dams which regulate the river, store their irrigation water, deliver the water on their demand and save them from floods.

The Bureau of Reclamation states:

"Hoover Dam pioneered reclamation's present-day giant, multiple-purpose developments. Its benefits encompass the whole concept of river control."

"The dam controls floods and stores water for irrigation, municipal and industrial uses, hydroelectric power generation, recreation and fish and wildlife. . . . This water is released in a regulated, year-round flow to farms, homes and factories downstream."

"Water stored in Lake Mead (behind Hoover Dam) irrigates 3/4 million acres of land in this country (over 1/2 million acres in the Imperial Irrigation District) and 1/2 million acres in Mexico. . . ."

"Colorado River water stored behind Hoover Dam irrigates some of America's richest farmlands."

California Department of Water Resources says, "Davis Dam, 67 miles downstream (from Hoover) . . . is used primarily to regulate the water . . . in accordance with downstream water requirements in the United States and Mexico. . . ."

"Senator Wash Reservoir . . . provides for a limited but valuable amount of additional regulation."

Despite these statements of the irrigation benefits derived from these three dams, the Bureau of Reclamation in its financial statements does not allocate one cent of the dam's costs to irrigation; therefore, irrigators repay nothing. They get a free ride. A subsidy. A dole. Most of the Hoover and Davis dams' costs are allocated to hydroelectric power and reimbursed by power. Most of the power is used in urban areas which means that the electric customers in the cities (as far away as Los Angeles) are subsidizing irrigation for Imperial farmers. When Bureau of Reclamation cost expert Gene Hines in Boulder City, Nevada, was asked why none of these dams costs were allocated to irrigation in view of the admitted irrigation benefits, he said, "Apparently there were no obvious beneficiaries at the time the costs were allocated."

The Boulder Canyon Project Act was authorized December 21, 1928. The Imperial Irrigation District (IID) was organized in 1911, and began actively leading the campaign for the Hoover Dam and All American Canal in 1920. The Metropolitan Water District of Southern California (Los Angeles area), another agency which delivers irrigation water illegally from the Colorado, was organized in 1928 before the project was approved, and its representatives lobbied for its passage.

#### ESTIMATED IRRIGATION SUBSIDY FROM COLORADO RIVER DAMS<sup>1</sup>

	Total cost	Estimated irrigation subsidy
Hoover	\$177,000,000	\$35,000,000
Parker-Davis	152,000,000	30,000,000
Senator Wash	58,000,000	58,000,000

<sup>1</sup> Based on a 20 percent ratio for irrigation on Hoover, Parker, and Davis, and 100 percent for Senator Wash. The 20 percent figure is on the low side to compensate for the large amount of city water in the Los Angeles part of the project. Irrigation is allocated over 60 percent of costs in the Federal Central Valleys project in California. I guess that 100 percent of General Wash is chargeable to irrigation because the only purpose of the dam is to regulate the river for the farmers.

The Boulder Canyon Act contains language which permits the irrigators to get free dams. The legislation says: "that no charge shall be made for water for irrigation for potable purposes in Imperial or Coachella Valleys."

Such phrasing, however, does not preclude a realistic evaluation of the subsidy involved. In standard Bureau of Reclamation procedure, the function of the allocated cost concept is to give a clear picture of the division of expenditures by function on multi-purpose projects such as Boulder Canyon. The reimbursable costs reflect the division of repayment obligations, if any, by the various users. The Bureau policy on irrigation, for example, is that the users are charged not on the basis of costs but on the basis of the Bureau's estimate of their "ability to pay." In the Central Valleys Project the bureau allocated over 60% of costs to irrigation. The reimbursable costs—what the irrigators were actually required to repay—was 17%. The amount of the irrigation subsidy there, is easy to figure. Not so on the Colorado. Apparently the big landowner-speculator coalition (led by Los Angeles Times and Irvine) which promoted the project desired to have the subsidy (welfare) tracks (covered) as much as possible.

(2) Free flood control: Minor proportions of Hoover Dam costs and the entire cost

of Senator Wash Dam are allocated to flood control which is a totally non-reimbursable item. The cost is paid by the federal taxpayers, nothing is paid by those protected from floods—like the IID. Another subsidy. Another welfare program.

#### Nonreimbursable flood control

	Million
Hoover Dam	\$25
Senator Wash	58

NOTE.—None of the Parker-Davis Dams' costs are allocated to flood control or irrigation as noted above; but out of the \$152,000,000 expenditure some \$13 million is allocated to Municipal and industrial water, presumably for the Metropolitan Water District whose water is diverted from the Colorado at Parker Dam. The Met made a \$13 million contribution toward building Parker-Davis Dam. Incidentally, the Met does deliver irrigation water from the Colorado, some to Orange County. The biggest landowner there: Irvine Ranch, 88,000 acres. Irvine is the second largest landowner in Imperial with 10,000 acres.

(3) Free water: As noted above, IID is not charged for any water it uses from the Colorado by special exemption from Congress. The argument, in effect, being that since IID used river water before the project went in, they had some sort of a property right and the Federal Government could not charge Imperial for water it already owned. As noted in the section on "Free from the Law," below, ownership of the water is not the key factor in application of the 160 acre limitation. The law applies to all water stored, regulated and/or delivered by a federally subsidized facility.

Imperial Irrigation District (IID) receives from the Colorado River 2.6 million acre feet of water a year. This is slightly more than the 2.5 million acre feet which is used yearly from all its sources by the entire Metropolitan Water District. The population of Imperial County is about 74,000. The population of the Met which extends from Oxnard to San Diego is over 10 million.

An acre foot of water is 326,000 gallons—enough water to cover one acre one foot deep. One acre foot would supply a city dweller with enough water for over four years if we assume the daily per capita city use is 200 gallons—a high figure.

Per capita use in Los Angeles is now 188 gallons; in San Diego, 153.

Assuming about two million acre feet of IID's water gets its 500,000 irrigated acres, that means that each acre uses four acre feet of water a year. An individual could survive over 16 years on that much water.

(4) Free interest: IID does have some obligation to pay on the Boulder Canyon Project costs. It pays a pro-rata share of the costs for the diversion works and the All-American Canal which carries the water to the district from the river. This is a 40 year contract—in reality a 55 year contract. (see paragraph below.) On this contract no interest is charged. The federal taxpayers pick up these costs. Another subsidy. Another dole. If interest were charged the \$28 million now being repaid by IID would be nearly tripled.

(5) Free ride for 15 years: All-American Canal began delivering water to IID in 1940. The district began repaying its reimbursable share in 1955. That's like buying a house and not making a payment for the first 15 years.

(6) More free flood control: All-American Canal costs \$70 million; of this, \$4.5 million is allocated to non-reimbursable flood control. When asked about this, Hines of the Bureau at Boulder City said that figure covers some levees built in the valley to prevent flooding.

(7) Free from the law: Terms of the Federal reclamation law under which the Colorado River facilities were built require that delivery from any federally subsidized irriga-

tion project be limited to enough water to farm 160 acres for each owner. The law has been interpreted liberally to allow man and wife 320 acres—and a real conniver could run-in a 160 acres each for a couple of other relatives also.

Reclamation law further states that one owner may obtain enough water to irrigate endless acres if he signs a contract with the federal government in which he agrees to make available for sale his "excess land" (over 160 acres) within 10 years at a price which does not take into consideration the increment in value resulting from the subsidized water. The purpose of this section is to prevent "undue enrichment" and to stop profiteers from gouging buyers for the "unearned increment" in land prices contributed by the federal project.

Harry Horton, late buyer for IID, once told Congress that under terms of this section, the big operator could sign the contracts, farm their lands for 10 years, sell at about any price and come out quite well.

Another part of reclamation law provides that the acreage limitation shall apply to all waters which are stored, regulated and/or delivered by facilities financed in whole or part by the United States. The same law requires that irrigators live on or near their land.

The specific rationale for these regulations is that the benefits should be widely dispersed because all federal irrigation water is heavily subsidized through free interest, free flood control, electric power, etc., and as a result the land skyrockets in value. The general rationale: the better society is the one in which the power and the wealth are broadly enjoyed and controlled.

Clearly this law applies to the Imperial Irrigation District. But in the lame duck February, 1933, days of the Hoover Administration IID was exempted, without benefit of a government legal opinion (by a mysterious series of memos). IID's attorney wrote Assistant Reclamation Commissioner Porter Dent asking for a ruling on the 160-acre limitation in Imperial "Provided, that such ruling would be that the 160-acre limitation did not apply." Dent passed the request, with an approving memo, on to Northcutt Ely, as Assistant Secretary of Interior. Ely agreed without following the usual procedure of obtaining a legal opinion from the department's solicitor. An exemption letter was drafted and signed by Secretary of Interior Wilbur.

Two weeks later, Roosevelt replaced Hoover in the White House, and Northcutt Ely took a retainer with the IID—a position he still holds.

In 1964, Interior Solicitor Frank Barry ruled that Wilbur's letter was "clearly wrong," and that the law applied. This federal turnaround set the stage for a court case precluded by another curious set of events—another object lesson in California power politics.

To fight the new attack, Imperial's largest landowners organized Imperial Resources Associates (IRA). Its initial guiding light was Robert Long, vice-president of Irvine Ranch (10,000 acres in Imperial, 88,000 in Orange County, both illegally receiving Colorado water). Long is now a vice-president (in charge of agricultural loans) for Bank of America, world's largest bank, financier of over half of California's farm production. Long's favorite speech was a warning about how the little farmer would suffer along with the big grower if acreage limitation were enforced. IRA elected as its president, Stephen Elmore whose three family companies farm over 17,500 acres in Imperial. Presently the Reclamation Commissioner, Floyd Dominy, representing the agency mandated to enforce the law, went to Imperial and told the growers, "I think it is time to examine whether the 160-acre principle is sufficient for today's farming." Following this rousing

support of law and order by Dominy, IID and the farmers rejected all formal Bureau of Reclamation proposals to apply the limitation. On January 11, 1967, the U.S. Justice Department filed a suit against IID in San Diego federal court.

IID went into battle with its regular legal battery while IRA hired O'Melveny & Meyers.

O&M, a bi-partisan political powerhouse in California, attaches one of its top men to every important candidate in every important political race in the state. In 1970, they had a man with Reagan and a man with Unruh. In the U.S. Senator's race they assigned a man to George Murphy, a man to Norton Simon and three men to John Tunney, the eventual winner. One of Tunney's O&M assistants was Warren Christopher who first met Tunney in Washington when Tunney was the congressman from Imperial and Christopher was a deputy attorney general on leave from O&M. That was when Christopher's partners were defending Imperial's big farmers from this federal onslaught. Perhaps a conflict of interest?

Another O&M partner, Allyn Kreps, was a honcho in the winning 1968 campaign of California's other liberal senator, Alan Cranston. Kreps in 1964 ran the initiative campaign which killed much of California's fair housing law. Chief sponsor of that law was Assemblyman Jesse Unruh, the candidate for governor Kreps managed in 1970.

Republican Governor Reagan blasted attempts to limit farm size in Imperial, and the State of California in the person of its Democratic attorney general entered to case on the side of the big operators.

In January 1971, U.S. District Judge Howard Turrentine ruled the 160-acre law did not apply in Imperial. His decision relied mainly on the 1933 Wilbur letter and the fact that it had not been openly challenged by the Congress. The Justice Department brief had said, "... the Wilbur letter must be recognized for what it was—a partisan effort by a lame-duck administration to effect, by administrative interpretations, an exemption ... that proponents never dared risk seeking directly."

Turrentine's decision was in keeping with California water litigation history: most lower courts rule with the big landowners; the U.S. Supreme Court rules for the people. At one point, Turrentine was quoted as saying, "Let's get it on the way to the Supreme Court." However, appeal now depends on the politics of Nixon's administration. Nixon has long been on record against acreage limitation. The government has until early April to take the case up to Appeals Court.

Meanwhile another suit is pending in San Diego Federal Court. About 125 mostly landless Imperial Valley folks are asking that the resident requirements of the law be enforced in IID. A little quoted section of the law states that farmers irrigating with federally subsidized water must live on or near their land. About 70% of IID is held by absentee owners living outside of the county. The case is to be heard in mid-March. Art Brunwasser of San Francisco is attorney for the folks led by Dr. Ben Yellen.

The battle over acreage limitation has been long and bitter. Never in the nearly 70-year history of the law has it been strictly enforced. The special interests arrayed against enforcement have, in the final analysis, been too strong for the public interest to prevail. The stakes in terms of power and wealth in Imperial and throughout the West (particularly California) are staggering. First of all, the big operators could not build their own irrigation projects and pay the full costs; so they turn to the federal government for subsidies. The subsidies involved are only the beginning and in the long view not much more than incidental. Delivery of water to arid land multiplies the value up to tenfold. Water makes possible great wealth. With a small number of big opera-

tors, like in Imperial, the wealth is thereby concentrated as is control of the communities' economic and political destiny. Imperial's big operators not only have babies on their water welfare program, they have continentals, private planes and their very own U.S. Senators.

Strict enforcement of the 160-acre law in Imperial would dethrone, but far from impoverish a privileged class of owners who have been enriched on the public dole for over 30 years. According to 1969 figures of the Imperial County office of the U.S. agricultural Stabilization and Conservation Service, 139 individuals and companies farm over 60% of the IID (300,000 plus acres) in operations of more than 1,000 acres each. The 139 figure is further narrowed when the overlapping and joint ownerships are considered. The Elmore family, for example, has three companies with a total of over 17,500 acres. Conglomerates have moved into Imperial to cash-in on control of the Colorado and cheap water: Purex, United Fruit, Kaiser-Aetna, Dow, and Irvine Ranch. The closest estimate of outside, absentee ownership, is about 70% of IID's 500,000 irrigated acres.

When the "farmers" organized against the 160-acre limitation, the driving force came from Irvine Ranch with headquarters in Orange County, near Los Angeles, and the Elmores who live on the coast near San Diego.

#### CROP SUBSIDIES—1969 WELFARE IN IMPERIAL COUNTY

	Number	Total payment	Per capita yearly average
Poor folks.....	17,760	\$7,800,000	\$439
Farmers.....	252	8,000,000	31,746

<sup>1</sup> Federal program for growing and not growing cotton and grains. Sugar payments not included.

The federal government also gave Imperial Valley growers over \$2.6 million in sugar-payments in 1969.

Many of the same growers are involved in both programs. The Elmores, for example, collected \$489,006 in cotton-grain subsidies in three different companies. Under the same three names they got \$93,652 in sugar payments. Irvine Ranch was doled \$174,408 in cotton-grains; \$17,000 in sugar. Even the local congressman, Victor Veysey got in on the handout. He was paid \$10,000 in the cotton-grain program and \$3,500 in sugar.

Last year Congress enacted a \$55,000 subsidy limit per farmer per crop. A man can collect \$55,000 for cotton, \$55,000 for wheat, \$55,000 for barley, etc. Also a farmer can rent out his crop allotment over the limit in each crop and realize 60% to 90% of what he took in previously, depending on how much rent he can charge. Also the sugar program is not included in the limitation.

#### Soil conservation subsidies

Over the past five years, 1966 through 1970, the U.S. Soil Conservation program has paid Imperial growers \$1.7 million to improve their land. Nearly 90% of these funds have been used for concrete ditch lining and underground drainage tiles to leach away salt-laden water. This work has been carried out under a cost-sharing arrangement established by IID which is also the local soil conservation district, the only such tandem operation in the county. Under district policies, landowners pay 25% to 30% of the costs; the district and the federal government pick up the rest of the tab.

#### Land management and crop advice

Imperial County, like other counties, maintains an agricultural commissioner's office and a farm extension service. These offices carry out state laws on inspection of crops, control of weeds, insects and predatory animals and provides farmers with ad-

vice and assistance in general farm operations. The Imperial County 1970-71 budget for these two departments is \$340,000. The state hires and pays 11 technical and professional workers in the extension office at an added expense of about \$150,000.

#### Research subsidies

IID is conducting three experiments in cooperation with (being subsidized by) government agencies.

To control weeds in the canal system, an African fish is being introduced with help from the California Department of Fish and Game.

Pollutants in irrigation and drainage water are being monitored with help from the U.S. Geological Survey.

Water consumption and drainage problems are being studied with help from the U.S. Department of Agriculture.

U.S. Department of Agriculture operates an experimental farm in Imperial at an annual cost of —.

University of California operates an experimental field station in Imperial at an annual cost of \$229,000.00.

Almost every advancement in farm mechanization, new chemicals and crop management techniques has been developed through research projects conducted at the University of California. These new methods are primarily responsible for the drastic decline in farm jobs. The University has done nothing in research to help improve the conditions of farm labor.

#### Electric subsidies

As noted earlier a disproportionate share of the Colorado River Dam costs are charged off to electricity. Nothing is charged off to irrigation. Power users, mainly city dwellers from as far away as Los Angeles, subsidizes irrigation for Imperial. This electric subsidy is compounded in IID, itself. The district acts as an electric utility. It distributes power; some of which it generates at drops along the All-American Canal, some of which it generates with steam, gas and diesel plants and some of which it buys from the Bureau of Reclamation. IID rates are relatively high for a public power agency, not because costs are particularly high, but because the district uses its electric revenues to give the irrigators another subsidy. Paul Post recently retired general superintendent of IID power sales, says that subsidy was planned from the beginning and has been carried out. The 1969 IID annual report shows that the power division paid to the federal government \$420,000 to cover canal costs; the water division paid nothing. In previous years comparable but lesser amounts were paid from the same power account. On close look, IID's financial statement reads like a report from a power company, not an irrigation district.

#### 1969 Imperial Irrigation District annual report

Water sales, \$5,700,000.  
Electric sales, \$13,000,000.  
Rural electric sales, \$600,000.  
Residential, commercial electric sales, \$12,000,000.  
Public agency electric sales, \$400,000.  
Water deliveries, cities, towns, 240,000 acre feet.  
Irrigation, 2,500,000 acre feet.  
Town residents in Imperial—including poor people welfare recipients—pay high electric rates so the big landowners can get cheap irrigation water.

#### Illegally low farm assessments

In the mid-60s local crusading Dr. Ben Yellen began exposing "fake low assessments" on farm properties. By comparing sale prices to values assessed by the county for tax purposes, he found that farm land was being assessed from 6% to 12% of market value, while cityland was being assessed

at 25% to 35%. A state Homeowners Association study confirmed Yellen's charges. In 1966 Yellen announced for county assessor. He ran a close third, but the "swindler" incumbent was defeated anyway. The victor: a man who had just quit as assessor-tax collector for the IID.

A spot check in February 1971 seems to indicate that the "fake low assessments" of six or seven years ago are not quite as fake as they used to be; but the farmers still seem to be favored. Farmland tends to be assessed at near market value; cityland, overassessed. And it seems that the most gross overassessments occur on the cheaper houses. The old-soak-the-poor philosophy of Imperial County is being carried into the 70s. To substantiate these charges a complete study of county land sales for the past year would be required.

#### Cheap labor

Squashed tight up against Imperial's southern line is the colossal Mexicali slum, Mexico's fastest growing city. Stories of Yankee gold draw literally hordes of destitute "campesinos" here from the sparse interior. Mexicali's population is soaring over 450,000. The whole of Imperial County is only 74,000. The pressure on the border is lean, hungry and relentless. Legal border crossings have risen from 8.9 million in 1965 to over 11 million in 1969. The apprehension of illegal Mexican aliens in the Imperial district has nearly doubled in five years. The U.S. border patrol picked up 6,933 wetbacks in 1965; 13,590 in 1970. At least 90% of Imperial's 7,500 farm jobs are held by commuters from Mexico—legal and illegal. The border patrol is outrageously undermanned and demonstrably unenthusiastic about the wetback issue. It is an open community secret in Imperial that thousands of Mexicans work illegally on the U.S. side of the border. Some are wetbacks who cross surreptitiously, either evading the border patrol or passing with forged papers. Others cross "legally" as visitors or shoppers and stay on illegally to work. Many middle and upper class Imperial households have cheap domestic help in this category, and illegals are known to work in many different Imperial jobs and hundreds of miles north of the border.

(Ironically, one illegal was exposed recently working for a war on poverty program in Fresno nearly 500 miles north of Mexico. He had been there three years.)

The border pressure works both ways: workers want to go north; business wants to move south. Under a convenient no-duty entente, some 89 U.S. owned assembly plants are operating in Mexicali. Perhaps the largest employer in this category is Mattel Toys which has 2,000 workers in a Mexicali plant.

Their wage rates: \$2.24 to \$3.68 a day, sometimes slightly more for piecework. The people work six days, earn about \$22 weekly.

The burden of this nearly open border and the concentration of land ownership is reflected in Imperial's stagnant economy.

Donald W. Baerresen, research director of the Center for Advanced Studies in International Business in Los Angeles says, "Here in Southern California much of our staggering welfare costs is due to the overflow, legal and illegal, of indigents across the border."

Between 1960 and 1970, Imperial County's population remained static at 74,000. The percentage of Anglos declined from 59% to 52%; Chicanos increased from 33% to 37%.

Over 75% of the county's low income families live in Calexico, the tiny (10,000) community just across the border from Mexicali.

Between 1960 and 1969 while farm jobs declined 50%, construction jobs dropped 10%, manufacturing jobs remained static.

Over 24% of Imperial County is on poor people's welfare.

The doctor-patient ratio in Imperial County is one for every 2,300 while the national average is one for every 650.

A 1970 U.S. Department of Labor study concluded: (1) "Commuters generally are paid the same wage rates as residents of the border community, but wage rates in most border areas are lower than in the remaining sectors of the border states and lower than the national averages for similar industries. . . (2) "Unemployment rates on the United States side of the border . . . are far higher than the average unemployment rates for the border states and are among the highest in the country . . . (3) "Border areas have a relatively high incidence of federal wage-hour violations."

Clearly, the concentration of landownership, much of it absentee, is sucking the local wealth out of the county.

Clearly, American corporate socialism, both agricultural and industrial, is exploiting the poverty on both sides of the border. The poor, in effect, are subsidizing the rich through cheap wages, just as the rich are being subsidized through various welfare programs they have courtesy of the U.S. government.

Dr. Yellen has filed suit in Washington, D.C. federal court in an attempt to have the Bureau of Reclamation set the electric rates for IID. Federal law requires that when the state Public Utilities Commission does not set rates for such as IID, the federal government must.

Yellen also promoted California Rural Legal Assistance (CRLA) to file a one-man, one-vote suit against IID, because the voting districts were not close to equal. Judge Kirk in the Imperial Superior Court ruled against CRLA. The case was appealed and demanded to Kirk. CRLA will seek to have Kirk disqualified this time around. *For over 10 years before becoming a judge, Kirk worked in the law firm which represented IID.*

#### PROFILE OF POWER STRUCTURE IN SAN JOAQUIN VALLEY

The singular fact of economic and political power in California is that much of its prime agricultural lands are held in large tracts by absentee owners. The patterns of large holdings—or large holding—prevails in the Delano grape area, western Stanislaus County, the Sacramento-San Joaquin Delta, Orange County, Imperial Valley and, most significantly in the San Joaquin Valley's west and south sides between Los Banos and the Grapevine (south of Bakersfield). Once the significance of concentrated landownership is understood, all of the political fights over water and farm labor—and most of the state's other public policy battles—fall neatly into focus. The interests which control this land are interlocked with all other facets of the California economy. They work in both political parties. They romance organized labor, particularly the building trades.

The largest holding in the San Joaquin Valley is Kern County Land Company (KCL) which owns about 350,000 acres in Kern County. That's equal to a 6-mile wide strip of land extending from San Francisco to Sacramento. Or from Los Angeles to Santa Barbara.

This holding was acquired in post-Civil War days through political fraud, economic pressures, legal harassments and conventional purchases.

KCL in 1966, is, however, far more than a land giant in a remote agricultural county. It is an international corporate octopus. A modern illustration of the maxim that the sins of fathers shall be visited upon sons.

KCL operates cattle feeding yards in California and Kansas, oil leases along the Gulf Coast and in Australia and Canada.

Twenty-five percent of American automobiles are equipped with exhaust products produced by a KCL subsidiary, Walker Manufacturing. One of Walker's three plants is located in Aberdeen, Mississippi. Another subsidiary, Deluxe Products, which makes oil filters has a plant in Holly Springs, Mississippi.

KCL holds controlling interest in J. I. Case farm machinery. It is developing real estate for residential, commercial and industrial use in Bakersfield, Santa Monica, and Hawaii.

KCL owns interests in a Palo Alto electronics firm, a Coalinga asbestos mine, a co-op winery. It holds canal companies, an almond hulling plant, a fruit packing operation.

Its directors sit on the following boards, in some cases with high office: Bankers Trust, General Electric, Matson Navigation, Pacific Mutual Life Insurance, California Ink, Hewlett-Packard, Varian Associates, Pillsbury, Owens-Illinois Glass, Western States Life Insurance, American Trust, Emporium Capwell, Pacific Telephone, Western Pacific Railroad, Pacific Gas & Electric, Rand Corporation, Brunswick Drugs, Security First National Bank, First National Bank, Firemen's Fund Insurance Company, and others.

The KCL operation was put together in the 1870's and 80's by James Haggin and Lloyd Tevis, two San Francisco financial manipulators, and Bill Carr, who gained fame as chief political hatchetman for the Southern Pacific Railroad.

The trio, with Carr as the man in Bakersfield, moved into Kern County with immense financial resources and tremendous political juice. In less than 20 years they gained title to nearly 400,000 acres.

When the Southern Pacific was selling land to no one, the ring—as the Haggin-Tevis-Carr operation was called by the liberal San Francisco Chronicle—was able to buy vast SP tracts, directly some 100,000 acres, indirectly another 62,000. The fact that Tevis was vice president of SP helped.

In the mid-70's the ring obtained 30,000 acres which had been entered with forged soldiers' scrip. The titles were clouded so Congress passed and President Grant signed, on his last day in office, the Desert Land Act.

Before the general public discovered the implications of this measure, the ring had secured the 30,000 acres of fraud and entered another 70,000 acres, all through dummy filings. The Visalia land office was put at the disposal of Carr all through a Saturday night and Sunday to file the entries.

The Desert Act allowed entries up to 640 acres for \$1.25 an acre, while charges under the regular Homestead Act were \$2.50 an acre for 160 acres.

The new act also waived the residency requirement on the grounds that the so called desert lands could not be inhabited until reclamation projects were completed.

Bitter protests led by the Chronicle forced a federal investigation which proved that most of the dummy entrymen had perjured themselves in the affidavits—they had never seen the land on which they filed and they did not know if it was desert land—in fact large portions were farmed without irrigation. Among the dummies were employees of firms controlled by Tevis and Haggin, including Wells Fargo and Central Pacific Railroad, plus government employees under Carr's control at the mint and the customs houses. All the dummies gave their land to the ring.

In a later hearing, the ring admitted that it had inspired entrymen friendly to their interests. Haggin declared the whole fraudulent operation was justified because reclamation and irrigation projects were feasible only under large ownership and that the ring planned, once the projects were complete, to sell off the land to settlers.

The federal government bought this argument. Haggin's claim that the big operators would build irrigation projects and sell off is comic in light of modern day developments; i.e., the Central Valley's Project financed by the federal government and the State Water Project financed by State and Federal funds are bringing water to these lands.

Incidentally, KCL land is not for sale—the cost factor was so low that sales would

put the company in an unfavorable tax position. However, KCL in 1964, did sell 10,000 acres in northern Kern County. The reason according to the KCL land offices in Bakersfield is that the situation might arise when the company could no longer guarantee delivery of irrigation water to these lands, farmed by tenants. The future is uncertain because the federal government has been talking about enforcing a federal law which limits the delivery of irrigation water from subsidized projects to no more than enough to irrigate 160 acres of land. Kern River water is now supposedly subject to that law—as yet unenforced—because the river is regulated by the federally constructed Isabella Dam.

The federal government debates this issue with itself while KCL tenacles reach far beyond the "home" base in Kern County. In fact, "home" base is not Kern County, but San Francisco has been since the beginning. KCL never held a stockholders' meeting in Kern County until 1961.

Southern Pacific Railroad owns 201,000 acres in the Valley. It got this land free about 90 years ago for building a railroad part of which was never completed.

The Boston Ranch Company holds some 37,000 acres. It is owned by J. G. Boswell who also holds 32,364 acres in his name. Also under Boswell control are: Crockett-Gambody, 28,503 acres; Tulare Lake Land Company, 10,392; and Miller and Lux (by lease), 25,313 acres.

Over 168,000 acres is owned by the Tejon Ranch which is controlled 50 per cent by the Los Angeles Times, explaining perhaps the newspaper's great concern for water development. Tejon holds another 100,000 acres south of the Kern County line.

Another large holding in the San Joaquin Valley is the 52,000 acre Vista del Llano owned by Anderson, Clayton and Company (ACCO), the largest cotton marketing firm in the world. ACCO is the most extensive private financier of crops in the U.S., a key exporter of Brazilian cotton—and coffee, part owner of a large ship operating combine, a manufacturer of oleo, soft drinks, instant pizza, salad oil. ACCO owns an insecticide plant in Mexico, a soap factory in Brazil, a farm in Peru, cotton oil mills in Argentina, cotton gins in Paraguay. It has agencies in Thailand and Turkey, Korea and Holland, Yugoslavia and South Africa—and 38 other countries.

Another large holding is the DiGiorgio Fruit Corporation owning a total of 26,000 acres of California farm land. DiGiorgio subsidiaries include: Wood Canning, S & W Foods, Treesweet Products, Sun Vista Foods, Klamath Lumber, Earl Fruit, Philadelphia Terminals Auction, New York Fruit Auction, and Chicago Fruit Auction. The New York and Chicago auctions are owned 45 and 13 per cent respectively. DiGiorgio controls the growing, and shipping, the canning and the selling of its products on the eastern markets.

Directors of DiGiorgio also sit on the following boards, in some cases with high office: Bank of America, Union Oil, Broadway-Hale Stores, Pacific Telephone, Lockheed Aircraft, Petroleum Equipment Suppliers, Southern California Edison, Foremost Dairies, Fibreboard Paper, California Ink, Bank of California Merchants National Realty, Transamerica Insurance, Firemen's Fund Insurance, Pacific Gas and Electric, Crocker-Citizens National Bank, Bell Telephone of Nevada, and others.

The biggest portions of the larger holdings are controlled from San Francisco (KCL and DiGiorgio), Los Angeles (Tejon Ranch), and distant points (ACCO). Even some of the local big operators are involved in non-farm corporations. The Giffen family of Fresno owns some 60,000 acres in this area and farms perhaps another 60,000 under lease mainly from SP. Russell Giffen is a

director of the Pacific Gas & Electric, the world's largest private utility.

Now under construction through the westside of the Valley, is the State, Federal San Luis irrigation and municipal water project. The main canal enters from the north approximately at Los Banos and extends south-southeastward through the middle of all these above mentioned holdings except DiGiorgio. The canal will turn sharply eastward near Bakersfield and will leave the Valley through the Los Angeles Times' Tejon Ranch.

This project will be subsidized by the State and Federal taxpayers—over \$1,000 per acre in some places. On water projects financed in any way by U.S. tax funds, the Federal law sets a subsidy limit to any one owner: enough water to irrigate 160 acres of land (320 acres for man and wife). This subsidy limit has been waived on the major portion of this land by Federal administrative fiat—contrary to legislation by Congress. When small farmers, unions, and church groups in 1964 stormed a U.S. Senate interior subcommittee in protest, the Federal administration announced some re-tightening of its loose regulations. Since then, Department of Interior officials have once again relaxed in favor of the large landowners.

In one 600,000 acre portion of the Valley Federally subsidized irrigation water will be delivered through a local governmental agency created under California State Water law. The name of this agency is the Westlands Water District. SP owns 120,000 acres in this district; Giffen and Anderson-Clayton operate here. When the district holds an election each person has one vote for every dollar's worth of property he owns. The SP land agent drives down from San Francisco to cast 20 per cent of the vote all by himself. It is not surprising that he holds one of the director's chairs. The president of the district is Russell Giffen, a 100,000 acre operator who also is a director of Pacific Gas & Electric.

Manager of the district is a lawyer named Ralph Brody. Brody began his career in the U.S. Bureau of Reclamation which builds the water projects. He learned the water law so well that when Pat Brown was elected Governor, he named Brody his special counsel on water. Brody succeeded in snaking the State water plan—which will deliver water to the large landowners—through a hesitant State legislature. Brody succeeded where two Republican Governors had failed. Almost immediately he was hired as the manager of Westlands and appointed by Governor Brown as chairman of the California State Water Commission, a body which makes basic decisions on irrigation water projects. A conflict of interest?

It is Ralph Brody who speaks for the State of California at Congressional hearings on Federal appropriations for water developments. It is almost funny to have him sitting before a U.S. Senate committee as Water Commission chairman and introduce himself as manager of the land barons' Westlands Water District.

On the charted portions of this map, some of the richest land in America awaits full exploitation. The largest block of class I soil in the U.S. lies just south of Los Banos in Westlands. It is useless, of course, without irrigation water. Its value dry is estimated at about \$100 per acre; with pumped water from expensive deep wells, around \$350; with subsidized canal water, \$1,000. The land will be worth just about what the taxpayers will pay out in subsidies.

These subsidies and the fabulous increment in land values explain why, when a \$1.75 billion bond issue to finance part of the State's contribution to the project was on a November, 1960, ballot, the biggest financial donors to the successful "yes" vote were Tejon Ranch and Southern Pacific.

The area of the historic Delano grape strike includes the following holdings:

DiGiorgio, 26,000 (4,700 in strike area); Schenley, 3,700 (plus 700 leased); Anthony Bianco, 6,795; W. B. Camp, 4,908; Anton Caratan, 1,129; Mila Caratan, 2,183; P. J. Divizich, 5,500; John Dulcich, 1,431; Elmco Vineyards, 3,610; Guimarra, 12,459; George Lucas, 940; Pandol & Sons, 2,288; D. M. Steele, 4,187; A & N Zaninovich, 2,283; Marko Zaninovich, 3,686; V. B. Zaninovich, 2,157.

These holdings are not entirely in the strike area. Who are the owners of these lands?

Anthony Bianco, for example, owns grapes outside of Delano. His headquarters are in Fresno, and he owns 240 acres of grapes in Fresno County. He also owns 400 acres of grapes at Arvin which is near Bakersfield. He has packinghouses at Sanger in Fresno County, and in Delano. He also grows grapes near Thermal in Riverside County, where he also has a packinghouse. He has a 500 acre peach orchard near Tipton along with 200 head of cattle and pasture land. He has cherry orchards near San Jose, but his biggest ranch is 4,000 acres of lettuce, cotton, vineyards, and citrus near Glendale, Arizona. This was bought by a syndicate formed by A. Blancos, Sr., and Jr., Carl Jarson of Detroit and Peter Malbandian of Phoenix for \$2,600,000. The Delano ranch cost \$500,000 and the Tipton ranch also cost \$500,000. Bianco has an office in New York to handle eastern shipping. He ships 3,000 rail and truck lots a year. Each carlot holds about 1,250 lugs, so he ships a total of 3,750,000 packages a year. Of course, not all of these are grapes, and not all of the fruit is grown by him. He buys from Lodi and Modesto southwards throughout the San Joaquin Valley.

Anthony Bianco is a director of the Grape Crush Administrative Committee which administers the bulk wine marketing order. He is also on the board of the Allied Grape Growers Association, a grower wine processing co-operative.

W. B. Camp, who was an assistant director of the Agricultural Adjustment Administration (AAA) during the New Deal was head of the entire cotton division, and was also the director of the Southern Region. He came fresh from his job of agricultural appraiser for the Bank of America (1929-1923). He made his money off the destruction of potatoes on a Kern County airstrip which was the New Deal's way of putting business back onto its feet while 19 million workers were unemployed and hungry. He owes his fortune to the Democratic Party. He was president of the quasi-facit Associated Farmers of California, the director of the agricultural committee of the State Chamber of Commerce. His wife is a farmer in Edgefield County, South Carolina and is a director of the Bank of Trenton, South Carolina. W. B. Camp is mainly a cotton grower, and is a small grape grower.

Delano has been a relative late comer in the history of California agriculture. As in almost all of the State's farming, the well-spring of wealth and power is water—captured, pumped, stored and spread out on the rich land at the command of the grower.

Even by arid California standards, the Delano area was not well-endowed by nature—it was mostly sagebrush, with no rivers nearby—so the first settlers went elsewhere. The keystone development came in the 1920's when Joseph DiGiorgio, an entrepreneur with a Sicilian grape background, began to pit vines and well water against the Delano sagebrush. After a faltering start and much experimentation, DiGiorgio and others who saw him making it, expanded their operations and perfected their grapes.

As they drew more and more water out of the ground for their multiplying vines, the underground water table sank lower and lower. The expense of drilling new wells down to the fading water table became prohibitive for all but the bigger operations.

According to records cited by Chief Engineer-Manager, Sam Fortier of the

Delano-Earlimart Irrigation District (the strike area), between 1905 and 1948 the water level dropped at least 100 feet; and in some parts of the district, as much as 250 feet. DiGiorgio and the other grape growers were literally pumping themselves out of business.

In the 1930's, the U.S. Bureau of Reclamation began work on the huge Central Valleys project. One of its long range aims was to bring river water some 100 miles into the Delano area. This rescue water began to arrive, via the Friant Kern canal, in 1951.

Since then the water table has gradually risen. The average rise has been 50 feet; as high as 100 feet.

Federal officials place the cost of supplying Central Valleys Project water at \$700 an acre, of which the growers repay \$123. The remaining \$577 per acre comes from Federal taxpayers and the users of project electric power.

The 160 acre subsidy limit is supposed to apply to the Delano area. Some of the big growers, mostly notably DiGiorgio, have agreed to this limit in signed contracts; but compliance has been bogged down in weak-kneed enforcement of a weak law—and DiGiorgio continues to use subsidized water for much of its holdings—contrary to the letter and the spirit of Federal law. Others of the big growers, Schenley for example, have decided not to sign any agreements of compliance with the Federal law; and the huge whiskey maker is allowed to pump all the subsidized water he wants from the underground wells replenished by tax delivered water.

The production of grapes in Delano is a big business established by hard-working, creative men. It is a big business which was once rescued by Federally subsidized irrigation water and now depends upon this water for its very existence.

California growers are enriched and empowered not only by subsidized irrigation water—the world's biggest welfare program some have claimed. The big growers strengthen their control of our lives through political manipulation which brings them the tax financed subsidies of soil conservation programs, marketing orders, acreage allotments for crops, guaranteed prices, etc.

These government programs are administered entirely by local committees of farmers. The big growers control the committees which parcel out the subsidies.

The size of some of these subsidies strains the imagination.

On June 19, 1967, Senator John Williams of Delaware, inserted in the Congressional Record, a list of direct price support payments received by big farmers throughout the United States. Included on this list were the following big operators on the west and south sides of the San Joaquin Valley and the amounts of direct subsidies (welfare) they received from the Federal treasury during 1966.

J. G. Boswell, \$3,313,000.  
Giffen, Inc., 2,397,073.  
South Lake Farms, 1,468,696.  
Salzer Land Company, 1,014,860.  
Vista Del Llano, 622,840.  
Kern County Land Company, 652,057.  
Westlake Farms, 622,569.  
Tejon Ranch, 121,096.

(The above is just a sample of the California farmer welfare recipients listed by Senator Williams. A total of 84 farming operations in California received direct price support payments of over \$100,000 in 1966.)

This paper becomes, in this light, more than an expose of past political frauds and current political giveaways. It becomes a warning to all of us who cherish freedom and would perfect its practice in America.

The warning is simply this: if the economic political power structure illustrated by this paper is further enriched and entrenched by huge water subsidies, individual freedom will be even more severely limited, if

not entirely eliminated, in the San Joaquin Valley—and thereafter much of the State.

The landownership pattern on the east side of the San Joaquin Valley is just the reverse of what exists on the west and south sides. According to the U.S. Bureau of Reclamation in the entire area served by the Friant-Kern Canal from Fresno to Bakersfield, over 80 per cent of the holdings are under ownerships of less than 160 acres each (a notable exception is the Delano-Earlimart Irrigation District as cited above).

The scale of holdings is reflected in the local communities. Small farm communities, according to a U.S. Senate subcommittee on small business, offer more opportunity for small business, for community activity and participation, for jobs. A recent study by Fresno State College revealed, also, that the small farmers on the east side of the Valley pay higher wages than the big operators on the west side.

#### *The stock portfolio of a "typical" rancher*

W. Todd Dofflemeyer was, until his death March, 1966, a substantial shipper and grower of oranges in Tulare County. For many years he sat as a member and chairman of the Exeter Irrigation District Board, which administers the Federal Government water program, providing growers with water at a small fraction of its real cost. Needless to say, Dofflemeyer and his fellow board members, all of them large growers using the water they administer, were not over-zealous in their enforcement of the program's 160-acre limitation. Mr. Dofflemeyer's will, available in the Tulare County Recorder's office, makes very interesting reading, especially its itemization of his somewhat lavish investments in stocks:

2000 shares Agnico Mines, Ltd.  
200 shares Abex Corporation.  
400 shares American Cyanamid Corp.  
53 shares Amtel, Inc.  
110 shares Arvin Industries.  
200 shares Arvida Corporation.  
2000 shares Benquet Consolidated, Inc.  
109 shares Callahan Mining Corp.  
200 shares Cities Service Company.  
300 shares Denison Mines, Ltd.  
2000 shares Deer Horn Mines, Ltd.  
300 shares Dome Mines, Ltd.  
400 shares Eurofund, Inc.  
250 shares Englehard Industries, Inc.  
100 shares Great Western Sugar Co.  
150 shares Hecla Mining Co.  
229 shares Homestake Mining Co.  
100 shares Ideal Cement Company.  
200 shares International Harvester.  
200 shares International Packers.  
200 shares Japan Fund.  
100 shares Kerr-McGee Oil Industries.  
100 shares Lockheed Aircraft Corp.  
200 shares Lockville Shoe Company.  
100 shares Signal Oil & Gas Company.  
1000 shares Siscoe Mines, Ltd.  
200 shares Southern Natural Gas Company.  
110 shares Timken Roller Bearing Company.  
303 shares Tennessee Gas Transmission.  
100 shares United Aircraft Corporation.  
300 shares United Shoe Machinery.  
1000 shares Upper Canada Mines.  
150 shares Union Carbide & Carbon Corp.  
200 shares Allegheny-Ludlum Steel.  
100 shares American Can Company.  
200 shares American Smelting & Refining Company.  
1000 shares American-South African Investment Company.  
200 shares Anaconda Copper Company.  
100 shares Atlas Consolidated Mining.  
400 shares Atchison, Topeka & Santa Fe Railway Company.  
200 shares Babcock & Wilcox Company.  
103 shares Bunker Hill Company.  
165 shares Cerro Corporation.  
100 shares Colt Industries.  
200 shares Continental Can Company.  
432 shares Draper Corporation.

STATEMENT OF THE HONORABLE  
GEORGE E. BROWN, JR.

Senator HARRIS. George Brown is here. May I say, hopefully, a once and future Congressman from the State of California. George, I'm glad you're here, and am pleased to hear from you at this time.

GEORGE BROWN. Thank you, Senator.

I appreciate the invitation and opportunity to appear here. I wish to make clear that I am not appearing as an expert on the subject of land and resource monopoly in California, land reform and related subjects. However, I have lived more than 50 years in California, most of that time in the rural and suburban areas. I have been a public servant more than 30 years and an elected public official at local, state and federal levels for nearly 20 years. This experience has given me some knowledge, and considerable concern, about the land and resource problems of California. I should like to testify here this morning as an informed layman, trusting that the views which I shall express and the recommendations that I offer will be of some value to you. I shall be as brief as possible, knowing that your time is limited.

Agricultural land in California is increasingly concentrated in the hands of giant corporations. The extent of this, and the rate at which it is occurring, has been well documented by many sources. It is not unique to California. The CONGRESSIONAL RECORD contains many references to and insertions of such studies with which I am sure you are familiar. For instance, the CONGRESSIONAL RECORD of Tuesday, Oct. 12, 1971, contains a series of articles by Nick Kotz of the Washington Post, and the CONGRESSIONAL RECORD of Oct. 27th, 1971, contains a series from the New Republic dealing with agribusiness corporation, conglomerates, land reform, etc. There are many others.

Owners of family-sized farms, and farm laborers, are being displaced from rural areas and forced into the cities where they contribute to and suffer from the problems of urbanization. Again, this phenomenon is not new. In fact, it has been a characteristic of our national growth. The difference today is largely in the rate at which it is accelerating. The adverse effects of this were noted and predictions of its increasing impact were made as long ago as the 1930's by the National Resources Planning Board.

The growth of corporate farms and massive landholdings has been supported as necessary to efficiency in production. The sacrifice of small farm holdings on land of marginal efficiency is justified as being necessary to progress. These assertions cannot be defended. Economies of scale in agriculture peak at operations that generally run from under 100 acres to possibly 1000 acres, depending upon crops and land. The fact is that corporation farming frequently is tax loss farming, or farming in which the profits can be taken at another point in a vertically integrated operation—neither practice being available to the family farm. Another point of importance is that even family farms today require substantial capital, and capital at competitive rates is increasingly difficult to obtain for family farms. Corporations, on the other hand, can generate capital internally or can secure it from financial institutions or the public at rates substantially below those available to family farms. This difference alone, having nothing to do with efficiency of farming operations, may force the family farm out of business.

The net effect of this will ultimately be a condition under which the bulk of our food and fiber will be marketed under price conditions having nothing to do with cost of production. Price structures will be incidental to the activities of corporations in other fields, and may be used as a device to levy a private tax on consumers as monopoly conditions are approached.

Another hazard from large corporate landholdings is the propensity of the corporation to exert undue influence on the local governing bodies for favorable treatment in terms of taxation and in approval of schemes for urbanization of the land. It is probably true that large landholders are the chief beneficiaries of the California law (Williamson Act) allowing for tax assessment at lower agricultural values for land placed in agricultural preserves. It is large corporate landholders who are the perpetrators of excesses in the development of "recreation" and "2nd home" developments, with their frequently adverse effect on environmental conditions.

Consideration of these problems, which I have sketched very briefly, leads me to conclude that a number of steps are necessary if we are to avoid the ill-effects of monopoly and giantism in the control of land—probably the most fundamental resource of our society. First, all land resources must be subject to comprehensive land use planning, integrated in national, regional and state policies. I drafted such a proposal in 1970, which was introduced as H.R. 17190 on April 23rd, 1970. I refer you to this bill as reflecting my views on this subject.

Secondly, land use planning requires a conscious policy of population control and distribution. I have introduced such legislation in years past, but public awareness and support of the need for this has increased so rapidly that completely new and stronger legislative proposals are now justified.

Thirdly, acreage limitation and residency requirements of federal reclamation laws should be enforced. However, some flexibility should be built into the law to meet the changing technological conditions in agriculture. There is no particular magic in the figure of 160 acres. The magic is in the concept of federal encouragement of an efficient family-sized agricultural operation, rather than federal encouragement of agricultural giantism.

Fourthly, anti-trust legislation should be made applicable to agricultural operations, such as provided in the Family Farm Act of 1972.

Fifth, the small family farmer should be provided with adequate access to capital at competitive rates. Marketing and bargaining legislation, such as that introduced in this session by Congressman Sisk of Fresno, should also be enacted to strengthen the position of the farmer in the marketplace.

Sixth, intensive study should be given to the application of a statewide graduated property tax, to replace all existing local property taxes. By graduated, I refer of course to the principle of taxation of low or zero rates for the first increment of assessed value, with progressively higher rates at higher increments of assessed value. This would encourage the small landholder, particularly if integrated with federal reclamation policy on landholding. Such a property tax system might also be the largest single factor in creating a market for housing at lower income levels. Present property taxes are a major inhibiting factor in the supply of housing at those levels.

Seventh, consideration should be given to strengthening of legislation relating to all forms of cooperatives, including consumer, marketing, and producer cooperatives. Legislation to encourage non-profit Community Development Corporations by giving them legal status and access to major sources of federal funding, including interest free loans and grants, should be developed and integrated with the structure of law relating to cooperatives.

These few suggestions are presented to you for your consideration and with gratitude for the opportunity to appear here. Thank you.

Senator HARRIS. Well, thank you. I think that the statement is really excellent. Your presence here is very helpful and your sugges-

tions are detailed and to the point. One in particular that we haven't spoken about earlier or heard about earlier today is the one on comprehensive planning on land use. Has someone in the intervening time taken up that bill which you had introduced? You mentioned H.R. 17190.

GEORGE BROWN. Yes. In fact, that was my own bill which was introduced in the last Congress, not the present Congress. There have been some efforts to encourage planning but, frankly, I am not familiar with specific bills which may have been, if any, introduced in this session. I do know that in the California State Legislature there are a number of what I would consider rather piecemeal efforts at legislation. For example, there are bills having to do with planning for the Coastal regions and there are bills having to do with planning for other special regions. These are necessary and valuable, but in themselves they will not really do the job. They will meet a particular crisis, but they will not meet the overall crisis of the chaotic growth of the population of this state and its dispersal in ways which are not conducive to the protection of the environment or the development of a living condition, in either the city or the country, which will make this the kind of a place to live that it really should be. We're no different here than New York or your own state probably.

Senator HARRIS. That's right. Almost anybody not personally involved, who looked at the situation of the big corporate farmers getting all fixed up with these tax subsidies, water subsidies, and others which you have talked about, and others here today have, would think it's not right that they continue to receive these subsidies. Now, I have, as you have, run both successfully and unsuccessfully for public office, and I know that campaign financing is highly important insofar as how economic power translates into political power. Do you see, for example, here in California the disclosure laws both federally and state-wide as being involved, or campaign financing generally being involved, as to why things stay the way they are though it's obvious to most that it's not right they should do so?

GEORGE BROWN. Well, Senator, I don't think things have changed much in the 15 years or so that I have been in politics, including the state legislature, and it is my judgment that the votes of at least a sufficient number of the legislature are heavily influenced by the nature of secret campaign contributions to be able to protect the status quo. Now that doesn't mean that all legislators are corrupt or that all representatives of big corporations are corrupt, but I say the influence is direct, pervasive and powerful and it doesn't have to even influence a majority of the legislators to be able to control the nature of the legislation which comes out of the legislature on issues of this sort. I think it is obvious that it does. The campaign disclosure laws are widely violated in this state as they are nationally. There seems to be no teeth in them. The teeth that exist are not used with the exception that within the last year or so we have seen an aggressive effort made by the Secretary of State, Jerry Brown, either to enforce them or show how unenforceable they are. This is a very happy situation.

Senator HARRIS. Thank you very much. I appreciate your contribution and your presence here.

STATEMENT OF PETER L. PETRAKIS, PROFESSOR OF CHEMISTRY, SAN FRANCISCO STATE COLLEGE, AND UTILITIES EDITOR OF THE SAN FRANCISCO BAY GUARDIAN

Senator HARRIS. Mr. Peter Petrakis, our next witness, is Assistant Professor of Chemistry at San Francisco State College and Utilities Editor of the San Francisco Bay Guardian.

Mr. PETRAKIS. Senator Harris, I appreciate the opportunity and the invitation to testify at this hearing on land and resource monopoly. I regret that I didn't have time to prepare a written statement for this hearing. I started to write one, but I found that I was rewriting four years at San Francisco Bay Guardian of investigative reporting on the subject of the Pacific Gas and Electric Company. So I decided to simply paste-up all those articles and have them duplicated, and let the whole Guardian series serve as my written testimony and that of other Bay Guardian reporters as well.

I will speak extemporaneously, not on all of these topics, but mainly on PG&E's forty-seven years of success in keeping San Franciscans from enjoying their own low-cost public power from a great hydroelectric project that the people of San Francisco built for themselves, and for which they paid \$300 million. I will also speak on PG&E's stature of billions of dollars worth of public power investments in California. I could tell you about PG&E's efforts to squeeze out other public power cities in California, but I see that Mayor Gillmor of Santa Clara, who is head of the Northern California Power Agency, will be testifying expertly on that subject.

I will mention the San Francisco Press Club incident in passing. The Bay Guardian in the three years prior to 1970 won four Press Club Awards, the "Club's Pulitzer prize of the West." In 1970, we learned that the rules had been rewritten to exclude the Guardian, and only the Guardian, from the competition. This was after two years of Guardian reporting on PG&E. We investigated and found that the head of the Awards Committee was none other than the top public relations man at PG&E, and that it was he who initiated the move. The rest of the committee was made up of public relations men from several large corporations with which PG&E has a client relationship, and they faithfully followed the PG&E initiative. There was the PR man from the Bechtel Corporation. This is a large construction firm that does a lot of their power plant construction. General Electric, which sells heavy equipment to PG&E, and Westinghouse which does the same, also had representatives on the committee. We had won four Press Club Awards in the years immediately preceding that. I will go into that if you like. I can say right now that we will probably be kept out of better places in the future.

I think when we talk about land and water monopoly in the press, we tend to neglect a very important part of the picture, and that is the power that is generated when the public undertakes to build large-scale water projects. This is a story that goes back many years. At the turn of the century, the private power companies were grabbing up water power sites all over, as soon as it became technologically possible to generate power at sites that are remote from the actual marketing areas.

Theodore Roosevelt and others were determined not to let this sort of thing happen, but rather to allow these rivers to be developed in the public interest. An early expression of this philosophy can be found in the Raker Act in 1913. This is a special piece of legislation that granted to the City of San Francisco the right to dam Hetch Hetchy Valley, which is a valley very similar to Yosemite Valley, a glacial rock-lined canyon in the northern end of Yosemite National Park. The city had only two reasons for wanting this particular site, despite the fact that it enraged the conservationists, justifiably. One was that it was convenient, the water was good; and the other was that it was an excellent power generating site. The city wanted the power. The city in 1900 adopted a charter policy that committed the city to public ownership of all public util-

ities, and specifically water, power and transportation within the city. So the city has this fight last from about 1900 to about 1913 when Congress finally passed the Raker Act. The issue was very prominent in this case as to who should benefit from this investment of the people in public lands, and therefore a section was added that prohibited the City of San Francisco from ever selling the water and the power to a private utility company for resale to the public. Congress was responding to two philosophies here. One is that when public lands are drowned, or public waterways are dammed, the public benefits should be distributed in the wisest possible manner to the benefit of all the people. Secondly, they were responding to that city charter policy that I just mentioned. While in 1913 it was passed, by 1919 construction was underway. The chief engineer of the project, Mr. O'Shaughnessey, as early as 1919 was advocating the sale of the power to the Pacific Gas and Electric Company for resale to the public. It is an interesting thing that I have just recently uncovered that in 1920, one year later, Mr. O'Shaughnessey had his name on a pamphlet entitled, "Shall California Be Sovietized?" This was a political piece of literature that came out to oppose a scheme that was before the voters in that year to put the State of California into the business of developing these river sites. It is interesting that along with Mr. O'Shaughnessey was a board member of the Pacific Gas and Electric Company, two men from the city attorney's office, and people in general. I would say, were quite sympathetic to the private utility interests. So already by that year as the project was underway, the groundwork was being laid for betrayal of the whole purpose of the Raker Act.

In 1925, the city was able to generate power. The Moccasin Power Plant was completed. The line was under construction, heading down from the Hetch Hetchy across the Central Valley and ending up in Newark, which is a little town in the southeast corner of San Francisco Bay. Suddenly the word flashed out from City Hall that funds were exhausted, and conveniently PG&E completed the line from San Francisco down to Newark, where it had its substation. The two lines were joined and PG&E began selling San Francisco's own power back to the people of San Francisco, buying it for \$2 million and selling it back for \$9 million. This went on for 15 years. Let me back up at this point and say that if it were true that the city had no money to complete this project, that is to complete those transmission lines into the city and to buy out the PG&E distribution system, it is very interesting that in the Water and Power Act of 1920 there was a provision for the State of California to lend money to municipalities with which to buy their own utilities. And here was our city engineer and some of our city officials on a political campaign committee to defeat that particular thing. This went on until about 1938 when the Secretary of the Interior, Harold Ickes, brought suit against the city for violation of Section 6 of the Raker Act for selling the power to PG&E. In 1940, the Supreme Court ruled that the city had violated it, and I want to refer to the specific language of this because much of what I have been telling you already has been written about by Professor J. B. Mullens of the University of California. I want to quote from the language of the Supreme Court in 1940. This is on the principle that when the meaning of an Act is in dispute, you go back to what the legislators intended.

"From the Congressional debates on the passage of the Raker Act can be read a common understanding both on the part of the sponsors of the bill and its opponents that the grant was to be so conditioned as to require a municipal performance of the function of supplying Hetch Hetchy water and

electric power directly to the ultimate consumers. . . ."

Again, it said:

"Before final passage in the Senate opposition had practically narrowed down to the power provisions of the measure, and these provisions contemplated a publicly owned and operated power system."

San Francisco, I believe, is the only city in the United States that is required by federal law to have public power. Now, I'll get back to that and continue the thread of this story. In 1941, the last of eight bond issues were prepared for the voters. This was one month before Pearl Harbor. The bond issues, as before, were defeated. And why were they all defeated? It was a powerful, well financed opposition from the Pacific Gas and Electric Company. Congressman Franck Havenner testified that on the record PG&E spent \$200,000 to defeat these bonds issues during the '20's, which I think you'd have to multiply by a factor of perhaps five to ten to get it into modern day figures. Then again, they succeeded in 1941. In December the whole question became sort of moot because we were in the war, and at the same time the Federal Government opened up a large aluminum plant right along side the Hetch Hetchy line in the valleys. That plant—since aluminum production is such a huge consumer of electricity—that plant was able to absorb the entire output which had been destined for the city. But after the plant closed down, the city succeeded in getting several stays of execution on this court order to stop selling to PG&E, and up until 1945 the city and the Interior Department were wrangling over the issue of how to dispose of the power. San Francisco's whole strategy was to try to find some way to have technical compliance with this law and yet not displace the Pacific Gas and Electric Company. In 1945, the Interior Department apparently was satisfied and agreed to an arrangement that we have pretty much to this day where 40 percent of the power that San Francisco generates is sold to a large group of industrial users of the type that I mentioned before, the aluminum companies. Big ones, that can just soak up this power at an enormous rate to get rid of this embarrassment that the city has with all this wealth, that it doesn't seem to want.

Another 4 percent goes to a couple of irrigation districts in the Central Valley. This is the Turlock Irrigation District and the Modesto Irrigation District, which are right adjacent to the Hetch Hetchy lines. These two districts have public power systems. They take a fraction of the Hetch Hetchy power, which just about supplies all their needs. They make more public profit from this fraction of Hetch Hetchy power by retailing it than the City of San Francisco does by wholesaling the entire output. They subsidize the free distribution of irrigation water, and I realize that we wonder about who's getting this generous subsidy in the light of previous testimony. I question how many small landowners really do. But the principle is there that they, at least, are using this power potentially for the benefit of the public. And the remaining 20 percent comes into San Francisco to power the municipal railway—and I'll mention the municipal railway later—and Water Department pumps and lighting civic buildings, etc.

Now, we pay PG&E to bring that power into the city and to distribute or transmit to our industrial customers out of town. They don't pay San Francisco taxes, they don't hire San Franciscans, they just soak up that power. We pay them \$2.3 million a year. I mention other utilities that the City of San Francisco owns. We own the municipal railways, and this is a chronic money-loser, and public transportation everywhere is in trouble. The reason we own it is precisely for that reason. When we bought the Market Street Railway Company, which was a private company serving the city in 1944, the

manager of the public utilities in San Francisco said that the system was in an advanced state of decrepitude, that we only bought it to keep the thing running long enough to replace it. In the first five months under city ownership, the city spent a million and a half dollars just keeping the stock rolling. So you can conclude from this that the previous owners were all too happy to get rid of it, and their only gain, I am sure, was to get the highest price possible. They had been losing money for many, many years before, and it is quite clear that they were cutting their losses by eliminating maintenance.

The Water Department, it was historically clear away back as early as 1870, that the Spring Valley Water Company which was serving the city then, would not be able to meet the city's needs, and it agreed to an amicable condemnation. So what does that leave us but PG&E, and why this resistance? Because it is the most lucrative business of all. PG&E, I have estimated by looking at PG&E data, is making a profit in San Francisco somewhere between \$30 million and \$40 million a year, while the city contents itself with about \$3 million to \$4 million profit on a total capital investment of about \$300 million.

Now two years ago, in 1970, a group of Hastings law students from the University of California and I, representing the *Bay Guardian*, appeared before the City Public Utilities Commission to urge them to start a feasibility study to buy out PG&E. Surprisingly, they amended the resolution they were considering, which was to renew the existing contract that dissipates this power to include such a study. I checked back from time to time and a year later they had not contacted the controlling engineer who was designated to do the study. They passed a few memoranda back and forth internally. Then they had a budget hearing for the next fiscal year, and the *Guardian* appeared again. The reaction could be summed up like, "what feasibility study are you talking about." So we read from the record and their quotes in the newspaper, etc. Finally, a year later, they directed the manager of utilities to find out how much one would cost. When he reported back a few months later, they decided not to request the funds from the Board of Supervisors. I am telling you this because I want to get into the matter of who comprises the San Francisco Public Utilities Commission. The President is the Vice President of the Bank of America. One of its members is a board member of the Bank of America. This is all documented in one of these articles here.

The Federal Trade Commission in 1934 conducted an investigation of the whole utility industry and they went in very deeply into the matter of the control, the overlap, between the banking industry and the private utilities industry. I think we are seeing an example of this sort of mutuality of interest. If you look at PG&E's top ten stockholders, you will find that half of them are bankers and half of them are insurance company people. These bankers represent the big four banks in California.

Senator HARRIS. Generally, California corporations? Or are they national as well as California?

PETER PETRAKIS. This is the interesting point. There is only one California bank among the top ten stockholders, and this is the Bank of California. The rest are Eastern banks, like Chase Manhattan and Manufacturers Hanover Trust, and I don't recall the others right off hand. But the interesting thing is that because Senator Lee Metcalf was able to go into this matter of nominee names, so-called street names, the aliases that large corporations have to conceal their real identity. This is how I found out, for instance, who the top big bankers are. You see, many banks have more than one street name. The Bank of America, for instance, has about 45,

so that they may not know one of these nominee firms may have enough stock to appear in the top ten. In the aggregate they would comprise a very large amount. Now, this is a matter for a congressional investigation. I don't think any reporter has the wherewithal to find this out. I think it's very worthwhile looking into. Here we have a man who presides over a city public utilities commission, created under a policy of public ownership, committed to it, who is a Bank of America vice president and the Bank of America has a board member on PG&E, and who knows how much of a financial interest. I know that after World War II, the Bank of America organized large bank syndicates to lend huge sums of money to private utilities in California. In 1954, the vice president of PG&E told the State Public Utilities Commission that it keeps \$2 million in the Bank of America branch at San Francisco, the headquarters branch. It generates a line of credit for \$14 million, he said, which is available to us overnight. He also testified that there is PG&E money in all the branch banks, which are spread all over the state.

So that brings me to one recommendation I would like to make. I would recommend that there be a congressional investigation in the City of San Francisco on the city's compliance with the terms of the Raker Act. I would like to see the Secretary of the Interior brought before this hearing and asked how he can say, as he said to a number of San Francisco citizens in writing, that they are satisfied with the city's complying with the Raker Act. I would like to see an investigation of the street name question. How much of one single bank's money is spread through a whole bunch of nominee firms, so that none of them add up enough to be recordable under recording requirements.

Now, the Raker Act was an isolated situation. By 1920, Congress had passed the Water Power Act which just threw the whole field wide open to private power companies to get licenses to set up power plants on the navigable streams in the country. These were 50-year licenses. That was in 1920. We are now in the 1970's, 50 years later. These licenses are expiring—several Southern California Edison licenses, and 20 percent of PG&E hydropower capacity will expire by 1975. But it is interesting how the recapture principle is being applied. The Federal Power Commission granted these licenses on its own authority. About 1968, they set up regulations to anticipate this flurry of renewal applications, and they set it up so that the licenses will be routinely, automatically renewed unless Congress passes a special bill to recapture the licenses. I think that should be reversed. I think that the licenses should be automatically recaptured, and a special act, if necessary, depending on the circumstances, be passed to allow them to continue. Perhaps we shouldn't think about 50-year licenses, either, because this is a public resource. I am reminded of the motto of the Ontario Hydro-power Commission that the gift of nature belongs to the people. This is a Provincial-wide system, with the Provinces engaged in the wholesaling of electricity. There are 5,000 municipal electric systems that buy their power from this Province. They participate in its governance and it seems to me a far more rational way than we have here in California.

You see, when we put what is essentially a governmental power into private hands, we are in effect creating a private government. You can look at any town of any consequence in California, and you will find the outpost of the PG&E empire, a little branch office right down there near the civic center. PG&E—and I am only using PG&E because that's an example—belongs to every single Chamber of Commerce in its territory. If you look at the cities, it would read like the index of towns on a road map. It belongs to Rotary Clubs, Kiwanis Clubs—everywhere where the

influential people in any community congregate—and it puts that system to work.

I have another point now, then I'll finish. On this matter of amending the recapture provisions. Since there is collusion, apparently, between bankers and private utilities, I think in this instance it would be necessary to have government grants or government loans—low interest loans—to municipalities and public districts and other public entities that would like to acquire one of these licenses. I would talk this out with people from the Northern California Power Agency as something they might be interested in getting behind.

Senator HARRIS. Well, thank you very much, not only for your testimony but for the really important work which you and the *Guardian* have done in this whole field. Why do you think the general public seems to consider utility companies free enterprise when, as a matter of fact, they have a monopoly—a government-protected monopoly and a government-protected rate of return—and are very unlike the kind of market-pressured enterprise we normally think of as free enterprise?

PETER PETRAKIS. There are two things, I think, that explain this. One is that private companies just pour this propaganda out, and it is a direct thrust of theirs to portray this line. The second is that newspapers don't consider utilities newsworthy in a deep, continuing analytical sort of way. I think that the *Bay Guardian* is the only paper in the United States that has a utilities editor. They have a city editor, they have someone who covers the city hall, but no one who systematically stays on the local utility. I think it's just a news blackout that just sort of leaves the field wide open for the power company propagandists to create any kind of illusions they want for the public.

Senator HARRIS. I recently testified before the Federal Price Commission. I told them I felt that they had failed the American people by not including utility rates among those that they regulated, nationally. They are thinking about that, but the process of utility regulation itself involves several kinds of subsidizations of utilities. Generally, they are owned by Eastern bankers and insurance companies. So you're not talking about a lot of investors in California; generally, you are talking about a few big banks and insurance companies around the country that own most of these utility companies. First, we say to them we will give you a guaranteed return on your investment; then we allow you to count nearly anything you want to as an investment; and then we even say you can count it at its "fair market" value rather than its original cost. That's number one. Number two, we give you monopoly of a particular area and guarantee you a set of customers so you won't have any competition. Number three, we allow you to use a public resource—that is, hydroelectric power and other kinds of public resources—for that private gain. As a general rule, we furnish you with regulatory agencies that you control. Most of the state regulatory agencies that control utilities are controlled by the utilities themselves, and as a result set prices much too high. At the federal level we've said, while other people will have wage and price controls, you won't have federal price controls—you can go ahead and do whatever you want to at the local level. What's amazing to me is that more people aren't very much disturbed about that kind of exploitation. What happens, I think, is nobody knows much about that exploitation because, while you and I pay for it in increased rates, the utilities are able to be very active in all kinds of civic affairs and community affairs. In fact, that's what the local manager spends most of his time doing—being very influential in local affairs. It's another way these things are perpetuated. We need more activity, such

as you and the *Guardian* have been involved in, to get the public to understand what is being done to them.

PETER PETRAKIS. We're trying to do that. I forgot to mention one thing. We talked about hydropower, that's just a small part of any modern day power load. The thing now is, of course, nuclear power. I don't want to go into the pros and cons of that. I just want to point out though that this is a directly subsidized project. This is a technology that was developed at public expense at a cost of billions. The utility companies get their uranium enriched at Federal Government plants, and then use TVA power to do it, because all the uranium enrichment plants are in the TVA territory. You look at the Federal Power Commission figures and you see that power costs half as much in the TVA region as it does, say out here in California. This is power that PG&E and others would condemn as socialistic if it were used directly by the public, and I think that this goes right into the point that you were making about corporate socialism, which is really what we have....

Senator HARRIS. That's exactly it. It's a kind of Zaibatsu system that existed in Japan prior to World War II where industry and government were virtually synonymous. With an outfit like PG&E, it's pretty much the same thing. It's kind of a corporate socialism, but a few big bankers and big insurance companies get the profit, rather than the general public. And that translates into political power, which is of interest to us in these hearings. It's not just economic power, but they are politically powerful enough to keep things virtually the way they are.

Well, I really appreciate what you've had to say here and it will be highly useful to us, PETER PETRAKIS. Thank you.

Documents submitted by Peter Petrakis follow:

[From the San Francisco Bay Guardian,  
Oct. 26, 1970]

**PG&E, STAUNCH DEFENDER OF PRIVATE ENTERPRISE, IS THE BIGGEST WELFARE RECIPIENT**

(By Peter L. Petrakis)

It captures power from public agencies, builds its dams on public rivers and exploits publicly developed nuclear research.

In early June of 1970, a group of Pit River Indians occupied a campground along the Pit River in Northern California that was controlled by Pacific Gas & Electric Company. The Indians were re-occupying a small part of ancestral lands which had been stolen from their tribe. They were trespassing, said PG&E.

The campground lies within a 3.5 million acre parcel of land spreading over parts of four counties that, according to the Federal Indian Claims Commission, was unlawfully occupied by white settlers who drove out the native Pit River Indians in the late 19th century.

After that, the Federal Government took over some of the land and, in 1923, granted PG&E a license to erect power plants along the Pit River.

The nominal license fee did not grant ownership to PG&E. But PG&E nevertheless has tried mightily to create the impression that it does own the sites. A typical part of its characteristic "public relations" approach to disputing the Indians' claim:

1. Having them arrested for "trespassing," in collusion with the sheriff, district attorney and justice of the peace of Shasta County.

2. Asking the publisher of Hearst's San Francisco Examiner to send a reporter to Redding to cover the story when it became clear the Indians were getting sympathetic treatment by other papers (the Hearst Corporation has large holdings in the area.)

3. Discovering a "tame" Indian, Ike Leaf,

then writing a statement for him condemning the Indian militants, flying him to Redding on a company-chartered plane and arranging a press conference for him in the sheriff's office (invitations to the press sent out by a PG&E public relations man, who also presided over the meeting).

**THE OWNER?**

Under white man's law, the existence of a license to occupy land is reasonable evidence. Why, then, didn't PG&E produce the government license to back up its assertions that it had a right to be on the Pit River? Why did it instead keep talking as if it actually owned the disputed property?

The probable answer: To bring up the matter of licenses in such a dramatic story, the subject of intense public interest, would have exposed a cover story that PG&E and the other private utility companies have been fostering for more than 50 years.

This is that they are bastions of individual initiative, "taxpayers" carrying their own weight in society, competing under adverse circumstances with a government that intrudes unfairly in the domain of "private enterprise."

The plain fact is that the U.S. government set up the private power companies in the power business. PG&E, staunch defender of "private initiative."

1. Has built its entire hydroelectric generating system on public lands and waterways under federal licenses which allow it to operate but own none of the power-generating sites.

2. Has captured the power generation of irrigation districts, water agencies and municipal, state and federal projects—representing a public investment of billions of dollars—and got power dirt cheap from the agencies and sold it back to the public at a large mark-up.

3. Has utilized a nuclear technology developed by the public at a cost of billions, uses nuclear fuel produced at expensive government plants by a publicly developed process that uses huge quantities of cheap public power, and has its nuclear power plants insured by the taxpayers because no private insurer will risk coverage.

**RIVER GRAB**

It started in the early part of the century, when technological advances were making it possible to generate power at locations remote from marketing areas. Private power companies were grabbing up power sites on the nation's rivers, despite efforts by President Theodore Roosevelt and others to develop the sites in the public interest.

By 1920, the private power lobby turned the tide in Congress. It passed the Federal Water Power Act, which vested ownership of water power sites in the people but also created the Federal Power Commission with authority to grant 50-year licenses to private and public utilities for power development on the nation's rivers. Only token charges were fixed for the use of the water, and public recapture of sites held by private power companies was made difficult.

Many licenses were issued to private power companies and public agencies over the next few years. So now, 50 years later, many licenses are due to expire. This means that 18 per cent of PG&E's hydroelectric capacity is subject to recapture by the public by 1975, and all of it by 2013.

To anticipate the license expirations, the Federal Power Commission in 1964 set up procedures to recapture of relicensed power sites that made an already difficult recapture procedure even more difficult.

The FPC issued the original licenses on its own authority. But now it will send its recommendations to Congress for action, at least two years before a license expires. If Congress does not recommend recapture, a new license would be issued. The new proce-

dures has been challenged, but not tested legally. So, for the present, a mere licensing arrangement has, through private power lobbying, been perverted into a virtual grant in perpetuity of public property to private corporations.

Over the past 70 years, several public agencies also have secured water and power rights on California rivers and, in 1913, Congress tried to keep private utilities from benefiting from this granting of public rights.

That came in the Raker Act, which prohibited the city of San Francisco from selling private utilities the power it developed on the Tuolumne River from the city's Hetch Hetchy project while operating under a Federal grant.

But when Congress passed the Federal Water Power Act in 1920, it buckled under severe pressures from utility lobbyists and deserted the public power principles of the Raker Act.

Under the Water Power Act, several irrigation districts and water agencies, as well as the State of California, are free to sell public power from public projects on public rivers to PG&E for resale to the public.

**WATER ACT**

PG&E is making a killing off this public power, precisely the sort of thing the Raker Act was designed to prevent. Thus, PG&E exploits the public, not only through its own plants, built on the public domain under its own FPC licenses, but also by capturing the power generated by public agencies at plants built on the public domain under their FPC licenses or federal grants.

Historically, any time a public agency has wanted to dam a California stream, PG&E has followed a consistent pattern: Get the power into the PG&E system, or fight the project.

For example, PG&E and other private utilities fought the formation of the East Bay Municipal Utilities District in 1923. But PG&E and EBMUD have since worked out a cozy relationship.

Since EBMUD completed Pardee dam in 1928, PG&E has been getting all EBMUD power. EBMUD has never made even a gesture toward getting into the power business, even though the Municipal Utility District Act of 1921, which permitted the creation of EBMUD, authorized the district to go into the power, water and even the telephone business.

**TWO EXCEPTIONS**

Over the years, PG&E has captured every power-generating irrigation district and water agency in northern California, with the exception of two—the Turlock Irrigation District and the Modesto Irrigation District.

In 1952, PG&E commissioned an official 367-page company history, titled "PG&E of California: The Centennial Story of Pacific Gas and Electric Company, 1852-1952," written by C. M. Coleman. In it is found this pithy summation of PG&E's attitude toward public developments on the public rivers: "Although the Company fought hard to preserve itself from government competition, it always willingly gave cooperation to worthy public water projects."

To PG&E, a "worthy public water project" is one in which the public surrenders its most lucrative product, electrical energy, to PG&E.

This, then, is the historic PG&E pattern:

1. Let a public agency build the most expensive parts of a hydroelectric project—the dams and canals—which PG&E would otherwise have to build and pay taxes on, then contract with that agency to deliver the falling water to the nearest PG&E power plant.

2. Or, better yet, let the public build hydro power plants too, then get the power into the PG&E system at low, fixed annual rates, under long-term exclusive contracts.

3. Make it clear to irrigationists and

municipalities that PG&E will block public projects if the power contracts are not signed with PG&E.

4. All the while, wage vigorous publicity campaigns to convince the public that public water and energy from public water are logically and ideologically separable—that the public impoundment of water on a public river, and its distribution through public systems, is “a worthy public water project,” while the distribution of the inevitable byproduct of the release of that public water—public power—is the expression of an alien and subversive philosophy.

5. Pose as an altruist and argue that PG&E's piddling payments for this public power are helping irrigators and municipalities to pay for their water projects, which could not otherwise be built.

6. Condition the public to ignore the fact that, if PG&E had exercised its self-celebrated “individual initiative” and built these projects for its power purposes, water users would still be getting the benefits from stored water that they now enjoy.

Today, 10 public agencies in California generate power for PG&E. Seven of them are under exclusive long-term contracts to PG&E, delivering all their electricity at low fixed annual fees to the company. One of them, the State Department of Water Resources, is under contract to deliver 56 per cent of the power generated at the \$500 million Oroville Dam to PG&E and the rest to Southern California Edison and San Diego Gas and Electric Co. until 1984. After all, all the power from Oroville Dam will go to PG&E.

#### BIG PROFITS

From all these public agencies, PG&E gets 10 per cent of the electricity it sells to the public. PG&E gets this power so cheap, and marks it up so high, that public power accounts for 25 per cent of the company's annual profits from electricity sales.

The Turlock and Modesto Irrigation Districts, the only two in California to do their own electrical retelling, charge 33 per cent less for electricity than PG&E does in the irrigation districts the company has captured. And the Turlock and Modesto Irrigation Districts pay for their projects without any “help” from PG&E, of course.

In reality, water at the tap and water power at the wall plug are merely different manifestations of the potential energy of water stored at high elevations. Yet, because of PG&E-generated confusion, citizens who would become enraged to learn that all the water behind a public dam had been diverted to a private corporation for resale to the public are not at all shocked to learn a private company is selling them their own electricity.

PG&E confuses the public at every turn. When PG&E builds a dam on a public river, it is called a “power dam,” even though downstream water users may benefit from the resulting year-round water supply. When irrigators, or municipalities, or the state or the federal government build a dam, PG&E propaganda conditions people to think of it as a “water supply,” though electricity, in vast amounts, may be produced from it— for PG&E.

#### “WATER” PROJECT

Today's multi-billion dollar California Water Project should be called a “power and water project,” since an immense amount of electricity will result from the state's impounding of Feather River water behind Oroville dam.

But PG&E and the other private utilities aren't openly fighting this project, for the simple reason that they are getting all the electricity from the public water project's \$500 million Oroville facilities and selling it back to the public at exorbitant rates. That according to the classic PG&E line, makes it a “water plan.”

The state Water Resources Department is more than a generator of power for private utilities. It also will buy power from them to help pump water through the California Aqueduct that will carry water from north to south in the California Water Project.

The Water Resource Department has contracted to sell the power output of Oroville Dam—3 billion kilowatt hours a year—to the private utilities for a low fixed annual fee of around \$20 million.

#### MORE MONEY

The utilities, in turn, will sell this hydro-power to the public during the peak daylight and early evening hours—and get an estimated \$42 million a year in revenue too for doing it.

Then to supply the Water Project with the power for its pumps, the utilities will turn around and deliver 10 billion kilowatt hours of their thermal power to the state during the off-peak hours. That will cost the state \$26 million a year.

The utilities will sell the pumping power to the state at cost, but they nonetheless will profit greatly from it. For it will enable them to keep their power plants running steadily and not just during the peak hours of general public demand, and thus avoid the heavy costs involved in shutting down and starting up steam generating plants.

There's an ecological aspect to this, too. Since the amount of water to be let out of the water project's Oroville reservoir will increase as Southern California's population grows, more water will pass through the powerhouses to generate electricity. And since the private utilities have contracted for all of the power from Oroville Dam, the more overcrowded Southern California becomes, the more PG&E and the others will profit.

#### CAN'T LOSE

Even if political opposition or legal injunction were to stop the badly conceived and possibly illegal California Water Project, the private utilities will come out on top.

Oroville Dam already is built, the contracts for power have been signed, and the utilities are getting Oroville power.

Should the Project be blocked, or even delayed, the state would be relieved of part of its responsibility to husband water at Oroville, and would be able to make larger water releases for power generation to the private utilities.

If the Delta Peripheral Canal, last link between Oroville water and the California Aqueduct, is not built, political pressures will develop to find alternative sources of water to send south.

There would be a strong possibility that water would come from sea-water desalination plants, operated by the private utilities.

PG&E and other coastal utility companies are moving fast to get into that field and, with the Department of Water Resources, are now studying desalination in connection with thermal power generation, under an order from Gov. Reagan.

PG&E also has offered the U.S. Interior Department the use of its steam plants at Moss Landing and Morro Bay for experiments in desalination in connection with power production.

#### NUCLEAR PLANTS

Nuclear power plants are enormous heat producers, and studies by the Atomic Energy Commission show that this heat can be used to convert sea water.

When President Johnson announced this in 1964 and indicated that the government would enter that area, shock waves were set up in the private power industry. The industry's trade publication, *Electrical World*, saw an “insidious” threat. “The alternative,” said *Electrical World*, “is for electric utilities to assume a responsible role in the supply of potable water.”

In other words, the private power companies are planning to get into the water business. Thus, historic trends are demolishing PG&E's carefully contrived cover story that water projects are public business and power projects are private business. To maintain their monopoly, PG&E and other private power companies must now get into the water business, too.

A further advantage to private power companies is that seawater desalination could be done during those off-peak hours when shutdowns are so expensive.

The implication for principled ecologist-conservationist foes of the Water Project is that they may be getting some covert, and unprincipled, support from the giant utility corporations of California.

Because of their strategic position in the economic life of the state and their enormous political power, the private utilities have been able to rig things so that, whatever the fate of the Water Project, the net result will be a public capital investment for their benefit.

Although Gov. Reagan has stopped the Upper Eel River Development, the study is continuing. This project on the north coast river has a direct relationship to the Oroville power contract with the private utilities, and is specifically mentioned in the contract.

Section B-8 of the contract provides that, after 1985, the Department of Water Resources can release, for power generation, an amount of water from Oroville Reservoir greater than that to be released from the Upper Eel River Development.

#### MORE WATER

The Upper Eel River Development would build a 700-foot-high dam at Dos Rios, in the Coast Range in Mendocino County, about 20 miles north of Willits, and would create a vast reservoir that would drown 30-square-mile Round Valley with its Indian reservation and the town of Covelo, 30 miles upstream.

The plan for the Upper Eel River Development is to feed its water into the California Aqueduct at the Aqueduct's point of origin in the Sacramento-San Joaquin Delta and send it to Southern California.

This could relieve Oroville Reservoir of its role as “key conservation unit” of water for Southern California and allow the state to make greater releases of water through Oroville's powerhouses—not to meet water demands in the south, but to generate power for PG&E.

The development also could counteract conservationist opposition to the Delta Peripheral Canal. By using water from the Eel River to supply Southern California, the Sacramento River can be permitted to flow at higher volume, flushing out the Delta and preventing stagnation in San Francisco Bay. This will mean maximum releases of water through the powerhouses at Oroville, for maximum generation of power for PG&E.

#### “OR ELSE”

Politically, this would be the alternative presented to the public: “Let us build the Upper Eel River Development, or the Delta and San Francisco Bay will be destroyed by diminished flow of the Sacramento River.”

PG&E will have maneuvered the state of California into building a hydropower facility for PG&E at Oroville whose generating potential nearly equals that of all the PG&E dams in California, plus a new source of public power for PG&E at Dos Rios, plus an off-peak market for PG&E's thermal power.

Alternatively, if the Eel River is not developed, there will be a brand new product to be sold by PG&E—desalinated seawater for the California Aqueduct, generated at PG&E's nuclear power plants.

#### STEAM PLANTS

The key to the control PG&E and the other private utilities have over public

water power projects in California, apart from their ability to buy politicians and dominate newspapers, is their monopoly on thermal electric generating plants.

Hydro power, which is all PG&E permits the public to generate is variable. It fluctuates daily and seasonally, as well as from year to year, depending on annual precipitation. Therefore, to make it salable for modern power demands, which are comparatively steady, it must be firmed by thermal power.

Since private companies have a monopoly on steam plants in California, it gives them enormous coercive powers over public agencies in disposing of public power. The companies tell the public in effect, "You will sell your power to us, and on our terms, or you won't sell it at all."

In 1941, when the Bureau of Reclamation first asked Congress for funds to construct a steam electric plant at Antioch to firm the power from Shasta dam, and build transmission lines down the Sacramento valley, the result was a parade of PG&E executives, lobbyists and attorneys that has never stopped. Result: The Central Valleys Project still has no steam plants, the federal project still is at the mercy of PG&E.

The California Water Project was originally designed to include a stateowned nuclear power plant, which together with the hydro power, would have made the project independent of outside sources of power to operate its pumps. The plant has not yet been authorized, though any observer of the private utilities in action knows that is intended to mean forever. Result: The private utilities will get \$39 million from Water Project power, plus an additional \$26 million payment for power from the Project itself, plus more economical performance of their steam plants and therefore greater profits.

More recently, PG&E blocked legislation which would have given the Northern California Power Agency, an association of 11 small municipal power cities, authority to jointly finance and construct a thermal power plant to serve their growing power demands. The bill had been passed by the State Senate, 21 to 4. Originally scheduled for the Assembly Local Government Committee, where proponents thought their bill had a chance, PG&E lobbyists got the bill switched at the last minute to the heavily proprivate utility Commerce and Public Utilities Committee by Assembly Speaker Robert T. Monagan (R-Tracy).

Observers on the scene saw evidence that the private power lobby had done an advance job on the committee members. The lobbyists were well represented in the audience. Assemblyman Kent Stacy of Kern County wryly asked the bill's author, Sen. Fred Marler of Shasta County, how he felt about changing the bill to add a provision to tax all publicly owned utilities, "as private utilities are." He was referring, of course, to the private utilities' pet project, the Bagley bill to tax public power cities, AB 908, recently withdrawn for the time being by its nominal author, William T. Bagley.

The committee, made up entirely of southern California conservatives, and headed by Robert Badham of Orange County, did not give the northern California cities a single vote.

Having fought successfully for decades to keep the United States government and the government of California from building steam plants in the state, the private utilities are not about to let 11 little cities do it.

The cities' desperate search for new power sources is based on the fact that the Central Valleys Project cannot supply additional power to its preferred customers (public power cities) after 1980. In 1967, PG&E forced the Bureau of Reclamation into an agreement that prevents the Bureau from accepting new preference customers or any new source of supply without the consent

of PG&E and limits the amount of power CVP can supply to its existing preference customers to their estimated 1980 requirements.

The leverage PG&E used to get this lopsided agreement out of CVP was its monopoly on steam plants, on which the CVP is forced to rely for firming and making salable its Shasta hydropower. The multi-billion dollar federal CVP, and the preferred customers that are eligible to receive its power, are securely in PG&E's vest pocket, barring future lawsuits for anti-trust violations.

The Federal Power Commission has retained jurisdiction to modify the 1967 PG&E-CVP agreement, but little hope lies in that direction: The chairman of the FPC is proprivate utility, and a vice-president of the Arizona Public Service Company is about to be appointed head of the FPC Bureau of Power (he will also continue on the company payroll).

Meanwhile, PG&E continues to encircle the 11 cities. During recent hearings before Sen. Philip Hart's Anti-Trust and Monopoly Subcommittee, R. W. Cowden, NCPA secretary, disclosed that PG&E has (1) refused to wheel public power to NCPA cities, (2) grabbed up all potential sources of non-PG&E power that the cities could use, including public power from irrigation districts and water agencies, surplus power from the Sacramento Municipal Utility District's Rancho Seco nuclear power plant under construction, also Union Oil's geothermal steam fields, (3) refused to join with the cities to construct power plants (4) sponsored the Bagley bill, (5) opposed legislation permitting cities whose charters are silent on the matter to issue revenue bonds for public electric systems, (6) had the NCPA banned from membership in regional utility councils. To this list must now be added PG&E's maneuvers to block the HUD loan, and the lobbying effort to block the cities from building their own thermal power plants.

PG&E's obvious intention is to put the 11 public power cities out of business and consolidate its historic theft of the public domain.

Suggestion to NCPA: Move to recapture some PG&E licenses coming up for expiration in the next few years, under provisions of the Water Power Act of 1920.

And PG&E has even more ambitious plans for the future—a future of nuclear power.

PG&E already has one nuclear power plant at Humboldt Bay near Eureka, and another nearing completion at Diablo Canyon near San Luis Obispo. Several more are being planned. In late September, PG&E announced it will purchase a quarter billion dollars worth of uranium fuel in 1971.

The company will buy crude, un-enriched uranium fuel from mining companies and turn it over to the Atomic Energy Commission, which will purify it to increase the proportion of fissionable uranium-235, then turn it back to PG&E.

The enrichment process is carried out at three AEC plants, including those at Oak Ridge, Tenn., and Paducah, Ky., that are in the service area of the Tennessee Valley Authority.

According to the FPC, industrial TVA power costs about half as much as PG&E and other private power. So the cost to PG&E for having its uranium fuel prepared by the government will be greatly reduced by the government's use of cheap federal power from TVA.

If the government had to buy power from a private utility to enrich uranium for PG&E its power bills would practically double, and this would be reflected substantially in the cost of nuclear fuel for PG&E.

Thus PG&E will receive another indirect public subsidy in the form of cheaper nuclear fuel, processed with cheap public TVA power that PG&E and other private utilities condemn as "socialistic" when it is used directly by the public.

It will be just another typical chapter in the story of PG&E, a huge public parasite that dominates the political life of the state, compels the public to create vast public works in its behalf, usurps the public's lands, rivers and technology, buys off and intimidates the press and even picks the men who "regulate" it on the state Utilities Commission and the Federal Power Commission.

PG&E doesn't see it that way, however. Its official biographer writes:

"PG&E's position at all times has remained essentially the same—that of a staunch defender against political invasion of a business successfully created and maintained by individual initiative and developed according to the needs of growing state."

#### HOW PG&E GETS \$67 MILLION OF PUBLIC POWER

D. L. Bell, PG&E's vice president and treasurer, recently put on a poor-mouth act for the State Public Utilities Commission. PG&E, he maintained, must be granted \$67 million more a year in electrical revenues so that it can "maintain its credit and financial standing" with major investors.

The Guardian examined PG&E's rate application exhibits and discovered that, although Bell hadn't said so, PG&E already gets a public subsidy of \$67 million worth of public power.

The \$67 million—\$67.4 million to be precise—is that part of PG&E's annual revenue which comes from its sale of public power. This is power generated at public facilities such as dams, sold to PG&E cheaply and then transmitted and sold to the public by the giant utility.

It is by far the most profitable phase of PG&E's extremely profitable operations.

PG&E's own exhibits show the company made an incredible after-tax profit of 22 per cent in 1969 from the power it generated itself. However, its profits from the public power sales were even greater—a staggering 54 per cent.

In dollar terms, that was a profit of \$138,357,000 on PG&E-generated power and \$36,482,000 on the public power sales.

That made total profits of \$175 million—a figure that would rise by \$40 million if PG&E is granted its plea for \$67 million more in revenue.

None of this would be passed on to the public agencies which have created huge tax-free capital investment and profit windfalls for PG&E. Their fees are fixed under long-term contracts.

[From the San Francisco Bay Guardian, Apr. 17, 1970]

#### PG&E KEEPS PUBLIC POWER OUT OF UC-BERKELEY

(By Peter L. Petrakis)

While the University of California imposes tuition on students as a revenue-producing device, it refuses to move effectively against the Pacific Gas & Electric Co. to save some \$500,000 a year in power costs.

This unpublicized issue is complicated, but it boils down to this: the University for years has sought to reduce its \$2 to \$3 million electricity costs, but PG&E refuses to wheel cheap power on its transmission lines to the Berkeley campus. Thus, Cal has no choice but to buy PG&E's expensive private power.

The background: In 1962, the Regents commissioned R. W. Beck & Co., a highly respected engineering firm, to determine how University's mounting electricity costs could be reduced.

Beck's survey recommended that the Berkeley campus switch from PG&E to the public power available from the U.S. Bureau of Reclamation, a division of the Department of Interior, which transmits power over its conductors down the Central Valley from its generators at Shasta Dam. The anticipated savings for Cal: \$5 million over a 10 year period.

As a public or "preference" agency, the University would be entitled under Reclamation Law to first call on Shasta's power output, Beck's report noted. It urged the University to apply immediately to Interior for a consignment of Shasta power.

Interior Secretary Stewart Udall promptly allocated 66 megawatts of power, but a serious obstacle remained: PG&E and its success for decades in keeping all federal transmission circuits out of the Bay Area and thereby severely throttling the growth of public power. (See previous Guardians on PG&E's illegal private power monopoly in San Francisco), by federal law a "public power city.")

PG&E's early assurances took the line, as one official put it, "we'll be glad to wheel your power over our cables." Later, when PG&E developed cozier relations with Interior, a sweetheart contract surfaced which prohibits delivery by PG&E of USBR power to a preference customer situated within any municipality in which PG&E enjoys exclusive distribution rights.

This "contract" has never been tested in court, but it clearly violates the Sherman Act and congressional intent in distributing public power. As Interior Secretary put it on Jan. 3, 1945, in Power Policy Memorandum #123327-1,

"Transmission outlets to existing and potential wholesale markets shall be adequate to deliver power to every preferred customer within the region upon fair and reasonable terms. . . . They must be owned and controlled by the government unless privately owned facilities should be made available upon terms which assure full accomplishment of the basic objectives of the congressional power policy and which do not reward the private company simply because of its strategic location or monopolistic position."

More: "No contracts shall be made that operate to foreclose public agencies and co-operators from obtaining power from the Government project."

Clark Kerr, then UC president, twice wrote PG&E's president and implored him to wheel USBR power to Berkeley from the nearest point on the CVP conductors at Tracy. PG&E rejected both requests.

How could PG&E arrogantly refuse to wheel public power? How could the USBR contradict public policy and sign a contract with PG&E permitting the private utility to refuse to wheel public power to a preference customer?

The answer lies in the fact that PG&E, and the politically muscled private utility lobby in Washington, has for four decades lobbied Congress into refusing to authorize the Bureau to build thermal generating plants to firm up its hydroelectric power, which is variable, and make it marketable.

Thus, the Bureau's Central Valley Project is totally dependent upon PG&E to firm up USBR hydro power (unlike TVA's fully integrated steam/hydro system). The marketability of USBR power is left to the mercy of PG&E.

"This situation is believed to lie at the root of PG&E's intransigence and the USBR's impotence," reported Elmo R. Morgan, UC vice-president for physical planning and construction, in a March 11 report memorandum.

(Note: PG&E's intransigence to wheel public power to UC stands in stark contrast to its willingness to surrender big industrial customers to the City of San Francisco to keep San Francisco's public power from reaching city customers over a public distribution system. See Feb. 28 Guardian.)

In 1965, instead of challenging the PG&E/USBR contract in court, the University seriously considered a notably tortured proposal to de-annex the campus from the City of Berkeley, remove it from PG&E's designated trade territory, meet the terms of the highly questionable contract and compel PG&E to wheel federal power. The proposal was abandoned as too complicated.

More important: the USBR advised the University that, even if the campus were de-annexed, USBR would still consider its delivery of federal power subject to discretionary control by PG&E.

By 1966, Gov. Brown was out, Gov. Reagan in and tuition clouds loomed darkly on the horizon. Enter the Berkeley faculty local of the American Federation of Teachers.

In an April 23, 1968 letter to Reagan, the AFT pointed out that it would be grossly unfair to impose tuition without cutting costs in plant operation, such as power costs. Three months later, a reply came from Reagan's then director of finance, Caspar W. Weinberger, who expressed skepticism about the substantial power savings. But he promised to investigate.

Russell Thompson, senior construction analyst in the Department of Finance, wrote a detailed letter on Aug. 19 and agreed with the union that ". . . substantial savings could be realized by obtaining federal power to the Berkeley campus. . . ." However, he cited PG&E's refusal to wheel the power as the major obstacle.

Thompson also noted that the regents earlier had balked at laying out an estimated \$5 million for the university's own transmission line to Tracy—because, he pointed out, the USBR could not guarantee a firm source of power for many years.

The AFT replied to Thompson with two suggestions: (1) that Reagan himself write PG&E and ask once more that it wheel the power and, if this fails, (2) that the state initiate a court test to require PG&E to transfer the power in accordance with the Ickes order.

As a research aid to Reagan's legal counsel, the AFT enclosed citations to both the Sherman Act and a chronology of 60 years of Reclamation and other congressional acts establishing the basis for federal power policy.

In its final communication, the State Department of Finance told the union that (1) would have to come from Reagan (it never has) and (2) from the university (it never has either).

The key is that the Regents and the University administration have never wanted to take on fortress PG&E in a lawsuit.

Morgan's report came in response to Regent Fred Dutton's request, at a Feb. 20, 1970 meeting of the Regents' Finance Committee, for the UC administration to reinvestigate the reduction of campus utility costs.

Morgan skated over the possibility of litigation in coming up with two courses of action: (1) to file again for CVP from the Bureau (which he quickly discounted as unlikely in view of the "historical background") and (2) to ask the State Public Utilities Commission to grant the university a special rate (which might produce some discount, but certainly far from the 50 per cent savings of public power.)

I called Thomas J. Cunningham, the Regents' general counsel and a former judge, on March 20 and asked him why the university hadn't taken PG&E to court in hopes of saving \$500,000 a year in power costs. His office was "consulted, but we didn't get into the act" at the time Kerr was begging PG&E to wheel CVP power, he said.

I read Ickes' power policy to him, as the basis for possible UC litigation as a preference public power customer. He acted as if he were hearing it for the first time.

"That's good news," he said. "Morgan would be very interested to hear about that." He transferred me to Morgan's extension.

I called Morgan, but he didn't express much interest. He finally suggested I send him the Ickes' quotes and the 60-year chronology so he could review them. The Ickes' quotes and the 60-year chronology came from the AFT, but the AFT I learned had originally gotten them two years ago from Morgan's office.

#### RESTRICTS PUBLIC POWER IN NORTHERN CALIFORNIA

(By Tiffin Patrick)

WASHINGTON.—The Pacific Gas and Electric Co. has demonstrated its influence with the Nixon administration by delaying for nine months, then idling, a federal loan to help 11 Northern California public power cities develop their own public power supply sources. PG&E's major victory went unreported in the local press.

PG&E's influence has been exceeded only by its audacity.

Hal Conner, the private utility's competent Washington lobbyist, says PG&E has made a survey of its own and concluded it would be more economical for the cities to satisfy their additional power needs by purchasing directly from PG&E.

The loan in question is exceedingly small by federal standards, but the principle at stake is large.

All 11 cities have municipally-owned power systems. They expect significant population growth in the next two decades and will need more power. Anticipating that they will become increasingly more dependent upon PG&E unless they develop a power generating source of their own, the cities banded together as the Northern California Power Agency and last July applied to the Department of Housing and Urban Development (HUD) for a \$125,000 loan to conduct a feasibility study on possible supply sources.

Perhaps naively, the cities anticipated little difficulty at the time.

Santa Clara City Mgr. Don Von Raesfeld says PG&E opposition was "a little bit surprising" because representatives of the nation's major power companies had, during the Johnson Administration, pledged cooperation in helping municipal companies solve their long-range power supply problems.

But it's a whole new ball game now, as some Nixon staffers say.

PG&E "cooperation" on the municipal application turned out to be total—and highly effective—opposition. Lobbying through their trade association, the National Association of Electric Companies, PG&E persuaded HUD to delay the grant indefinitely. HUD's decision came on March 25.

At one point, HUD officials went so far as to tell reporters here that they had "no record" of the application and didn't know what had become of it.

PG&E knew, however. A week after the "no record" statement was made, utility lobbyists huddled with Asst. Secretary Samuel C. Jackson and, reportedly, Secretary George Romney himself to express vigorously their opposition to the loan.

The reasons given for that opposition vary somewhat, depending on the lobbyist who's doing the talking. Conner insists opposition to the loan comes from non-California private utilities who are concerned the loan might set a "precedent" for similar applications by municipally owned companies elsewhere.

Other association members maintain the entire impetus for opposition arises from PG&E, a point buttressed by the estimates of Herbert C. Westfall, a Seattle engineer hired by the 11 California cities, that they could save \$17.5 million a year in lower electric bills by developing their own power generating facilities.

If Westfall is anywhere near correct, the potential savings for larger cities would be staggering. Palo Alto, Santa Clara and Alameda are the largest cities in the Northern California Power Agency and most of the other cities—Roseville, Redding, Ukiah, Heraldsburg, Gridley, Biggs, Lodi and Lompoc—are very small cities indeed.

(San Francisco is the only city in the U.S. required by federal law to have public power, but it has allowed PG&E to establish an il-

legal private power monopoly in San Francisco. Thus, the city can't sell its own citizens the power it produces from its Hetch Hetchy power generating facilities. However, San Francisco is now seeking to sell some of its excess power to the 11 public power cities.)

At any rate, the cities struck back, but belatedly. They enlisted the aid of Rep. Charles Gubser, whose district includes Palo Alto and who is a moderately conservative Republican from Gilroy who has never been accused of advocating Socialism.

"I don't see why established cities that have their own power plants should be denied the right to find ways of improving service to their customers," Gubser said. "This isn't a public power vs. private power issue because it isn't going to change the service areas in any way."

Despite this reconciliation of opposition and ideology, it was precisely the private power vs. public power argument that utility company lobbyists supposedly made with Rep. Charles R. Jonas, (R-North Carolina) ranking Republican on the HUD appropriations subcommittee, in applying pressure on the agency to deny the loan.

By coincidence, North Carolina is one state where municipally owned companies abound and where the loan was regarded as setting a "precedent."

Representatives of the cities were prepared to counter this move by asking Rep. Joe Evins (D-Tenn.), chairman of the subcommittee and a staunch public power advocate, to support the loan application.

Evins was the last hope against HUD officials deciding to go all the way with PG&E and deny the loan. Six Northern California congressmen supported the cities' application, but Gubser is the only Republican among them and the Nixon administration has shown a consistent disinclination to listen to Democrats—unless they possess important chairmanships.

PG&E's victory is nationally significant. American cities that want federal assistance to improve their power service have in effect been told to look elsewhere than the Department of Housing and Urban Development.

#### ELEVEN NORTH CALIFORNIA PUBLIC POWER CITIES DEFEY PG&E (By Tiffin Patrick)

WASHINGTON.—Eleven California cities have defied the Pacific Gas & Electric Co. and renewed their application for an independent power supply study that was blocked by PG&E lobbying earlier this year. (See April 17 Guardian.)

The cities, all of them small Northern California municipalities that now furnish cheap, city-owned electricity, are looking for alternative power sources to meet an anticipated doubling of demand by 1985.

PG&E lobbyists here, who candidly concede they would prefer the cities to purchase additional power from PG&E, last March successfully opposed a \$125,000 loan for the study from the Department of Housing and Urban Development (HUD).

Lobbying through electric company trade associations, PG&E contended that the study would set "a dangerous precedent" for federal assistance to municipal power systems. Despite support for the grant from several Northern California congressmen, HUD unceremoniously rejected the application.

Now, the cities have reapplied in a letter that eschews the legalese HUD is fond of and pinpoints the reason for the denial.

"We do not feel that it was the intention of your department to be unduly influenced by 'political pressures' in making a determination as to whether or not a loan application, obviously in the public interest, should be approved or denied," R. W. Cowden wrote HUD Asst. Secretary Samuel C. Jackson.

Cowden is city manager of Redding and secretary of the Northern California Power Agency, an organization formed by the 11 cities to make the application. The cities, which presently serve some 340,000 customers with electric power, include Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara and Ukiah.

#### HOW PG&E ROBS S.F. OF CHEAP POWER (By J. B. Neillands)

A few months before he died last year, Franck Havenner sat up in his bed in a nursing home in San Francisco and told me of how the Pacific Gas & Electric Co. swindled San Francisco out of hundreds of millions of dollars of cheap hydroelectric power.

The story was incredible: PG&E and its political allies had defeated eight successive bond issues to establish a municipal electric system in San Francisco and grant city residents and businesses the benefit of low cost power produced by the city's Hetch Hetchy water system in the Sierras.

The results: San Francisco has paid through the nose to PG&E for its power and the city loses about \$30 million a year in profits it would get from a public system.

Havenner, longtime SF supervisor and later a U.S. representative, said: "In the beginning, we had the support of some newspapers, but in the end the PG&E was able to buy them all out with their newspaper ads."

The PG&E/newspaper/political combination got stronger with each bond issue. Today, you never hear about the city's sacred pledges to build a public power system.

How could this happen? How could Sacramento, Los Angeles, Palo Alto and a dozen other California cities get their own lucrative electric distribution systems when SF couldn't even get one when it had its own power? More: How could this happen when it is a specific condition of federal law for San Francisco, unlike any other American city, to build its own municipal electric distribution system?

Abe Ruef's graft in 1906 was peanuts, birdseed, compared to this.

The story goes back to the turn of the century when San Francisco desperately needed an adequate water supply. Fifteen alternate sites were crossed off before Mayor Phelan filed for water rights on the Tuolumne River with money from his own pocket.

Unfortunately, however, the site lay inside Yosemite National Park and the proposed dam would flood exquisite Hetch Hetchy Valley.

Conservationists were furious and John Muir raged: "Dam Hetch Hetchy! As well dam for water tanks the people's cathedrals and churches; for no holier temple has ever been consecrated to the heart of man." Understandably, Congress was reluctant to grant the brutal intrusion into Yosemite.

The impasse was resolved by Rep. John Edward Raker, from the state's second (Mountain) district. He proposed to let San Francisco take the water from Yosemite, but in the process generate and distribute low-cost hydroelectric power.

It was the only federal grant of its kind ever made by Congress and it is certain, as Interior Secretary Harold Ickes later emphasized, that it would never have been made without crucial conditions: that both water and power go directly to consumers, and that no profits whatsoever from this unprecedented public grant go to private utilities.

The act's language was explicit (see chronology, 1912) and there was no doubt among supporters or opponents, about the public power intent of Congress. Thus on the floor debate:

"Mr. Sumners: Is it the purpose of this bill to have San Francisco supply electric power and water to its own people?"

"Mr. Raker: Yes.

"Mr. Sumners: Or to supply these corporations, which will in turn supply the people?"

"Mr. Raker: Under this bill, it is to supply its own inhabitants first . . ."

Muir and other militant conservationists were bitterly disappointed by the Raker Act and the loss of Hetch Hetchy, but other conservationists, like Sen. George Norris of Nebraska, considered it a reasonable compromise.

The Raker Act was the Magna Carta for cheap public power. It was thought to be tightly drawn in the public interest and virtually impervious to subversion by private power trusts. Its basic intent was to establish a municipal power distribution system in San Francisco, but it also allowed the sale of power to public agencies and recognized the prior claims of the nearby Turlock and Modesto Irrigation Districts.

However, the Act stipulated, in strict terms especially irritating to the private power lobby, that any attempt to transfer the water or power to a "person, corporation or association" for resale could result in revocation of the federal grant.

#### WATER, NOT POWER

In developing water, San Francisco has observed reasonable compliance with the Raker Act on the record. It has had little trouble passing expensive water bond issues to construct the enormous Hetch Hetchy system of pipes and tunnels that delivers the water across the Central Valley, under San Francisco Bay and into the Peninsula's Crystal Springs Reservoir. There's been no reluctance to "go into the water business" in San Francisco.

In developing power, however San Francisco has gone up against fortress PG&E and has failed miserably in complying with the Raker Act. Ickes was here on Oct. 24, 1934, for the celebration of the first flow of Hetch Hetchy water to reach Crystal Springs. He mused in his diary:

"San Francisco also develops power from this water. . . . Unfortunately, private utilities have such a grip on San Francisco that it cannot actually sell its own power to users in San Francisco. I held there was a violation of the Act . . . the newspapers and most of the politicians have seen to it, by propaganda and other devious methods, that a method of complying with the Act has been defeated."

Norris lamented in his biography that, as a supporter of the Raker Act, he had "underestimated the 'resourcefulness' of PG&E."

"When I spoke so hopefully and so confidently (not only I but many others) it was incredible that a great utility could control the policies of city government in San Francisco . . . to defeat the original spirit and purpose of Hetch Hetchy. But it has done all this."

PG&E moved in early and has prevented the full public development of Hetch Hetchy power to this day. Hetch Hetchy's first small hydroelectric generator, Early Intake Powerhouse, went on the line in 1918. It was immediately connected to the Sierra and San Francisco Power Co. (later merged into PG&E). Interior declared the accord illegal on June 8, 1923, but nothing was pressed since only a small amount of power was involved.

With the completion of Moccasin Powerhouse in 1925, a substantial block of hydroelectric power became available; to bring the energy to San Francisco as required by the Raker Act, the city began laying a steel tower transmission circuit in the direction of San Francisco.

It was strung all the way to Newark, some 99 miles, but was stopped abruptly at Newark on the east shore of San Francisco Bay. Here, conveniently, PG&E had a substation and here, conveniently and in obvious anticipation of a new energy load, PG&E had just laid a trans-Bay, high voltage cable to span the remaining 35 miles to San Francisco.

Although the city had purchased enough

copper wire to complete the Hetch Hetchy line, word suddenly rocketed from city hall that further construction funds were exhausted. San Francisco's two power companies, Great Western and PG&E, refused to sell their systems to the city, and the board, instead of using eminent domain to acquire them, approved a contract on July 1, 1925, to hand over Hetch Hetchy power to PG&E at Newark. The copper wire was stored quietly in a SF warehouse and 10 years later sold for scrap.

"The disgraceful history of the handling of Hetch Hetchy power should place a new ugly verb in the lexicon of political chicanery. 'To Hetch Hetchy' means 'to confuse and confound the public by adroit acts and deceptive words in order to turn to private corporate profit a trust set up for the people'.

"I need not repeat the scandalous story that has given birth to this new verb, but I would remind you that the last chapter of it has not been written. The pledge that the people of San Francisco, with full knowledge, made to their government has not yet been redeemed". Interior Secretary Harold Ickes to the Commonwealth Club in 1944.

#### THE BIG SELLOUT

It was a sellout worthy of chronicling by Lincoln Steffens and Frank Norris. The city produces the power, but PG&E grabs it for wholesale, then wheels it into the city at exorbitant retail rates. As the San Francisco Examiner then observed:

"It is a wrongful and shameful policy for a grant of water and power privilege in the Yosemite National Park Area to be developed at the expenditure of \$50 million by the taxpayers of San Francisco, only to have its greatest financial and economic asset, the hydroelectric power, diverted to private corporation hands at the instant of completion; to the great benefit of said private corporation and at an annual deficit of San Francisco."

In the 1925 city election, every incumbent supervisor was defeated who voted for the 1925 contract and presided over the establishment of PG&E's tollgate at Newark. The people wanted public power and the new board determined the city should bond itself in whatever amount necessary to buy out PG&E and get it.

The first \$2 million bond issue in 1925 fell before a powerful PG&E onslaught, but it still got 52,216 for, 50,727 against (two-thirds needed for passage). In all from 1925 to 1941, PG&E's enormous political influence defeated eight bond propositions to buy all or part of PG&E distribution properties.

To defeat the bonds, Havenner told a congressional committee in 1942, that PG&E had spent at least \$200,000 in the previous 10 years; Ickes broke the amount down further: \$11,876 in 1935; \$25,330 in 1937; \$59,755 in 1939 and much, much more in 1941. It now spends hundreds of thousands each year in political and charitable donations.

PG&E's strategy, Ickes testified, was to "spread throughout the city the word that the Raker Act could be easily amended" and to confuse the issue by saying the city "had been discriminated against" by the act (see Ickes box).

PG&E laid it on thick in an expensive series of seven ads in the daily press; the press responded by repeating and embellishing the PG&E line. The Chronicle, for example, ran nasty cartoons and editorial comments implying this was all a city hall power grab: "If the city hall were not so busy trying to aggrandize itself by clutching more business to muddle with . . ."

#### PG&E'S VOICE

(PG&E maintained close connections with most newspaper managements, but Chronicle/PG&E connections have for decades been intimate through family relationships, notably the Tobin and de Young dynasties. Joseph O. Tobin, who became a Chronicle owner by marrying Mike de Young's daugh-

ter, Constance, is a nephew of Joseph S. Tobin, a onetime PG&E director. The Tobins live in Hillsborough and have long been associated with the Hibernia Bank. Mike de Young and his brother founded the Chronicle.)

(Recently a Chronicle story described PG&E president Robert Gerdes as "exceedingly dignified" in the utility's whopping rate hike case before the Public Utilities Commission. His opponent, the distinguished former PUC commissioner, William Bennett, was described as "something" of a representative for consumers.)

His patience exhausted, Ickes meanwhile filed suit in federal court to throw out the PG&E's phony 1927 contract. The case ultimately went to the U.S. Supreme Court which ruled, on April 22, 1940, that San Francisco had been illegally disposing Hetch Hetchy power to PG&E for the past 15 years.

More: that the act required a "publicly owned and operated power system" in San Francisco.

It is difficult, almost impossible I found, to determine how long this illegal sale continued, how much city users were overcharged and what is the city's current legal status. It appears to me, after months of research, that the city is still under a federal court injunction.

A significant sidelight is then Rep. Clair Engle's investigation in 1955 into another diversion of Hetch Hetchy power to PG&E. Engle's biting cross examination of public officials and his ability to disentangle complicated issues proved conclusively that San Francisco was allowing irrigation districts to serve as a conduit to transfer Hetch Hetchy power to PG&E.

Engle quoted figures compiled by the Federal Power Commission showing that 24.7 per cent of the power purchased by Modesto and Turlock "is currently and for a period from 1945 to 1953" was sold to PG&E. Forty-eight per cent of this total was Hetch Hetchy power, the FPC said.

Engle asked the American Law Division of the Library of Congress to research this point. It advised him on May 22, 1956, that SF had sold dump power to PG&E since 1945 and by letter agreement had extended the arrangement into 1962. It also said that SF had been selling power to Modesto and Turlock, which at the same time were furnishing to PG&E about the same amount they were buying from the city. M and T have plenty of power through their own generating plants at Don Pedro and La Grange.

To determine if this unlawful transfer of power continues, the following data is required: (1) hourly production by district generating plants; (2) simultaneous receipt by the districts from Hetch Hetchy; (3) simultaneous delivery from the districts to PG&E. The Interior Department has refused my repeated requests for this public information.

We are left with a significant remark in the Modesto District's 1967-68 annual report: "These once bitter enemies, the irrigation districts and San Francisco, work in close harmony toward the full economic development of the water and power resources of the Tuolumne River watershed."

And, I might ask, in supplying power to PG&E in violation of the Raker Act? Because of the power, the money and the chicanery involved, only something on the order of a congressional investigation will turn up the facts.

As a result of PG&E's influence, Hetch Hetchy's formidable power output is dribbled away in a fragmented pattern that brings relatively little revenue to the city. Besides the irrigation districts, power is sold to several low-paying San Francisco industrial consumers, which are served by PG&E lines from its Newark and Warnerville substations. The city pays for transmission charges, including losses.

City power is wheeled into San Francisco on PG&E toll lines and the company until recently levied an outrageous toll. (PG&E buys Hetch Hetchy power at Newark for \$2 million, then resells it to SF consumers for \$9 million, congressional testimony showed in 1941. Total overcharge: \$6,600,000. Multiply these totals year by year and you begin to get the dimensions of this steal from the city treasury.)

Hetch Hetchy power goes to the airport, Muni and street lights. Everything else, notably the lucrative, tightly packed retail market that forms the base of PG&E's empire, is served by PG&E.

Sen. Lee Metcalf of Montana, a nationally recognized authority on utilities, writes the Guardian: Political manipulation by power companies is commonplace. Too few accounts of it are published. J. B. Nellands here tells well how Pacific Gas & Electric Co. defied national and local governments and denied Bay Area residents the low cost electric power to which they are entitled by law—and which they can get if they will insist on law enforcement.

(Metcalf is the author of "Overcharge," an exhaustive 1967 study of utilities. He has invited Nellands, a professor of biochemistry at the University of California, Berkeley, to testify at current congressional hearings on public power.)

#### THE BIG STEAL

What does San Francisco lose without its own system to distribute its own power? Three key points: (1) a lower user rate for business and residences, (2) a new source of city income (much, much more than PG&E taxes bring), and (3) a substantially lower city tax rate because of this massive tax subsidy.

Let us compare SF with Palo Alto, a city with a municipal system since 1898, and see how these benefits accrue.

(1) Lower user rate: Palo Alto's municipal rate for KWH is \$5.65, PG&E's in San Francisco is \$6.20. This means that power per user is about \$20 cheaper a year in Palo Alto and owners of Palo Alto's 20,000 meters would save some \$400,000. (PG&E charges much higher rates around Palo Alto—in Menlo Park, for example, 250 KW costs \$7.41 from PG&E.)

(2) New city income: Palo Alto put \$1,327,000 in surplus power profits into the general fund in 1967. This does not include the exact in-lieu-of-tax payment PG&E would have made had it operated the utility. Palo Alto credits this as a separate item to answer PG&E charges that "public agencies do not pay taxes."

(3) Lower tax rate: income from public power is the reason, and the only reason, that Palo Alto's tax rate is just 78¢ per \$100 assessed valuation. In Berkeley, a city of comparable size, the city tax rate by contrast is almost \$3 because it does not have public power. Clearly Palo Alto uses power revenue as a big tax subsidy.

If we add the \$400,000 in user savings to the \$1,327,000 in utility revenue, the total annual benefit of public power approaches \$2 million. Palo Alto also has an \$8 million investment in a modern and efficient electric utility system which, at the rate of undergrounding, will be entirely subsurface by 1980.

San Francisco's profits from public power would total about \$30 million a year by scaling up these figures from Palo Alto. It would more than double the city's current Hetch Hetchy power revenues.

This sum would undoubtedly rise much higher because San Francisco has an extremely high meter density, with its packed in housing, and because the city of course generates its own power. Palo Alto buys federal power wheeled over PG&E lines.

Politically, it would be difficult to establish a municipal power system in San Francisco. A ninth bond issue, even a modest one to

complete the line from Newark, would surely be defeated by the PG&E/Ex/Chron combine. Sacramento is the most recent California city to buy out PG&E; even with the forthright support of the Sacramento Bee, it took a terrific battle to defeat PG&E's well-heeled campaign.

In Berkeley, where the Berkeley Coalition has made public power an issue in the April council election, PG&E agents call on the Berkeley Gazette almost daily to keep the newspaper in line.

The best course in San Francisco is to illuminate the issues as this article has done, then dramatize them in this fall's supervisory campaign (see editorial, p. 8). There are several ways San Francisco can proceed: one is to gradually acquire its own system by putting in its own lines during redevelopment construction; another is to get acquisition capital through the non-profit corporation method of financing used with Candlestick Park and parking garages.

Since Ickes two decades ago, the Interior Department has been notoriously lax in pushing San Francisco to enforce the Raker Act. James Carr stepped out of this don't-ruffle-PG&E-atmosphere in Interior to become San Francisco's general utilities manager. He has kept PG&E's monopoly intact, untroubled and unquestioned in San Francisco.

I asked Carr, shortly after he took office in 1964, when the city would enforce the Raker Act. Carr replied in a letter, 51 years after the Raker passed as the Magna Carta of public power, that it was "premature to discuss municipal distribution of power in San Francisco." In March, 1969, it still is.

#### How to "HETCH HETCHY"

(A Chronology)

1902: SF City Engineer Grunsky develops a plan to pump Hetch Hetchy water in Yosemite National Park to a thirsty San Francisco.

1912: The Freeman Plan calls for a gravity-flow system with hydro electric plants on the Tuolumne River. The Board of Supervisors publishes a book, large and glossy, showing that the proposed works would beautify Hetch Hetchy and make cheap water power available to SF.

1913: Congress passes the Raker Act (HR 7207) granting, with strict provisions, water and power rights to the City & County of San Francisco.

The two key sections: Section 6:

"That the grantee is prohibited from ever selling or letting to any corporation or individual, except a municipality or municipal water district or irrigation district, the right to sell or sublet the water or the electric energy sold or given to it or him by the said grantee: Provided, that the rights hereby granted shall not be sold, assigned, or transferred to any private person, corporation, or association, and in case of any attempt to sell, assign, transfer, or convey, this grant shall revert to the Government of the United States."

Section 9 outlines enforcement procedures: "... the grantee shall at all times comply with the observe on its part all the conditions specified in this Act, and in the event that the same are not reasonably complied with the carried out by the grantee, upon written request of the Secretary of the Interior, it is made the duty of the Attorney General in the name of the United States to commence all necessary suits or proceedings in the proper court having jurisdiction thereof..."

1923: The City purchases enough copper transmission cable to reach from Hetch Hetchy to San Francisco.

1925: San Francisco builds a great powerhouse on Moccasin Creek in the low Sierra and the transmission line was started to the city. Suddenly, word comes from the city that further construction funds were exhausted: just as the line conveniently reaches PG&E's substation in Newark, just after PG&E con-

veniently completes a high voltage line from SF to Newark. PG&E refuses to sell its SF system to the city, then inveigles SF to put up a PG&E tollgate in Newark. PG&E got the city's power cheap, then jacks up the rate for wheeling it the remaining 40 miles to SF consumers. (See 1941.) Every supervisor for this contract was defeated handily in the 1925 supervisory election.

1927: First of eight bond issues to create an SF municipal power system as required by Raker Act. PG&E, its powerful political allies and the newspapers only manage to narrowly defeat the bonds: 52,215 to 50,727 against on a 2/3rds vote. PG&E alliance gets stronger as the press in later years more and more shuts off the truth about San Francisco's pledges under the Raker Act. Now, you see hardly a word.

1933: Interior Secretary Ickes takes office. Begins study of 1925 contract.

1935: Ickes grumbles about PG&E and Hetch Hetchy. City sells the unused cable for scrap.

1937: Ickes files suit in Federal District Court, charging San Francisco with violation of Sec. 6.

1938: Federal District Court rules in favor of the government; the city appeals.

1939: Circuit Court of Appeals reverses the District Court; government appeals to the US Supreme Court.

1940: Supreme Court upholds the Government, remands the case to the District Court. The Supreme Court made liberal reference to the original debate on the Raker Act and said in part:

"From the Congressional debates on the passage of the Raker Act can be read a common understanding both on the part of sponsors of the Bill and its opponents that the grant was to be so conditioned as to require municipal performance of the function of supplying Hetch Hetchy water and electric power directly to the ultimate consumers..."

Again: "Before final passage in the Senate opposition had practically narrowed down to the power provisions of the measure, and these provisions contemplated a publicly owned and operated power system". San Francisco readied its eighth and last bond issue.

1941: Ickes comes to SF and gives a speech at the Civic Auditorium urging passage of the bond issues on Nov. 4. Chronicle runs front page editorials and nasty, misleading cartoons against the power bonds. Citizens committee is formed to fight the power bonds and amend the Raker Act. Chairman is J. W. Mailliard of the politically prominent family, a member is Walter Haas of Levi Strauss.

Committee states: "We are not committed to private ownership nor to public ownership." The bonds were defeated and Rep. Tom Rolph (brother of Mayor James Rolph) introduced a bill to amend the Raker Act. Hearings were held in Washington and San Francisco. Bill died in committee.

1941: A quick glimpse of PG&E's surcharge on SF public power (unreported here) emerges in the House Public Lands Committee hearing in Washington. PG&E buys Hetch Hetchy power at Newark for \$2,400,000 a year, then resells it to SF consumers for \$9,000,000, testimony showed. The total overcharge: \$6,600,000. It is difficult, almost impossible The Guardian found, to determine how long this illegal sale continued and how much city users were overcharged.

1944: Ickes coins the phrase "to Hetch Hetchy" in a Commonwealth Club speech. Means "to confuse and confound the public by adroit acts and deceptive word in order to turn to private corporate profit a trust set up for the people."

1949: Walter Haas elected to the board of PG&E.

1955: Rep. Engle introduces a bill to create a new irrigation district on the Tuolumne River. In the hearings, Engle proves that Hetch Hetchy power sold to Turlock & Modesto Irrigation districts was resold to

PG&E in violation of a 1945 proviso by Ickes. City Atty. Dion Holm agrees Raker Act requires a municipal system and says "... we are minus that for the time being, which one day we will have."

1964: James Carr assumes post as manager of SF utilities. Comes from an interior department notoriously lax, since Ickes, in trying to enforce the Raker Act. His brother, Francis Carr, was until 1966 manager of PG&E's tax department. Neillands asks Carr when the city will enforce the Raker Act and Carr replies, 51 years after Raker Act passes, that "... it is premature to discuss municipal distribution of power in San Francisco..."

1965: Neillands writes similarly to Frank Barry, solicitor of the interior, says Barry: "... we know of no means by which the US can require the city to acquire the municipal distribution system..."

1969: Oral Moore, manager of Hetch Hetchy, tells the Guardian that the city has no plans to enforce the Raker Act.

[From the San Francisco Bay Guardian, Feb. 28, 1970]

SF POWER—IN THE GREAT TRADITION OF ABE RUEF AND CANDLESTICK  
(By Peter L. Petrakis)

Oral Moore, manager of San Francisco's Hetch Hetchy water and power project, recently addressed the San Francisco Planning and Urban Renewal Association (SPUR) on our huge hydroelectric system in the Sierra. He referred to "the problem of disposing of San Francisco's electrical power."

"Problem?"  
Why should San Francisco, which has within its boundaries one of the most compact, populous and lucrative retail power markets in North America, have a "problem" disposing of its own electric power?

The historical background of this "problem" has been outlined fully in previous Guardians as part of the great San Francisco tradition of Abe Ruef, Russell Wolden and Candlestick Park. (See Neillands in Mar. 27, 1969 Guardian, Petrakis in Sept. 30, 1969 Guardian.) Only a brief summary is now needed.

In 1913, after a bitter conservation battle, the federal government granted San Francisco the unprecedented concession to dam a beautiful valley (Hetch Hetchy) in a beautiful national park (Yosemite) to build a system of dams, reservoirs and powerhouses on the Tuolumne River to supply the city's water and power.

The condition: that the city produce cheap public power, that it build a municipal distribution system and that it allow absolutely no resale or transfer of power to private utilities such as PG&E.

Disposing of Hetch Hetchy water was no "problem" for San Francisco. It brought out the Spring Valley Water Co. without much fuss and promptly went into the business of retailing cheap water to San Francisco and Peninsula residents. Retailing cheap electric power in San Francisco, however, brought the city up against fortress PG&E.

#### NEWS BLACKOUT

From 1927 to 1941, PG&E spent a small fortune to defeat eight successive bond issues to purchase its San Francisco distribution system in accordance with Raker Act and city charter public power commitments. Its principal allies: the Chronicle, Examiner (who impose a news blackout on the issue to this day) and other conservative business elements.

Since 1925, when Hetch Hetchy's first block of power became available, the city PUC has slaved mightily to figure out how to get rid of the power without selling it to San Francisco citizens and disturbing PG&E's illegal power monopoly.

First, the PUC tried to sell the power directly to PG&E for resale to San Franciscans (with a stiff surcharge). But the U.S. Su-

preme Court killed that sweetheart arrangement in 1940.

The Court's decision and the failure of the bond issues, together with a steady growth in Hetch Hetchy's power generating capacity, have subsequently led the city into an incredible series of arrangements, all designed to dispose of power to almost anybody except its owners—the people of San Francisco.

Many San Franciscans think of this Hetch Hetchy scandal as past history. It isn't. By forcing the city to build its electric utility system on the fringes of PG&E's empire, the private utility has imposed crippling physical and economic deformities that grow worse each year.

In brief, San Francisco has been forced to "solve" its "problem" by:

(1) Maintaining a "dumping ground" for Hetch Hetchy power with large out-of-town chemical plants, assigned to it by PG&E to keep the city's power out of San Francisco;

(2) Continuing to provide Hetch Hetchy power to PG&E for resale;

(3) Wholesaling Hetch Hetchy power to public power districts that make more money out of a fraction of Hetch Hetchy's output than San Francisco can make out of the whole output;

(4) Preparing to maximize Hetch Hetchy's capacity with a \$230 million bond issue (total capital investment in the project: half a billion dollars) without simultaneously planning to acquire San Francisco's retail market; which it must have to make the investment pay;

(5) Planning to wholesale Hetch Hetchy power to nearby public power cities thereby allowing them to reap the superior profits and prosperity that come with electrical retailing;

(6) Continuing to allow PG&E to grab annual profits of at least \$30 million while the city takes the crumbs of far less profitable markets.

By the early 1940's the Turlock and Modesto Irrigation Districts began to outgrow their own power generating facilities. They were now interested in a deal San Francisco had first offered them in 1925. No doubt with some relief, after the Supreme Court decision, the city contracted to deliver extra Hetch Hetchy power to the districts, well above the Raker Act's small quota for irrigation.

#### MUNICIPAL SERVICES

To dump the rest of the electricity, City Hall and PG&E came up with this plan: Hetch Hetchy power coming over PG&E's Newark-San Francisco transmission lines (formerly sold by the company to San Franciscans) would henceforth be delivered exclusively to the municipal services. That way, no one could say the city was "selling" Hetch Hetchy power to PG&E for resale.

The Department of the Interior and the Justice Department, which had sued the city over the earlier "agency" contract, went along with the plan. They agreed the city would pay PG&E to perform a service—wheeling the city's power to municipal departments.

(Another way to look at this arrangement, though, is that San Francisco gives to PG&E that portion of Hetch Hetchy output destined for municipal services, then buys it back. Once Hetch Hetchy power goes into PG&E's lines, it becomes indistinguishable from PG&E power and the company can do what it wants with the power—even sell it to the people of San Francisco. "Wheeling" and "wheeling fees" are merely bookkeeping labels.)

After these contracts were signed in 1945, the city had a guaranteed market for power. The city could now proceed with further power developments along the Tuolumne River—not for sale to the people of San Francisco, but to anyone else who could legally buy it.

Sometimes in the psychology of utility managers makes them unable to bear the

sight of an undeveloped hydroelectric power drop. Thus it has happened that, although the city has been unwilling to go into business selling electricity to its own citizens, it has proceeded to harness additional power on the Tuolumne for customers outside the city.

From 1925 to the present, Hetch Hetchy's total generating capacity has been increased from 70,000 to 320,000 kilowatts by the construction of additional dams and powerhouses. In 1968, Hetch Hetchy delivered nearly 2 billion kilowatt-hours of energy to its customers. (PG&E during the same year delivered roughly the same amount to all the houses, businesses and industries in San Francisco.)

So rapidly did Hetch Hetchy's generating capacity grow, from 1945 on, that it outstripped the capacity of the municipal services and the irrigation districts to absorb it. The original solution to "the problem" was no longer adequate. The city had to have additional customers.

It found them—not among the residents of San Francisco, but among out-of-town chemical manufacturers.

In the past six years, these companies have gotten about 38 per cent of Hetch Hetchy's power, according to the city PUC's annual report. (See table.)

The companies: Shell Chemical Co., Kaiser Gypsum and Cement Co., Kaiser Aluminum and Chemical Co., Air Products and Chemicals Corporation, Hercules Powder Co., Norris Industries, California Ammonia Co. and some small customers. (The balance of the power is distributed to Turlock/Modesto Irrigation districts (40 per cent) and municipal services (22 per cent), including the Muni Railway, City buildings, airport, water department pumps and street lights.

#### SF'S DUMPING GROUND

Not one of these plants is in San Francisco. They do not pay taxes to San Francisco. They do not employ San Franciscans. They merely use San Francisco's power for the benefit of Contra Costa, Santa Clara, San Joaquin and Stanislaus Counties.

But the story is more complex than that. It involves a further development in the incestuous relationship between City Hall and PG&E that has sabotaged the public power provisions of the Raker Act and the city charter for 45 years.

Of course, more than a primitive urge to grow was involved in the development of power capacity above the immediate and predictable needs of municipal services and irrigation districts. A basic characteristic of hydro power is its variability. It rises and falls with the amount of precipitation in the Hetch Hetchy watershed.

The city has no steam plants to back up these hydro power variations. Therefore, to meet what it regards as its primary obligations the city must generate a large excess of hydro power. That way, it will not be caught short during a dry spell.

However, San Francisco has developed an excess generating capacity far greater than needed to assure constant delivery to its primary customers. In fact, the current excess is double the amount now needed by the irrigation districts. This insures plenty of power to meet future increases in demand by these users.

The Modesto Irrigation District increases its power consumption by 10% a year, Turlock by 8%. Thanks to the economic growth stimulated by cheap public power and water, it will not be long before both districts will be able to absorb all of Hetch Hetchy's present excess capacity.

But in the meantime something had to be done about the "problem" of San Francisco's excess power. Enter the city's industrial customers.

That these industrial plants serve as an "electrical dumping ground" for power the city cannot (or will not) deliver elsewhere is revealed by the nature of the contracts the

city signs with them. Unlike the contracts with the irrigation districts, these are short term contracts, cancellable on short notice. Here is how they work:

During periods of high runoff at Hetch Hetchy, more surplus power is available, so the city sends more power to these companies (over PG&E's lines, for a fee). During dry spells, Hetch Hetchy must deliver less. What then happens to these companies when Hetch Hetchy power is reduced? Do they cut down operations until Hetch Hetchy is ready to deliver more? Not at all. They keep operating at full blast—because the city buys the additional power it needs from PG&E to meet these companies' demands.

#### NONCOMPETITIVE

Thus, PG&E and the city essentially share the same industrial customers. These companies once were exclusively PG&E's customers, but PG&E turned them over to the city in the early 1960's when the new Dion Holm and Robert C. Kirkwood powerhouses went on the line at Hetch Hetchy. Why should PG&E willingly give up customers?

To PG&E, the arrangement is necessary, if unpalatable, because it keeps the city from getting funny ideas about bringing the extra power into San Francisco as the Raker Act and city charter require. Better to let the city get rid of power by assigning it some less profitable PG&E customers—outside the city.

Oral Moore freely concedes this is what the industrial accounts are all about. "PG&E has to provide some legitimate outlets for Hetch Hetchy power or they'd be in trouble," he told me "The city would obviously be pressuring to get a distribution system."

#### INDUSTRIAL ACCOUNTS

To the city's industrial customers, it makes no difference who they pay for electricity. The city and PG&E charge them the same rate—the schedule established for privately owned utilities by the California PUC.

Thus, they have no incentive to prefer public power, which in other areas is cheaper than power sold by private utilities.

This non-competitive arrangement clearly violates the Raker Act and its provisions for a public system to sell power "in direct competition with adjacent privately owned utilities."

New San Franciscans are aware of these industrial contracts that dispose of electricity they can't have. This is because they are quietly ratified by the State PUC. Orville Wright, formerly a deputy city attorney for public utility matters, told me that, although these contracts have existed for several years, they have never been the subject of the State PUC public hearings.

The city, according to Moore, expects to gradually turn the industrial customers back to PG&E over the next few years. Demand for power in the Turlock and Modesto Irrigation Districts, which the city considers its prime customers, is growing so rapidly that, by about 1974, they will be able to take all the available output from Hetch Hetchy. No doubt, PG&E will breathe easier. The loss of some of its industrial accounts would have been only temporary. The loss of its San Francisco distribution system would have been forever.

#### "POWER BANK"

The Raker Act says: " \* \* \* the grantee (SF) is prohibited from ever selling or letting to any corporation or individual, except a municipal water district, or irrigation district, the right to sell or sublet the water or electric energy \* \* \* "

It was on the basis of this restriction that the U.S. Supreme Court, in 1940, invalidated the 1925 sweetheart contract between the city and PG&E. Nevertheless, some Hetch Hetchy power still passes regularly into the PG&E system, and is retailed to PG&E's customers. Unlike the earlier arrangement, this one at least has the wary approval of the U.S. Interior Department.

Since Hetch Hetchy is exclusively a hydro-electric system, with no steam plants to back up the system's output variations, problems arise at the production end.

Annually, during the late winter months, it is necessary to lower the levels in the Hetch Hetchy reservoirs to anticipate the spring thaw. In February, March and April, Moore told me, the snow pack on the Hetch Hetchy watershed is measured. An estimate is then made, usually accurate to within 5%, of the volume of water that will flow into the reservoirs during the thaw.

An amount of water equal to that expected from the thaw is then let out of the reservoirs.

If this were not done, the added water from the runoff would spill over the tops of the dams and by-pass the powerhouses. By lowering the reservoirs in advance, the city can put all the water through the powerhouses to generate electricity.

While the reservoirs are being lowered, the generators run day and night. However, the city's regular customers cannot use this sudden surge of extra power; their needs are fairly steady over the year.

Through a letter agreement in 1960, the city arranged to transfer the extra power to PG&E. Since PG&E has a lot of steam generating capacity, the hydro power is readily absorbed into the PG&E system. All the company must do to accommodate this surge of hydro power is to throttle down some of its steam plants. During these periods, Hetch Hetchy power is sold by PG&E to its customers, including the people of San Francisco.

During late summer, when the run-off is essentially completed and the reservoirs again are filled, the city faces a different problem. It must now regulate the water flow through the powerhouses to conserve water for city and irrigation needs, and to prepare for a possible dry spell the next year. PG&E then cranks up its steam plants to pay back the electricity it got from the city during the late winter and spring.

Examination of Hetch Hetchy's annual report shows that, while the "deposits" and "withdrawals" from PG&E's "power bank" do not balance well in a given fiscal year, they do come out better over a six year period. But unlike regular banking, the city does not earn "interest" on its "deposits" with PG&E. PG&E, after all, makes a substantial profit on the power it "borrows" from Hetch Hetchy—more money than the city can make on its power sales.

This is another instance how San Francisco's failure to obtain its own city retail distribution system has hurt the city and benefited PG&E. Had the city bought out PG&E, in all probability it would have built its own steam plants with its own earnings long ago—just as other public hydro systems have done—to smooth out yearly production at the maximum levels.

#### HETCH HETCHY PROFITS

The Raker Act recognizes the prior claims of the Turlock/Modesto Irrigation districts and stipulates the city must provide at cost whatever power the districts need for irrigation and municipal services. This amounts to only a small portion of the total delivered to the districts. San Francisco's "problem" has allowed the districts to reap a windfall—an abundance of cheap electricity for general distribution to houses, businesses and industries.

In the 1967-68 period, the two districts sold to their residents about 1 billion kilowatt-hours of electricity annually (80% from Hetch Hetchy). From this, they grossed \$13.6 million and cleared \$5.4 million. In the same period, San Francisco grossed \$12.8 million from Hetch Hetchy power, but it had to sell twice as much electricity—2 billion kilowatt-hours, Hetch Hetchy's capacity—to do

it. City profits from electricity sales were less than \$4 million.

The reason is obvious: San Francisco has no domestic retail market and the districts do. Power sales in the districts are almost entirely retail, while San Francisco's sales are predominantly wholesale, at cost or at low industrial rates. As any PG&E executive knows, the sale of electricity to the ultimate consumers—houses, business and industries—and on a large scale is how major profits are made in the utility business.

After completion of the first Don Pedro dam, residents of the irrigation districts voted overwhelmingly in 1922 to buy out PG&E's distribution system and go into the retail electric business. The districts built this project and thus were not restricted by the Raker Act. There was no compulsion for them to retail Don Pedro power and no prohibition against wholesaling it to private utilities.

#### GROWING PROBLEM

Yet they voted to buy out PG&E. With an earthy practicality that never caught on in "The City That Knows How," voters responded to arguments like this:

"The power crop is a natural by-product of the stored water and to sell that crop at a small wholesale price and turn around and buy it back at a much higher price for drainage and other uses does not seem any better logic than to raise a crop of corn, sell it at a low price and then buy the corn at retail prices to feed our hogs." (From the district's annual report.)

For about 20 years, the districts were able to supply their own power from their own projects. Then, after San Franciscans in 1941 voted down their eighth and last bond issue to buy out PG&E's local distribution system, the districts "rescued" San Francisco, solved Moore's disposal "problem" and agreed to take the power the city didn't want. They have been taking it ever since.

The supreme irony is that the districts do better with just a portion of San Francisco's power than does San Francisco with the whole.

Even with the high profits, district electrical rates are substantially lower than they are in San Francisco. The average household uses 3,000 kilowatt-hours of electricity per year, according to the State PUC. On this basis, an average household in the Modesto Irrigation District pays \$60 a year for electricity. The average San Francisco household pays PG&E \$74.40 a year—24% more for the same amount of power.

The Modesto Irrigation District makes enough profit from Hetch Hetchy electricity to totally subsidize the distribution of irrigation water to the district's farmers and still has money left over; in 1968, it transferred \$1.8 million to surplus after making the water subsidy. Meanwhile, San Francisco's PUC contemplates a 15% increase in water rates for city consumers and PG&E petitions the State PUC for another increase in electricity rates.

San Francisco could bring almost the entire output of Hetch Hetchy into the city—if it had a distribution system. Although there is no visible intention at City Hall to do this, the PUC still is studying expensive ways to maximize Hetch Hetchy's power output.

A couple of years ago, the PUC hired the associated engineering firms of Claire A. Hill and R. W. Beck to determine how to develop unused potential on the river to maximize Hetch Hetchy's power output.

The consultants' plan would boost Hetch Hetchy's annual power production 2½ times, to nearly 5 billion kilowatt hours. This is enough to supply two cities the size of San Francisco, but again none of this power is destined for San Francisco citizens. The cost estimate was \$230 million, to be paid out of general obligation bonds over a period of 60

years. This would boost San Francisco's total investment in the Hetch Hetchy Project close to half a billion dollars.

Moore says the expansion would add \$2.5 million to the \$4 million the city nets annually on Hetch Hetchy power. Concedes Moore, "This is a small return for a \$230 million investment."

The city could do much better if it took over the electrical distribution system in San Francisco and its annual profits to PG&E of at least \$30 million. (See Neilands' article in Mar. 30, 1969 Guardian.)

This possibility the PUC is not exploring. Instead, following its don't-ruffle-PG&E tradition, it has quietly scouted the area outside San Francisco for potential customers it could legally wholesale its vastly increased output. It has found some.

The Northern California Public Power Association reports it will be happy to take all of San Francisco's extra power. This is an association of public power cities, including Palo Alto, Sacramento and Alameda. Of course, Hetch Hetchy power would be "wheeled" to these cities over PG&E lines, at an annual cost of millions.

#### ACQUISITION

Curiously, our PUC did once gesture weakly to acquire PG&E's distribution system in San Francisco. In 1963, the PUC ordered its utilities staff to find out how much a feasibility study would cost. Nothing more was ever heard on the matter.

I recently asked former Commissioner Thomas Stack, then the PUC president and the PUC's strongest public power advocate, what happened. He replied that, shortly after the instructions were given, the General Manager of Public Utilities, Robert C. Kirkwood, died. His successor, James K. Carr, requested time to settle into his new position.

"Everything came to a standstill," Stack said. Why didn't the staff follow instructions? "Well, it's possible for someone to shuffle papers so long that you even forget what it was you were asking."

Clearly, what is needed is a feasibility study to acquire PG&E outright, or gradually in federal urban renewal projects. Before this, however, there must be steam in the boilers beneath the PUC, the mayor and the supervisors. This may take awhile.

At the moment, our Hetch Hetchy economists are fretting about how much rent the project pays for its modest offices. Supervisors Von Beroldingen, Francois and Medelsohn figured out how the city can save \$80,000 (repeat: \$80,000) in five years: Move Hetch Hetchy offices from 215 Market St. to the top floor of a cigar factory South of Market in the Industrial area.

#### COMPARING HETCH HETCHY PROFITS

San Francisco generates 2 billion kilowatt hours of power a year at Hetch Hetchy, sells it to SF municipal services, out-of-town chemical plants and the Turlock and Modesto Irrigation Districts. But not to San Franciscans.

<i>Millions</i>	
San Francisco's 1967-68 power earnings:	
Gross .....	\$12.8
Net .....	4.0

The Irrigation Districts retail 1 billion kilowatt-hours of electricity (most of it from San Francisco) to their residents.

<i>Millions</i>	
Irrigation Districts' 1967-68 power earnings:	
Gross .....	\$13.6
Net .....	5.4

Conclusion: The Turlock and Modesto Irrigation Districts make \$1.4 million more a year than San Francisco on half the amount of power. The point: The Districts do it by retailing the cheap public power which San Francisco sells wholesale to them. This is the same public power which San Francisco refuses to sell to its own citizens.

WHERE HAS SAN FRANCISCO'S POWER GONE? (EVERYWHERE, BUT TO SAN FRANCISCANS)—6 YEARS OF HETCH HETCHY PRODUCTION: 1963-68<sup>1</sup>

	Kilowatt-hours	Percent of total Hetch Hetchy output
1. San Francisco houses, business, and industries.....	None	0
2. San Francisco municipal accounts (wheeled from Newark to San Francisco on P.G. & E. lines, at an annual charge to San Francisco of \$2,000,000):		
International airport.....	636,000,000	
Municipal railway.....	578,000,000	
Municipal street lighting.....	264,000,000	
Water department pumps.....	156,000,000	
All other municipal.....	605,000,000	
Subtotal.....	2,039,000,000	22
3. Irrigation district accounts:		
Turlock Irrigation District.....	1,040,000,000	
Modesto Irrigation District.....	2,670,000,000	
Subtotal.....	3,710,000,000	40
4. Industrial accounts:		
Dow Chemical Co. (Pittsburg).....	1,399,000,000	
Kaiser Gypsum & Cement Co. (Santa Cruz).....	939,000,000	
Hercules, Inc. (Pinole).....	656,000,000	
Shell Chemical Co. (Pittsburg).....	168,000,000	
California Ammonia Co. (Lathrop).....	120,000,000	
Kaiser Aluminum & Chemical Co. (Santa Cruz).....	111,000,000	
Norris Industries (Riverbank).....	88,000,000	
Air Products & Chemicals Co. (Lathrop).....	21,000,000	
Miscellaneous customers (Fresno, etc.).....	28,000,000	
Subtotal.....	3,526,000,000	38
Total Hetch Hetchy power delivered.....	9,275,000,000	001

<sup>1</sup>Source: Hetch Hetchy preliminary annual report, 1969 Pacific Gas & Electric Co. annual reports, 1963 through 1968.

HOW SAN FRANCISCO SOLVES ITS POWER "PROBLEM"

San Francisco's power, 2 billion kilowatt-hours annually, originates at city's \$300 million facilities at Hetch Hetchy.

Turlock and Modesto Irrigation Districts buy 40 percent of Hetch Hetchy output, retail it to district consumers (houses, industries, agriculture), make more public profit on this fraction of Hetch Hetchy power than San Francisco makes on the entire output. Districts charge low rates, subsidize irrigation with earnings—still have profit left over.

City's 99-mile line ends at Newark, 35 miles from San Francisco. Hetch Hetchy power passes into PG&E's toll gate there and the private utility carries it to city municipal services (22 percent) and to city's out-of-town industrial customers (38 percent). Annual toll to PG&E: \$2 million.

City's industrial customers employ no San Franciscans, pay no city taxes. PG&E assigned them to San Francisco to help the city get rid of Hetch Hetchy power the irrigation districts can't use. Purpose: to prevent the city from agitating to acquire PG&E's San Francisco distribution system and bring this cheap public power to the city.

MAKE THE CITY CHARTER MODERN, EFFICIENT EVEN, BUT DON'T RUFFLE PG&E (By Peter L. Petrakis)

For the first time in 38 years, San Francisco had the chance to change its city charter and set up the legal machinery to establish a municipal power distribution system and stop Pacific Gas & Electric Co. from swindling the city out of \$30 million a year in hydroelectric power.

Instead, the Charter Revision Committee blew the opportunity and put forward char-

ter revision proposals that would make it difficult, if not impossible, to buy out PG&E and establish a city power system as required under historic mandates from the U.S. Congress, the U.S. Supreme Court and the city charter itself.

The result: San Francisco businesses and residences will continue to lose the benefits of low cost public power produced by the city's Hetch Hetchy water and power complex in the Sierra. They will continue to pay through the nose to PG&E. PG&E's dominance remains undisturbed in San Francisco.

The background of this historic power grab is long and complex. It was outlined at length for the first time by Prof. J. B. Nields in the Mar. 27 Guardian and in the brief chronology on page 3 of this issue.

But the major points are simple. The city charter, since 1898, commits San Francisco to "gradually" acquire and "ultimately" own its own power system.

The U.S. Congress, in the famous Raker Act of 1912, granted San Francisco an unprecedented concession to dam a beautiful valley (Hetch Hetchy) in a beautiful national park (Yosemite) to get water for a thirsty city. The condition: that the city produce cheap public power, that it build a municipal power system to distribute the power and that it allow absolutely no resale or transfer of power to private utilities such as PG&E. The Raker Act then was considered the Magna Carta of public power.

San Francisco has produced public water and public power, but PG&E for four decades has kept this public power from reaching San Francisco. The private utility has reaped millions of dollars by, in effect, selling the city its own power.

The 1969 charter committee could have tackled this sorry scandal. It could have set up specific legal steps to enforce the Raker Act and the charter's utility acquisition provisions, "gradually" buy out PG&E and distribute the city's own power in San Francisco. Instead, the committee:

1. Deferred for two years the whole question of public power in Section 119. Tom Caylor, of the powerful Chamber of Commerce, said, "We have no obligation to recommend continuation of any policy; we are interested in Balkanizing the public utilities and getting them into manageable form."

2. Decided to Balkanize public utilities by abolishing the city's Public Utilities Commission and dividing the commission's specific utility operations among other agencies.

3. Deprived all city utilities of their historic charter protection.

4. Separated the water and power departments, making it difficult if not impossible to acquire the integrated hydroelectric system as required by the charter and the Raker Act. Assigned the administration of the Sierra Hetch Hetchy complex and the city water department to a new agency (Environmental Resources Agency) and, at the same time, cast its critical power component, the Bureau of Light, Heat and Power, to the political whims of the supervisors under a vague reorganization plan.

The Bureau now delivers Hetch Hetchy power for strictly municipal purposes, but could be expanded to gradually displace PG&E under urban renewal.

This plan to displace PG&E—by authorizing the Bureau of Light, Heat and Power to install its own lines in federal renewal areas or those getting federal money—has evolved after a strong PG&E newspaper combination defeated eight bond issues to buy out PG&E.

Gradual displacement would require no large bond issues, could be financed by urban renewal grants and could be enforced through federal law. It would be less susceptible to the PG&E/Ex/Chron Juggernaut.

But this method would need specific charter requirements well within the committee's power to supply: (1) continued

stability for public utilities by preserving their charter status; (2) assignment of the Bureau of Light, Heat and Power as the intended distributor of Hetch Hetchy electricity and (3) placement of this bureau in the new Environmental Resources Agency (or in a preserved PUC) alongside the Hetch Hetchy project and the Water Department.

Instead of making these provisions for gradually displacing PG&E, the Committee sabotaged the city's charter and Raker Act public power commitments, all the while insisting that it was deferring "policy" for two years.

Once this decision was made, the Chairman became "very tough minded" and allowed "no pet packages" to be introduced, according to one committee member. It is doubtful, then, that even if a member had wanted to bring up the Raker Act he could have gotten it past Chairman Frankel.

What would happen to Section 119 when the committee got around to it in 1971? It is questionable, Staff Director George Williams replied, whether such a statement belongs in a city charter.

I asked several committee members if the Raker Act came up in committee deliberations and got bewildering answers:

Atty. William Porter: "We all knew a problem exists on the Raker Act. There are several lawyers on the Committee who know a great deal about it."

J. Bradley Bunnin (staff counsel): "The Committee did a fair amount of research on the Raker Act."

Atty. James Frankel (committee chairman): "I'm vaguely familiar with the Raker Act from reading the Guardian. The Committee never gave a second's thought to it." George Williams: "No, the Raker Act never came up."

Thomas Caylor: "I think PG&E is doing an outstanding job. When we get to Section 119, I'm going to do everything I can to remove it from the charter. I don't believe in universal imperatives. The city should be able to pick and choose what it wants to acquire."

Wouldn't it have been more logical to decide policy in Section 119, then deal with the city's utilities?

Williams: "The order of business in this respect is not crucial because of the Committee's neutral position on the question of public versus private ownership."

Frankel: "Don't get me to say we have a policy on public versus private ownership of utilities."

Caylor: "Section 119 was not put into the charter as a matter of high philosophical purpose. It was a tool to get utilities out of the hands of exploiters. That kind of banditry is no longer with us. We now have safeguards, and a different attitude on the part of the utility monopolies."

Porter: "Who are you going to get to pay for billboards? Can't you just see the president of PG&E calling his banker friends and people like Dauer (William Dauer, head of the Chamber of Commerce) and saying, 'Don't support those Reds?'"

Bunnin: "Putting Section 119 into the third year was based on a literal reading of the Supervisors' resolution."

Result: The Committee created policy to justify changes in non-utility areas, but had to be "neutral" on existing utility policy because it wasn't the time to deal with it.

Supervisors set this schedule for the Committee: first year, structure and organization of city government; second year, city personnel matters; third year, everything else. The Committee decided that meant reorganizing utilities the first year, dealing with utility policy the third year.

On other issues, the Committee acted with dispatch. In its concern for human rights, it sought to establish a Human Rights Commission with charter (not ordinance) status. In its concern for amenities, it wanted a more independent Planning Commission.

Recognizing the alienation of citizens, it created an ombudsman's office with charter status. Sensing weakness in the major's office, it decided to strengthen it. And so on.

This was the approach: conduct a study, evolve policy and make changes in accordance with that policy. But when I asked Staff Director Williams why Section 119 wasn't adopted before the Committee dealt with utilities, he said, "The Committee was not instructed to make policy for the city."

Frankel reassures, "This year's work doesn't affect 119." The problem is that Section 119 did not affect this year's work.

All this is nonsense. When the Committee juggles utilities, then says it has "no policy" or a "neutral" policy on the Raker Act and Section 119, it might as well declare its utility policy straight away: "Ignore the Raker Act and don't interfere with PG&E's illegal monopoly."

During my interviews, I was given these explanations why the Committee didn't take on PG&E and the Raker Act:

"Isolate the hot potatoes . . . keep down controversy . . . we can't afford the opposition of PG&E and the Chamber of Commerce types . . . nowadays, you need \$50,000 to elect a dog catcher in this city . . . we're going to need all the friends we can get . . . a billboard costs \$3,000 . . . it would be a silly criticism of the Committee to raise the Raker Act at this time."

Clearly, the Committee doesn't want to take on a new and powerful political opponent, PG&E. Neither does it want to jeopardize a potentially lucrative source of campaign revenue—PG&E and its business allies.

Already, a large anticipated source of campaign money, from the Chamber of Commerce, won't materialize because of the Chamber's strong opposition ("it's a double cross," one Committee member said)—for reasons that have nothing to do with utilities.

Labor unions and much of the city hall bureaucracy are also cool for their own parochial reasons.

Charter revision, Frankel said philosophically, "is not a sexy issue."

San Francisco is desperately short of money. Its residents and businesses this year will pay a crushing 20 per cent more in city property taxes. Question: wouldn't a good sexy issue be cheaper power for industry, lower light and heat bills for homeowners and businesses, a massive tax subsidy for socially beneficial city programs and a saving of \$30 million a year for the city and its constituency?

Alger Jacobs, manager of Wells Fargo's investment portfolio, had little to say about public utility acquisition. As I tried to bear down on Section 119 questions, he said: "I hate to be a dog, but I have to break off the interview or I'll miss my ride home."

Then he added wryly, "And I'd have to use public transportation."

Principles of charter revision, cited by the 1969 Charter Revision Committee:

"The City and its residents lose substantial savings which could result from timely use of modern techniques of government."

"The main function of city government is to serve the people of San Francisco."

"The operating departments should be organized to permit effective, efficient, economical and responsive City management."

"The basic system of safeguards which has protected San Francisco against major graft and corruption should be retained and strengthened."

#### HOW TO HETCH-HETCHY THE CITY CHARTER

1897: James D. Phelan runs for mayor of San Francisco on a platform of public ownership of all public utilities. Phelan explains in the Overland Monthly:

"Supervisors and Aldermen, in this city it is common report, betray the interests they are supposed to guard, and the officers of the

corporations uphold the interests of those they are paid to serve. The see-saw of corruption will continue so long as public utilities are in the hands of private owners. Would it not be wise statesmanship to destroy corruption, increase efficiency and lower cost at one blow? We may come to that and hence we want a charter that will enable us to assume new duties and responsibilities in line with modern progress."

Elected Mayor, Phelan appoints a Committee of One Hundred to frame a new charter.

1898: The voters, weary of corruption by private utilities, approve the charter. A section reads:

"It is the declared purpose and intention of the people of the city and county that public utilities shall be gradually acquired and ultimately owned by the city and county."

The charter also includes provisions for voters to override pro-private utility supervisors by initiating acquisition of a private utility on petition by 15 per cent of the voters.

1900: Under the new charter, the city initiates moves to acquire a public water and power system. The Examiner, noting anticipated savings from city budget cuts, urges investment of these savings in a city-owned lighting plant. It recommends buying out the San Francisco Gas and Electric Company, PG&E's predecessor. Mayor Phelan files for city water rights along the Tuolumne River, using money out of his own pocket.

1912: Supervisors publish a large, glossy book showing that the proposed works would beautify Hetch Hetchy and make cheap water and power available to San Francisco.

1913: Congress passes the Raker Act (HR 7207) granting water and power rights to the city and county of San Francisco. The city is strictly prohibited from transferring water and power from Hetch Hetchy to private utilities like PG&E.

The two key sections: Section 6:

"That the grantee is prohibited from ever selling or letting to any corporation or individual, except a municipality or municipal water district or irrigation district, the right to sell or sublet the water or the electric energy sold or given to it or him by the said grantee: Provided, that the rights hereby granted shall not be sold, assigned, or transferred to any private person, corporation, or association, and in case of any attempt to so sell, assign, transfer, or convey, this grant shall revert to the Government of the United States."

Section 9 outlines enforcement procedures: ". . . the grantee shall at all times comply with and observe on its part all the conditions specified in this Act, and in the event that the same are not reasonably complied with or carried out by the grantee, upon written request of the Secretary of the Interior, it is made the duty of the Attorney General in the name of the United States to commence all necessary suits or proceedings in the proper court having jurisdiction thereof . . ."

1925: San Francisco builds a great powerhouse on Moccasin Creek in the low Sierra and begins laying the transmission line to the city. Just as the line conveniently reaches PG&E's substation in Newark, 40 miles from San Francisco, City Hall announces construction funds are exhausted. PG&E inveigles SF to put up a PG&E tollgate in Newark, buys the city's power cheap, then jacks up the rate for wheeling it the remaining 40 miles to SF consumers.

1927: The first of eight bond issues is proposed to create a SF municipal power system as required by the Raker Act. PG&E, its powerful political allies and the newspapers manage, narrowly, to defeat the bonds.

1932: San Francisco prepares a new charter (the present one), retaining the old public utilities policy (see 1898), but inserting the

words, "when public interest and necessity demands."

1937: Interior Secretary Harold Ickes files suit in federal court, charging San Francisco with violating power provisions in Sec. 6 of the Raker Act. A key government argument:

". . . the grant to the City was made upon the mandatory condition that this power be sold solely and exclusively by the City directly to consumers and without private profit in order to bring it into direct competition with adjacent privately owned utilities . . ."

1938: Federal court rules in favor of Ickes' case; the city appeals.

1939: Circuit Court of Appeals reverses the District Court. The Circuit Court recognizes the charter's utility policy as committing the city to "a general policy of public ownership of all public utilities" carried forward as a footnote in the current charter. The government appeals to the U.S. Supreme Court.

1940: Supreme Court upholds the government, makes liberal references to the original Raker Act debate.

"From the Congressional debates on the passage of the Raker Act can be read a common understanding both on the part of sponsors of the Bill and its opponents that the grant was to be so conditioned as to require municipal performance of the function of supplying Hetch Hetchy water and electric power directly to the ultimate consumers . . ."

1942: Frank Havenner, former supervisor (later congressman), informs Congress that PG&E's expenditures on the defeat of bond issues were officially reported as approximately \$200,000, but probably amounted to much more. Referring to the dereliction of city officials, he added:

"They ignored the elaborate pledge of ultimate municipal distribution of the power . . . ignored also is the language of Section 119 of the San Francisco City Charter."

1944: Ickes coins the phrase "to Hetch Hetchy" in a Commonwealth Club speech. It means "to confuse and confound the public by adroit acts and deceptive word in order to turn to private corporate profit a trust set up for the people."

1955: Rep. Engle introduces a bill to create a new irrigation district on the Tuolumne River. In the hearings, Engle proves that Hetch Hetchy power sold to Turlock & Modesto Irrigation districts was resold to PG&E in violation of a 1945 proviso by Ickes. City Atty. Dion Holm agrees Raker Act requires a municipal system and says ". . . we are minus that for the time being, which one day we will have."

1967: Supervisors pass a resolution directing the mayor to create a Charter Revision Committee and appoint members to it.

1969: Charter Revision Committee defers action on "policy" of utility acquisition for two years, yet subverts the "policy" with major changes in the utility departments.

Well, well. It's clearer now why the Charter Revision Committee wasn't much interested in taking on PG&E on the Raker Act business. For its campaign, the committee picked up \$2,500 from PG&E—one of only three \$2,500 corporate contributions. J. Bradley Bunnin, the committee's staff counsel, went to work for PG&E's law department shortly after the Charter Revision package was defeated in November.

THE GREAT 1965 JAMES K. CARR  
PUBLIC POWER DISASTER  
(By Peter L. Petrakis)

San Francisco's Public Utilities Commission has authorized another study of the feasibility of acquiring PG&E's electric distribution system in the city. But don't be fooled. The commissioners don't appear to

mean it any more now than they did last time, in 1965.

This "buy out PG&E" ploy has not been reported fully until now. But if the PUC had meant it in 1965, a regional public power system could have been set up to compete with the PG&E system, which in San Francisco continues to bilk the people of \$30 million each year in private power profits.

Then as now, the commission appeared to be concerned merely with the threat to take over PG&E's San Francisco distribution system. It sees such threats mainly as bargaining tools in negotiations with PG&E on the contracts that set the fees it pays to PG&E for delivering the city's Hetch Hetchy power to San Francisco's municipal services and several out of town industrial users. (These users were "assigned" to the city by PG&E to keep San Francisco from selling its own cheap public power to its own residents and businesses.)

San Francisco's power comes from its hydroelectric system that was built, as the result of an unprecedented act of Congress in 1913, by flooding Hetch Hetchy Valley in Yosemite National Park.

But as the Sacramento Bee puts it, "not one watt of it ever powers so much as a nightlight or broils a hamburger for the San Francisco resident for whom the system was built." Instead, San Francisco residents and businesses have been forced for the past 50 years to buy PG&E's expensive private power—in disregard of the city charter and in violation of the Raker Act.

City Utilities Manager James K. Carr, who has set out this year to negotiate "long term extension" of the PG&E contracts, used the "buy out" threat five years ago to get PG&E to lower its delivery fees for city power from an outrageous \$2.6 million a year to a merely exorbitant \$2 million. After that, the threat of acquisition was quietly laid aside until 1970, when contracts were again up for renewal.

Carr could have scored a real victory for public power. For the 1965 threat inspired four major public agencies to approach him with an important deal.

They proposed a partnership and regional public power district that would give San Francisco the political and economic leverage to finally wrest control of electrical distribution in San Francisco from PG&E, and at last give city residents the cheap public power that PG&E has been denying them for decades.

The deal also would have headed off these subsequent developments:

An excess annual payment of \$1.7 to 2.6 million a year to PG&E for the electricity to operate BART trains—meaning BART fares will be 10 per cent higher than necessary.

PG&E's capture of the massive public power output of the California Water Project's Oroville Dam. PG&E buys this power for about \$20 million, then retails it back to the public for about \$42 million.

The annual \$500,000 excess payment by the University of California/Berkeley for PG&E power. Cal wants to get public power to save money, but PG&E refuses to wheel CVP power to the campus and Cal Regents refuse to buck PG&E in court.

The increased vulnerability of public power cities throughout Northern California to heavy reliance upon and perhaps ultimate capture of their power systems by PG&E.

Managers of the California Water Project and officials from UC, the transit district and the city of Santa Clara were the ones who approached Carr with the deal to avoid the problems since raised for them.

They proposed to join with San Francisco and pool the power produced at Hetch Hetchy with that produced at Oroville Dam, pool funds to build a jointly-owned thermal power plant to beef up the hydro power and de-

liver low-cost electricity to each member of the proposed power consortium.

But Carr continued to be concerned only with the idea of using the threat to get PG&E to lower its fees. The consortium proposal fit in nicely with that, however, and Carr ostentatiously instructed Hetch Hetchy Manager Oral Moore to make a preliminary study of the proposal.

By early fall, Moore was ready to propose a formal study to the utilities commission, to be carried out by R. W. Beck and Associates, an engineering consulting firm, for \$75,000. The city would pay \$15,000, the other agencies would share the balance.

Carr halted the study abruptly, however, when PG&E agreed to lower fees.

After that, managers of the State Water Project not only had to abandon hopes to deliver power directly to public agencies, but also plans to construct their own thermal power plant. Instead, they had to contract to buy thermal power from PG&E and two other private utilities.

The capture by PG&E of the power output of the project's Oroville Dam also means PG&E has managed to interpose itself between Oroville power and BART, which will be one of the chief users of electricity at the dam.

Since the cost of propulsion will constitute the largest single item of operating expense when BART is completed, the fact that it will have to buy power from PG&E will raise fares far higher than they would be if it could buy the power at the much cheaper rates that would have been charged under the proposed consortium.

Carr's position on the proposal, as outlined in a memorandum to the City Utilities Commission after the feasibility study was halted, showed where he stands on the issues of public power in competition with private power. He's against it.

He called the proposal "unrealistic . . . a move in the wrong direction."

Two years after Carr wrote this, Santa Clara, Alameda and Palo Alto joined eight other public power cities to form the Northern California Power Agency to pool resources for joint projects and for collective resistance to PG&E's threats to take over their power systems.

Their partnership is a feeble one that could have been strengthened greatly by inclusion of the members of the proposed power consortium of 1965.

Carr's judgments were made without the benefit of a serious, systematic study by outside experts. Indeed, his memorandum was intended to prevent such a study.

The Utilities Commission, he wrote, "should devote the staff's limited time and energy to negotiations looking toward a substantial reduction in delivery charges for city power over PG&E lines . . ."

Carr also wrote of "the great strides that have been made toward lower-cost power and better service through cooperation of private and publicly-owned power producers. . . . Further progress. . . . requires great—not less—cooperation and pooling of privately-owned and publicly-owned generation and transmission facilities."

This must stand as a minor masterpiece of irony, in view of the huge capital investments the public has made for PG&E during the past 50 years, and PG&E's war on public power distribution.

"Cooperation," it turns out, means letting PG&E control the destiny of the Federal Central Valley Project.

"Progress" means letting PG&E put public power cities out of business to destroy the competitive yardstick by which PG&E's power rates can be judged.

"Pooling of privately-owned and publicly-owned generation facilities," means turning over public power to PG&E for resale to the public.

The Guardian has contacted knowledge-

able people in the four various agencies and found strong agreement on this point: That Carr's decision in 1965 was a serious blow to public power systems in northern California.

There's no reason to believe, either, that Carr's position or that of anyone else has changed since 1965.

Just as in 1965, appropriate sounds are coming from the Utilities Commission these days about studying the acquisition of PG&E—but no appropriate action.

The study was authorized this April. But nothing has been done about finding answers to the crucial questions on the costs and benefits of buying out PG&E.

It turns out, in fact, that the consulting firm, R. W. Beck, which was designated to do the study, actually has been retained only to help the city on cost-benefit studies relating to the renewal of the PG&E-city contracts.

#### HOW P.G. & E. WILL MAKE YOUR BART FARES 10 PERCENT HIGHER

Thanks to Pacific Gas & Electric, fares on trains to be operated by BART will be 10 per cent more than they need to be—meaning that for every \$1 you give BART for fares, you'll have to fork over another dime for friendly PG&E.

The dime will help pay for BART's yearly purchase of 430 million kilowatt hours of electricity from PG&E to run its trains. The overall cost will be between \$4 and \$6 million a year—20 percent of BART's total operating expense.

It might have been otherwise, had James K. Carr, San Francisco's manager of public utilities, carried through a 1965 proposal to deliver cheap public power to BART from Oroville Dam, Hetch Hetchy and a publicly-owned thermal power plant.

Exactly how many millions of dollars would have been cut from BART's electricity bills is not known, for only a study of the public power proposal would have shown that—and Carr killed that study.

It is clear, however, that BART will pay from \$1.7 million to \$2.6 million more for electricity than it would have had to pay if Carr hadn't blocked access to public power sources in 1965.

This estimate is based on Federal Power Commission figures on the cost of 430 million kilowatt-hours of industrial power in Seattle, a public-power city with a population of 560,000, and San Francisco, a PG&E city with a population of 750,000.

The federal figures show that PG&E rates are 76 per cent higher than Seattle Department of Lighting rates. To make up the difference, you will pay 10 per cent extra to ride BART trains.

[From the San Francisco Bay Guardian, Oct. 26, 1970]

#### DO NOT PAY YOUR UTILITY TAX

San Francisco Supervisors have granted Pacific Gas & Electric still another boon—this time in adopting the five per cent sales tax on gas, electric, telephone and water bills that went into effect on Oct. 1.

The measure further institutionalizes PG&E's illegal power monopoly in San Francisco by giving status to the giant utility as an official city tax collector. More, it gives City Hall a vested interest in raising PG&E rates and from now on refusing to oppose PG&E rate increases as it has in the past. For whenever the rates go up, returns under the new tax ordinance also will go up.

This is the last of a barn full of straws. It is time for supervisors to live up to the public power mandates of the City Charter and federal law. The city must buy out PG&E and use its own facilities to bring its own cheap public power to San Francisco from Hetch Hetchy.

Until the supervisors do this, San Franciscans should not pay the five per cent tax that now appears on their PG&E bills—and send along a note with the bill explaining

precisely why they are making a principled refusal. (For assistance, contact the Guardian and ask for back copies on PG&E and Congressional Record reprints of Hetch Hetchy statements by Sen. Lee Metcalf (D-Montana.)

According to a recent ruling by the State Public Utilities Commission on a similar tax imposed in Vallejo, "utilities cannot disconnect or threaten to disconnect the utility service of any customer" who does this, as long as he pays his regular bill.

San Francisco could bring these taxpayers into court to try to collect. But in so doing, the city might well prompt a serious legal challenge to the city's chronic failure to buck PG&E and bring Hetch Hetchy power to San Francisco under the public power mandates.

Is there a better way to make the point that, if the city is interested in law enforcement, it ought to start with PG&E?

That's the point: the city collects a five per cent utility tax from every utility user in town, but doesn't go after the \$30 million in illegal profits that go each year to PG&E.

[From the San Francisco Bay Guardian, Feb. 26, 1971]

#### HOW TO HETCH HETCHY

The Grand Jury, as Ed Uno demonstrates in his Guardian interview, is supposed to investigate city departments and issue reports leading to reform. (See pgs. 12-13.)

Instead of investigating the Hetch Hetchy power department however, the 1970 Grand jury, like previous SF Grand Jurors for the past 25 years, took a three day all expenses paid vacation to Hetch Hetchy last September. Needless to say, this Grand Jury like previous Grand Juries:

1. Didn't say in its final report that this Hetch Hetchy area is by federal law to be opened up to camping for the public, not just for SF VIPs and the Grand Jury.

2. Didn't investigate why the cheap Hetch Hetchy public power is by federal law required to go to the citizens and businesses of San Francisco—but, that the city has instead allowed PG&E to establish private power monopoly here and keep San Francisco from selling its own power to its own people. The city's loss: \$30 million a year.

3. Didn't report that it took a \$1,600 vacation from a city department it was charged to investigate. Or, for that matter, that PUC/Hetch Hetchy each year gets a nice chunk of the city budget for VIP and press inspection tours of Hetch Hetchy.

Several persons have asked about The Guardian's recommendation for San Francisco citizens to make a principled refusal to pay the 5% utility tax. Here is the principled refusal, mailed to PG&E with his power bill, of Peter Petrakis, Guardian utilities editor.

This is to inform you that I will not pay the 5% city tax on my utility bills on grounds that, if the San Francisco Board of Supervisors wants to take money off a utility, it ought to go out and get one.

Section 119 of the City Charter reads:

"It is the declared purpose and intention of the people of the city and county, when public interest and necessity demand, that public utilities shall be gradually acquired and ultimately owned by the city and county..."

Under the Charter Utility Policy, the Supervisors are designated to make the determination of public interest and necessity. The Supervisors have now decided that the city should have revenues from utilities, but they have made not so much as a gesture towards implementing Charter policy and determining the public interest and necessity of acquiring a money-making utility. Instead, they persist in treating Section 119 as a meaningless ornament.

The Raker Act of 1913 (H.R. 7207) is a direct expression of the municipal ownership policy of the City Charter. It gave the city the right to dam the Tuolumne River at Hetch Hetchy Valley inside Yosemite National Park for a city water and power supply.

In making this requirement, Congress was responding to the municipal ownership philosophy of the Charter, as well as to the broader principle that the public should be the prime beneficiary when special privileges are granted inside the public domain.

The city, in collusion with the Pacific Gas and Electric Company, has been violating both the City Charter and the Raker Act ever since power became available from the Hetch Hetchy project. It has refused to obey the law, buy out the PG&E distribution system and bring San Francisco's cheap electricity to its people. (See The Grand Jury 'Investigates' Hetch Hetchy, p. 13.)

The city and PG&E have worked out a series of arrangements that are designed to keep San Franciscans from enjoying their own low cost power from their own projects. Now, the supervisors have taken the city further away from compliance with law in further institutionalizing PG&E's illegitimate presence here by giving it status as an official city tax collector.

I wish this protest and tax refusal to be regarded as a principled one, based on the conviction that the City of San Francisco, its Board of Supervisors and other officials, elected and appointed, are in chronic violation of law on the matter of Hetch Hetchy power, and that this utility "user's tax" takes the city in the opposite direction from eventual compliance with the law.

[From the San Francisco Bay Guardian, Dec. 23, 1970]

#### THE GRAND JURY COMETH

Situation report on the 1970 grand jury: This Fall the Guardian asked each member of the San Francisco Grand Jury in a formal letter to support a formal inquiry into the failure of the city to live up to the City Charter and Raker Act, buy out PG&E and sell its own cheap public power to its citizens. (See previous Guardians.)

Grand Jury Foreman Ray Hackett, at the next jury session, branded the request a circulation-building gimmick "by a newspaper of limited circulation," according to authoritative sources.

Hackett also announced to his fellow jurors that, since the Guardian's publisher had not asked for acknowledgment of the letters suggesting the inquiry, no acknowledgment would be sent.

Gustav Knecht, who heads the Grand Jury committee that oversees the Public Utilities Commission and thus would conduct the inquiry, had a ready excuse for not wanting to take part in an inquiry.

Knecht, a stockbroker at Dean Witter & Co., said he recommended PG&E stocks to his clients and that he couldn't possibly investigate the Guardian's complaint. "I have a conflict of interest," he said.

Instead of undertaking any investigation, the jury routinely sent the letter to Oral Moore, head of the city's Hetch Hetchy power department, and asked him to send back a reply.

Bruce Brugmann, Guardian publisher, called Hackett to confirm these points. Hackett became angry and accused Brugmann of getting secret, unauthorized information from grand jury sessions. He threatened at one point to subpoena Brugmann and force him, under threat of a contempt citation, to reveal his grand jury sources.

Brugmann said he wouldn't reveal his sources, but he would be glad to appear and talk about how PG&E was bilking San Francisco businesses and residences of \$30 mil-

lion a year. "Isn't this more important than the identity of my sources?"

"We're going to have a facedown on this," Hackett said.

[From the San Francisco Bay Guardian, Apr. 31, 1970]

#### BANNED BY THE SAN FRANCISCO PRESS CLUB

The Guardian has regularly entered the annual "Pulitzer of the West" newspaper awards competition of the San Francisco Press Club and, the past three years, has won four of the nine awards available in the one non-daily category open to us.

Last year, Blair Paltridge's expose of the San Francisco grand jury won the \$250 first place prize. Larry McDonnell, PG&E's top public relations man, chairman of the club's awards committee and the man who made the awards presentations, announced The Guardian prize at the awards banquet. The Guardian story "purported to show," as McDonnell put it from the dais, that the city's grand juries were unrepresentative.

This year, The Guardian had been tipped off that, despite the fact we won the contest last year, an attempt would be made to exclude our newspaper from this year's competition. We called the club several times through June and early July to ask when the entry blanks would be sent to us. (The past three years, we got them in normal course in the mail.) In early July, the club secretary told us McDonnell and his awards committee were sending them out that Thursday.

We never got them. The secretary told Bruce Brugmann, Guardian publisher, the committee had decided the category this year would be open to "weeklies only." The Guardian (a monthly) was out. Brugmann pressed her for details and an explanation, but she said the entry forms were being mailed out this year by PG&E and she didn't have much information. She referred Brugmann to McDonnell at PG&E.

Brugmann called McDonnell at PG&E. Yes, he said, The Guardian was out this year, but it was not the intent of his committee to exclude the Guardian. Instead, it was to initiate a category for weeklies only, to encourage them to enter and to get back to the original spirit of the press club contest.

How do you encourage weeklies by excluding the Guardian? How do you justify banning last year's winner? Why is the only non-weekly to submit entries the past three years suddenly picked out, without explanation, without the courtesy of notification, and made the only newspaper ever blackballed in the history of the competition? Isn't this censorship to exclude The Guardian, one of the few Bay Area newspapers devoted to investigative reporting and solid journalistic crusades in the Pulitzer tradition?

Brugmann pressed these obvious questions, but McDonnell refused to give any details beyond his "we want to encourage the weeklies" stand. He became incensed when Brugmann asked if The Guardian blackball had anything to do with The Guardian's two year campaign against PG&E and its illegal power monopoly in San Francisco that keeps cheap public power out of San Francisco in defiance of federal law, the U.S. Supreme Court and the city charter. (See "PG&E's Big Blackball," p. 15.)

McDonnell said his committee's decision had not been aimed at The Guardian and that The Guardian had not come up in the discussion. He denied vehemently that he or PG&E had anything to do with The Guardian blackball and he threatened to hang up when Brugmann asked if it had anything to do with our PG&E campaign.

He refused to say how the ban originated, who originated it, or even who brought it before the committee in its first and only meeting on June 10. He even refused, until Brugmann pressed hard, to identify the other members of his committee.

The group that banned The Guardian, McDonnell finally disclosed, was made up almost exclusively of advertising and public relations men—most of them representing companies The Guardian had criticized in its reportage. The committee: Chairman: McDonnell (PG&E), Robert Rezak (PT&T), Carl Albracht (Westinghouse), Paul Cane (Bechtel), Gordon Grannis (Crown Zellerbach), J. Campbell Watson (Editor & Publisher), Carl Spencer (General Electric), Charles St. Peter (Frank Albert-Guenther Law Adv. Agency), Robert Richelson (Carl Byoir Adv. Agency).

Brugmann polled the committee by phone and found, contrary to McDonnell's explanation, that several committee members recall that: (1) PG&E's McDonnell brought up the rules change that axed The Guardian; (2) No other newspaper was mentioned by anyone; (3) The Guardian was mentioned several times during the session by name, (4) The Guardian was mentioned, as CZ's Grannis put it, "as not being a weekly newspaper" and therefore not qualifying for this year's contest.

Brugmann brought up these points to each committee member and nobody rebutted them. If the member didn't agree with these recollections of his committee colleagues, he said he couldn't remember or he simply refused to answer questions (Watson, Richelson) or he hung up (Cane, Albracht, Richelson). Rezak was quite specific. "He (McDonnell) threw it (the rules change) out on the table."

Did you realize, Brugmann asked, that The Guardian was being purposely excluded by McDonnell's proposal? Rezak: "You didn't have to hit me with a bat." He added: "If they wanted to change the rules they could have heard from your paper."

Rezak said that, as a PT&T man, he read The Guardian regularly and that he, too, didn't like some of the stories and editorials, particularly those critical of PT&T. But, "this wasn't the time or the place" to do something about them, he said.

Brugmann appealed in writing to the club's 15 man board of directors under guidelines set down by Dick Alexander, Examiner reporter, club first vice-president and chairman of the July 27 meeting that heard Brugmann's protest. (See p. 15 for details on Alexander's Examiner series that appeared three days later on July 30-31 and put forth, without qualification or deviation, the PG&E/McDonnell line on The Guardian-initiated proposal for the city to buy out PG&E.)

Brugmann asked the directors to either publicly announce and explain The Guardian's blackball or reopen the competition. The 1970 Pulitzer contest, Brugmann wrote, was "not the time or the place to begin censoring copy, banning newspapers or bringing the contest quietly into line with the PG&E Progress or, for that matter, a committee representing Westinghouse/GE/PG&E/PT&T Crown Zellerbach/Bechtel or clients of local ad agencies/pr firms."

Brugmann wasn't notified about any action of the directors, so a few days later, he called Ray Leavitt, director, secretary of the meeting and SF's chief deputy city assessor. No, Leavitt told him, the directors hadn't acted on his protest, but they would vote on it at the Sept. 14 meeting. Don't call us, we'll call you, he told Brugmann genially.

Directors at the meeting: McCarty, Leavitt, McDonnell, Alexander, Joshua Eppinger (old Examiner city editor, now associate managing editor), Graham Kislinsky (of Kislinsky Adv. Agency), Robert Meyers (former SF bureau chief of AP, now with Whitaker & Baxter public relations firm), George Shimson (commercial photographer), Harry Ross.

Directors not at the meeting: Larry Dum (Examiner reporter), Stanton Delaplane (Chronicle columnist on assignment in Mexico), Paul Speegle (sympathy public relations director), Ed McLaughlin (KGO radio), Don McLaughlin (PT&T public relations).

Leavitt's story sounded familiar to Brugmann so he polled some club directors as he had with McDonnell's awards committee. He found, contrary to Leavitt's account, that the members had listened politely and attentively to McDonnell's explanation, and decided without dissent to reject Brugmann's complaint (the Aug. 15 entry deadline was only a couple of weeks away, one argued) and not to notify Brugmann about their decision.

More: not a word about Brugmann's protest or the directors' decision to reject it appeared in Leavitt's minutes of the meeting.

Brugmann called Leavitt back. Why, Brugmann asked, did his account differ so sharply from those of his colleagues? How would Leavitt's Sept. 14 vote have any bearing on a contest that ended Aug. 15 and whose winner would soon be announced at a Sept. 27 banquet?

"Don't you like the way the club is run?" asked Leavitt. "I don't like the way the club booted me out of its contest," Brugmann replied. Leavitt hung up. Brugmann called back immediately, but Leavitt hung up again on his city hall assessor's office phone.

Eppinger, when contacted, asked Brugmann if he knew McDonnell. "You've got the wrong guy," he said. "Larry McDonnell is truly a gentleman." Brugmann tried to press questions on McDonnell and the directors' meeting, but Eppinger hung up.

Brugmann wrote another protest on Aug. 7, reiterated his earlier requests and asked the directors to act on it before the Aug. 15 entry deadline. He sent copies to each director.

"You have blackballed me and my newspaper from your Pulitzer awards contest," Brugmann wrote. "You have done so secretly, without a decent hearing, without notification of any kind, on the basis of PG&E's aversion to The Guardian's news and editorial policies (which is abhorrent in a contest with the name *Pulitzer* and in a club with the word *press*), on the bald excuse I do not publish my newspaper frequently enough (a club commentary on my desperately poor financial condition, which didn't bother you the past three years, and the fact I cannot break the Ex/Chron monopoly joint advertising rate that swallows up most of the newspaper advertising revenue in SF, which is what my federal suit is all about.)"

"Good God: Do you guys spend your whole lives behind the big black cat (Ed: which means you won't be quoted)? Are you really in the business of censoring copy, banning newspapers and bringing the contest/club quietly into line with the PG&E Progress. Will one of you be reading my PG&E meter next week?" By now the story was out and on Newsroom, KPFA and Jim Eason's KGO talk show. The LA Times Phil Hager was working up a story.

Directors received several protests from working newspapermen, including Joseph Houghteling, an owner of three suburban weeklies, and Fred Garretson, The Oakland Tribune's conservation writer, last year's first place Pulitzer winner and a Nieman fellow this fall at Harvard University.

Two directors, Dum and Speegle, called Brugmann to offer informal support and sympathy and a third, Meyers, told Brugmann earlier he felt badly about the whole business. Still, at presstime, Brugmann had heard nothing formally from the directors on his protests.

Summed up Dum: "I think this is a public relations error. I think it's surprising that a club with so much public relations talent should make such a public relations blunder."

Postscript: Our press club is in another world: it discriminates against women, has few minority members, at last count had only 100 working newsmen out of 400 or so "actives" and a total club membership of 2,500. Isn't it time for somebody else, say

the Journalism School at Berkeley or Stanford, to sponsor a real contest for working newsmen with qualified and independent judges?

Then, the club members could go back to their high stake poker games and gang dinners honoring Helen Hayes and Rudy Vallee.

[From the San Francisco Bay Guardian, Oct. 26, 1970]

STILL BANNED BY THE SAN FRANCISCO PRESS CLUB

Larry McDonnell, PG&E's top public relations man, refused to appear on a recent KABL radio program on the PG&E/Hetch Hetchy power scandal. The reason, McDonnell told the KABL reporter, was because a Guardian editor was interviewed for the program and because The Guardian wasn't a "credible" paper.

No facts, no argument, no refutation, just quiet swipes at Guardian "credibility"—that's been the McDonnell/PG&E line since The Guardian began disclosing two years ago how PG&E steals over \$30 million a year in power revenue from San Francisco in defiance of federal law, the U.S. Supreme Court and the city charter.

It was no surprise then to watch McDonnell/PG&E move quietly to blackball the Guardian, as a consistent winner, from the press club's Pulitzer of the West newspaper awards contest. (My God: what if the Guardian's PG&E exposés won this year, as did our grand jury exposé last year?)

It was surprising to watch the awards committee and club directors and Examiner/Chronicle executives with influence in the club gather about McDonnell like rams in a storm, rumps together, horns out, and refuse to budge. (See Lynn Ludlow's 'Dear Larry' letter on pg. 15.)

Bruce B. Brugmann, Guardian editor and publisher, appealed three times in writing to the club's directors under guidelines set down by Dick Alexander, Examiner reporter and club first vice-president.

His first letter was not only rejected, but the directors decided without dissent to not notify Brugmann of their decision. Brugmann's second letter was ignored.

In his third letter, Brugmann pointed out that, by allowing PG&E/McDonnell to blackball the Guardian because of the Guardian's PG&E exposés, the directors were now:

1. A party in perpetuating and covering up a great San Francisco scandal far beyond the scope and cost of Abe Ruef, Russell Wolden and Candestick Park . . . PG&E's success in keeping San Francisco from selling its own power to its own citizens is dependent on silence and complicity from the Ex/Chron.

2. Actively giving aid and comfort to the Ex/Chron monopoly and their rate-fixing stranglehold on San Francisco journalism . . . actively opposing the Guardian's major constitutional lawsuit in federal court to challenge the monopoly and restore real competitive journalism to San Francisco.

"The Ex/Chron, too, is seeking to discredit the Guardian as Chron did the two challengers to its KRON broadcast license; Chron has had the Guardian and its staff members under surveillance for months by private dicks, as testimony in the KRON case revealed."

"You will note for the record," Brugmann said, "no executives of the Ex/Chron, the club's two dominant newspapers, supported the Guardian on grounds of free press, fair play or competitive journalism."

"I'm not complaining," he added, "I'm just making the obvious point of the identity of interest of PG&E/Ex/Chron over the scotch and behind the Big Black Cat at the club and but another example of the sudsy working relationship the Ex/Chron has with about every major flack in town. This PG&E/Ex/Chron palsy walsy is so comfy that McDonnell/Bog Gross/Bob Letts could be installed

tomorrow at the Examiner or the Chronicle city desk; in turn the Examiner's Dick Alexander/Gayle Cook/Josh Eppinger/Ed Dooley/Dick Nolan and the Chronicle's Stanton Delaplane/Charlie Raudebaugh/Abe Mellinkoff could be installed in the public relations department of PG&E without a break in stride for the PG&E Progress, the San Francisco Examiner or the San Francisco Chronicle.

"Is this really your intention? Do you intend to stick in tight formation with PG&E/Ex/Chron and support press censorship, newspaper banning, municipal scandal and newspaper monopoly in one sweep down the field?"

Instead of taking up Brugmann's appeal, the directors approved a resolution commending McDonnell for his diligence, imagination and initiative in handling the Pulitzer awards contest this year. They also decided not to notify Brugmann of their decision.

(McDonnell, incidentally, got \$22,000 and \$1,149 in expenses in 1969 as a PG&E public relations man, according to PG&E exhibits on file with the PUC. PG&E in 1969 also paid press club dues and chits for four PG&E public relations men: \$312, \$151, \$302 and \$151 for a grand total of \$916. This is about half the Pulitzer prize total of \$2,000 in cash prizes.)

Directors at the meeting were: McDonnell, Alexander, Charles Raudebaugh (Chronicle investigative reporter), Harry Ross (former city controller), Paul Speegle (sympathy public relations director), Graham Kislingbury (of the Kislingbury Advertising Agency), Don McLaughlin (PT&T public relations man), Robert Meyers (former SF bureau chief of the Associated Press, now with Whitaker & Baxter public relations firm), Josh Eppinger (the Examiner's associate managing editor) and George Shimmon (commercial photographer.)

Directors not at the meeting were: Superior Court Judge Francis McCarty, Ed McLaughlin (director of KGO radio), Ray Leavitt (SF's chief deputy city assessor) and Club President Delaplane. (Delaplane was a real Pulitzer prize winner, of the Columbia University variety, in the early 1940s.)

Larry Dum, Examiner reporter and club secretary, had turned in his written resignation just before the meeting—not because of the Guardian blackball, he told The Guardian, but over a series of differences with the directors and the club.

After the vote of confidence from fellow directors, McDonnell said thanks and the resolution was duly entered in the club minutes. As before, there was not a word about Brugmann's protest, nor the Pulitzer judge resignations, nor the many letters and calls of protests, nor Sen. Metcalf's critical comments on the club on the floor of Congress.

Brugmann's postscript was prophetic: "PG&E's gas and power monopoly was born and bred in corruption and bribery: it paid Abe Ruef \$1,000 a month in "attorney's fees," three key PG&E executives were indicted for bribery during the Ruef graft prosecution. For the next five decades, PG&E has illegally kept San Francisco from selling its own power to its own people and today steals \$30 million a year from every business and residence in the city. Its PR man is head of the Pulitzer awards committee, blackballs the Guardian, will preside over the awards presentation at the banquet, will announce, congratulate, and shake hands with each Pulitzer winner.

"There you have it: the state of San Francisco journalism in September of 1970."

[From the San Francisco Bay Guardian, Oct. 26, 1970]

#### REACTION TO THE GUARDIAN'S OUSTER FROM THE SAN FRANCISCO PRESS CLUB'S PULITZER OF THE WEST CONTEST

Kenneth Stewart, emeritus professor of journalism at the University of California at

Berkeley, and Jerry Werthimer, professor of journalism at San Francisco State College, resigned in protest as Pulitzer judges over the Guardian's ouster from the San Francisco Press Club contest.

Here are some other reactions, including letters sent to the club; the directors; Stanton Delaplane, club president; and Larry McDonnell, PG&E's top public relations man and chairman of the club's awards committee. No letters of protest or resignation were acknowledged or answered by the directors.

DEAR LARRY: This note is an appeal to you to suppress your disgust at the disgusting charges of the Bay Guardian concerning your personal and professional integrity. I believe the Awards Committee should play Caesar's wife and find a way to allow Brugmann to compete, possibly in a "non-weeklies" category that would include the dailies, possibly in a new "periodicals" category that would include San Francisco Magazine, California Living, Rolling Stone and articles for national publications by local journalists.

I am writing not as a reporter for The Examiner nor as a journalism teacher at San Francisco State College but as a non-member of the Press Club who cherishes the awards he has received, both as a high school student in 1951 and as a professional newsman in recent years.

I have further credentials: The same issue of the Bay Guardian which offered a paranoid paroxysm about the Press Club also included a false accusation concerning my own honesty in covering the KRON TV hearings—with Charles Raudebaugh of The Chronicle, I was accused of distorting, suppressing and slanting my news stories with a deliberate intention of somehow assisting the strategy of the KRON lawyers.

It was a stupidly written hatchet job which will be believed, unfortunately, by a large number of those otherwise well-meaning innocents who mistake sincerity for competence, bombast for truth and rhetoric for reality. The old Big Lie. It works.

Because the Press Club is more than a social organization with a swimming pool, it must judge the Brugmann complaint solely on the principles, not the personalities which involve freedom of the press. To do otherwise is to damage severely the credibility of the club among those outsiders, including myself, who hate to see the club appear to behave on the same unprincipled level as Bruce B. Brugmann, the crybaby editor specializing in cheap crusades and undeserved martyrdom games.

LYNN LUDLOW,  
Examiner reporter.

The author (Stephen R. Barnett, acting professor of law at the University of California) replies: "Mr. Ludlow does not even attempt to show that anything in my story was inaccurate. His letter is pure invective, and it speaks for itself."

To the Press Club:

When I agreed once more to become a judge in the forthcoming newspaper awards competition, I was not fully aware of the implications of the new rule that effectively eliminates any entries by Bruce Brugmann and his San Francisco Bay Guardian.

I would not be true to the memory of the newspaper PM, on which I spent my happiest newspaper days, if I did not ask that my name be withdrawn from the list of judges in the contest. Thanks for the invitation for dinner and drinks but I shall not be with you on September 9.

KENNETH N. STEWART,  
(Professor emeritus in journalism,  
University of California.)

To the Press Club:

As a member of the Press Club and first place winner in last year's Best News Story competition (plus another Press Club award in 1965) I protest and request an explanation... Brugmann has supplied powerful circumstantial evidence that this change in the

rules... was in fact engineered by executives of corporations whose activities were exposed by Brugmann's scholarly muckraking... If there is some explanation other than Brugmann's, I'd like to know what it is.

FRED GARRETSON,  
Oakland Tribune.

To the Press Club:

As a participant in three weekly newspapers over the past 20 years, I join Bruce Brugmann in his protest against the new definition for entry categories in the annual newspaper contest.

It seems obvious the lines were drawn specifically to exclude the Guardian. For by most criteria, the Guardian looks like a newspaper, reads like a newspaper, and indeed sounds more like a newspaper than many of such products published hereabouts.

Certainly, the Press Club's own record over the past years is good evidence that the Guardian was considered a newspaper until the PR-types decided it wasn't.

I can understand why PG&E doesn't want the Guardian in any contest; I cannot understand why the Club as a whole could accept the utility's rationalization.

JOSEPH C. HOUGHTLING,  
Publisher, Los Gatos-Saratoga Times  
Observer.

Mort Levins, publisher of the San Jose Sun newspapers and Milpitas Post, wrote a column titled "Scratch one press contest." Excerpts:

"In the past two years, the Bay Guardian, a crusading monthly tabloid published in San Francisco, has swept the awards in the non-daily classifications. And they deserved each one they won. And we can say that because we came in second.

"The Guardian isn't hampered by the conventionalities of dependence on advertising revenue and the currying of a local geographic base of support. And it has a missionary zeal that attracts outstanding writers seeking a platform.

"The Guardian stories showed bold enterprise, dramatic flair in word and layout. They also nalled a number of the state's biggest pelts to the wall. PG&E, PT&T, SP, the big San Francisco newspaper-TV combine, etc. all receive a good monthly rake in the muck.

"But, even the judges (picked from business, industry and retired journalist ranks) agreed these were stories that deserved prizes.

"This year, to save judges from sleepless nights and conscience pangs, Press Club directors decided to change the rules... the judges won't have to contend with the problem of pinning a prize on a story which has been an embarrassment to a major private economic interest.

"The announced reason for the rule change was to encourage more weeklies to enter. A strange bit of logic.

"Bruce Brugmann, the burly driver who has kept the Bay Guardian afloat and on course, hasn't lost any sleep himself about the exclusion from the contest. He's been kicked out of better places than the SF Press Club, we're sure.

"The surprising thing is that the Press Club (as dominated as it is by public relations types) ever did permit the Guardian to win any awards in the first place.

"But it is pretty clear that the loser in all this is the press itself which hasn't much of a record on self-analysis and self-criticism. The standards set by really significant prize competitions help set goals for those working in the news field.

"Evidently, the Press Club contests can now be dropped from that tiny group of contests that really mean anything."

These remarks come from a Sept. 29 speech by Vic Reinemer, Senator Metcalf's executive secretary and co-author with Metcalf of "Overcharge," a book on utilities, at the

Western States Water and Power Consumers Conference in Salt Lake City.

The President, Vice-President, the Attorney General and his wife are all absolutely correct when they talk about the breakdown of law and order in this country. Their only fault is that they understate the case . . .

Several of us could provide the President with a real blockbuster for release from the Western White House, about the Raker Act of 1912, a federal statute which required construction of a municipal power system in San Francisco and forever prohibited any corporation from selling or subletting the water and electrical energy from Hetch Hetchy Dam.

If the Administration took law and order seriously, the President would pin the Cop-of-the-Month Award on Bruce Brugmann, editor of the Bay Guardian, a San Francisco weekly. Brugmann and two of his detectives, Neillands and Petrakis, have developed an air-tight case that Pacific Gas & Electric stole Hetch Hetchy's power from the City of San Francisco.

But alas, all the Guardian has received so far is a blackball from the San Francisco Press Club's annual awards committee, which is headed by one of P.G. & E.'s ombudsmen.

The P.G. & E. man is very soft on law and order. He packed the Press Club committee with "radiclibb"—to use Mr. Agnew's phrase—from Pacific Telephone and Telegraph, GE, Westinghouse and advertising agencies.

These "radiclibb" have taken over so much of the San Francisco press corps that non-enforcement of the Raker Act and the theft of Hetch Hetchy power isn't even mentioned by the San Francisco dailies.

Agnew should know this. He's been talking about just the radiclibb in the eastern press. But they are infiltrating the media all over the country.

This U.S. Senate speech, by Sen. Lee Metcalf (D-Montana), was entered in the Congressional Record on Aug. 19, 1970, under the title "Monopolies support monopolies in San Francisco." It was reported in a 14-paragraph story in the Sacramento Bee newspapers by Leo Rennert, the Bee's Washington bureau chief.

Mr. President, last month a bill to exempt newspapers from the antitrust laws was signed into law by the President, whose administration has certainly on more than one occasion criticized media concentration. This new law further strengthening the news conglomerates makes the survival of the small, independent newspapers even more tenuous.

One such independent, the San Francisco Bay Guardian, a monthly, continues to struggle against the price-fixing unity of that city's two major dailies. The Guardian has pioneered many controversial areas untouched by the larger papers.

And its courageous and excellent reporting has not gone unnoticed. During the past decade, the San Francisco Press Club has on two occasions awarded the Guardian its "Pulitzer of the West" Award—in 1964 and 1967. The Guardian has also won four out of the San Francisco Press Club's nine awards in the "nondaily" category during the past 3 years, including first place in the 1969 competition.

In view of this fine record, I was greatly surprised to learn from Bruce B. Brugmann, publisher of the Guardian, that his paper has been excluded from the Press Club's competition this year.

I believe this exclusion is explained, however, by the sad fact that the chairman of the Press Club's Awards Committee is none other than a public relations man from the Pacific Gas & Electric Co.

One of the courageous campaigns waged during the past 2 years by the Guardian has

been against that company's monopolistic and political strength in San Francisco and northern California.

The Guardian has documented P.G. & E.'s direct violations of the law—see articles in the April 3, 1970, CONGRESSIONAL RECORD, pages E2738-E2742. The Guardian has criticized the company's love-in with the major San Francisco dailies, and finally, it has recently advocated municipal ownership of P.G. & E.'s local electric distribution system.

One of the Guardian's editors, Peter Petrakis, recently suggested to the Public Utilities Commission a feasibility study on the acquisition of the system. This study is now underway.

Perhaps this was the last straw for P.G. & E. Its tolerance for "freedom of the press" has reached the breaking point. So through the Press Club the company is "punishing" this small, independent newspaper which it believes poses such a threat to its monopoly.

Mr. President, I am dismayed that P.G. & E. would choose this arena for its punitive and petty actions against the Guardian.

I am appalled, however, that the San Francisco Press Club would allow its fine and respected halls to be used for such obvious derogation of the "freedom of the press" on which rests its tradition if not its very existence.

I also ask unanimous consent to have printed in the RECORD the Bay Guardian's June 8 release of Peter Petrakis' testimony before the San Francisco's Board of Supervisors, with its analysis of city acquisition of the electric system; and finally the recent comments of our Washington friend, Nicholas von Hoffman, who refers to the Bay Guardian as "the best and most reliable periodical in the city—San Francisco."

(From the San Francisco Bay Guardian, Aug. 31, 1970)

#### P.G. & E.'s BIG BLACKBALL

The Guardian's news and editorial campaign for public power and against PG&E's illegal private power monopoly in San Francisco is now about a year and a half old.

It has been publicly challenged by PG&E's maneuver to get the Guardian banned from this year's San Francisco press club awards contest, (see On Guard), and by Dick Alexander's pro-PG&E series in The Examiner on July 30/31. So: we thought it necessary to detail the Guardian's campaign and present a point by point rebuttal of the PG&E/Alexander/Examiner line.

1. The Guardian in March, 1969 ran a story by J. B. Neillands ("How PG&E Robs S. F. of Cheap Power"), outlining in detail the Hetch Hetchy scandal and how PG&E for 45 years blocked public power for San Francisco in violation of the public power mandates of the Raker Act. It told of the strenuous efforts by PG&E and its allies, the Chronicle, Examiner and other conservative business interests, to preserve PG&E's illegal monopoly in San Francisco by defeating eight consecutive bond issues to buy out PG&E and set up a municipal power system. It showed how San Francisco now loses a minimum of \$30 million a year in profits by not having a publicly owned electric distribution system.

2. In September, 1969, we disclosed the attempt to sandbag the city charter's mandate for the public ownership of all public utilities by the 1969 Charter Revision Committee (P. L. Petrakis, "Make the Charter Modern—Efficient Even—But Don't Ruffle PG&E").

3. In February, 1970, we detailed the collusive PG&E/SF arrangements that dissipate the city's Hetch Hetchy power outside San Francisco, and we contrasted the sorry economic performance of the Hetch Hetchy project with that of the public systems to which it is forced to sell power. (P. L. Petrakis,

"S. F. Power—In the Great Tradition of Abe Ruef and Candlestick").

4. On April 14, 1970, P. L. Petrakis, Guardian utilities editor testified before the San Francisco PUC and persuaded commissioners to order a feasibility study to buy out PG&E's electric distribution system so San Francisco could at least enjoy the benefits of its own cheap electricity.

The next day, the Examiner said nothing about the PUC's historic move against PG&E, the first in 29 years on this public power issue, even though Reporter George Rhodes had interviewed Petrakis after the meeting and turned in a separate story. The Chronicle reported nothing.

5. On June 8, 1970, Petrakis testified before the Board of Supervisors and urged the board to take no action to raise Municipal Railway fares until the PUC's feasibility study was completed. It might then be possible, he argued, to use earnings from the sale of electricity to subsidize the Muni and maybe even lower the fares. His arguments weren't reported.

6. In late July, the Guardian learned the Awards Committee of the San Francisco Press Club—dominated, it turned out, by Larry McDonnell, PG&E's top public relations man—banned the Guardian from this year's competition for the "Pulitzer of the West" award.

7. On July 30 and 31, the Examiner finally came out with two prominently displayed and lengthy articles on the acquisition study. They were written by Dick Alexander, first vice-president of the Press Club. They could have just as well been written by PG&E's McDonnell. (See analysis below.)

8. To this date, nearly four months after the PUC initiated its study, Chronicle readers have not been told the city is considering buying out PG&E.

Alexander's stories presented figures on Hetch Hetchy power distribution (40% to the Turlock and Modesto Irrigation Districts, 22% to San Francisco municipal services, 38% to out-of-town industrial accounts), which could only have come from the Guardian.

The percentages represent a six-year average, available from no other published source, and Petrakis tabulated billions of kilowatt-hours to get them.

The point is that, though the Examiner used the Guardian as a resource, it failed to mention these more crucial revelations:

1. Our discovery, based on annual reports from the Turlock and Modesto Irrigation Districts and the Hetch Hetchy Project, that the districts make more profit by retailing just a portion of our Hetch Hetchy output over their publicly-owned electric system than we make by wholesaling the entire output.

2. That with these earnings, the districts subsidize the free distribution of another utility—irrigation water.

3. That district residents—urban and rural—pay 24% less, on the average, for electricity than do the residents of San Francisco, and they use our power to do it.

4. That, even with the water subsidy and the lower rates, the districts still have millions of dollars left over for surplus.

5. That these benefits the districts enjoy are made possible by a huge capital investment by the people of San Francisco.

6. That the districts bought out PG&E's local distribution systems in the 1920s when San Francisco defeated its first bond issue. The result: their residents are able to buy cheap Hetch Hetchy power while its original owners, the people of San Francisco, cannot because they have not followed the mandates of the Raker Act and their own city charter and bought out PG&E.

7. That the people of San Francisco, under the Raker Act, have priority on Hetch Hetchy power and can take practically all of it, as soon as they establish a public power distribution system.

8. That San Francisco loses at least \$30 million a year in profits by leaving electrical retailing in the hands of PG&E.

9. That this \$30 million annual profit could provide the city with a generous tax subsidy to help keep taxes down, subsidize the Muni, pay for desperately needed city services.

10. That San Francisco now must pay PG&E \$2 million a year for wheeling city power from Newark because the city, under mysterious circumstances worthy of chronicling by Lincoln Steffens, never completed the last 35-mile link of its transmission lines from Hetch Hetchy.

11. That PG&E "assigned" some of its out of town industrial customers to San Francisco, to provide a way for San Francisco to dump its excess power and to prevent public clamor for a publicly-owned system to distribute it here.

12. That these large industrial users (in Contra Costa, Santa Clara, San Joaquin, and Stanislaus Counties), taking 38% of San Francisco's power, do not employ San Franciscans and pay no San Francisco taxes.

13. That it was understood by congressional opponents and proponents alike that power generated at Hetch Hetchy, as a result of the Raker Act's grant of land in Yosemite National Park, would be delivered to the people of San Francisco through a publicly-owned distribution system.

14. That the U.S. Supreme Court in 1940 declared that the intention of the Raker Act was to provide municipal water and power for the consumers in San Francisco.

15. That the Raker Act, passed at the insistence of San Francisco in 1913, does not exist in a vacuum, but is the expression of our general charter policy on public utilities—that all such utilities shall be "gradually acquired and ultimately owned" by the city.

16. That the major piece of unfinished business under charter policy is the acquisition of a municipal electric distribution system for Hetch Hetchy power.

17. That this charter policy (Section 119) has so far resulted in the acquisition of a municipal transportation system, a municipal water system, a municipal sewage system, a municipal street system, a municipal airport, a municipal parking system and a municipal power generating facility.

Naturally, the directed verdict from PG&E/McDonnell/Alexander is "not feasible."

As the latest attempt to sandbag public power for San Francisco, this requires a point by point rebuttal.

*The Examiner:* "... if PG&E were to go out of the electric business and serve only gas here, more than half (of the \$9.5 million the company pays in local taxes) would not be paid to the city. It would have to be made up by higher taxes on others."

*The Guardian:* This is outright obfuscation. Contrary to the PG&E/McDonnell line, the company is not a taxpayer. It is a tax collector. It has only one source for the taxes it claims to pay—its customers, which include every electricity user in San Francisco.

The company adjusts the rates it charges the public to offset the taxes it "pays" the public. Result: the public pays PG&E's taxes in its utility bills.

E: Revenues from a public electric distribution system "can't be used for (another) utility (e.g., to subsidize the Muni, as the Guardian has suggested) without a charter amendment."

G: Any undertaking as important as buying out the local electric system will inevitably require some legislation to facilitate both acquisition and the subsequent management of the system by the city. To imply that the possible need for charter amendments is some sort of impediment to acquisition is specious—especially when the city, for two years, has had a charter revision committee engaged in revamping the entire city charter.

Whatever is required—approval of acquisition, bonding, charter amendments, ordinances—could be presented to the voters as a package.

E: "The total amount of general obligation bonds sold cannot exceed 12 per cent of the assessed value of taxable property (under the city charter) . . . Either the limit must be extended, which is unlikely, or Hetch Hetchy be exempted (from the charter limitation)."

G: Nowhere do the two Examiner articles (56 column inches) mention revenue bonds, which do not have this limitation and are being used increasingly by many public agencies.

The critical questions: Why mention only general obligation bonds—the kind that raise the tax rate? Why ignore revenue bonds, which would permit the city to pay for the electrical system out of the money it earns from it, without raising taxes?

Why fall to tell the public that PG&E itself finances its own expansions with what are essentially revenue bonds that the public pays off through its utility bills? Couldn't the city pay for its own electric system in exactly the same way?

E: "... the city, if it put up its own distribution system, would not have enough power from Hetch Hetchy to supply San Francisco consumers. So, it would have to buy electrical power from another source, Pacific Gas and Electric."

G: It is probably true the city at times, would have to obtain outside power to supplement Hetch Hetchy. It is also beside the point. Because of federal power policy, virtually every electric utility on the west coast of North America is interconnected with every other electric utility. Power is constantly being sold, exchanged, loaned or borrowed between these utilities.

To imply that San Francisco could not successfully retail its own electricity to its own people because it could not, with its own Hetch Hetchy power alone, supply all their power needs is to argue that a dairy can't survive unless it owns all the cows that supply it with milk. Or that a newspaper can't succeed unless it owns forests and paper mills.

Has the Examiner never heard of wholesale purchase for resale? It is a common business practice.

E: "Hetch Hetchy Project manager Oral Moore estimates PG&E's local facilities could be worth about \$500 million."

G: Alexander quoted Moore secondhand from the PUC counsel. He should have checked with Moore directly. We did and learned Moore did once cite that figure as an off-hand estimate, but he now believes after further study the figure would most likely be between \$200 and \$300 million for the distribution system and for PG&E's local Portrero thermal generating plant.

City ownership of the local steam plant would supplement Hetch Hetchy power, making dependence on PG&E for supplementary power unnecessary.

It is not surprising for PG&E McDonnell/Alexander/Ex to grossly over-estimate the worth of the private utility's local properties to discourage acquisition. That's the same old story.

Some factors should be kept in mind: 1) PG&E's electrical system in San Francisco was essentially completed several years ago. The city's population has been fairly stable for decades. PG&E has taken nearly full depreciation on large parts of its local system. It could not now sell it at original value.

2) Only a small proportion of PG&E's total electrical plant is now in San Francisco (13% of its customers, 2% of its distribution lines, 5% of its thermal generating capacity).

The total depreciated value of PG&E's system-wide distribution and steam generation facilities is \$2 billion, according to PG&E's own exhibits, on file with the State PUC in its current rate increase application. Based on the above percentages, it is generous to

estimate that 10% of the value of those properties is in San Francisco.

This comes to \$200 million.

E: "... condemnation proceedings through eminent domain . . . could take years in the courts."

G: PG&E is proving it will fight tooth and claw to preserve the most lucrative segment of its system. But the city will ultimately win if it resolves now to pay heed to its own interests, its own charter and federal law.

Conclusion: Had Alexander gone beyond McDonnell/PG&E in his research, he might have turned up some additional arguments, such as the 1925 Examiner editorial commenting on PG&E's early Hetch Hetchy grab:

"It is a wrongful and shameful policy for a grant of water and power privilege in the Yosemite National Park Area to be developed at the expenditure of \$50 million by the taxpayers of San Francisco, only to have its greatest financial and economic asset, the hydroelectric power, diverted to private corporation hands (PG&E) at the instant of completion; to the great benefit of said corporation, and at an annual deficit to the city of San Francisco."

Or this 1930 Examiner editorial:

"To do all this (build Hetch Hetchy) and then fail to distribute the power which is produced by the city would be the rankest sort of business folly."

It still is.

ARE YOU A "KEY PERSON" IN SAN FRANCISCO? WOULD YOU, TOO, LIKE TO VACATION AT HETCH HETCHY AT CITY EXPENSE? CALL JIM FINN AT THE PUC, 558-4986

(By Greggar Sletteland)

"The weather will soon permit use of the Hetch Hetchy facilities for the coming season," then Mayor Jack Shelley wrote to PUC President Thomas F. Stack on a chilly February day in 1965.

Shelley proposed in the letter that San Francisco take "maximum advantage" of its rustic guest cabin high in the Sierras by opening it to "important State and Federal officials . . . business, community, labor or other important city officials."

"My objective," Shelley wrote, "is to acquaint key people of San Francisco with the magnificent public plant that has been made possible by the taxpayers."

In the years since, Supervisors, Judges, grand jurors, PUC Commissioners, newsmen, have flocked to the scenic Hetch Hetchy valley in numbers that confirm Mayor Shelley's hopes—and then some.

In the last 18 months alone, the city, according to a Hetch Hetchy report circulated within the department, has served up 2,621 meals at Hetch Hetchy's O'Shaughnessy guest cabin during "the season." For these meals, the city has picked up a \$12,746 tab.

Not included in this amount is the bill, size unknown, for upkeep of the cabin, built at a cost of \$29,000 in 1938 for reasons no one can now recall with certainty, though some say it was to entertain President Franklin Delano Roosevelt during one of his West Coast visits.

The total bill to the taxpayer would be even higher, but the O'Shaughnessy area is buried in snow from November through late April, confining the season of the dignitary to six months or so.

Can the ordinary taxpayer who "made possible" the O'Shaughnessy facilities take a few days' rest there away from the rat race? Not unless he's a "key person."

Even city employees on work-projects at the nearby O'Shaughnessy dam can't stay at the cabin. There's a bunkhouse for them.

Each meal served to a dignitary by the city costs the taxpayer \$7.08, according to the previously mentioned PUC report. This is only an average, mind you. Figure three bucks for breakfast, another three for lunch, and \$15 or so for dinner. The city could get

away for less by wining and dining officials at the St. Francis.

To learn more about the sporting season at Hetch Hetchy, the Guardian ventured over to PUC headquarters. After a two-week struggle in the Water Department's accounting section, Chief Accountant Milt Brown agreed to open his books on the guest cabin, including vouchers containing the names of visitors.

A quick tabulation of names and bills, however, revealed that, of the 2,621 meals served, vouchers accounted for only 514.

"We only get vouchers for guests who have paid," Brown explained. "Since the others ate free, naturally we would have no bills with their names on them."

Brown's remark inspired a merry Guardian chase through the PUC in pursuit of 2,107 missing meals and 301 missing dignitaries. (On the average a dignitary eats seven meals during his stay at O'Shaughnessy; 2,107 missing meals divided by seven meals per dignitary means 301 missing dignitaries.) Here are the highlights:

James Leonard, PUC's public relations director, proclaimed innocence and pointed toward Hetch Hetchy Director Oral Moore.

"We file a boarding house report," said Moore. "It's a complete record of what happens up there." Could we see that report?

"We send it on over to accounting," said Moore.

Said Milt Brown, in accounting, "We don't have any boarding house report."

Moore, when told of Brown's remark, said, "I assume they destroy it."

Then the city kept no records of who had been staying in the guest cabin?

"There's never been any requirement," Moore explained, "that we keep records of who goes up there."

But then who decided which San Franciscans were important enough to stay in the cabin? Who decided which guests would have to pay and which the city would pick up the tab for?

"You'll have to ask Jim Finn about that," Moore said. "He's the one who handles all this."

The man who would have all the answers, PUC Secretary James Finn, proved a formidable obstacle to further enlightenment. Finn confirmed he (in consultation with PUC General Manager John Crowley) decided who would use the guest cabin. Finn at first wasn't sure, really, who went up there.

"I learned a long time ago that I don't inquire to Commissioners or Supervisors about who's going to O'Shaughnessy."

Why not?

"They don't answer," said Finn. "They say it's none of my damn business."

Asked to explain the city's policy on use of the guest cabin, Finn said it was set forth in Shelly's letter calling for the cabin to be put to "maximum advantage." Beyond defining "city officials" as those "so specified by the city charter," he would not elaborate.

If he didn't keep a list of former guests, the Guardian asked, did he have a list of reservations for the coming season?

Finn said he didn't.

"The less I know about the party and the politics of it," he said, "the better off I am."

William Bourne, Deputy City Attorney who acts as PUC attorney, voiced mild distress when told of missing, possibly destroyed, records, involving thousands of dollars in city funds. He said he would huddle with Finn on the matter.

Later, Bourne told the Guardian Finn did indeed keep a reservation list. "It's on a little pocket calendar," Bourne said. In Bourne's view that calendar was not an official document and therefore unavailable for public inspection.

Even if the reservations had been listed in the more formal fashion one might expect for documents describing official city busi-

ness, those lists would still not be available, Bourne said.

Reminded that \$12,000 in city funds for the past 18 months alone was involved, Bourne acknowledged that the PUC might have been "lax" in its recordkeeping. "But that's not my department," he said.

From that date on, Finn was out when the Guardian called.

The Guardian put through a call to the residence in Groveland, California, near Moccasin, of Mrs. Irene Kimmey, listed in city payroll records as the "housekeeper" for the O'Shaughnessy cabin.

"She's up to the cabin," said Mr. Kimmey. The answer was the same for eight subsequent calls placed to Mrs. Kimmey on eight different days.

Meanwhile, another season of the dignitary has come.

Would you like to vacation at Hetch Hetchy at city expense?

Are you a "key" person in San Francisco? Give a call to James Finn, reservations clerk, at 558-4986.

PEOPLE YOU SHOULD GET TO KNOW

Those in bold type ate, at taxpayer's expenses, 150 to 3,500 meals served at Hetch Hetchy guest cabin in the last two years. Those in small type ate 500 meals paid for by friends in bold type. People who ate the 1,950 missing meals, with the taxpayer paying, are too important for the public to know.

FALL, 1970

John D. Crowley, General Manager, P.U.C., Oct. 16-19, 1970; C. Crowley, M. Marino.

Marvin A. Cardoza, President, P.U.C. & Urban Affairs Officer, Bank of America, Oct. 14-16, 1970; J. Cardoza, J. Holbrook, A. Ziph, L. Freschi, M. London.

Hon. Joseph J. Diviny, P.U.C. Commissioner, labor leader, Oct. 8-11, 1970; J. McGeehan & wife, J. Farrell & wife.

Eneas J. Kane, S.F. Housing Authority, former P.U.C. aide, Oct. 12-14, 1970; F. Lucoza & wife, T. Ferguson.

Hon. John A. Ertola, S.F. Supervisor, now Superior Court judge, Oct. 22-25, 1970; Mrs. J. Ertola, Mrs. Smith, Mr. C. Ertola, Sr., Mrs. C. Ertola, Sr., B. Ertola, W. Ertola, Dr. Para & wife, C. Ertola, Mr. Lettice & wife.

SPRING, 1970

Oliver M. Rousseau, P. U. C. Commissioner, homebuilder, May 1-3, 1970; D. O'Neill, L. Breto, L. Goldman, B. Coon, J. Rolph II, R. Smith, L. O'Neal.

Oliver M. Rousseau, May 8-10, 1970; L. Byington, Dr. Selak & wife, J. Tynan & wife, Mr. Hirsch & wife.

Eneas J. Kane, May 15-17, 1970; K. Kane, T. Ferguson, C. Raudebaugh, C. Roberts.

Wallace R. Lynn, P.U.C. Commissioner, May 22-24, 1970; D. Lynn & wife, D. Lynn, Jr., G. Lynn.

John P. Crowley, May 29-June 2, 1970; J. Kealy.

FALL, 1969

Eneas J. Kane, Nov. 7-9, 1969; Mrs. E. Kane, T. Ferguson, K. Roberts, C. Raudebaugh.

John D. Crowley, Nov. 27-30, 1969; Dr. Christiansen & wife.

John D. Crowley, Oct. 24-26, 1969; Dr. Christiansen & wife.

Bert Simon, President, Globe of California & former P.U.C. Commissioner; Mr. Joffee, Dr. Wise & wife, Mr. Phelan & wife.

Hon. John A. Ertola, Sept. 11-14, 1969; J. A. Ertola, C. Ertola & wife, Mr. Gatti & wife, Dr. G. Pera & wife, Mrs. S. Adamson, Mrs. M. Clark.

Eneas J. Kane, Sept., 1969; Mr. T. Ferguson.

John D. Crowley, Aug. 8-10, 1969; Gen. Snoddie & wife.

Hon. Richard N. Goldman, P.U.C. Commissioner, August 20-21, 1969; Mr. Seidman & wife, Mr. Schwartz & wife, Mr. Peidoza & wife.

SPRING 1969

Hon. Richard N. Goldman, June 20-22, 1969; P. Arnstein, W. Block.

Oliver M. Rousseau, June 13-15, 1969; C. Bortlie, B. Corton, C. Roga, B. Reid, G. Oaks. Hon. John A. Ertola, June 5-8, 1969; Ron Ertola, J. Picetti, M. Rozano, G. Kapp, I. Felmer, C. Molinari, H. Aney, G. Connell, R. Monaco, B. Vernazza, L. Stefanelli, P. Fontana, R. Gardner.

James K. Carr Party, General Manager, P.U.C., May 29-June 1, 1969; Miss Carr, Mr. Bennett & wife, Father Moore, A. Leroy.

Oliver M. Rousseau, May 16-18, 1969; J. Kernan, J. Lovely, D. O'Neill, J. Rolph, L. O'Neal.

Eneas Kane, May 8-11, 1969; Kathy Walker, Betty Walker, C. Raudebaugh, Ted Ferguson.

DEAR PUC: This article is just a reminder that you are allowing PG&E to steal \$40 million a year from us. Your attention on this matter is 40 years overdue. Won't you reconsider our request to make a feasibility report to buy out PG&E right away?  
Thank you,

SAN FRANCISCO CITIZENS.

(By Peter L. Petrakis)

All J. Welton Flynn could say at the April 27 meeting of the city Public Utilities Commission was, "I don't believe it."

Flynn, an accountant, is Mayor Alloto's newest appointee to the PUC. The Guardian was telling Flynn and three other commissioners that San Francisco probably loses at least \$30 million a year by not retailing its own Hetch Hetchy power to its own residents, and that therefore the commission ought to request money to implement its own resolution to do a feasibility study to buy out PG&E.

The commissioners offered no figures to refute ours. On an obviously prearranged motion, the PUC voted unanimously to kill its own feasibility study, which had never been implemented in the year since it was authorized.

The commission wouldn't accept our method of estimating power profits in San Francisco—factoring up the power profits of cities that have municipal electric systems to a city the size of San Francisco.

OK. The Guardian has now turned to an authoritative source on power profits in San Francisco, one that our PUC respects highly—the Pacific Gas and Electric Company.

It seems our earlier estimate of San Francisco's profit loss to PG&E was a bit conservative.

We checked PG&E's 1970 annual report to the state Public Utilities Commission and PG&E officials submitted to the state PUC in support of PG&E's 1970 rate-increase application. We found:

(1) That San Francisco's annual profit loss to PG&E probably exceeds \$35 million a year.

(2) That even assuming no increase in PG&E power profits (hardly likely, in view of Reagan's PUC and the near-breakdown of utility regulation in California), San Francisco will lose more than \$1 billion in profit to PG&E over the next 30 years.

(3) That \$3.37 of every \$5 PG&E gets in San Francisco electric sales is profit before taxes.

(4) That San Francisco's power market is so lucrative that the city, from its own power revenues under municipal ownership, could readily finance purchase of PG&E's local electric distribution system, with two local PG&E thermal generating plants thrown into the deal, and still have millions in surplus profits every year during the repayment period.

(5) That with PG&E's two local steam generating plants, San Francisco would have a 20% excess capacity to meet future city

power needs, but in the meantime could sell surplus power to public power cities, or to public agencies like BART, to bring total annual profits close to \$40 million.

Here's the breakdown: PG&E power revenue from San Francisco—\$55 million; PG&E's San Francisco electric expenses—\$19 million; Revenue minus expenses—\$36 million. That's \$36 million profit before taxes for PG&E. (See box for computation details.)

Don't let that "before taxes" throw you. PG&E doesn't pay any taxes. We pay PG&E's taxes in our utility bills. PG&E adjusts its rates to offset its taxes, so PG&E is really a tax collector.

The \$36 million profit figure includes only power profits from San Francisco. More could come from wholesaling surplus city power to others. The combined power output from the city's Hetch Hetchy facilities and PG&E's Potrero and Hunters Point thermal plants would come to around five billion kilowatt-hours a year.

San Francisco now uses four billion kwh a year. So, the city would have a billion kwh to sell to other public systems. PG&E now sells a billion kwh at wholesale for about \$8 million, of which probably a fourth is profit. That would bring San Francisco's annual power profit to \$38 million.

And, since San Francisco now pays PG&E over \$2 million a year to wheel Hetch Hetchy power into the city for municipal services (from Newark, 35 miles away), the city could also keep that money.

Final profit figure: Around \$40 million a year. That's what PG&E takes from San Francisco every year, not counting profits from natural gas sales. In 30 years, it adds up to about \$1.2 billion dollars.

What would it cost to buy out PG&E? No final answers can be given until the feasibility study is made (which is probably why the PUC killed it). The study would involve a detailed inventory.

The Guardian analyzed PG&E data and estimated the total depreciated value of its San Francisco electric properties at around \$200 million. Oral Moore, Hetch Hetchy general manager, earlier came up with the same rough estimate, based on a study of PG&E property taxes.

Depreciation of PG&E property is an important factor in San Francisco. The city is essentially "full grown," and has been for several years. PG&E's two local steam plants were built in 1929 and 1930 at a total cost of \$82 million, according to the Federal Power Commission. PG&E has now taken more than 40 years depreciation on them.

The distribution network also is greatly depreciated. PG&E's own valuation of domestic-user facilities in its San Francisco Division (includes several peninsula cities) is \$19 million.

Let's be generous and assume that the final cost, including actual plant value, severance costs to PG&E, plus interest and bond redemption payments for 30 years on revenue bonds, would come to \$600 million.

Since net earnings over that period would be around \$1.2 billion, the city could still make \$600 million in profit. That comes to \$20 million a year, about what the Supervisors hope to raise with their utility tax, off-street parking tax and 100% increase in the business gross receipts tax.

I sent a draft of this article to Shermer L. Sibley, president of PG&E, asking for his comments on these figures. He replied.

"As you might suspect, we do not agree with your conclusion that municipal ownership of our electric system in San Francisco would be desirable, nor with the arguments you use to support that conclusion." Sibley did not elaborate.

Perhaps the best answer to Sibley is the experience of public power cities.

Palo Alto, with power rates much lower than PG&E's, recently announced that, despite lower revenues from sales taxes and an increased city budget, it would not be necessary to raise property taxes.

The reason: increased earnings from the municipal electric system would compensate. Palo Alto, with one of the lowest property taxes in the state, makes more city revenue from its electric utility than it does from the property tax.

Jack Knudson, a Palo Alto resident, recently took a Menlo Park friend's bill to the Palo Alto electric department for comparison. The PG&E bill was \$11.54 for 572 kwh (an average monthly rate of consumption). The same amount of power costs \$8.93 in Palo Alto.

In 1966, voters in Anaheim rejected a proposition to sell their municipal electric system to a private utility. Said City Councilman Schutte: "I have never felt so strongly about a matter as I do this particular issue. I think the electrical system should be retained. If it had not been for this facility, many improvements and programs, such as parks and playgrounds, which are for the people, would not have been realized without either a bond issue or raising taxes."

A. R. Schell, city manager of Roseville, recently told the Guardian, "In brief, the electrical system has been the salvation of the City of Roseville in many respects. It has given flexibility to city finances. It has saved many thousands of dollars for citizens of the city. It has been an aid in our industrial program. I think every city should own its own municipal electric system, where feasible."

"Where feasible?"

Isn't it now feasible, with rising taxes and PG&E bills, to do a study to see how much the city would profit by selling its own electricity to its own people?

PG&E Revenue (from 3.2 billion kilowatt hours)-----	\$55,000,000
PG&E Electric Expenses:	
Power generation-----	\$11,200,000
Distribution and customer accounts-----	\$4,400,000
Sales expenses-----	\$700,000
Administrative and general expenses-----	\$3,000,000
Total expenses-----	19,300,000
PG&E Profit Before Taxes (Revenue minus expenses)---	\$35,700,000

<sup>1</sup> San Francisco's power load is 4 billion kwh per year. Of this, 3.2 billion is supplied by PG&E, and the rest by the city's Hetch Hetchy Project for municipal services. The city pays PG&E \$2.3 million a year to carry Hetch Hetchy power into the city from PG&E's Newark substation, 35 miles away, where the Hetch Hetchy transmission line ends and PG&E picks up the power.

<sup>2</sup> Computed from PG&E's average unit power production cost (3.5 mills per kwh).

<sup>3</sup> San Francisco has 12% of PG&E's customers. Since customer-related expenses in San Francisco are half those for the average PG&E customer system-wide, the figure is 6% of PG&E's total distribution and customer accounts expenses (\$73 million).

<sup>4</sup> Taken at 12% of PG&E's total sales expenses (\$6 million).

<sup>5</sup> Taken as 12% of PG&E's total administrative and general expenses (\$25 million).

<sup>6</sup> This figure compares well with the Guardian's earlier \$30 million estimate, which was obtained by scaling-up Palo Alto's municipal power profits to a city the size of San Francisco. The same \$30 million is obtained by scaling-up the power profits of the Modesto and Turlock Irrigation Districts, which buy Hetch Hetchy power from San Francisco and retail it to their residents over their public power systems (charging rates 15% lower than PG&E rates in San Francisco). Combined T/M power profits are \$5 million a year. San Francisco has 6 times the population of T/M, thus you multiply by \$5 million by 6 to get \$30 million.

The \$30 million figure we have always regarded as a minimum profit figure for San Francisco: mainly because it didn't take into

account the economies that would come from this city's high meter density (240 customers per mile of distribution line, compared with 96 for the whole PG&E system). PG&E's own figures bear this out (see footnote 3, above).

Sources: PG&E's 1970 annual report to the California PUC. PG&E's 1970 rate-increase application to the California PUC (CPUC application No. 51551). Hetch Hetchy project preliminary annual report, fiscal year 1969-70.

#### HOW MUCH PROFIT DOES PG & E TAKE OUT OF YOUR CITY

The giant private utilities have severely crippled regulation in California, but they have not succeeded, as yet, in keeping from the public their annual reports to the state Public Utilities Commission.

That may come later. In Arizona, utility reports to the state regulatory agency are "confidential," meaning the public can't find out what's going on.

Nowhere, including California, will private utilities tell the public how much profit they take out of individual cities and towns—for the obvious reason that public awareness of those juicy profits might lead to moves to buy out the local private utility.

In California PG&E is required to report gross revenues for individual communities. These figures provide the basis for a rough estimate of the profit your city loses by not having a municipal electric distribution system.

Your estimated city loss is 40% of PG&E's reported revenues. That 40%, on a system-wide basis, is what is left of PG&E revenues after operating expenses are deducted.

The estimated city loss includes PG&E profits (62%) and the "PG&E taxes" hidden in your electric bill. Under municipal ownership, the 40% your city now loses would all be city profit—to be used to lower rates, lower property taxes or both.

Here is a sampling of Bay Area cities, showing PG&E's reported 1970 revenues, the estimated public profit lost in each for lack of a municipal electric system, and property taxes levied in each, as reported by the State Controller's office.

Subtracting the estimated city loss (which would be city gain with public power) from the property tax, the sample shows how much each city might cut property tax bills if the city operated its own electric distribution system.

This method can be tested by the following case: Palo Alto, operating its own electric system, makes \$2,099,092 a year in profits. Berkeley, which is twice as big as Palo Alto, should make twice as much.

Our estimate for Berkeley is \$4,119,000. Cities like Oakland, with high population density, should be able to make more than our figures indicate because high density means lower operating expense.

At first glance, it does seem incredible that lost city electric revenues are so large relative to property tax levies. Again, Palo Alto provides a useful example.

Palo Alto's municipal electric system in the last fiscal year transferred \$2.1 million in profits into the city's general fund. For the same year Palo Alto's property tax levies were also \$2.1 million. If it is assumed that the public power profits would ordinarily be raised through property taxes, then municipal ownership can be said to have reduced Palo Alto property taxes by 50%.

Compare the property tax rate of Palo Alto with that of San Mateo, a nearby PG&E city with about the same total assessed value. San Mateo: \$1.63 per \$100 of assessed valuation; Palo Alto: \$.74 per \$100 of assessed valuation. Thus, Palo Alto's tax rate is 55 per cent lower than San Mateo's. Essentially, the same relationship holds true in comparing total property tax levies in the two cities. San Mateo: \$5 million; Palo Alto: \$2.1 million. Palo Alto's total property tax is 58 per cent lower than San Mateo's.

City	Reported P.G. & E. electric revenues	Estimated city loss	Property tax levied 1970-71	Percent of possible property tax savings with public power	City	Reported P.G. & E. electric revenues	Estimated city loss	Property tax levied 1970-71	Percent of possible property tax savings with public power
Albany	\$926,469	\$371,000	\$617,691	60	Oakland	30,578,517	12,231,000	26,944,809	46
Berkeley	10,298,980	4,119,000	9,063,146	45	Pacifica	1,683,277	673,000	1,338,327	50
Burlingame	2,935,607	1,174,000	1,414,434	83	Redwood City	4,725,204	1,890,000	3,199,622	67
Davis	1,719,585	688,000	1,218,694	57	Richmond	12,947,392	5,179,000	9,061,102	57
El Cerrito	1,520,022	608,000	1,293,431	47	San Jose	33,141,052	13,260,000	20,271,793	65
Hayward	7,583,067	3,033,000	3,276,560	93	San Rafael	3,884,337	1,554,000	1,191,147	100+
Livermore	2,386,142	954,000	1,102,837	85	San Mateo	6,117,456	2,447,000	4,982,462	49
Menlo Park	3,238,763	1,296,000	1,012,391	100+	Santa Cruz	2,846,638	1,139,000	1,721,317	66
Mill Valley	839,529	336,000	1,092,366	31	Sunnyvale	10,450,279	4,180,000	4,053,620	100+
Mountain View	6,671,503	2,669,000	2,461,718	100+	Vallejo	3,884,337	1,554,000	2,204,968	71
Novato	1,956,779	783,000	594,111	100+					

**LET'S BREAK UP THE BOFA/PG&E ACT ON THE PUC**

Conflict of interest is defined and expressly prohibited by Section 222 of the city charter: "No supervisor and no officer or employee of the city and county shall engage in any activity, employment or business or professional work or enterprise which is inconsistent, incompatible, or in conflict with his duties as a supervisor or officer or employee of the city and county. . . . Violation . . . shall constitute official misconduct. . . ."

Section 11 spells out what must be done about official misconduct: "Any appointee of the mayor or the board of supervisors guilty of official misconduct . . . must be removed by the mayor or the board of supervisors, as the case may be, and failure of the mayor or any supervisor to take such action shall constitute official misconduct on his or their part."

Section 119 declares it to be the "purpose and intention" of the people of San Francisco to "gradually acquire and ultimately own" all utilities in San Francisco.

With these charter provisions in mind, The Guardian requests the immediate removal of Marvin E. Cardoza (chairman) and Louis A. Petri (member) from the San Francisco Public Utilities Commission.

We charge these two Alioto appointees with conflict of interest, as vice-president and board member respectively of the Bank of America, which makes it impossible for them to carry out the public power mandates of the charter, the federal Raker Act and the U.S. Supreme Court.

These public power mandates require San Francisco to buy out PG&E's private power monopoly in San Francisco and thereby sell the city's own Hetch Hetchy power to its own citizens and businesses in San Francisco. We believe Cardoza and Petri cannot support this policy to buy out PG&E and that they have amply demonstrated already that the intimate connections and direct working relationship between BofA and PG&E require them to subvert this public power policy in the interests of their employer and to the disadvantage of the city.

This enterprise, we contend, is "inconsistent, incompatible and in conflict" with their public duties as PUC officers.

The working relationship between banks and private utilities is an old pattern. A 1934 Federal Trade Commission investigation showed that the major investors in private utilities were banks and insurance companies.

The investigation produced documents and testimony that characterized bank-utility relationships as an "invisible partnership which should work to the advantage of both parties."

Today, the BofA/private utility/PG&E relationship is quite visible. Eight of the 20 board members of B of A are also on the boards of California private utility companies. Nearly half of PG&E's board of directors are also bank directors, representing

every major San Francisco bank. Of PG&E's 10 largest stockholders, five are banks and five are insurance companies.

Here are some specific visible elements in the BofA/PG&E alliance:

(1) PG&E vice president K. C. Christensen testified before the state PUC in 1964 that PG&E's kept \$2 million in interest free deposits with the San Francisco headquarters branch of BofA and that these deposits gave the giant utility a line of credit for \$14 million, "which is available to us overnight." PG&E, he testified further, has large interest free deposits in numerous BofA branches all over the state.

For more than 50 years it has been official PG&E policy to cement political alliances with bankers by "saying it with millions in interest free deposits." (See Hockenbeamer footnote.) It still does. Christensen is now a director of BofA's real estate investment trust.

(2) Before his death in February this year, Carl F. Wente, a BofA board member, was also a board member of PG&E and a member of the board's executive committee.

(3) Walter A. Haas, Jr., a member of BofA's board of directors, is the son of Walter A. Haas, board member and member of the executive committee of PG&E. Walter Jr. is also on the board of directors of PT&T.

(4) T. M. McDaniel, board member of BofA, is president of the Southern California Edison Company.

(5) Garrett W. McEnerney II, board member of BofA, is also a member of the board of directors of Pacific Telephone. He is the nephew of Garrett W. McEnerney I, one of the original incorporators of PG&E and a member of its board of directors (He is also an attorney for the Examiner.)

(6) E. Hornsby Wasson, board member of BofA, is a board member of Pacific Telephone and board member of Prudential Insurance Co., one of PG&E's top ten stockholders.

(7) F. A. Ferrogliaro, board member of BofA, is a director of California Pacific Utilities Company.

(8) BofA has always been a major financier for private utilities. After World War II, it organized and led large bank syndicates in lending huge sums to private major utilities in California.

It is fair to conclude that the BofA has a major financial stake in the private utility industry, in PG&E and in keeping intact and undisturbed PG&E's private utility monopoly in San Francisco. It is also fair to conclude that Mayor Alioto had incredible gall to appoint two BofA executives to a city public utilities commission that is required by law to buy out PG&E.

In January, 1970, the Guardian asked Mayor Alioto in writing if his forthcoming appointments to the PUC would be people who could support the city charter's utility policy. Alioto never replied. A month later he appointed Cardoza and at the same time announced that Cardoza's BofA had agreed to

help buy city utility bonds, not through competitive bidding, but through negotiated sale.

A negotiated sale of the \$26 million in utility bonds was necessary because BofA and other San Francisco banks had refused to bid the interest rate down, and had held out instead for a negotiated sale that could extract higher interest rates from the city.

Is it unreasonable to wonder if the appointment of bankers to the PUC was part of the deal? We think not. The banks also gouge millions each year from the city by paying extremely low interest on the city's \$250 million in bank deposits (see last Guardian).

These corporate connections might be considered symbolic were it not for the fact that Cardoza and Petri since their appointments have acted openly as sword and shield for PG&E/BofA on the PUC. They have moved to quash every attempt to find lucrative markets for the city's Hetch Hetchy power and to block every move leading to the acquisition of PG&E.

Cardoza became PUC president in February and, in late April, led the commission in a unanimous vote to kill the PUC's own cost and feasibility study in buying out PG&E. (The reason: the feasibility study would show that the city loses \$35 to \$40 million each year by not selling its own power to its own people, according to our comparisons with public power cities like Palo Alto.)

Cardoza's kill came in a meeting deliberately rigged to avoid publicity and cover the PUC's tracks. The resolution to kill wasn't printed on the PUC's official calendar, Cardoza quickly disposed of the matter, at 5:45 p.m., long after the audience had gone home. He refused, when requested, to give his reasons for his kill vote and his refusal showed the way for other commissioners to do the same.

Almost since the day Cardoza was appointed, the PUC has been negotiating with PG&E to renew contracts that dissipate the city's Hetch Hetchy power in unprofitable out-of-town markets and establish the extortionate fees the city pays PG&E to wheel city power to municipal services.

Cardoza/Petri support without blushing the city's sell-out bargaining position: that PG&E cannot only block Hetch Hetchy power at Newark, but it can then set up a tollgate and soak the city \$2.3 million to wheel city power 35 miles from Newark to SF.

PG&E would not elect public power advocates to its board of directors. It would not even elect men who professed to be neutral on the subject. Why should the people of San Francisco tolerate private power company agents on the "board of directors" of their municipal utility enterprise.

Footnote: We urge the 1971 SF grand jury to investigate the BofA/PG&E act on the PUC and the entire Hetch Hetchy scandal and to forgo its annual three-day \$1200, wine and dine trip to our Hetch Hetchy facilities in Yosemite National Park.

To this end, The Guardian two weeks ago wrote the grand jury and formally requested an investigation.

Footnote: From a letter by A. F. Hockenbeamer, president of PG&E from 1927-1935, to the president of an eastern utility company:

"The bankers as a rule, are about as economically minded as we are, but nevertheless, we came to the conclusion about 15 years ago that as a practical incentive to get them to work with us, there is no substitute for deposits. A worthwhile account has, therefore, been the keystone of our policy . . .

"We believe it is well worth while: First, because the service they render to us as banker is worth something, and secondly, because it cements their friendship and cooperation. Incidentally, we require no interest on these deposits."

#### LET'S END THE CHARADE AND CALL THE PUC THE RAILWAY AND WAREHOUSE COMMISSION (By Jay Joseph)

Why not just end the charade and go back to the pre-Hiram Johnson days and call it the Railroad and Warehouse Commission?

The regulatory agency now known as the California Public Utilities Commission, a creature of Hiram Johnson reform in 1911, was intended to be second only to the California Supreme Court in importance and independence in its role of protecting the consumer against the excesses of the all-powerful railroads and utilities.

It worked for Hiram. It worked in latter days for Governors Earl Warren and Pat Brown. It worked so well that Pacific Telephone Co. was the despair of its parent American Tel. and Tel. as the company with the lowest earnings—read that lowest rates—in the Bell System.

But Ronald Reagan is not Hiram Johnson. And the California Public Utilities Commission might now at least consider striking "Public" from the signs in its McAllister Street offices in San Francisco.

The public is in low esteem these days around McAllister St. with Reagan's appointees the heirs of Johnson's agency.

"The orderly business of this commission is too often frivolously delayed or diverted from its objective, observed PUC President (he doesn't like the title chairman) John P. Vukasin Jr. not long after he took office.

Vukasin is an Oakland lawyer, a 1969 Reagan appointee to the five-member commission and in 1964 was state vice chairman for the Barry Goldwater presidential campaign.

When he speaks of frivolous diversions he is not referring to those mounds of printed testimony and exhibits utility attorneys bring in wheelbarrow loads.

No. He means those amateurs from the Sierra Club, the California AFL-CIO, the fledgling lawyers of Consumers Arise Now from Hastings College of the Law, Bill Bennett and Sylvia Seigel of the Association of California Consumers. And Edward L. Blincoe, of whom more later.

Vukasin made that statement as he took over a Commission hearing on rules changes proposed by, among others, Francis N. Marshall, partner in Pillsbury, Madison and Sutro, the San Francisco law firm which enjoys a million dollar annual retainer from Pacific Telephone at its ratepayers' expense.

Marshall took his lumps from the Brown-appointed Commission a few years back when he went in as spear-carrier for a Pacific Telephone rate increase and emerged with a \$40 million rate reduction. It was not a performance calculated to win any endorsement from the stewards of telephony at Ma Bell's headquarters company in New York, and future rate applications were entrusted to others.

Marshall, however, was allowed to contribute toward earning that million dollars

a year, beginning in 1968, when he, John C. Morrissey of Pacific Gas and Electric Co. and A. Crawford Greene Jr., sometimes transportation industry counsel, offered some rules to "streamline" Commission procedure.

That is the point where entered from Stage Left a fat, untidy man with a crumpled wide tie when nobody was wearing wide ties. His name is Edward L. Blincoe and on a nickle-and-dime budget sans law degree (or, probably, any degree) he tilted with the distinguished man of the million-dollar-retainer, Francis N. Marshall.

At the rules change hearings Marshall, in fact, dubbed Blincoe most accurately as the epitome of "the man off the street." It was the kind of man Marshall is most desirous of eliminating from any but a minor role in rate increase applications.

"He cost the State of California and other parties, I'm sure, many tens of thousands of dollars in repetitious time," testified Marshall in the kind of indignation which occupation of a paneled office at Pillsbury, Madison and Sutro can engender.

The rules changes are numerous and most of them are of no public interest—but two are. One would put down the Blincoes of this world to a new status called "limited parties." As such they could introduce exhibits and testify till the cows come home—but they could not cross-examine witnesses.

The other change would require that all participants, with a few exceptions, be represented by attorneys.

Blincoe's monument to rate regulation is enshrined in page after page of cross examination of Pacific Telephone Co. witnesses. Cal PUC Case 7409; look it up if you have a few weeks free.

"I was repetitious," allowed Blincoe one day at the rules change hearing. "Sometimes I had to ask the same witness (from Pacific Telephone) the same question differently twenty times to get an answer he could have given the first time."

That kind of bickering is fun to observe on a dull day. But it obscures the potential contribution the Man off the Street can make on the public's behalf.

A portrait of the likes of Edward L. Blincoe may never grace the cover of your telephone book. But he is the man who got Pacific Telephone to list multi-message unit calls on your monthly phone bills, without which, of course, one could never protest an incorrect billing.

And Michael Peevey, a nonattorney who is research director of the California AFL-CIO, one day cross examined a PG&E witness on wage increases to get on the record the fact that labor productivity increased at a faster rate than wages. PG&E somehow neglected to mention productivity in its direct testimony on labor costs.

These are the kinds of things that will be lost if the Commission weeds out the non-lawyers in the interests of "streamlining."

#### VUKASIN CRUMBLES

There is evidence that Goldwater's hero Vukasin is crumbling in his enthusiasm for these rules changes in light of criticism from the press—most notably the Los Angeles Times and the McClatchy Newspapers—and from the California Legislature.

Vukasin, as most everybody on the fifth floor at the McAllister Street offices has noted, is even spending more time at work since the press focused on him. He used to be known as a part-time commissioner, not a bad job at \$31,000-per year.

Last month he even paid fence-mending calls on the editorial writers of The Chronicle, Examiner, Los Angeles Times, Sacramento Union and Sacramento Bee.

The proposed rules changes—which probably will be before the full commission in March or thereabouts—bear Vukasin's signature under a recommendation for adoption.

#### POSITION SHIFT

Since the heat, however, he has shifted his position to say he was merely throwing the proposals into the public arena for discussion and revision.

Vukasin's "staff rotation" plan has drawn as much or more criticism as the rules changes. It involves shifting some 300 experts (of a staff of about 800) into new jobs to create "depth" in the Commission.

Trouble is, in the arcane field of utility regulation an expert who talks the language of telephone rate separations (or anything else) becomes an amateur in any other field. There are no generalists in utility regulation.

Critical legislators are falling all over themselves to hold hearings on the rules changes and staff rotation.

#### PUBLIC RELATIONS

For a man who won his bachelor's degree in public relations (at UC Berkeley in 1950) Chairman Vukasin must have missed some lessons.

When Gov. Reagan was proclaiming "cut, trim and squeeze" last fall, Vukasin was having his office redone. There was a new \$459 conference table which demanded new chairs (\$834) and sofa (\$265). Add a desk chair, \$205.

Vukasin then installed a mobile telephone in his state car which, incidentally, is driven for him by a young man named Ernest Hendricks whom the state pays \$480 per month to be a clerk in the Commission's duplicating office.

Vukasin told the Los Angeles Times that the redecorating was initiated well before he became president of the Commission last July.

The State's General Services Department will tell you, however, that the furniture purchase orders are all dated in November 1970.

#### ONE INDEPENDENT

The Commission stands four out of four now with Reagan appointees. There is a fifth seat, vacant since Dec. 31, that the governor will fill soon, but it will be meaningless in terms of power balance. The only commissioner who has exhibited any independence of the present four is Thomas Moran, a San Diego attorney.

Moran has written some stinging dissents, most notably when the Commission decided to allow Pacific Telephone to claim accelerated depreciation for federal income tax purposes.

Pacific had shunned the option, available since the 1950's, because at the time the tax savings would go to the ratepayers' benefit. But when Ma Bell lobbied a change in federal tax law to permit utilities to hold the tax savings as an investment pool, Pacific broke down the doors to apply—successfully.

"The majority decision is outrageous," protested Moran. "Pacific Telephone will collect from California subscribers a bonus of more than \$700 million during the next 10 years."

Vukasin and Reagan's other two commissioners were not the least outraged. It was suggested—not entirely kindly—that they did not know what they were signing. They are two loyal, but out of work, former legislators, William Symons Jr. and Vernon L. Sturgeon, onetime Republican state senators who were reapportioned.

#### UTILITIES GET MAN ON PUC

(By Ivan Sharpe)

In a bombshell admission that may reverberate around the Reagan administration, a utility company executive frankly conceded to the Bay Guardian this week that utilities got their own man appointed to the State Public Utilities Commission.

Commissioner Fred P. Morrissey, one-time associate dean of the UC Graduate School of Business Administration at Berkeley, was rec-

ommended to Gov. Reagan after a hush-hush meeting of utility company attorneys in San Francisco's Bohemian Club in December 1966.

The meeting, which was hinted at and denied Jan. 25 in the final day of PUC hearings into PT&T's massive \$181 million rate increase application, was confirmed to me by Sherman Chickering, general counsel and vice president of San Diego Gas & Electric Company.

"Utilities got together, as anybody has a right to do, to screen candidates for the commission," said Chickering, senior partner of the prestigious San Francisco law firm of Chickering & Gregory, 111 Sutter St.

"Most of the principal utilities had representatives at the Bohemian Club meeting," added Chickering. "We passed on our list of candidates to a screening committee headed by Joe Knowles, the Governor's representative here."

Chickering also confided that he was a member along with five others, of that Reagan screening committee, although he claimed that he had never attended any of its meetings.

He said that the utilities had got together in the past to recommend candidates every time there was a pending vacancy on the PUC.

#### FIRST TIME

"This was the first time one of our candidates was chosen," he admitted, however.

Chickering described Morrissey's selection by the utilities as "natural one."

"I had read several of his articles about utilities and I knew what his views were. He was objective in his thinking. If somebody else hadn't put his name up, I might have done so myself," he said.

Chickering also said he was disappointed there were not more utility company representatives on the Knowles committee.

"There were people like Knowles who knew very little about utilities," he added.

Knowles, a taciturn stockbroker little known outside his office or the second floor of the State Building here, at first denied there were any utility men on his screening committee, which he called a talent search sub-committee.

After I pointed out Chickering's utility connections, Knowles said: "I didn't know that. I just know him as an attorney and a very good one."

Asked the names of his committee members, he replied: "I can't even recall who was on the committee now. It was over a year ago."

He said there were six, on the committee including himself.

#### I CAN'T REMEMBER

Knowles, again, at first emphatically denied that he had got names of possible candidates from the utilities. But, when told of Chickering's admission, he conceded: "I can't remember now."

He added: "All I did was to try to get names of people who were interested in being appointed to the commission. I had a whole sheaf of names with resumes and biographies."

Despite the biographies, Knowles claimed that he did not know that Commissioner Morrissey was a former paid consultant for Pacific Telephone.

Chickering's startling disclosure drew a predictable sharp comment from PUC Commissioner William M. Bennett, whose persistently probing questions during the final day of telephone rate hearings into the circumstances of Morrissey and Commissioner Symons' appointments led to angry exchanges.

"As a Californian and one who must take utilities' services, such as gas, electricity, telephones, I don't like a system that permits California public utilities to pick commissioners," he said.

"I think it is a terrible thing when the Reagan administration is consulting with California public utilities to select commissioners who are supposed to protect the public interest and oppose those utilities in their rate applications.

#### THE SAFEST CANDIDATE

"Realistically, those utilities aren't going to recommend anyone but the safest candidate for them," declared Bennett, a Democratic holdover who does not expect to be reappointed when his term ends this December.

The circumstances of Morrissey's appointment to the \$25,000, six-year-term PUC job assume more damaging and tainted significance when it is remembered that Reagan early last year made the unprecedented comment during the telephone company rate hearing:

"The phone company here in California has been in great difficulty because of some of the actions of the Public Utilities Commission. The PUC is going to have to be more realistic in its approach and its permissions to the phone company."

Lt. Gov. Robert H. Finch also said that the view was outdated that only the public's interest must be protected in regulation of utilities.

Philip M. Battaglia, Reagan's former executive secretary, predicted last July that utilities would get fair treatment from the PUC in the future.

This week Battaglia told me: "We had certainly heard a lot of complaints during the campaign that the PUC needed a balance. If the thinking was oriented one way, it should be balanced out with some fresh thinking."

However, Battaglia said he would be "very surprised" if the utilities had, in fact, recommended Morrissey.

In any case, Commissioner Morrissey himself feels there is nothing to be perturbed about.

If the utilities had put his name forward to Governor Reagan, he said this week, "I don't know whether it would be improper or not. Whether they did or didn't is substantially indifferent to me. I would vote independently in any case."

He said he found Chickering's admission "frankly hard to believe."

"What has happened here is that there has been a concerted effort on someone's part to label me as pro-utility. I just don't think this is so."

"Look through the way I've voted in the past year. I'm sure I've voted on matters which would displease utilities."

#### TWO ARTICLES

Morrissey said two articles he wrote in the Public Utilities Fortnightly in April and November, 1966, were "more pieces of research rather than pro-utility."

"I still look upon myself as an academician," he added. His paid work for the telephone company was in the 1950s, he said.

Tom Reed, Reagan's former appointments secretary who quit at the end of Reagan's first 100 days in office, denied that utilities had any say in Morrissey's appointment.

"They made no recommendations to me," he said.

Reed, who runs a mining and land company in Nevada County and lives in San Raphael, said he had given Reagan five or six names for the PUC appointments, with Morrissey and Symons getting his personal recommendation.

He recommended Morrissey, he said, after his name had been put forward by the major appointments task force, by a senator and after canvassing college faculties.

#### SCREAM VIOLENT OBJECTIONS

He conceded that utility companies didn't "scream violent objections" to Morrissey's nomination.

"I thought then, and I still do, that both Morrissey and Symons were intelligent, impartial and fair guys who were concerned with the best interests of the people," said Reed.

Symons, a rancher, whose Mono County GOP senate seat was swept away by reapportionment in 1966 after serving one year in the Legislature, was recommended by members of the State Senate, disclosed Reed.

#### COMPLETE SURPRISE

Chickering, incidentally, said Symons' appointment came as a "complete surprise" to him and to the utilities, who had not recommended him.

Whatever the political repercussions of Chickering's remarkably frank statements, great doubt is now thrown on the validity and fairness of the Pacific Telephone hearings which ended last month after 82 days and 12,568 pages of testimony.

Pacific, in requesting a \$181 million rate boost, wants to improve its allegedly depressed rate of return on investment by some 30%—to 8% from 6.3%. If granted in full, the request would nearly double some phone bills in San Francisco.

Chickering's remarks also appeared to contradict sworn testimony by Jerome W. Hull, Pacific's executive vice president, who stated: "I do not know of any recommendations that were made to the Governor by any utility group."

#### STATEMENT OF GARY G. GILLMOR, CHAIRMAN OF THE COMMISSION, NORTHERN CALIFORNIA POWER AGENCY, AND MAYOR OF THE CITY OF SANTA CLARA, CALIF.

Senator HARRIS. I would like to call now Mr. Martin McDonough, General Counsel for the Northern California Power Agency, and the Honorable Gary G. Gillmor, Mayor of Santa Clara, and Chairman of the Northern California Power Agency. Gentlemen, we are pleased you are both here, and we would be pleased to hear from you at this time.

Mayor GILLMOR. My name is Gary Gillmor, the Mayor of the City of Santa Clara, and also Chairman of the Northern California Power Agency. To my left is Martin McDonough, General Counsel, from the Northern California Power Agency, and we did have the opportunity of having fifty statements so they will be available here for the press and those involved.

Senator HARRIS. Good.

Mayor GILLMOR. Basically, the Northern California Power Agency is made up of eleven municipalities, who at the present time do not have any generation but are hoping to get into the generation field in the electrical area, but we do have our own distribution system. We have a population in our system of close to 400,000 people, spreading from the northern part of the state even down to Lompoc, our most southern extremity.

We have had many problems along the way. I have been somewhat of a neophyte in this area. I have only been involved eight years in fighting Pacific Gas and Electric, whereas Martin McDonough, to my left, is probably in my opinion the most able counsel in this area, and really he is one of the few, I think because of the statements that were made earlier that not too many people seem to be interested on a general basis in electricity. The news doesn't like it. However, in Santa Clara alone—just an interesting statistic—over the last five years we ran an analysis based upon our tax rates, and we were fortunate enough to be the number one city in the State of California for clean industrial growth in 1970. And looking at this as a result of our lower utility rates, we have found that our average family, based upon taxes and other concerns in the electrical area, saved over \$300 in the past five years. Now when we start talking about \$300, in amounts of this nature we find that individuals, I think, should be concerned and

should be aware of what is going on in the electrical area in northern California, in fact, in the entire state and the nation.

The NCPA previously, with the 11 cities made up of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara and Ukiah, negotiated for their power with PG&E on an individual basis. As a result of this individual basis, we found that "divide and conquer" seemed to be the aspect used by Pacific Gas and Electric with the various entities, giving them piecemeal bits of hope and piecemeal bits of contractual relations, which in essence pacified the city councils. Therefore, they would have long-term contracts with them, which would lock them into basic terms and regulations which really, in my opinion, were not beneficial for the individuals or the municipality.

This was their method until the late 1960's when we formed the Northern California Power Agency with the idea of defeating this divide and conquer aspect with which PG&E had engulfed them. We saw this basically in the Central Valley Project. The Central Valley Project was a system whereby the Department of the Interior through the Bureau of Reclamation, Pacific Gas & Electric, and other entities, devised an integrated transmission and generation system for all of northern California and into southern California.

At that time we were appalled when we appeared before Secretary of the Interior Udall, and we found that Pacific Gas & Electric had entrenched themselves so much in the Interior Department's Bureau of Reclamation and the state legislature and other entities, that we were in a situation that at any time for approximately 40 years if we wanted to get new power into the system—new generation—that we had to have the consent of Pacific Gas & Electric, who seemed to have control over the Federal Government itself. We were fortunate just to get a letter of intent between the Secretary of the Interior, at that time Mr. Udall, and the Pacific Gas & Electric president, Mr. Gerdes, which in essence stated—during this infamous period, I will call it—they would consider PG&E working with the Federal Government if they would allow new generation to come into the great system and into the Central Valley Project.

We at this time are trying to get generation in northern California, since we don't have any. Southern California is way ahead of us on this. And therefore we decided to adopt a project in the Geysers Area. This is a geothermal area, and it's a new area for most of us, even though it has been here from time immemorial. And in northern Sonoma County, we find that there is an active steam area; in fact, I believe it is the only one in the United States that is 99.5 percent pure in regard to the steam, even though there are known areas throughout the Western United States, of which I have a map up here, and, as you are well aware, basically there are potential fields throughout all of Western United States. The Geysers Area, though is the only producing area in northern Sonoma County, and we were looking to that area for potential generation.

We contacted the Department of the Interior, Bureau of Reclamation, told them of our intent, and they stated first, well, let us have a feasibility study on this. We are spending over \$100,000 for a feasibility study. As a matter of fact, we even asked for a loan prior to this for our general needs from the Federal Government. This was through HUD. We went back to Washington and talked to, I believe, Assistant Secretary Jackson at the time in HUD. It was a loan for a little better than \$100,000, of which we guaranteed repayment. We had six Congressmen, both Senators, and bipartisan support on this loan to look to our general needs, and it was defeated. It was appalling when this happened, and this is when I felt that a crusade was

needed, and I hope through efforts like yours that people of the State of California will realize what is going on in the utility industry.

With that defeat, we decided that this was not going to stop us, and we went on into the area of doing it on our own. We are raising our own monies; we are talking with the Department of the Interior through the Bureau, and we even did our own feasibility study on the Geysers Area. Just recently, on working with the Bureau, we found that it was feasible insofar as the transmission lines are involved, and that, in fact, it would be no harm to PG&E or to the Bureau of Reclamation. However, at the present time the Bureau of Reclamation says this is fine, it is feasible; but you must now go to PG&E and, in my opinion, beg, and ask them in essence if we can work with them through the Bureau so that we can get 220 megawatts of power in the Geysers Area.

When we go to the Geysers Area and the monopolies that seem to be present there, we find that Union-Magma, which controls 86 percent of the known geyser stream area where there is a basic feeling that the power is available, we find that they have an exclusive contract with Pacific Gas and Electric, and they have 86 percent of the known wealth. We also find that we are now dealing with Signal Oil which has a substantial part of the remainder. But in the meantime, Pacific Gas and Electric is also negotiating with them to a minor degree. Signal, we feel, is acting in good faith with us at the present time; however, we still have this nemesis on the side which is Pacific Gas and Electric controlling most of the area at the present time. And I start to wonder if this isn't again another method whereby Pacific Gas and Electric, since they have controlled—and I'll make this as a firm statement—they do control the State Legislature.

As an example of this, we had a bill by our Senator Ahlquist, who ran for Lieutenant Governor in the last election, and he authored it on our behalf, whereby we find in the State of California you can get revenue bills for almost every type of industry you want to go into, such as water, airports, roads—in general, all cities can get involved in this. There is one major exception to this, and this is power—generation and distribution. So we tried to amend this. And this is illogical, because this is a way in which you can generate revenue to pay your debt obligation. It was found we got it through the Assembly, we got it to the Senate and it is still there. It has never passed. We have tried many, many times, and we buck Pacific Gas and Electric, and all of the private companies. They group together to fight us every year that we are in the legislature on this, and this is totally illogical. This is why I say they control the legislature. We find that again, going back to the Geysers Area with Union-Magma and with the other entities that are involved there, and with all these potential areas and with much of the land owned by the Federal Government.

In the hearings that are forthcoming on this, in this particular area alone, let's not let history repeat itself. I hope that people in the Congress will become concerned and become involved. I think there is a feeling in northern California, with such cities as Berkeley—and I am happy to say in Berkeley they have a potential referendum whereby they are forcing the City Council in Berkeley through this referendum to buy out Pacific Gas and Electric. The costs are magnanimous as compared to the returns that the people of Berkeley—the people of Foster City are doing the same thing, the people of San Francisco, and I am happy to see that there is one newspaper there that is doing something about it—will get back their monies which they definitely deserve. And the people of the State of California, through having these public entities like the North-

ern California Power Agency, will have a general yardstick with which to measure this quasi-monopolistic tendency of PG&E. We find that PG&E in one case has not raised their rates over the past few years, because they know the Northern California Power Agency will not stand for it and in unity we will fight them.

So we find insofar as the Geysers Area is concerned, which is a new area for generation, a clean type of generation. In fact, I'd like to quote from the Supreme Court of California, which recently said:

"Geothermal steam obviously provides an attractive source of power for the generation of electricity. Since the conversion of geothermal steam power into electric power does not involve combustion, the process does not pollute the environment with by-products. The steam is not significantly cheaper than fossil fuels, but construction of geothermal steam electric generation costs less than installation of fossil fuel plants. Furthermore, steam units of relatively low capacity are economical, and the lead time for building such facilities is shorter than that required for construction of fossil fuel or nuclear plants." (Northern California Power Agency v. Public Utilities Commission (1971) 5 Cal. 3d 370 at 373.)

We find that we have preference customers in the State of California that are paying four to four and a half mills for their power. Our feasibility reports show that in the geothermal steam area, we would pay six to seven mills for power. If we had to buy it from Pacific Gas and Electric, we would pay seven to eight mills for the power. And also the fossil fuel costs are going up, and we anticipate 12 to 15 percent increase requests from PG&E very shortly along these lines. We find that Pacific Gas and Electric, with its monopolistic tendency, is now trying to curb our growth into generation fields. This is a fight of survival as far as they are concerned. With almost every city council in the area, as was mentioned earlier, they are involved in every service, fraternal, social and commercial organization.

We are fortunate that in Santa Clara the head of the Chamber of Commerce is a Pacific Gas and Electric representative. And we also find that within our community there are very nice individuals, and in every community there are private power people, and I know they are standing up for their interest. However, it is frustrating, it's sickening, and in my opinion it is almost corrupt, the way these measures have happened in San Francisco. It's a corrupt situation in my opinion. Because of the people of San Francisco—definitely through the Raker Act—something should be done, and I concur with the previous speaker on that.

This concludes my remarks. Martin McDonough is the most able counsel in regard to the utility industry. He in turn was very influential in setting up SMUD, the Sacramento Utility District. This is why we hired him as our general counsel. He can cite to you, if you are interested, various court cases that we have been involved with.

We are definitely committed to fight the monopolistic tendencies in the Geysers Areas, which are already 86 percent certain, as you will see from our comments where the Pacific Gas and Electric control this by right of first refusal on all the residual lands. We find that we are left with Pacific Gas and Electric holding thousands of acres. However, this is on the periphery. It is not tested. Union-Magma has had accomplishments here, and they have their own fields. We find that now we must go and beg, in my opinion, the Bureau of Reclamation to get progress on what we have spent hundreds of thousands of dollars to test the feasibility of transmission. We have to go to the President of Pacific Gas and Electric and say, "Will you now meet the intent of the letter between Udall and Gerdes." This is not fair.

I don't think that's private enterprise, if you want to call it that.

And I disagree with it being called private enterprise. I agree with your comments earlier—who control the municipalities and public power. If it wasn't for public power, I'd hate to see the rates in the State of California, because we are always there even though we are small, monitoring and constructively, I say, arguing with them over their rates. We will find through the NCPA, and we hope through your influence—and we admire your courage, because this is not a popular matter which makes newspaper headlines—that you will continue your fight as well as Senator Metcalf and the others who have seemed to take an interest in the conglomeration of monopolies that seem to be present.

If there is one in the State of California, I think one that is very paramount and the least known about, it is the area between public and private power. We are determined to go to whatever method necessary, through the courts if we have to, to get our own generation to keep Pacific Gas and Electric, and all others who seem to feel that they can use public monies for investigation, research and inquiry at the expense of the public, from benefiting from the high inflationary guaranteed return, which they now have.

Martin, would you like to make some comments?

Senator HARRIS. Mr. McDonough?

MARTIN McDONOUGH. I am involved in certain litigation involving these aspects, Senator, but I won't go into that unless you have some questions.

Senator HARRIS. Can I ask either one of you, Mr. Mayor or Mr. Counsel—this is a rather new subject to me, that is geothermal power—what is the basic law about who owns this steam? Is that like the ownership of petroleum that goes with the land? What is the interpretation under California and other law?

MARTIN McDONOUGH. There probably is no final answer, but we are treating it as though it were petroleum products for the purpose of ownership. That's the current practice.

Senator HARRIS. The Department of Interior, as I understand it, takes the position that they will lease this kind of energy source on public lands—on Federal lands—out to the highest bidder. Is that the way it works?

Mayor GILLMOR. Well, Martin has attended some conferences. That's basically my understanding. Martin?

MARTIN McDONOUGH. Yes sir, as I understand it, that's the basic principle, except there are some grandfather principles in the law which protect people who had done certain work or taken certain steps before the law took effect. And those people who are grandfathered in will have important privileges. Aside from these privileges, the basic idea is that the highest bidder will prevail.

Senator HARRIS. That being the case, leasing out this kind of energy source to the highest bidder would obviously benefit somebody like PG&E. It would be just like if when we began to harness hydroelectric power, we just leased that out to whoever wanted to bid the highest. Is that a fair statement?

MARTIN McDONOUGH. Yes sir, it would have been a very bad situation for California, at least, if hydropower privileges had been given out to the highest bidder.

Senator HARRIS. Mr. Mayor, you talked about SMUD being under pressure, I suppose, and deciding not to grant you a loan, which I understand they could do under Federal programs to try to develop this source of energy. Is that correct?

MARTIN McDONOUGH. Well, we received the basic arguments that priorities, etc., precluded them, that the money had dried up, and other reasons for which to deny us the right to this loan. It was quite amazing, Senator, because when we had Republican and

Democratic support and they showed up to me in the first. I've been back there many, many years, and in our area we had Congressman Gubser, who is not a proponent to any degree of public power, supporting us 100 percent, and then Congressman Edwards, who has been a definite proponent of public power, and they were putting us on. This is what really appalled me in regard to their denial of this. As you are well aware, there are many reasons that can come up to deny such loans.

Senator HARRIS. One of the things I've found as I've been around the country, is that oil companies in particular have for some time been moving into other energy sources—coal, uranium, etc. As I understand what you've said, the same kind of situation exists here in regard to this geothermal energy?

MARTIN McDONOUGH. That's correct. There's Union, there's Signal, there's also another oil company that has taken over Geothermal Resources International, as I believe they used to be called. They are very active now. They conceive the monies that are ever-present there, and it is a cheap source of supply, so this is why it is so important at this time at hearings like yours that we start developing some governmental regulations of this. I'd hate to see future generations faced with the deplorable electrical situation that we have today.

Senator HARRIS. Well, I really appreciate that. As I said, this is a somewhat new situation to me, but one I find very alarming. I want to compliment you and others like you who are making the fight for the general public. I just hope that these hearings and your testimony here may add to the fight. I thank you very much for your presence and for our statement.

MARTIN McDONOUGH. Thank you.

Senator HARRIS. Thank you. Incidentally, I think it's really outrageous that with the awful demand for power in this country that we are often wasteful consumers of energy and power. Think what that's doing to the country insofar as pollution and depletion of natural resources, and the stripping of land for coal, etc., and yet in a building like this you can't turn off the lights in one room. That just seems like a hell of an outrage to me that that should be so.

MARTIN McDONOUGH. No comment. (Laughter)

Senator HARRIS. I want to look into that. Thank you very much. We will recess now for lunch and resume at not later than 1:30.

Thank you very much.

#### STATEMENT OF MARC GROSSMAN, LEGISLATIVE COORDINATOR, UNITED FARM WORKERS

Senator HARRIS. The hearings will come to order. I apologize to all of you that were here on time that I was inadvertently delayed. Our first witness of the afternoon is representing the United Farm Workers—the Legislative Coordinator of the United Farm Workers, Mr. Marc Grossman. Mr. Grossman, I'm pleased that you are here and we'll be glad to hear from you at this time.

May I just say for those of you who might not have been here this morning, that these ad hoc public hearings will be transcribed and published in the Congressional Record and presented to the relevant committees in the House and Senate where there are issues which are brought out in the hearings and legislation now pending and being prepared. I also hope that by holding these hearings in California, a presidential primary state, we may be able to get these issues more involved in the presidential campaigns in 1972 and thereby have more immediate impact. Mr. Grossman.

MARC GROSSMAN. Senator, we would like to thank you for giving us the opportunity to make a statement here on a matter which is of interest to us. There is a double standard, we feel, in rural California and rural

America. There is one standard for large landowners and the agribusinessman, and there is another standard for the farm worker and the laborer, the vast majority of whom are Mexican-American, Filipino and Black. When a man robs a bank, they call it a felony and they send him to jail. As a matter of fact, I think it is a federal felony and in all probability the FBI takes part in tracking down and evidence gathering. When a poor bank teller or clerk embezzles money from a firm or trust, he is prosecuted and perhaps imprisoned. But when a giant farming conglomerate or large family grower subverts the letter and spirit of the law, and in the process steals from the taxpayers and the power users of the nation millions of dollars annually, there is hardly a head turned in the seats of authority responsible for safeguarding the public interest. As a matter of fact, our government, instead of trying to correct these abuses, is actually aiding in the conspiracy.

There was an article on the front page of the Fresno Bee on Friday, January 7, 1972, written by a Mr. George Baker, concerning a 160-acre law being violated in Kings County. It stated in part:

"A Fresno federal judge has absolved Kings River area farmers from federal acreage limitation laws in a ruling which could have far reaching consequences. District Judge M. D. Crocker yesterday ruled the so-called 160-acre limitation cannot be applied by the U.S. Bureau of Reclamation to 1.1 million acres of rich farmland fed by the Kings River water stored behind the Pine Flat Dam."

And in another section, it said:

"The principal beneficiaries of the ruling will be the large-scale farmers of the Tulare Lake area, such as J. G. Boswell Company and Salyer Land Company."

Senator, there is a double standard in this state and nation. When a farm worker spends a large part of his wealth building up the wealth of a rich grower's ranch, and then he is fired one day because of mechanization, ill health or old age, and thrown out of his livelihood without any kind of security, without employment insurance—which Governor Reagan vetoed as a Christmas present for farm workers last year—without a pension, without a medical plan, and through sheer poverty has no choice except to turn to the County Welfare Department for assistance, what's going to happen? In Kings County, where Boswell and Salyer companies receive millions of dollars of the taxpayers' money in public subsidies, there is no food stamp program. And why is there no food stamp program? Because the growers in that county don't want one. And why don't they want one? Because they don't want to be saddled with the financial burden of one, and because the concept of "doling" welfare out to poor farmers is against their principles of free enterprise. You know, that's a very interesting concept, welfare. When the government squeezes out a few crumbs to feed a malnourished farm worker's child, they call it welfare. But when a multimillion dollar grower receives millions of the taxpayers' dollars for benefits he is not even entitled to receive, for benefits which were designed to aid a class of small family farmers, they don't call it welfare. They call it something else. They call it subsidies.

There's a state of anarchy in the State of California. There is a flagrant flouting of the written law as it pertains to the whole question of subsidies and government benefits, and who is entitled and who is not entitled to receive them. Now, I'm sure you know this, and I'm sure most people here know this. And I'm not an expert on cotton subsidies, or the 160-acre limitation or the Williamson Act, but what I would like to do is make a few brief statements on some aspects of these subsidies as they affect the farm workers' struggle for economic dignity through collective bargaining.

In the last twelve years, farm workers have been engaged in a life and death struggle for dignity and self-determination. They have been fighting to build a union, a union that would be begun by farm workers, run by farm workers and dedicated to filling the needs and aspirations of farm workers. They have been struggling nonviolently in the tradition of Gandhi and Martin Luther King, Jr. They have gained some remarkable victories in the face of overwhelming odds, mainly through hard work, dedication and a great deal of sacrificing. Many of the strikers have lost their homes, their cars and most of their worldly possessions, but out of this conflict has come a national union dedicated to gaining for all farm workers of America the rights that other United States working people gained twenty or thirty years ago. A few weeks ago the Farm Workers Union dropped its official status as an organizing committee and was granted a fully, independent charter by the national AFL-CIO. We are now the United Farm Workers-AFL-CIO, until later on this summer when the farm workers will converge in a national convention when they will name the new union.

But these recent victories are only a small beginning. There are farm workers in Florida and in the South suffering even greater indignities than here in California, who are now organizing behind the United Farm Workers. Where farm workers work under the protection of union contracts, conditions improve and wages and benefits increase. Workers under union contract now enjoy minimum wages, improved working conditions, sanitary facilities in the fields—including toilets—cool, clean drinking water, overtime, grievance procedures, protection from extremely dangerous and toxic poisons, a medical plan, and two clinics. Our clinic in Delano was staffed by four full-time doctors, and we have a clinic in Calexico. Farm workers, really for the first time, are starting to enjoy the kind of political freedom that they have never had without fear of reprisals or discharge. But, unfortunately, only about one percent of the growers in this nation are covered under union contract. The vast majority of the rest are still operating under a cruel and inhuman labor system that has kept farm workers in an oppressed state for generations.

Now what's our government doing about all this? Anyone receiving Reclamation Act water on land in excess of 160 acres, or in some cases 320 acres, is violating the law and receiving an illegal subsidy. Many of these growers are also engaged in oppressing their workers. So by granting these illegal subsidies to growers who are engaging in exploitative labor practices, the Federal Government is in essence closing its eyes to the suffering of farm workers.

In California, government—both at the state and federal levels—grants benefits and subsidies to growers who are in constant and persistent violations of the law. Growers in California discharged their workers for union activities. They violate state sanitary laws and Food and Drug Administration regulations and laws regarding food picked under sanitary working conditions or poisoned by pesticides. Growers work children 12 years of age or younger over eight hours or more a day. In the Imperial Valley in 1970, our Union had a labor strike against melon growers there, and the growers hired eight- and nine-year-old children to work as strike breakers. And in many areas of California you can drive around and see little kids that you think are going to Sunday School and ask them where they are going: "I'm going to go and pick garlic," or something like that—little kids in straw hats, 8, 9 and 10 years old.

Growers continue to misuse pesticides, endangering both farm workers and consumers, in violation of the state law. In an average year, 1000 people die from these pesticides, many of them children who get

into carelessly left-around pesticide containers or pesticides sprayed in the fields. In a farm workers union contract, there is a health and safety clause. I am quoting from a contract signed March 31, 1970, by Mr. Lionel Steinberg, who I understand is to testify here. This is a farm workers Union table grape contract. It's a good example of a lot of the contracts that are signed in the table grape industry. In it:

"DDT, Aldrin, Dieldrin, Endrin, Parathion, Tepp and other economic poisons which are extremely dangerous to farm workers, consumers and the environment, shall not be used."

Others specify that the organo-phosphates, which are also dangerous to farm workers, are to be used only in keeping with the strict application of state safety laws and the approval of a worker-elected health and safety committee. I would like to leave with you a copy of a Farm Workers Union Contract as an exhibit.

Senator HARRIS. Thank you, I would like to put that in our record.

MARC GROSSMAN. During the lettuce strike in the summer and fall of 1970, the pesticide issue was the issue that the workers were probably more concerned with than any other issue. Even in many cases, more than with wages. The reason that the balance of the lettuce industry broke up negotiations with the Farm Workers Union last year was their refusal to negotiate on the issue of economic poisons. Growers may grant that the farm workers might know something about what they need to eat and live on, but most growers are much too paternalistic to admit that farm workers might also know something about the safety conditions and the working conditions under which they have to work.

Growers create numerous industrial hazards—buses without brakes, tractor drivers ill-trained for that kind of work, resulting in numerous injuries and death. Growers violate sections of the Social Security Act by failing to report money taken from workers as deductions, and this is rampant in many areas of the country—not so much, maybe, as it used to be but it is still around. Now some of our people don't think that these kinds of things happen any more, but they happen daily. Workers are being cheated on wages and being brutalized by growers, forcing them to work long, hard hours that contribute to the fact that the average farm worker dies at the age of 49.

Now, it is bad enough that these unjust, exploitative conditions exist in agriculture, but the least that the government should do on state and federal levels when it finds out about these injustices is to make sure that it in no way aids growers in this oppression. Instead, our government has acted as a silent partner to the suffering of farm workers and the bilking of the taxpayers of the nation.

The Federal Reclamation Act is a good example of the methods that arrogant growers use to dominate the law. Not only farm workers are victimized by the abuse of the law, but many small and marginal growers also suffer from the effects of subversion of this Act. Several years ago two farm workers, who also owned small plots or agricultural holdings in the southern Tulare County area, instituted a suit that was filed on their behalf by Charles Farmsworth, an attorney for the United Farm Workers Organizing Committee. They stated that they were being denied a supply of water adequate for farming their own lands because of the illegal sales and deliveries to large growers by the Interior Department and the Irrigation District. The local Irrigation District where the suit was filed was the Delano-Earlimart Water Irrigation District. One of the workers was quoted as saying, "I have to support my family with the wages

I earn working for these big growers. I can't make a living on my own farm because I can't get enough of this irrigation water. The Irrigation District tells me there isn't enough water, but I know it's because the big growers are getting it all."

The reason that those two small growers—I think they were on about 40 acre farms—couldn't get enough water was because two very large table grape growers in that area were receiving federal water under the Reclamation Act on their acreages in excess of, I believe it was 1500 or 2000 acres, so there wasn't enough left over for the people for whom the Act was designed. This federal policy of helping small farmers has been subverted for years by this kind of illegal delivery of water to big growers, and millions of dollars of the taxpayers' money has been wasted in this subsidy to rich corporate farmers, and the government has done absolutely nothing to correct it.

Many farm workers would also like to be small growers. It is very interesting because I understand that a lot of doctors and lawyers and professional people in the cities use the Reclamation Act as an easy tax write-off for investment or speculative purposes. I think the Act should also be to the benefit of the small growers and farm workers who would like to go into some sort of marginal farming, because after all it was for them, I understand, that the Act was originally passed.

If the spirit of the Reclamation Act is ever to be fulfilled, that is, if it is ever to benefit a class of small family farmers on acreages of 160 acres or below, then this vicious cycle of the subversion and the flouting of the law must be corrected. I have already estimated that the average taxpayer pays hundreds of dollars per year to provide cash subsidies to growers. Recent reports indicate that the growers' greed is not even fulfilled with this, that many growers have conspired and have been conspiring for years to fleece the taxpayer out of even more revenue. A good example, as mentioned this morning with regard to Kern County, where growers receiving subsidies for cotton under the Agricultural Soil Conservation Act through the local ASC Committee in Kern County, were in flagrant and rampant violation of that law—where 40 percent of its growers there were violating the law. And this is a situation which is really unique to California in many ways. You have violations, I imagine, in other states but nothing like this.

In the farm workers struggle, the water subsidy has had its effect. In the Imperial Valley lettuce industry, the Western Growers and Shippers Association would have been forced to come to the negotiations table by now had it not been for the financial backing they received from the Federal Government in the form of water subsidies. In many areas of this state, in the Imperial and Coachella Valleys where we have had strikes against growers, the fact that large growers exist at all is due nearly entirely to the existence of these water irrigation projects and districts and the water subsidies that they receive.

But the water issue is not an isolated example of the government complicity in the grower opposition of the plight of oppressed farm workers. During the lettuce boycott of 1970-71, the Nixon Administration through the Department of Defense opposed the farm workers' boycott by drastically increasing their purchases of scab lettuce from the Bud Antle Corporation. The United Farm Workers filed suit in the Federal District Court against Bud Antle Corporation, Secretary of Defense Melvin Laird and the Department of Defense, charging violations of the First and Fifth Amendments to the Constitution and the Administration Procurement Act and other

procurement regulations, which essentially establish a policy against the federal agencies taking sides in labor disputes.

Now we contended that the Department of Defense—and they'll probably do this again when we institute the lettuce boycott, I'm sure they will—but we contend that when the Department of Defense spends millions of the taxpayers' dollars for the purchase of a field product which is most definitely involved in labor disputes, that that isn't maintaining neutrality.

The Federal Government has even refused to continue its investigation of a very serious and very real plot to assassinate Cesar Chavez. In late August of last year, agents of the Alcohol, Tobacco and Firearms Division of the Internal Revenue Service contacted Mr. Chavez and his aides and informed the Union of a plot to assassinate him. This investigation was closed down several months later without having revealed who put up the money or actually the whole network of conspiracy. We could only think in its most charitable light that this was due at most to bureaucratic negligence. But perhaps a more realistic political rationale for it is that there are political considerations in this, especially when you consider who the Secretary of the Interior is. A man who, when he was Governor of the State of Texas, used his private police force, the Texas Rangers, in gestapo-like tactics in breaking our strikes in that state.

Senator HARRIS, Secretary of the Treasury. You said Secretary of the Interior, but you mean Secretary Connally?

MARC GROSSMAN. Yes.

The Border Patrol has a history of generations of racism and harassment to Mexican-American farm workers in the Southwest. On February 10 of this year, the Border Patrol killed a 21-year-old farm worker in Livingston, California, without any provocation at all, according to the statement of Cesar Chavez right at point-blank range. It was an arrogant injustice committed by a despotic armed man against a humble, unarmed worker. It is an outrage that we should have to suffer assaults and murders by the officials of the government that calls itself a government of democracy and justice.

Our movement is expanding among farm workers everywhere. It represents a group that seeks social justice. We are men and women of dignity and peace, and we live our convictions in nonviolent struggle for social change. We are not violent, but we feel anger when one of our brothers is unjustly murdered. Whenever any person who has any kind of firearms enters a field where our members are working on a contract, there will be a sitdown in that field.

And this is only part of the Border Patrol and Immigration's history of opposition to our Union and the whole question of illegal aliens. For years the Border Patrol has refused to investigate or conduct raids on ranches where we are picketing or striking. A good example is Mr. Earl S. Smittcamp, who was recently appointed by Governor Reagan as a member of the State Board of Agriculture. Mr. Smittcamp has a reputation of being one of the most notorious users of illegal aliens in the Fresno County area. And yet the Border Patrol consistently refuses to raid his ranch. However, where our member was murdered in Livingston, California, the Border Patrol conducts regular harassment and humiliation of farm workers. I might add that through our hiring hall procedures, we try to issue work dispatches to only legal residents and American citizens, and of course we help illegal aliens with immigration problems. We are concerned with that. But we're not going to sit by in a situation where illegal aliens, imported by growers, are used to break our strikes and depress wages.

There seems to be a trend in this state and with the state and federal bureaucracies

whereby the agencies that are responsible for enforcing and administering the law have become co-conspirators in the subversion of the law, and have even become law-making bodies themselves. These agencies and these government offices which are responsible for enforcing the law decide which offenses they will prosecute and which offenses they will not prosecute. And year after year we have seen big government scandals concerning the stealing of the taxpayers' money by these growers. You know, there is really no big problem in understanding why this occurs and why these agencies refuse to enforce the law, because the growers control the agencies. With the device of the cotton subsidies, the growers control the ASC Committees in the counties and state on the state level, such as in Kern County.

With regards to the water reclamation question, the growers control the individual water irrigation districts, such as the Delano-Earlimart Water Irrigation District and others. And even now the growers through the legislative process are trying to use the same method that they used to feather their caps with these subsidy programs to try to get rid of us. The growers are now trying to set up agencies and special committees and commissions legislatively to deal with farm worker unionization. Committees and agencies which are being set up, or attempted to be set up, exactly in the same way they were set up in the cases of water, land and tax subsidies—committees controlled by Reagans and Nixons, and through them by the growers themselves.

We understand that within the next few days or few weeks, the Nixon-employer controlled National Labor Relations Board is going to enjoin us on the boycott, that they are going to declare the boycott illegal, and I imagine it can eventually result in some sort of contempt of court action where the leaders—the officers—of our Union may go to jail again.

This is not going to stop farm workers from organizing. Farm workers will strike and march and picket and boycott, and do whatever else it is necessary to do until all farm workers in this land have dignity and justice through organized strength.

The growers throughout the State Houses in this country under the leadership of the American Farm Bureau Federation and other reactionary groups, such as the National Right to Work Committee, are attempting to pass legislation destroying the farm workers unions in the State Houses. They are setting up a smoke screen by using the secret ballot union representation election as a front for the right-to-work anti-boycott, anti-strike laws which they are trying to pass, and this is being done simultaneously in fifteen states across the nation. So that at one time we have, right now, about four legislative crises across the United States, from Florida to Kansas and Idaho.

Another trick the growers are using is a referendum, an initiative referendum, they are trying to get on the ballot in California—with a great deal of financial help from the food chain stores, by the way. The man who is in charge of getting this referendum on the ballot is a guy by the name of Walters, and he got George Wallace on the presidential ballot here in '68. They are using a great deal of fraud in getting people to sign this referendum. They are passing the referendum off as a lower food prices kind of thing. In many cases, they are telling people who sign it that they are signing a pro-farm worker, pro-United Farm Workers referendum, and, fortunately, we checked with the Secretary of State's office here in California, and I think they need something like 325,000 signatures and as of last week they had about 16,000. So we hope it won't get on the ballot, but this is just another way that the growers are trying to get around the farm workers' boycott and strike. They know they can't beat us

on the strike or boycott any more, so they are trying to do it through legislation and through voting.

When the Farm Workers Union was founded in 1952, Cesar Chavez and the other early organizers saw the plight of the farm workers as the result of a basic power imbalance in rural California and rural America. There is a situation where growers control and still make the most important decisions in farm workers' lives. That is, those decisions covering wages, working conditions, and hiring and firing practices. And grower racism and paternalism aside, these crucial economic decisions are made as a rule, not on the basis of the human interest of the workers, but rather on certain economic principles related to economic self-interest and the maximization of profit. Moreover, this structural deficiency in the economic framework of rural California and rural America carries over into social and political activities of rural communities where growers dominate local school boards, city councils, county boards of supervisors, rural law enforcement agencies, and state and federal regulatory offices and their enforcement outposts in rural communities.

The problem of the 160-acre limitation, the problems of the Williamson Act in this state, and the cotton subsidies, and all their abuses cannot be understood apart from the larger picture of agribusiness domination in rural America. At the core of this problem lies the vicious stranglehold that growers have on all aspects of life in rural California and America, and it is this stranglehold that must be broken if we are to have any kind of progress in this country.

The Farm Workers answer to this was and still is to counter this oppression with their own organizational strength, the strength of workers coming together into a union of their own to engage their employers in collective bargaining as equals across a negotiating table, and not as peons of the field. Farm workers are struggling and are being subjected to a vicious legislative campaign now to destroy their union, because they are trying to gain political and economic freedom—something they never had before.

The kind of hard-nosed, determined non-violent battles that farm workers have waged through strikes and boycotts is the only language that the masters of the land can understand. Committee hearings, speeches, studies and written law cannot and have not helped farm workers in their plight, and they cannot and they will not help get some equity. Only strong law and order enforcement will do that, and, unfortunately, we feel very strongly that there will be no such enforcement until the power balance is changed and organized farm workers, through their own union, have equal power in the community. Then enforcement will come, as is happening now, in areas where we have Union contracts and where labor and sanitation laws are now being enforced through our Union committees.

Senator HARRIS. I agree with that. I think that the American way is to confront them with organized and group power, and that's exactly what you are doing. And I commend you and the United Farm Workers, which you represent, for helping bring some kind of power to a group which has been economically and politically powerless in our society.

The thing that is interesting to me is how all these companies with which you deal are proud to call themselves representatives of the free enterprise system. And yet, we subsidize them in so many ways; we subsidize them with food stamps, for example, for those counties where it's allowed. And those who do work for them at decent levels of pay probably have to pick up part of that to the degree that food stamps are provided, instead of having the company start by paying a decent wage to begin with. So you are fighting the public's battle in many ways,

and that's only one. But also in the labor laws, isn't it true that if you are Tenneco or Standard Oil of New Jersey, whereas in your usual business you are subject to the labor laws, if you move into agriculture you're not. And, therefore, there is a kind of built-in incentive in the law for big conglomerates and others to go into the farm business.

MARC GROSSMAN. It is very interesting, Senator, that in 1965 the first strike of the National Farm Workers Association, which was the predecessor to the United Farm Workers Union, was a strike at the Mt. Arbor Nurseries in McFarland, Mt. Arbor Nurseries were owned by a firm actually in Cincinnati, Ohio. The Reverend Chris Hartmeyer, Director of the California Migrant Ministry, made a call to the man out in Cincinnati, or out in the Midwest, who owned Mt. Arbor Nurseries, and said we have a situation here where the workers are on strike and demand Union representation. And the guy said, "Oh, is that so. We have contracts with our employees in other areas, so we will contact our lawyers." Reverend Hartmeyer called him back a few days later, and the man told him, "Well, farm workers are not covered by the National Labor Relations Act. We don't have to do anything," and hung up on him. It isn't as simple as that. A lot of people say we want coverage under the NRA, which is not true because the only reason the growers really want us to be covered by the National Labor Law is to use it as a weapon to destroy our Union.

Senator HARRIS. What about plans for land reform? Are there any long-range plans? I understood there may be in the United Farm Workers for the workers themselves to become small growers, either individually or through cooperatives?

MARC GROSSMAN. Well, there's always plans, you know. The only problem is that in the next few years, and in the foreseeable future, our Union will spend most of its financial assistance in staying alive. When farm workers gain economic strength through recognition, then there will be a whole slew of programs and reforms, I think, in rural America. But I think that that could never happen until we actually gain the kind of large-scale recognition that may take us several years.

Senator HARRIS. Did the United Farm Workers support that bill by Senator Harrison Williams for the right of farm workers to organize?

MARC GROSSMAN. Well, Senator Williams has been a long-time friend of the Farm Workers Union, and at this point all I could really say is that we are opposed to any inclusion under National Labor legislation. I believe we have been talking with Senator Williams about, and I am not exactly sure as to the details of the communications there.

Senator HARRIS. I am surprised that is so. I would think that would give you additional power, particularly in the event you run into problems through the courts on boycotts.

MARC GROSSMAN. No, not really. You see the problem is, Senator, that to be covered under the National Labor Relations Act, we would also have to be covered under Taft-Hartley and Landrum-Griffin. I think an understanding of the history of those laws is necessary. The Wagner Act was passed in the '30's when the Congress felt that there was this great imbalance between the power of labor and the power of industry. Therefore, we had the Wagner Act to try to correct this imbalance and give labor some rights and some advantages. Then after the war the Congress, however erroneously, believed that Unions were big and powerful and their excesses had to be curbed. So they passed the Taft-Hartley, which is a great restriction on organizing today, and later Landrum-Griffin. We are already covered under parts of Landrum-Griffin, because of our affiliation with the

AFL-CIO. But our position as a Union is very similar to the kind of position unions had back in the '20's and '30's—a young, fledgling struggling union—and we want the same kind of twelve-year breathing period that other unions had in industry.

Furthermore, we have many advantages under our present situation today that we would not have under NRA; for instance, we would not be able to boycott. We may not be able to boycott anyway because of the Nixon Administration, at least not for awhile, but we can do that without coverage under NRA. Actually, I think a lot of people think we enjoy it, you know, but it's not anything enjoyable at all. It takes farm workers away from their homes and families and friends for months and years at a time, and to places they have never been, thousands of miles away from where they were born. It's a very hard kind of work and it can be very lonely and very demanding. But when growers break our strikes by getting exemptions from rural judges, and when growers' goons beat up our workers and threaten us with violence, it's impossible to continue in a strike situation. The only nonviolent alternative we have is that of boycott, and it has proven to be the most effective economic weapon in the history of the American labor movement. So any law that would destroy that boycott, destroys the only nonviolent and principal economic weapon we have. I know it's a very sticky issue, although the Union has never officially come up for inclusion under NRA. It is interesting, too, that the growers only recently changed their position on that, because for years they opposed any kind of inclusion for farm workers under labor legislation. And all of a sudden, around 1970 when we signed the balance of the contracts we have with the table grape industry, all of a sudden the growers decided, well we've got to get these guys under laws now. We haven't been able to beat them on the boycott and the strike, but we ought to get them under legislation. I think you have to understand that the whole movement by the Farm Bureau and the Right-to-Work Committee and the growers associations across this land that cover farm workers under state and federal legislation is nothing but a smoke screen to destroy our Union.

Senator HARRIS. I appreciate having that insight expressed, and I do appreciate your being here very much, Mr. Grossman.

MARC GROSSMAN. Thank you. Document submitted by Mr. Grossman follows:

#### COLLECTIVE BARGAINING AGREEMENT

This agreement is made and entered into at Los Angeles, California as of the 31st day of March, 1970, by and between the party whose name appears on the signature page hereof under the designation of "Company" ("Company" herein) and United Farm Workers Organizing Committee, AFL-CIO (herein "Union").

The parties agree as follows:

#### SECTION I. RECOGNITION

A. Company does hereby recognize Union as the sole labor organization representing Company's agricultural employees (herein called "workers") and recognizes and agrees to treat and negotiate with Union as the sole and exclusive bargaining agent for and on behalf of such workers on properties owned or leased by Company, and all other workers employed by Company. The term "worker" shall not include supervisory employees with the authority to hire or fire (herein called "Supervisors").

B. Company further recognizes the rights and obligations of Union to negotiate wages, hours and conditions of employment and to administer this Agreement on behalf of all covered employees.

C. Neither Company nor its representatives will take any action to disparage, denigrate

or subvert Union, nor will they promote or finance any competing labor organization.

D. Neither Company nor its representatives will interfere with the right of any worker to join and assist Union. Company will make known to all workers that they will secure no advantage, nor more favorable consideration nor any form of special privilege because of non-participation in Union activities.

E. Company will make known to all workers, supervisors, and officers, its policies and commitments as set forth above with respect to recognition of Union and will encourage employees in the bargaining unit to give utmost consideration to supporting and participating in collective bargaining and contract administration functions.

F. Supervisors and other workers not covered by this Agreement shall not perform work on operations performed by workers in the bargaining unit as defined in this Agreement, except for improvement of processes, testing of equipment, and training. Company agrees that this paragraph shall not be used as a basis for the purpose of avoiding the recall of bargaining unit workers from layoff or displacing bargaining unit workers from work they would normally perform.

G. Any claim by Union that on-the-job conduct of any non-bargaining unit employee is disrupting harmonious working relations may be treated as a grievance under the grievance procedures of this contract.

H. There shall be no sub-contracting without prior consultation and agreement with the Union.

#### SECTION II: UNION SECURITY

A. Union membership shall be a condition of employment. Each worker shall be required to become a member of Union immediately following seven (7) continual calendar days of employment, and to remain a member of Union in good standing. Union shall be the sole judge of the good standing of its members. Any worker who fails to become a member of Union within the time limit set forth herein, or who fails to pay the required initiation fees, periodic dues or regularly authorized assessments as prescribed by Union shall be immediately discharged upon written notice from Union to Company. The preceding sentence is not intended to limit the grounds for determination of good standing.

B. Company agrees to furnish Union, in writing, a list of workers giving the names, addresses, ages, Social Security numbers and type of job classifications.

C. Company agrees to deduct from each worker's pay all initiation fees, periodic dues and assessments as required by Union, upon presentation of individual authorizations, signed by workers, directing Company to make such deductions. Company shall make such deductions from the worker's pay once monthly and shall remit same to Union not later than the 15th day of the following month. Vacation pay is subject to monthly dues deduction. Union will furnish the forms to be used for authorization. Company will furnish Union with a duplicate copy of all signed authorizations.

D. Union shall indemnify and hold Company harmless from and against any and all claims, demands, suits, or other forms of liability that may arise out of or by reason of action taken by Company for the purpose of compliance with any of the provisions of this section.

#### SECTION III. SUCCESSOR CLAUSE

A. This Agreement shall be binding upon the successors, administrators, executors, and assigns of the parties hereto.

B. In the event a farming operation or part thereof is sold, leased, transferred, conveyed in any manner, or taken over by sale, transfer, assignment, receivership or bankruptcy; such operation shall continue to be subject to the terms and conditions of this Agreement for the life hereof. Company shall

give notice of the existence of this Agreement to any purchaser, transferee, lessee, or assignee of the operation covered by this Agreement or any part thereof. Such notice shall be in writing, with a copy to the Union, at the time the seller, transferor, or lessor executes a contract or transaction as herein described.

#### SECTION IV. HIRING

A. Whenever Company requires workers to perform any work covered by this Agreement, it shall notify Union, stating the number of workers needed, the type of work to be performed, the estimated starting date of the work and the approximate duration thereof. Said preliminary notice shall be given at least two weeks prior to the estimated starting date. Company shall give Union a further notice fixing the exact starting date at least forty-eight hours prior to the date fixed for actual commencement of the work.

B. Upon receipt of said latter notice, Union shall use its best efforts to furnish the requested number of workers. If Union does not furnish the requested number of workers on the date of the beginning of the work, Company shall be free to procure needed workers not furnished by Union from any other source. If Company procures workers from any other source, it will make available to Union, in writing within seven (7) days thereafter, the names, Social Security numbers, job classifications, and addresses of all workers so hired, provided, however, that Union shall be entitled, acting on its own, to ascertain such information from such workers at any time after twenty-four hours following the hiring of such workers. Such workers shall be subject to the provisions of Section II of this Agreement.

C. The number of workers requested by Company shall be reasonably related to the amount of work to be performed in ratios related to Company's previous practices.

D. Company will notify Union in advance of lay-offs either within seven (7) days, or as quickly as possible, and will furnish Union with a list of those workers that have been laid off either within twenty-four hours or as quickly as reasonably possible thereafter.

E. When filling vacancies and making promotions, demotions, transfers, layoffs, recalls from layoff or reclassification, preference will be given to workers with the greatest seniority provided they have the qualifications to perform the work under normal supervision with reasonable efficiency.

F. Seniority will be defined as the total length of continuous service or actual days worked. Any authorized leave of absence or vacation will be deemed days worked if such time would have been work days. Seniority will not be accumulated during time not worked.

G. If less than the usual work opportunity is available, preference in hiring shall be given to workers with the longest seniority.

H. Union will assume responsibility for compliance with seniority. Company shall be entitled to rely on seniority determinations made by Union, and Union will indemnify Company and hold it harmless of and from any claims, demands, disputes or actions arising out of or in connection with such determinations as shall have been made by Union.

#### SECTION V. DISCRIMINATION

In accord with policies of Company and Union, it is agreed that neither party will discriminate against any worker on the basis of race, age, creed, color, religion, sex, political belief, national origin, or language spoken.

#### SECTION VI. MAINTENANCE OF STANDARDS

Company agrees that all conditions of employment for workers relating to wages, hours of work and general working conditions shall be maintained at no less than the highest

standards in effect as of the date of this Agreement. Conditions of employment shall be improved wherever specific provisions for improvement are made elsewhere in this Agreement.

#### SECTION VII. REPORTING AND STANDBY TIME

A. A worker paid on an hourly or piecework basis who is required to report for work and does report and is furnished no work or less than four hours of work for reasons other than Acts of God shall be paid at least four hours for that day at the worker's hourly rate of pay or the worker's average hourly piece rate earnings. The term "Acts of God" shall include, but not be limited to, a drop in allowable sugar content of any particular variety of grape during the first week of harvest only.

B. A worker shall be paid for all time he is required to remain on the job ("standby time") at his hourly rate or average hourly piece rate earnings.

#### SECTION VIII. CAMP HOUSING

A. Allocation of available camp housing shall be on a non-discriminatory basis without favoritism. The factors of race, color, creed, religion, age, political belief, national origin or language spoken shall not be considered in distribution of available dwellings.

B. Camp housing shall be free of charge. Board shall be operated on a non-profit basis.

#### SECTION IX. WORKER SECURITY

A. Company agrees that any worker may refuse to pass through any picket line sanctioned by Union.

B. No worker under this Agreement shall be required to perform work that normally would have been done by employees of another Company who are engaged in a strike, or to work on goods that will be handled or are destined to be handled by other workers engaged in strikebreaking.

#### SECTION X. CREDIT UNION WITHHOLDING

Upon proper written authorization from a worker, deductions as provided for in such authorization shall be made by Company for the Farm Workers Credit Union, and such monies forwarded to that organization.

#### SECTION XI. LEAVES OF ABSENCE

A leave of absence without pay shall be granted to a worker for a reasonable period for any of the following reasons, without loss of seniority:

A. For jury duty or witness duty;  
B. Up to two (2) years for illness or injury of worker requiring absence from the job;

C. A worker of Company who serves his country pursuant to the Selective Service Act shall not lose any seniority, job rights, or other benefit. Upon return from such service, such worker shall be granted a job equal to that he would have had with Company had he remained in Company's continued employ.

D. For valid personal reasons.

#### SECTION XII. DISCHARGE

A. Company shall have the sole right to discipline and discharge workers for just cause provided that in the exercise of this right it will not act in violation of the terms of this Agreement.

B. Prior to any discharge, Company shall notify a steward and/or Union official and such Union representative shall be present when formal charges are made.

C. The Union representative shall have the right to interview employees in private.

D. Within twenty-four (24) hours after any discharge for just cause the Union representative will be notified in writing of the reasons for such discharge.

E. Individual performance in relation to a piece rate or incentive plan shall not be conclusive evidence for the purpose of discharging a worker.

#### SECTION XIII. LEAVE OF ABSENCE FOR UNION BUSINESS

A. Any worker elected or appointed to an office or position in Union shall be granted a leave of absence for a period of continuous service with Union. Fifteen (15) days' notice must be given the Company before the worker takes leave to accept such office or position or chooses to return to work. Such leave of absence shall be without pay. Seniority shall not be broken or suspended by reason of such leave.

B. A leave of absence without pay shall also be granted for temporary leave to conduct Union business provided reasonable notice is given.

#### SECTION XIV. RIGHTS OF ACCESS TO COMPANY PROPERTY

A. Duly authorized and designated representatives of Union shall be permitted on Company premises in connection with the normal conduct of Union affairs.

B. In the exercise of the foregoing privilege, there shall be no unnecessary interference with the productive activities of the workers.

C. Before a Union representative contacts any of the workers during regular working hours, he shall notify Company that he is on the premises.

#### SECTION XV. RECORDS AND PAY PERIOD

A. Company shall keep full and accurate records, including total hours worked, piece rate or incentive records, total wages and total deductions. Workers shall be furnished a copy of the itemized deductions each payday which shall include the worker piece rate production record.

B. Union shall have the right, upon reasonable notice given to Company, to examine time sheets, work production or other records that pertain to worker's compensation.

#### SECTION XVI. BULLETIN BOARD

Company will provide bulletin boards placed at such central locations as shall be mutually agreed, upon which Union may post notices.

#### SECTION XVII. ROBERT F. KENNEDY FARMWORKERS MEDICAL PLAN

Effective as of the date of this Agreement, Company shall thereafter during the term of this Agreement contribute to the Robert F. Kennedy Farmworkers Medical Plan ten cents (10c) per hour for each hour worked by all workers covered by this Agreement.

#### SECTION XVIII. HEALTH AND SAFETY

Company and the United Farm Workers Organizing Committee, AFL-CIO recognize the need to protect and conserve human life, water, soil and vegetation. Economic poisons, when used incorrectly by a grower in agriculture on any crop, may be harmful to farm workers and to consumers, disrupt the earth's ecology and do not properly serve the farmers. In the hope of developing, with the help of Federal, State and University consultants, new, imaginative and creative approaches to the problem of conserving our natural resources, and in hope of taking progressive steps to protect the health of farm workers and consumers, Company and Union agree that the subject of economic poisons is a necessary and desirable subject for this collective bargaining agreement.

Company and Union agree as follows:

A. Union shall cause to be formed a Health and Safety Committee (the "Committee") comprised of workers' representatives. Members of the Committee shall have free access to all records concerning the use of economic poisons. The Committee shall participate in the formulation of rules and practices relating to the health and safety of workers including, but not limited to, the following: use of economic poisons; the use of garments, materials, tools and equipment as they may

affect the health and safety of the workers; and sanitation conditions.

B. DDT, ALDRIN, DIELDRIN, ENDRIN, PARATHION, TEPP and other economic poisons which are extremely dangerous to farm workers, consumers and the environment, shall not be used.

C. The Committee shall approve the use of organo-phosphates. Company will notify Committee at least seven (7) days prior to the application of organo-phosphate material. Such notice shall contain the information set forth in paragraph D, below. The Committee shall determine the length of time during which farm workers will not be permitted to enter a sprayed field following the application of an organo-phosphate pesticide. One baseline cholinesterase test and other additional tests shall be taken at the expense of Company when organo-phosphates are used. The results of said tests shall be given to Committee immediately, and, if requested, to an authorized Union representative.

D. The following records shall be kept and made available to the Committee and to any other authorized Union representative:

1. A plan showing the size and location of fields and a list of the crops or plants being grown.

2. Pesticides and economic poisons used including brand names plus active ingredients, registration number on the label and manufacturer's batch or lot number.

(a) Dates and time applied or to be applied.

(b) Location of crops or plants treated or to be treated.

(c) Amount of each application.

(d) Formula.

(e) Method of application.

(f) Person who applied the pesticide.

(g) Date of harvest.

E. No worker under this Agreement will be required to work when in good faith he believes that to do so would immediately endanger his health or safety.

F. There shall be adequate toilet facilities, separate for men and women in the field readily accessible to workers, that will be maintained in a clean and sanitary manner. These may be portable facilities and shall be maintained at the ratio of one for every forty workers or fraction thereof.

G. Each place where there is work being performed shall be provided with suitable, cool, potable drinking water convenient to workers. Individual paper drinking cups shall be provided.

H. Workers will have two (2) rest periods of ten (10) minutes which insofar as practical shall be in the middle of each work period.

I. Tools and equipment and protective garments necessary to perform the work and/or to safeguard the health of or to prevent injury to a worker's person shall be provided, maintained and paid for by Company, such as but not limited to: grape knives, rain gear, gloves, pruning shears, and umbrella for tractor drivers. Workers shall be responsible for returning all such equipment that was checked out to them, but shall not be responsible for breakage.

J. Adequate first aid supplies shall be provided and kept in clean and sanitary dust proof containers.

#### SECTION XIX. GRIEVANCE PROCEDURES

A. The parties to the Agreement agree that for all differences, misunderstandings, or disputes which arise between Company and Union in regard to wages, working conditions or other conditions of employment, discharge or any other dispute, an earnest effort shall be made to settle any difference immediately as follows:

Step 1. Any disagreement or disputes between company and any worker, or union, shall be taken up within seven days of its discovery and the responding party shall respond immediately, if possible but no later

than 24 hours from the presentation of the dispute and disagreement.

Step 2. In the event that such dispute cannot be settled within one work day, the matter shall be taken up by a Union representative with Company's representative.

Step 3. If the matter is not settled under Step 2 within two (2) work days, the matter in dispute shall be reduced to writing and submitted to Company's designated representative and a Union representative.

B. If the parties have not resolved a dispute arising out of the interpretation of this agreement within seven (7) working days, the matter shall be submitted to an arbitrator selected by Union and Company. If they cannot agree on an arbitrator, one will be chosen by the Federal Mediation and Conciliation Service, and his decision on the matter shall be final and binding on both parties.

C. A grievance committee of five (5) workers shall be established by the Union which committee may participate at any step of the grievance. If Company requests a meeting of this committee during working hours, Company shall pay the members for their time at their hourly rate or average piece rate.

D. Any disputes arising between Union and Company under Sections I, XXV, II or IV shall be taken up directly by Company's representative and Union's representative and shall proceed immediately to arbitration, if said persons cannot resolve the dispute within five (5) days.

E. All testimony taken at arbitration hearings shall be taken under oath, reported and transcribed. The arbitrator's fees and expenses shall be assessed as a part of his award against the losing party as he shall determine the same.

#### SECTION XX. UNION LABEL

The parties contemplate that a Union label (certification mark) will enjoy a competitive advantage in the market. The parties wish to insure that the public cannot be deceived in purchasing non-union picked grapes under a fraudulent Union label (certification mark). In order to insure that such fraudulent marketing does not and cannot take place, the following information will be made available to an official representative of Union:

A. Labels or labeling process:

1. Name and registration number.

2. Printing source.

3. Amount ordered.

4. Amount used.

B. Shipping information:

1. Method: truck, rail, air or sea.

2. Name of shipper.

3. Name of broker.

4. Destination.

5. Type of sales arrangement, including but not limited to district sales, consignment, credit, auction, contract or other arrangement.

C. Union Label or Seal. Each lug and/or unit (as that term may be agreed upon) shipped shall bear the Union label or seal. The Union label or seal cannot be sold, transferred, or assigned in any manner. Company will place on each lug and/or unit for sale in a visible manner a Union label such as the Union may designate.

D. Security Clause. It is recognized that violation of this provision will cause actual damage which is difficult to ascertain, but which includes expenses attendant upon informing the consuming public of this misuse and misrepresentation of other non-union growers. These expenses will approximate \$10,000. The damages for violation of this provision, therefore, shall be \$10,000 plus \$1,000 for each mislabeled carload shipped.

#### SECTION XXI. MODIFICATION

No provision or term of this Agreement may be amended, modified, changed, altered

or waived except by a written document executed by the parties thereto.

#### SECTION XXII. DURATION

This Agreement shall be effective as of March 31, 1970, and shall continue through the 30th day of March, 1973. Thereafter, the Agreement shall continue in effect from year to year unless either party gives the other written notice of its intention to terminate, which notice shall be given sixty (60) days prior to any anniversary date of this Agreement. Notwithstanding the foregoing, either party shall have the right at any time after January 1 of a contract year to notify the other in writing of its desire to reopen Sections XVII, XVIII and XXIII for the purpose of renegotiation, and if such renegotiation has not resulted in a mutual agreement prior to the end of said contract year, then the provisions of Section XXV shall become inoperative unless, on or before the end of said contract year the parties shall have mutually agreed to submit said issues to arbitration.

#### SECTION XXIII. WAGES AND OTHER BENEFITS

A. Appendix A which is attached hereto and made a part hereof sets forth the schedule of wage rates which shall apply to all jobs in the bargaining unit.

B. Incentive and piece rate workers shall have guaranteed an hourly earnings rate of not less than the rate applicable to general labor as set forth in Appendix B of this Agreement.

C. A worker will be paid jury duty pay and/or witness pay for any days of work missed (not exceeding seven) due to the performance of such duty. Jury duty pay and/or witness pay is defined as the difference between the fees received by such worker for performing such duty and his regular earnings up to eight (8) hours per day for each such day of jury duty and/or witness service. To receive pay under this provision, the worker must provide Company with a copy of notice summoning him to appear for jury duty or witness duty and if so requested, documentary evidence of the amount of jury fees and/or witness fees received for performing such duty.

D. Vacations with pay shall be granted to eligible workers who qualify for such vacations. Workers shall be eligible in the calendar year following the first anniversary of employment and annually thereafter for a two-week vacation, provided that, in order to qualify for vacation pay such worker must have worked two thousand (2,000) hours in the prior calendar year. Vacation pay will be computed on the basis of the hourly rate (or his average hourly piece rate earnings) applicable on the last day worked prior to the vacation.

E. Overtime pay based on time and a half shall be paid to all women and minors who work more than eight (8) hours per day.

#### SECTION XXIV. HOURS OF WORK

A. A normal work day will consist of no more than eight (8) hours per day, Monday through Saturday. A normal work week will consist of forty-eight (48) hours.

B. The foregoing is not considered to be a guarantee of hours per day or hours per week.

#### SECTION XXV. STRIKES, BOYCOTTS AND LOCKOUTS

A. There shall be no strikes, boycotts of union-picked grapes or lockouts.

B. If any of said events occur, the officers and representatives of Union and/or Company, as the case may be, shall do everything within their power to end or avert such activity.

#### SECTION XXVI. COUNTERPARTS

This Agreement may be executed in counterparts, each of which when taken together shall constitute the original agreement between the parties.

In witness whereof, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

United Farm Workers Organizing Committee, AFL-CIO.  
The Grape and Fruit Company.

STATEMENT OF LIONEL STEINBERG, FRUIT GROWER, THERMAL, CALIFORNIA

Senator HARRIS. Our next witness is Mr. Lionel Steinberg, president of David Freedman & Company, Inc. Mr. Steinberg is a fruit grower from Thermal, Calif. Mr. Steinberg, thank you for your patience in coming here and staying all this time. I will be pleased to hear from you at this time.

LIONEL STEINBERG. First, it is a pleasure to be here, Senator. I have followed your career with a great deal of interest. I think you are performing an outstanding public service to Americans of both political parties.

Senator HARRIS. Thank you.

LIONEL STEINBERG. It was good of you to come here to California.

My name is Lionel Steinberg. I was born in Fresno, California, and graduated from Fresno State College in 1940. Following graduation I did a year of graduate work at American University Graduate School in Washington, D.C., in soils and agricultural economics. I spent one year at the Harvard Graduate School of Business, Naval Supply Corps School, serving in the U.S. Navy from 1942-1946.

I have spent over 30 years farming, harvesting and marketing California fruits and vegetables. During this period I have grown some 20 of California's 100 crops, and am presently growing table grapes and citrus in Coachella Valley.

I served as a member and as the Vice President of the California State Board of Agriculture from 1959 through 1970, and served on the White House Food for Peace Council 1961-1964. Since 1963 I have served as a National Trustee of the American Freedom from Hunger Foundation.

In 1963, I served as a member of the first 7-man mission that was sent by President John F. Kennedy, the U.S. Department of State, and the Governor of California, to Chile, to initiate an agricultural program in that country.

I served as Chairman of the 1962 and 1963 California Farmers People-to-People Missions to the Soviet Union, Yugoslavia, Poland, Bulgaria, East Germany, West Germany, Belgium, France, Italy, England and Israel.

In 1965, I was appointed by U.S. Secretary of Agriculture Orville Freeman to serve on a 15-man Citizens Advisory Committee on Civil Rights, 1965-1968.

I wish to express my appreciation for the invitation to testify here on the problem of land and resource monopoly and its effects on the people of California, and to make some suggestions for changes.

I would feel remiss if I did not remind my fellow Americans that in no period in our history have the American people been better fed for a smaller portion of the family income. In 1972 the average employed American family buys a healthful, varied diet containing ample quantities of meat, poultry, dairy products, fruits and vegetables for  $\frac{1}{2}$  of the family income. 25 years ago a less healthful and less varied diet took  $\frac{1}{3}$  of the family income.

During this same 25-year period,  $\frac{1}{2}$  of the nation's farms have disappeared—some 30 million people have abandoned their family farms for an insecure life in the cities, where 75% of the people are crowded only on 2% of the land. Our remaining 2.8 million farms are disappearing at the rate of 2,000 farmers each week. I have read recently that the American Farm Bureau Federation and other exports forecast that in 15 years there will be only 500,000 farms remaining in the United States. In 1950 there were 10 million farm workers, and in 1970 4.2 million farm workers.

Here in California the decline of the family farm has been just as precipitous. In 1960 there were 108,000 farms in the State, with an average of 359 acres each. By 1970 there were only 56,000, averaging 654 acres. The latest U.S. Census reports that 54% American farmers grow 97% of the production on 88% of the 292 million acres farmed in the United States; and according to the USDA in 1970 a total of 45 corporations controlled 61% of California's prime agricultural land.

Despite the fact that agriculture, in the past 25 years, led all American industries in increased productivity, American farmers earned the smallest return on their invested dollars, and the lowest return for their own labor. It is my humble opinion that many members of the Congress need to be reminded of the people who make up rural America.

A million family farmers were forced off their farms during the Ezra Taft Benson era, from 1952 to 1960. This erosion continued during the 1960's, and is accelerating under President Nixon.

In my opinion the Nixon farm program has been an abysmal failure. The plight of the American farmer has worsened. The corporate invasion of agriculture by billion dollar companies and conglomerates is gobbling up rural America with its goal of integrating agriculture from seedling to the supermarket. The parity ratio is down to the 1933 levels. That is why there was a massive rebellion in Congress when President Nixon recommended the appointment of former Assistant Secretary of Agriculture Earl Butz to the Cabinet as Secretary of Agriculture . . . because he is a man whose views are diametrically opposed to the preservation of the family farm.

In the rural communities of America that used to be a prosperous way of life, local merchants who once sold machinery and materials to the farmers, and the small business man, are disappearing, along with the destruction of the rural, social and economic structure of this country. These are the people whose economic wellbeing is tied directly to the dollars returned from farm activities. These are the people who have been squeezed between rising costs and lowered prices and are fast disappearing as a viable part of our economic community.

As the smaller family farm disappears, so do the small businessmen and the small communities of the countryside. Replacing the family farms are multipurpose corporations and conglomerates whose tax shelters and benefits give them advantages not available to the individual farmer. These large units do not become a part of the rural communities. Their business is conducted with persons far removed from the local area. The total result is an abandonment of the rural areas. Billion dollar corporations and conglomerates are the octopus squeezing the bona fide family farmer out of existence.

Here in California, Tenneco brags that they have become a \$4.3 billion company in assets in just 27 years, with over \$2½ billion in annual sales. Depreciation from their Tennessee Gas Transmission system and oil and gas holdings, are used to develop and farm 25,000 acres of crop land, and promote and sell to business and professional men another 100,000 acres.

The overall effect is to make Tenneco, Purex, United Brands, International Telephone & Telegraph, Greyhound, John Hancock Life Insurance Co., Ralston Purina, Stokely Van Camp, Coca-Cola, Dow Chemical and Southern Pacific, the agricultural giants who control super farms, endangering the food supply of the nation.

The present tax structure of the United States encourages industries to enter agriculture, frequently taking heavy farming losses, while acquiring tax credits with the long range plan to own land speculatively as a counter-inflationary capital investment.

Their machinations and disregard for over-production can bankrupt family farmers when they over-flood the market place with crops.

The perfect example of this is in the lettuce farming where United Fruit, Purex and others have inundated the country with lettuce plantings which have rapidly driven f.o.b. prices down to packing charges, resulting in the elimination of three-fourths of the individual lettuce farmers who cannot compete and obtain financing from banking institutions against these new farm Goliaths.

The worst example in the nation is here in California. Again, I am speaking of Tenneco. That company has sought vertical integration from the manufacture of pesticides and farm machinery through production, processing and marketing. When they acquired Kern County Land Company, they acquired several hundred thousand acres of the richest farm land in California. They then proceeded to develop some of this acreage with funds derived from natural gas and oil depletion allowances, and tax advantages.

If Tenneco had limited their operations to slowly developing their own farm lands, it would have been bad enough. However, they have joined with Hollis B. Roberts, one of America's most prominent ranchers, in an unholy alliance to lure doctors, lawyers and other professional men into gentleman ranching.

Hollis Roberts teamed up with the New York brokerage firm Hayden, Stone in forming Haygrove, Inc. That company obtained options on 20 tracts of farm land, totalling over 6,000 acres in California, and set up a limited partnership operation called Jasmin Groves, to develop the property as citrus and nut orchards. In December, 1968, it offered 720 partnership interests in Jasmin Groves for \$10,000 each in down payment, plus an additional \$15,000 to be paid subsequently as required. 1968 was the last year that business men and professional men were allowed to purchase farms with 5-years prepaid interest. That plan called for prepaying \$4,763,000 of the interest, which would allow each partner putting in an initial \$10,000, to take a tax deduction for the first year of \$8,700.

The Los Angeles Times, February 22, 1972, reported the newest twist in conglomerate-brokerage house maneuvers. On that day, Hollis B. Roberts, president of Roberts Farms Inc., announced the purchase of an additional 25,000 acres of prime farm land in Kern County from Tenneco West Inc. The transaction, worth about \$42 million, brings the total purchased by Roberts from Tenneco within the last few months to 70,000 acres, worth some \$65 million.

Now here is an interesting twist. Tenneco's newest subsidiary, Heggblade Marguleas Tenneco, knows very well that to develop 70,000 acres of farm land into trees and vines would require in excess of \$250 million. Apparently \$250 million is a large sum for even a billion dollar corporation. So this is where Hollis Roberts enters the picture. It appears it will be up to him and assorted brokerage houses to find 2,000-3,000 San Francisco, Beverly Hills and other big city investors who will each assume the financial responsibility of providing tax dollars for the planting of 30-40 acre parcels.

At the end of 5 or 6 years over one-half the cost of development will be borne by the Treasury Department through tax loss farming, and if growing wine grapes, walnuts, citrus and nut crops is not profitable, the non-farmer owner can walk away from it and figure it was a loss like a bad stock purchase. In the meantime, when the 70,000 new acres of crops come into production, it will provide permanent competition for the full-time efficient family farmer who must make his entire living from farming. As you gentle-

men know, trees and vines, when well cared for, live for 20 or 30 years.

At the same time, Tenneco, through its subsidiaries and its tie-in agreements with Hollis Roberts, will retain the marketing rights on this acreage which may generate \$100-200 million per year in sales, from which they will extract packing and selling profits of about 10%.

This contract is in existence, Senator. I wonder if you could obtain a copy, since none of us in agriculture in California are privy to some of the finer points of this agreement between Hollis Roberts and Tenneco. I think it's a matter of public interest and perhaps there may even be antitrust implications.

Senator HARRIS. That's a good suggestion, and also as a member of the Senate Finance Committee, I would be very interested in that, because it obviously takes advantage of the tax laws, capital gains in particular, and I'll try to look into that to see if it would be possible to get a copy.

LIONEL STEINBERG. This is a vicious cycle. Over-planting of almost any crop produces vicious results. Those of you with a knowledge of elementary economics know that fruits and vegetables are items of flexible demand. A small amount of overproduction in lettuce, tomatoes, peaches, table grapes, etc., can result in disastrously low prices in the market place.

That is why, in the recent "money crunch" of tight money, California's major banking institutions faced the problem of how to justify supplying loans to small farmers growing speculative crops. Eventually many of them made a decision to continue to finance the most efficient family farmers with a long record of good operations. However, this period of Nixonomics brought the downfall of many new young farmers, and family farmers without the managerial experience required of financial institutions.

Someone should remind the American people that they spend only 17% of their take-home pay for food products at the supermarket. Only 40% of that 17% gets back to the farmer—about 6½% of the consumer's take-home pay.

I have just completed four months serving as chairman of the Agriculture, Water and Rural Development Committee preparing recommendations for the California Commission on Platform and Policy that will carry California's views to the Democratic Convention. This Committee was made up of 20 members who conducted meetings and hearings in Fresno, San Francisco, Sacramento, Los Angeles, and the Coachella Valley, soliciting views of farmers and rural Californians on agriculture, water and rural development. The public was invited, regardless of party affiliations. Expert testimony was heard from many eminent Californians.

The theme that ran throughout the session was the fear of the impact of conglomerates on the family farm. The president of the world famous Sun-Maid Raisin Growers, Allen F. Mathers, responded to our invitation in both written and oral testimony. He said, in part, "It is certainly true that the entry of large business firms, basically oriented to nonagricultural operations, into farming activities will occasion some changes in the overall shape of California agriculture. In addition to this, however, it is apparent that in many areas—particularly specialty crops—non-corporate investors have deemed it advantageous to place funds into agricultural production. These have generally been characterized as the "professional men," such as doctors, lawyers, etc. Substantial numbers of businessmen are also included in this group of individuals who feel that investment in agriculture can provide some tax shelter, as well as appreciation of the real estate asset."

Mathers concluded, "We would recommend that legislation be adopted to require capital-

ization of costs involved in vineyard plantings, until the time that the vines become bearing. This approach has heretofore been applied by Congress to citrus groves and almond orchards. It seems only appropriate that the same treatment be applied to vineyards.

Senator HARRIS. Does that mean that it wouldn't be treated as expenses that could be charged off against ordinary income, so that a person couldn't buy that up as an expense tax loss?

LIONEL STEINBERG. Which would lessen their enthusiasm for growing figs, plums, peaches, apricots, table grapes and wine grapes.

Senator HARRIS. Right.

LIONEL STEINBERG. Mr. Les Thonesen, President of the Fresno County Farm Bureau, who is a family size farmer growing nectarines, grapes and oranges in Parlier, California, stated and I quote him in part, "The family farmer has been the backbone of this country and agriculture. He will remain this as long as he has the freedom to produce and market his commodities, if he is given the technical knowledge to progress with the times. Every effort should be made to take away tax or other advantages that large corporations may enjoy by going into agriculture. If this is done, in my opinion, there will always be family size farms in America."

It is my hope that both political parties at their national conventions will address themselves seriously to the unparalleled problems of American agriculture, and to rural America itself. Some of the recommendations we have made to the Democratic Party are the following:

(1) We urge that farming be returned to farmers in the 1970's. Legislation is needed to preserve the efficient family farm, and turn back the increased dominance of agriculture by large corporations.

(2) We urge that farm income be raised to a level that will preserve the integrity and future efficiency of the full-time family farmer. Farm income should be at full parity level with that of the non-farm business. Seldom has the American farmer received a commensurate return on his investment in his land, buildings and equipment comparable to that received by other businesses.

(3) Despite an abundance of food available for those able to pay for it, one-fifth of the people in the richest nation of the world suffer from malnutrition and hunger. The Food Stamp program inaugurated to prevent hardship among low income people, the aged, and the needy, must be maintained, and expanded. Every child in America is entitled to one decent meal a day provided by a school lunch and school milk program. Adequate school lunch facilities should be made available in every school in the nation.

(4) Establishment of a food and feed reserve plan whereby essential commodities will be stockpiled as a safeguard against crop failures to assist our nation and other nations in times of famine and disaster, is of prime importance.

(5) We urge the support of the National Marketing and Bargaining Bill of 1971 which would extend protective legislation to the agricultural community long enjoyed by labor and industry assuring the consumer of a consistent and ample supply of farm produce at fair prices and give the farmer a voice in the marketing of his product. It would attempt to restore balance to the farm economy through national bargaining and marketing legislation, and would for the first time give the farmer the power to bargain collectively commodity for commodity in the market place under the law.

(6) We urge that agriculture be brought under the National Labor Relations Act. We support and recognize the right of farm workers to bargain collectively and to join unions of their own choice, with the right to register their choice by secret ballot.

(7) Young farmers must be encouraged to enter agriculture by long term, low interest loans, particularly applied to areas where Federal funds have established vast water projects.

(8) Support and encourage agricultural cooperatives in their endeavor to improve economic returns to farmer members.

(9) Halt the encroachment in agriculture by the giant conglomerates that seek to control America's food supply from the seedling to the supermarket. They have access to vast sums of development capital; they use unfair tax writeoffs and can spread losses and profits from one business to another, and they enjoy the biggest Federal subsidies. This encroachment on agriculture by conglomerates, aiming to control our food and fiber, will be halted by:

(a) Enforcement and strengthening of the Sherman Anti-Trust Act.

(b) Stemming unfair trade practices.

(c) Eliminating tax loss loopholes and write-offs, whereby farm losses are offset by non-farm income.

(d) Discouraging land speculation.

(e) Reducing natural resource depreciation allowances.

(f) Discouraging excessive land holdings and encouraging laws favoring resident operator run farms.

(g) Providing equal pricing advantages and marketing conditions to producers of equal quality commodities.

(h) Enacting laws altogether prohibiting conglomerates from engaging in agricultural production.

(10) We urge programs providing technical assistance, grants and low cost loans to qualified young farmers, and qualified farm workers seeking to become proprietors of small family farms. Particularly, incentives should be given to those seeking to utilize production processing and marketing co-ops.

In conclusion, may I commend you and your colleagues who are the co-sponsors of a Senate antitrust measure—the Family Farm Act of 1972—that would require large corporations to divest their agricultural operations. I noted with interest that this Act provided that persons and organizations owning or controlling more than \$3 million in non-farm enterprises, or over \$1 million in stocks or shares of one or more businesses, would be prohibited from controlling land for agricultural production. General exceptions are farmer-owned cooperatives, charitable and educational institutions and non-profit research organizations.

This legislation, with some amendments, would encourage the self-sufficiency of family farmers and arrest out-migration from rural areas, stopping the trend toward control of rural America by conglomerates.

Senator HARRIS. Thank you very much, Mr. Steinberg. I won't take more of your time, and the time of others who have been waiting a long time to testify, except to say that I am grateful for your testimony, and say, too, that I noted what you said about the platforms in the National Conventions and of your own efforts in that regard to be serious, which I certainly commend.

Document submitted by Mr. Steinberg follows:

MEMBERS—AGRICULTURE, WATER AND RURAL DEVELOPMENT COMMITTEE—CALIFORNIA DEMOCRATIC PARTY COMMISSION ON PLATFORM AND POLICY

Lionel Steinberg, Chairman, P.O. Box 501, Thermal, California 92274, Residence—797 Via Vadera, Palm Springs.

Ruth Gelman, Vice Chairman, 6633 Kane Way, Bakersfield, California 93309.

J. Frank Bennett, General Manager, California Prune Bargaining Ass'n., 455 Capitol Mall, Room 380, Sacramento, California 95814.

Joseph F. Branco, Manager, Western Dairy-men's Association, Rt. 1, Box 128, Dos Palos, California 93620.

Berge Bulbulian, 2735 South McCall Ave., Sanger, California 93657.

Francis DuBois, 776 Sycamore Lane, Davis, California 95616.

A. E. Engel, Manager, Plumas-Sierra Rural Electric Co-op, P.O. Box 1136, Portola, California 96122.

Mark Eudey, California Municipal Statistics, 244 Kearny St., San Francisco, California 94108.

John H. Guthrie, Slough Ranch and Feed Lot, 20210 Avenue 176, Porterville, California 93257.

J. Russell Kennedy, Chairman, Calcot, P.O. Box 259, Bakersfield, California 93302.

Anthony J. Tarlock, Manager, Walnut Control Board, 2040 Pioneer Court, San Mateo, California 94403.

John Thurman, Jr., County Board of Supervisors, Rte. 5, 2125 Dunn Rd., Modesto, California 95351.

Tad Tomita, President, Naturipe Berry Growers, P.O. Box 6390, San Jose, California 95150.

L. T. Wallace, Economist, Agricultural Extension Service, 319 Giannini Hall, University of California, Berkeley, California 94720.

William E. Warne, Consultant, 209-8th, Sacramento, California 95818.

J. Keegan Watson, Watson Dairy, 201 Sunnyslope Ave., Petaluma, California 94952.

John C. Williamson, Chief Executive Officer, Senate Rules, Room 5100, State Capitol, Sacramento, California 95814.

Borghild Haugen, Executive Director, California Farmer-Consumer Information Committee, 1346 B Franklin St., Santa Clara, California 95050.

U.S. Congressman Bernie Sisk, House Office Building, Washington, D.C. 20515.

State Senator George Zenovich, State Capitol, Sacramento, California 95814.

#### AGRICULTURE

In no period in American history have the American people been better fed for a smaller portion of the family income. In 1972 the average employed American family buys a healthful, varied diet containing ample quantities of meat, poultry, dairy products, fruits and vegetables for 1/6 of the family income. 25 years ago a less healthful and less varied diet took 1/3 of the family income.

Since World War II one-half of the nation's farms have disappeared—some 30 million people have abandoned their small farms for an insecure life in the cities, where 75% of the people are crowded onto only 2% of the land. Our remaining 2.8 million farms are disappearing at the rate of 2,000 a week. The Nixon farm program has failed. The parity ratio is down to 1933 levels.

The small towns and communities of America, long dependent upon local dollar trade generated by family farm trade, are now squeezed by inadequate economic returns to the family farm unit. Replacing family farms are multi-purpose corporations and conglomerates whose tax benefits and shelters give them advantages not available to individual farmers. These large units do not become a part of the rural towns. Their business is conducted with persons far removed from the local area. The continued disappearance of family farms will result in the more rapid disappearance of small businessmen from rural communities. These communities may die. If they do, our country will suffer immeasurably.

The failure of farm communities will be felt by people in our large cities. The problems of one area become the problems of another. As people move from the rural area to our cities they compound problems of welfare, housing, pollution and crime in the metropolitan areas. In the short term we may not notice the loss of our family farmers—in the long term we will all notice both

the shortage of food and fiber, and higher food prices, as well as the problems of crowded city living.

(1) It is the solemn pledge of the Democratic Party to return farming to farmers in the 1970's. Legislation is needed to preserve the efficient family farm, and turn back the increased dominance of agriculture by large corporations.

(2) We pledge ourselves to raise farm income to a level that will preserve the integrity and future efficiency of the full-time family farmer. Farm income should be at full parity level with that of the non-farm business. Seldom has the American farmer received a commensurate return on his investment in his land, buildings and equipment comparable to that received by other businesses.

(3) Despite an abundance of food available for those able to pay for it, one-fifth of the people in the richest nation of the world suffer from malnutrition and hunger. The Food Stamp program inaugurated by our Party to prevent hardship among low income people, the aged, and the needy, must be maintained, and expanded. Every child in America is entitled to one decent meal a day, provided by a school lunch and school milk program. Adequate school lunch facilities should be made available in every school in the nation.

(4) We must establish a food and feed reserve plan whereby essential commodities will be stockpiled as a safeguard against crop failures to assist our nation and other nations in times of famine and disaster.

(5) We support the National Marketing and Bargaining Bill of 1971 which would extend protective legislation to the agricultural community long enjoyed by labor and industry assuring the consumer of a consistent and ample supply of farm produce at fair prices and give the farmer a voice in the marketing of his product. It would attempt to restore balances to the farm economy through national bargaining and marketing legislation, and would for the first time give the farmer the power to bargain collectively commodity for commodity in the market place under the law.

(6) We recommend that agriculture be brought under the National Labor Relations Act. We support and recognize the right of farm workers to bargain collectively and to join unions of their own choice, with the right to register their choice by secret ballot.

(7) Young farmers must be encouraged to enter agriculture by long term, low interest loans, particularly applied to areas where Federal funds have established vast water projects.

(8) To maximize constructive foreign trade we must institute a thorough study of import and export activities so as to identify areas of unfair practices. It shall be our purpose to establish truly equitable trade programs within the framework of recognizing needs and problems of American farmers and the standards which they must meet in their production activity, including high wage levels.

(9) Create a stronger and more responsive U.S.D.A. Identify clearly the costs of programs assigned to the agency. Record for the public the costs of consumer programs, welfare programs, and general public programs separate and apart from farm programs.

(10) Continue to support and encourage agricultural cooperatives in their endeavor to improve economic returns to farmer members.

(11) Establish a national land use policy that will protect the prime agricultural land of the nation and will preserve living space for future generations. Land taxation based upon land use should be an integral part of such a program.

(12) We want farmers to have more access to commodity marketing orders. These are self-help programs in which farmers decide the procedures, scope and methods which

they want to use in order to meet their own production and marketing problems. We want the nation's farmers to be encouraged to coordinate and use effective marketing orders at both the state and national levels. All farmers should be permitted the prerogative of self-determination in organization and marketing problems.

(13) The Democratic Party pledges to halt the encroachment in agriculture by the giant conglomerates that seek to control America's food supply from the seedling to the supermarket. They have access to vast sums of development capital; they use unfair tax writeoffs and can spread losses and profits from one business to another, and they enjoy the biggest Federal subsidies. This encroachment on agriculture by conglomerates, aiming to control our food and fiber, will be halted by:

(a) Enforcement and strengthening of the Sherman Anti-Trust Act.

(b) Stemming unfair trade practices.

(c) Eliminating tax loss loopholes and write-offs, whereby farm losses are offset by non-farm income.

(d) Discouraging land speculation.

(e) Reducing natural resource depreciation allowances.

(f) Discouraging excessive land holdings and encouraging laws favoring resident operator run farms.

(g) Providing equal pricing advantages and marketing conditions to producers of equal quality commodities.

(h) Enacting laws altogether prohibiting conglomerates from engaging in agricultural production.

(14) We urge programs providing technical assistance, grants and low cost loans to qualified young farmers, and qualified farm workers seeking to become proprietors of small farms. Particularly, incentives should be given to those seeking to utilize production processing and marketing co-ops.

(15) We recognize the growing pressure upon United States' fruit and vegetable growers from importation from countries paying extremely low wages, and urge Congress to provide reasonable import surcharges.

(16) We recognize that a strong, healthy cotton economy is an essential step toward prosperity for U.S. agriculture. A program for cotton should strive toward stability in price by building a reserve stock isolated from the normal market fluctuations. Meaningful price-support and export market programs should be employed to protect grower income and build increasing markets for U.S. cotton.

(17) To help meet the needs of the dairy industry we urge:

(a) Legislation to improve farm bargaining power.

(b) Development of realistic workable supply management.

(c) Price supports that will maintain a fair level of farm income.

(d) Effective operation of the marketing order under which more than 50% of all milk is marketed in the nation.

(18) The Democratic Party believes in the principle of Most Favored Nation treatment in world trade, and that this principle must be adhered to by all nations signatory to GATT in order to insure trading on a non-discriminatory basis. In order to insure that world trading returns to a non-discriminatory basis, and that the Most Favored Nation principle is preserved, this Party intends to pursue and resolve all cases of discrimination in trade, including discrimination against fresh citrus exports from the United States to the European Economic Community.

(19) Prolonged transportation strikes such as the recent dock tie-up causes irreparable damage to American agriculture. It is essential that a mechanism be established to eliminate long term work stoppages without vio-

lating existing rights of labor or management.

#### ENVIRONMENTAL CONSERVATION AND NATURAL RESOURCES

Man has, for years, fouled the air, water and land of planet earth. The consequences of such irresponsible acts are now confronting us. Remedial measures to compensate for past practices, as well as avoidance of future pollution, are essential if man is to continue his tenure on earth. As the greatest contributors to pollution, it is our obligation in this nation to take first steps towards remedial action. However, people of all nations must be concerned with the need to improve and protect the environment. To this end, an international approach holds promise. A meeting of the nations which contribute most to pollution is a beginning which is long overdue. The United States should assume leadership and call such an international meeting. This meeting should include the 18 most industrialized nations which account for 82% of the world's pollution, to join forces here in the U.S. to discuss emergency measures.

(1) We pledge restoration of a livable environment; conservation and prudent use of natural resources; clean water and clean air; waste disposal emphasizing recycling without offense to the people, to the landscape, or the rivers, the lakes and the seas.

(2) In furtherance of these objectives, we pledge appraisal of the long-term environmental impacts, and consideration of alternatives in order to avoid unwarranted social costs and environmental degradation by projects that are undertaken.

(3) Specifically, with regard to pollution, we pledge limiting agricultural burning in strict accordance with acceptable air quality standards; elimination, except under governmental control based on safety and ecological security, of persistent pesticides, and of dangerous poisons and wastes; prevention of unacceptable water pollution; and encouragement of regional solutions to agricultural and metropolitan drainage problems.

(4) We pledge increased research in problems of water degradation brought about by re-uses, by irrigation return flows, by industrial discharges, and by percolation of effluents.

(5) We pledge to apply the new programs based on advanced water sciences, such as desalination and weather modification, to specific problems and to bring them out of the stage of repetitive experimentation.

(6) We pledge periodic review of framework water and related land use studies in the light of new projections and the needs of urban areas, in which most of the people contend with the environmental consequences of their lives and their economic pursuits.

(7) We pledge to sponsor effective planning for air, water and land uses within metropolitan areas in which local governments will cooperate with state and federal resource and construction agencies to give effect to sound programs of environmental enhancement.

(8) We pledge protection of prime agricultural lands from monopolization and from urban sprawl, the preservation of greenbelts and open space, judicious dedication of wildernesses and wild rivers, and the reservation of parks, seashores and recreation areas while there is time to do so.

(9) In order to achieve these purposes, we will restate in conformity with the social objectives stated above the mission of the U.S. Bureau of Reclamation and of the Corps of Army Engineers and other federal agencies so that they will be compatible with the needs of the remaining decades of the 20th Century.

(10) Recognizing the changes and transitions that have occurred in American agriculture during this century; we urge an upward revision of the 160 acre limitation of

the Reclamation Law of 1902, that will strongly enforce and preserve the intent of the law of project the family farm, but at the same time will recognize the changes in agriculture. Coupled with a change in the limitations should be programs to encourage land ownership by farm workers and qualified young farmers through long term loans and other incentives.

#### RURAL DEVELOPMENT

Over the last 25 years the rate at which the value of goods and services our country produces has increased twelve times faster than our population's growth—yet rural America continues to suffer from lack of jobs and access to social and cultural services of all kinds.

During the same period, 3 million farms have disappeared in the technological revolution that is still sweeping agriculture. More than 30 million people have abandoned the small farms and towns for the cities, so that 75% of our people are crowded onto 2% of the land. This has resulted in a national crisis of the environment. We must halt the trend toward megalopolis.

All states have communities and regions losing vital capable people to the cities and suburbs of the nation. Unless this national trend toward concentration is stopped, urban areas as well as rural areas will keep on "losing out." Everyone is involved in the solution of this situation.

It is of tremendous interest and concern, both in the short run and long run, that recognition of the problem result in direct activities that will maintain economically sound and socially desirable rural community areas across this nation.

Moreover, the farm area will be reduced to food producing regions devoid of the small towns that once were home to so many people. The people who once populated the rural areas are now crowded into the urban city life with all its complex and difficult problems.

Responsible decisions by people who know what they want for their communities and America are keys to opportunity to change our patterns. But we have to act now.

We must identify the needs of rural America, community and region, by community and region.

We must decide where America's dollars and resources for rural development can be invested for the most new jobs and for the greatest number and highest quality of services.

We must obtain the funds for making loans to the communities which do the best job of planning for responsibly managed jobs and service projects.

We must emphasize the creation of local and original plans and encourage community-wide participation and enforcement.

We strongly support the Democratic Party's U.S. Senate Consolidated Farm and Rural Development Act to finance major development and programs for America's smaller communities and rural areas in the interest of better balanced national growth.

Specifically we urge:

(1) Programs which create job opportunities which in turn have the greatest possible "spin-off" job creation potential.

(2) Programs which encourage profitable private investments to create local jobs.

(3) Programs to provide loans for responsibly planned water and sewer projects, waste management projects, housing projects and education centers.

(4) Programs to provide loan funds for quality health and medical services for people of all ages and income levels.

(5) Programs of effective job placement, counselling and on-job training.

(6) Programs which provide ready access to our diverse cultural heritage and expression.

(7) Programs specifically adapted to helping farm workers, permanent or migrant, share more equitably in the nation's wealth and social opportunities. Farm workers need help to voice their needs and obtain employment and social services.

(8) Effective waste management laws will eliminate pollution of air and water resources.

(9) A comprehensive land use plan is needed to enhance and maintain the agricultural areas of the Nation, and guarantee the city dweller open space and a pleasing environment now and for future generations.

(10) Rising technological advances in both industry and agriculture have resulted in unemployment of persons willing and able to work. Therefore, it is in the public projects, regionally located, including job training and education, with projects in the fields of public education, communication and recreation.

#### STATEMENT OF WALTER GOLDSCHMIDT, PROFESSOR OF ANTHROPOLOGY, UNIVERSITY OF CALIFORNIA, LOS ANGELES

It is difficult to prove causation in history, for each society is unique and the forces are complex, but there are few who doubt that the nature of rural land tenure is intimately related to the character of the social order. Since the dawn of civilization, when intensive agriculture became the means by which man supplied his basic wants, the control of land has been a basic element in forming the character of society. By and large, where democratic conditions prevail, the man who tilled the soil was a free holder and in control of his enterprise. Where, on the other hand, the farming lands are owned and controlled in the urban centers, and the men engaged in production are merely peasants, serfs, or hired laborers, democratic institutions do not prevail. Those who framed our constitution and set the course of American history believed that this relationship was paramount. It lay behind Jeffersonian democracy; it lay behind the homestead act, and it lay behind the extension of the homestead principles in the development of irrigation under the Reclamation Act as formulated at the beginning of this century.

It is a remarkable fact that in this scientific era, so little empirical research has been done on this vital relationship. Indeed, I know of none other than that which I executed in 1944, and which was published by the U.S. Senate in 1946.<sup>1</sup> This research touches on these basic issues, but it was more modest in its scope. Essentially, it focused on the scale of farm operations rather than on external land control and absentee ownership (though these are not unrelated), and it focused only on the rural community itself, not on the broader social context. Yet this more explicit framework, necessary to the prosecution of research, is manifestly related to the broader consideration.

The study we made in 1944 on the towns of Arvin and Dinuba was one of "controlled comparison." We selected two towns which, as nearly as was possible, were alike in basic economic factors except that they differed in farm size. In scientific terms we treated farm size as the "independent variable," and examined the character of the social life and organization of the two communities as the dependent variable. It was thus designed to discover whether the size of the unit was a matter of importance in the determination of the character of the society. Our purpose in making this study was to provide an answer to the question as to what effects might the application of the acreage limitation law, under which the Reclamation Program is expected to operate, have on the rural life in California. The study was executed in the San Joaquin Valley, for that was the target

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area for the Central Valley Project, for which the study was made.

We found that in fact the two towns varied remarkably—variances that were consistent, statistically significant, and all in support of the principle that independent family farms created a healthier rural community. Though the total dollar volume of agricultural production was the same, the communities differed in the following important ways:

The small farms community had twice as many business establishments as the large-farm town and did 61% more retail business, with particular differential in the purchase of household goods and building equipment.

The small farms supported about 20% more people and at a measurably higher level of living.

The majority of the small farm community population were independent entrepreneurs, as against less than 20% in the larger farm community, where nearly two-thirds were agricultural wage laborers. And I might say agricultural wage laborers before Mr. Chavez. The Union has brought some dignity to that work. I was doing this right in the aftermath of the depression and you know the conditions at that time.

The small farm community in all instances had better community facilities: more schools, more parks, more civic organizations and more churches.

The small farm community had more institutions for democratic decision making and a much broader participation in such activities by its citizenry.

It is reasonable to ask whether in fact the size of farm differential was the essential determinant of these differences—and needless to say, this question was raised. Research under natural conditions cannot produce those perfect controls that a laboratory will provide, and we examined with great care the alternate hypotheses that were put forward by the critics of this study. The alternate explanation most frequently argued was that Arvin was much younger than Dinuba. When we plotted the growth of the towns, we found that Arvin was between 20 and 25 years younger, but that the facilities that differentiated the two communities were, in all instances, much older than this differential in age. We also made some comparisons with neighboring towns of Arvin's age where the farms were smaller and these, too, showed a richer local social life than the larger-farm community. We examined also differentials in the cost of production, such as water charges, and found that these were so nearly alike that they could not have had a differentiating effect on the local economy and community life.

It was part of the original research design to engage in a second phase of the study, in which we would investigate all the rural communities in the San Joaquin Valley. I had supplied to me by economists of the U.S. Department of Agriculture, by which I was employed at the time, data on the farm size of each of these towns. It was our intent to examine certain readily obtainable data relating to the kinds of differentials we found: physical facilities and amenities, churches and social organizations, existence of schools, banks and newspapers, and the like. We could then treat these either individually or combine them into a kind of "index of community quality" and then establish a regression curve between that index and the size of farms. Had we been able to do this, and had it supported the comparison between Arvin and Dinuba as I am confident it would have done, then there would have been no question of the cause of the differences between Arvin and Dinuba.

But a powerful pressure against the study developed, spearheaded by the Associated Farmers and picked up by the national press. Pressure was brought to bear on the BAE, so that its director ordered me to discontinue

the investigation after I had completed the work on Arvin and Dinuba. The issue took on such magnitude that, 20 years later, it was the subject of a detailed historical review.<sup>3</sup> I find much lacking in this analysis, for the author failed to comprehend some of the basic issues and he left out some important events—such as the prohibition against the second phase of the study—but it nevertheless stands as testimony to the concerted effort to prevent the completion of the study—and by extension, freedom of discussion and inquiry. There were some<sup>2</sup> who believed that it was objections to this study that brought about the Congressional wrath that led to the curtailment of the BAE in general and that has led to its virtual abandonment of sociological research. There is, however, no direct evidence of this in the *Congressional Record*.<sup>4</sup>

In the invitation extended to me to testify here, it was suggested that I examine our research with the perspective of twenty-five years, and in the process I have reread my works on the subject and some of the controversy they engendered. I am satisfied that the canons of scientific inquiry were scrupulously followed, that the data are clear and unequivocal, and that the analysis is basically sound. It is important to emphasize that the analysis rests firmly on well-established and basic sociological theory, and I want to comment briefly on these theoretical matters. This involves some consideration of an earlier research on the town of Wasco, which was my doctoral dissertation and subsequently published (with two chapters on Arvin and Dinuba) under the title *As You Sow*.<sup>5</sup>

The thesis of *As You Sow* is that industrialized farming creates an urban pattern of social organization. Theories of urbanization stem from the great sociological tradition established by Ferdinand Tonnies, Max Weber, Emile Durkheim and Louis Wirth. The essence of this theoretical framework is that urban social orders are of a different kind from rural ones, characterized by social heterogeneity, social class, depersonalized social relationships which are dominated by pecuniary considerations rather than sentimental ties, and increased differentials of power leading to a source of alienation and apathy in the mass population. These theories were formed on the differentials between city dwellers and peasants of Europe, but were recognized by American rural sociologists as applying to the cities and farm communities in this country as well.

And, of course, the study of Arvin and Dinuba showed that there were differentials within this, because if you have more of those qualities of industrialization you have more of the urbanized kind of social relationships. I was interested in the testimony this morning in hearing someone point out, seeing it from the standpoint of PG&E, that PG&E had somebody on the Chamber of Commerce in every little town. Well, this is something I discovered when I went to Wasco, but I saw it from the other side. That is to say, in Wasco the town quite clearly was being dominated, not by local leaders but by outsiders who came and went at the pleasure—not merely of PG&E, though PG&E was one, but Bank of America, McCormick-Deering, the oil companies—I can't remember—Union Oil was one of them and there were couple of oil companies who had their outlets there. And their managers, quite clearly—I mean, I didn't get records of this—but quite clearly they defined it as part of their task, or the job—to put it crudely—of running the town, of being sure that they were on the boards of directors of all the organizations and setting the opinion and the tone and attitudes. And it was very important to me in the prosecution of my business, for instance, not to get in the bad graces of such people. And I know that questions went back to San

Francisco from the managers in some of those places as to the credentials and bona fides of this stranger in their midst. This is, of course, doing something to our rural communities in a very real and important way.

I do want to make another point now—I'm trying to pick up the text on a matter of labor and unionization. It has appeared in various places of the testimony, especially that from the agricultural Farm Workers Union, that unionization is a necessary element and that the relationship between the unions and the small farmers is an integral relationship. And I believe this very firmly. I think, perhaps the current subsidy and the current deleterious effect of government policies in the '70's and in the '60's has been the tax benefits and tax breaks in this whole matter of capital gains and so on, of which others know much more than I. But at an earlier time, I am quite convinced that the important issue lay in the retention of underpaid, and I think that's the only proper way to put it, agricultural labor, extremely low-wage labor, which gives a subsidy to the large grower. The small grower, depending upon how large his operation is, obviously, gets a large percent of his income as a result of the work he does with his hands. And if the work he does with his hands is being paid at fifteen and twenty and twenty-five cents an hour, as it was at the time I was working in the California agricultural concerns, that meant it was a very low income to him, indeed, for the time he spent there. So, of course, he has been disadvantaged as opposed to those who were farming, as the saying went in those days, from the barns.

The matter of unionization requires some special attention. The larger growers in California have fought unionization in the past and have profited by the low level of wages. This has, in turn, been very hard on the small farmer, for a large proportion of his income derives from his own and his family's labor. It is an ironic fact that the early introduction of unionized labor would have helped to protect the small farm system, but that unionization has begun to take hold only after the invasion of the agricultural scene by the giant corporations. The irony is compounded by the fact that small farmers have, because of deeply felt ties to the concept of independence, generally been antipathetic to the unions. Thus while the establishment of strong labor unions in rural areas will come about largely as a result of large scale corporate operations, they are not themselves a threat to the continuation of the family indeed of super-Arvins.

The American society was built on the assumption that the population would consist largely of independent entrepreneurs—shop keepers, artisans, self-employed professionals and, above all, independent farmers. Industrialization has effectively eroded this concept for urban populations. The independent family farmer has been an important leaven, preserving that quintessential independence of spirit that has characterized American culture. The study of Arvin and Dinuba has shown what effect corporate and large scale control can have on rural community life; the vision of the future under increased corporate control of the land is the vision of Arvins rather than Dinubas—indeed of super-Arvins.

Is this an inevitable development; is it possible that there is no stemming the tide of an evolution toward corporate control of agriculture? There is no real evidence that this is the case. Governmental policies with respect to tax laws, with respect to agricultural aid, and with respect to farm labor have been potent forces affecting the growth of large scale and corporate farming. This growth cannot therefore not be said to be natural, but is the result of force-feeding—of the injection of fiscal hormones, if you will.

One aspect of this force-feeding for the growth of corporate farming has been the

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failure to apply time honored and established agrarian policies to current reclamation programs, such as the Central Valley Project. I am convinced that if such policies are applied to the area, there will be richer and better rural communities in the target area of the C V P, and furthermore, that this will be an important element in the preservation of the traditions of American life.

Senator HARRIS. Thank you for a very helpful and fascinating statement. I agree with you this hasn't been a natural kind of thing. It's been unnatural, brought about by government action. I have a few questions that obviously are on my mind and yours, but first, a more procedural question, that is, would it be possible today to find the kind of laboratory you did in Arvin and Dinuba to up-date that study and to do the further research that you had intended originally to do?

WALTER GOLDSCHMIDT. I think it would. I think that California probably still provides that laboratory. I don't—my work has taken me in other directions, so I've come back and I'm having a kind of vis-a-vis of the whole situation. But, I still have the files and I'm still deeply and emotionally involved in these issues and problems. So I don't know exactly what's going on. Arvin has changed its character. I've been trying to find out how much land was developed in Arvin—I don't mean to say it has really changed its character, I mean the Arvin area got a lot of irrigation water and so the agriculture has expanded. And whereas Arvin and Dinuba had exactly the same economic base in '44 when I was there, I'm sure Arvin's base now has doubled, or tripled, or quadrupled. And I'm also quite sure that if that had been done with 160-acre homestead-like farms, that you would have not had one Arvin almost as good as Dinuba but you would have had two or three or four Dinubas. That I'm quite convinced of. The nature of the study, the nature of the way things went wouldn't have been exactly like Dinuba, because architectural styles and city planning styles differ, but they would have been communities.

This is one thing that Senator Nelson asked me, too, and I think there is an interest. I think it would be very important if this is to be done. For instance, I doubt that it could be done within the framework of the U.S. Department of Agriculture as it is presently set up. I think it ought to have, quite frankly, support from the Senate, either directly or indirectly; that it be done under the aegis of a committee. No one really knew how my study was done because of the Secretary's insistence that there be no mention of the Department of Agriculture here. It looked as if the Senate Small Business Committee had commissioned the study, which it had done no such a thing. But I think it could be done, and I think it could not only be done in California, but now that California—the culture of the future—seems to be spreading all over the United States, it probably should be done in parts of the South that have become corporate controlled and probably in parts of the Atlantic Seaboard, and maybe even the Middle West. The study would have to be done a little differently.

I spent two months in the field. I guess my budget was in the order of a one-man year, which is to say \$5,000 at the time and which is to say \$20,000 now, perhaps. Of course, I was in a big agency and the agriculture data, I didn't know how they got it, but they provided me with the size of farm data, and they provided me with the total value of crop production. As an anthropologist, I couldn't do that. You'd have to do it that way again. You would have to have a proper team of experts.

I think not only that it can be done, Senator, I think very much that it should be done. I think this study was a powerful force in the

1940's; it was a fantastic force. I gather it has regained some of its momentum as a result of your and other Senators' interest in it. I think it would be awfully easy to say, but that's in another country and besides the wench is dead kind of thing about it, because if they would say well it's 25 years, and anyway, you know. The way the press puts it . . . it's really very, very funny. I usually dine out on stories of this. (Laughter) But, they'll put it down for that reason.

We validate things in scientific studies, even when we know the answer, what the true answer is, and I think it would be very, very important to set it for us, and to do it with the canons of scientific properties, as it was done originally. I was extremely cautious. I didn't even take the worst, the extreme community, on the farming comments . . . I guess my identifications are that I'm a scholar, and my identity as a scholar is paramount. And that's the kind of person you want for this job. I became a propagandist because my study was propaganda, that is to say, it came out to be a statement of this is what happens, boys, and this is what you are going to have to put up with . . . on an issue that was in the public press at the time. It's not my nature to be a propagandist, and the study was not made in a propagandist fashion at all but, as I say, I was prevented by the propagandists from taking the second phase.

Senator HARRIS. Well, I appreciate very much your being here and I hope the new interest being given to that study will get us back to the fundamental questions involved.

The other question is, could you reverse it if people had access to land and a decent life, and the working of it? Wouldn't the social and political and other organizations and institutions which will allow for human self-determination and freedom arise? I think we could look at examples such as Israel and others, and conclude probably that they were—at least that's the basic question you raised, isn't it?

WALTER GOLDSCHMIDT. Your question, Senator, is, "Have we passed the point of no return to the demoralization of our culture and our heritage?" I'm certainly not going to be the doctor to say the body is dead. I don't think we ever pass the point of no return. Of course, it can be revived, it has to be revived, I look around me and I see the kind of young people that you have on your staff, that Senator Nelson has on his staff, and Nader's Raiders and the lot, and I'm not worried too much about the basic American spirit. I am worried about economic controls.

Senator HARRIS. Thank you. Thank you very much.

## FOOTNOTES

<sup>1</sup> Walter Goldschmidt, *Small Business and the Community: A Study in Central Valley of California on Effects of Scale of Farm Operations*. Report of the Special Committee to Study Problems of American Small Business. The U.S. Senate, (79th Congress; 2d Session). U.S. Government Printing Office, Washington, D.C. December 23, 1946.

<sup>2</sup> Richard S. Kirkendall, *Social Sciences in the Central Valley: An Episode*. The California Historical Society Quarterly, 1964.

<sup>3</sup> Alden Stevens: *Small Town America VII*. Dinuba, California. The Nation, September 28, 1946.

<sup>4</sup> Walter Goldschmidt, *Alive and Kicking* (Letters to the Editor) The Nation, January 15, 1947.

<sup>5</sup> Walter Goldschmidt, *As You Sow*. Macmillan, 1947 (originally published by Harcourt, Brace).

STATEMENTS OF JEAN FLORES, DELANO, CALIF., AND DAVID McMILLON, ARVIN, CALIF.

Senator HARRIS. I would like to call now on Mrs. Jean Flores and Mr. David McMillon of

Kings County, California, who have been here very patiently with many others. Thank you for coming and we'll be glad to hear from you right now.

JEAN FLORES. I should like to make a correction. Mr. McMillon is from Kern County, Arvin, California.

Senator HARRIS. Oh, you're from Kern County, Mr. McMillon, and you, Mrs. Flores, are from Kings County?

JEAN FLORES. Right.

Senator HARRIS. O.K. Thank you very much.

JEAN FLORES. My name is Jean Flores. I am a daughter of a farmworker. I have migrated with my parents through out the San Joaquin Valley in my childhood years. In the past five years I have worked in the migrant traveled counties of Kern, Ventura, Fresno, Kings, Madera, Merced, Stanislaus, San Joaquin and Tulare. Through this experience I have become aware of the major problems in these basically agriculture areas. It is of Kings County, that I am here to provide testimony regarding conditions in that county.

The area of Kings County is 1,395 square miles and has a population of 86,300 as per census of 1965. The area of the county is 892,000 acres. Ninety-five percent of the land is privately owned, with 506,528 acres in farms and 342,041 acres in other lands.

The above indicators reveal that Kings County is a large agricultural area. One of the largest growers in the state of California controls Kings County, J. G. Boswell, who obtained four and a half million dollars in subsidies from the Federal Government is the largest land owner in Kings County. Agricultural prosperity blossoms out for this grower-controlled county. For the farmworkers of this area it means poverty. An example of this is that 60 percent of the residents in this county are on welfare. The Kings County residents are on welfare because there is no work available, which reflects the subsidies that growers receive.

California growers are enriched and empowered not only by subsidized irrigation water, the world's largest welfare program some have claimed. The biggest growers, J. G. Boswell and Salyer who control Kings County, strengthen their control of our lives through political manipulation, which brings them the tax franchise subsidies of soil conservation programs, marketing order, acreage allotment for crops, guaranteed prices, and so on, as has been stated over and over again today. These government programs are administered entirely by local committees of farmers, the big growers control the committees which parcel out subsidies and financial assistance to obtain more land.

The size of some of these subsidies strain the imagination. The following growers rake in subsidies, Welfare in Kings County: J. G. Boswell, with four and a half million dollars; Salyer Farms, one million fourteen eight-sixty; South Lake Farms, one million four sixty-eight six ninety-six; West Lake Farms, six hundred twenty-two thousand five sixty-nine. A total of seven million six hundred and six thousand and twenty-five dollars.

The above is a sample of California farmer welfare recipients. A total of eighty-four farming operations in California received direct price support payments of over a hundred thousand in 1966. This story has been repeated over and over. The government makes laws to limit subsidies and the growers find ways to continue to collect subsidies. The process for them seems to be very simple.

Another example of the kind of power that is controlled by the big growers is the Williamson Act, that has recently passed in Kings County and at the same time the Food Stamp Program was turned down. The Food Stamp Program in Kings County would have cost \$80,000 to be exact. Cost of commodities versus Food Stamp Program is the

same. At the same time the grower-controlled board of supervisors passed the Williamson Act, which represented a half-a-million dollar tax cut to the rich growers. Because of this action Corcoran Schools, in Kings County, will lose \$200,000 in tax revenues. As of Feb. 22, 1970, Kings County had 320,000 acres in preserves, dropped \$17 million, in assessed value, losing \$1.1 million in tax revenues.

Middle income people become the victims of rising taxes and place the blame on welfare recipients as a scapegoat. No one realizes the huge tax gifts that continually go to growers. The grower-controlled board of supervisors continue to divert public attention away from their own action and make the Food Stamp Program and Welfare a scapegoat for rising taxes. The large growers continue to manipulate Kings County.

The pity of all of this is that it took a thousand five hundred farm workers to camp in front of the courthouse for twenty-one days and nights just to force the board of supervisors to comply with the law. The board of supervisors were not in compliance with distribution of commodities as per Federal regulations. It took a court order and demonstration to bring the board into compliance.

The Social Workers Organization of the Welfare Department in Kings County supported the poor of that county. It takes no imagination to see the outcome of the poor in this county.

According to Dr. Arnauld Schaefer, who testified before the Senate Select Committee on Nutrition and related Human Needs on January 1968, there are two significant indicators of malnutrition among children. One of them is the incidence and severity of dental problems among young children. The other is the incidence of functional anemia among young children. Dr. Schaefer further stated that many Dental problems among children are caused by lack of vitamin C and by a lack of fluoride. He also said that dental problems among children get worse because, as the child's teeth get worse, he usually eats more and more of the soft food that lacks the proper nutrients he needs.

The above statements on health problems bear out this crisis, since 60 percent of Kings County is on Welfare and receiving commodities.

Three years ago the Corcoran Unified School District surveyed 250 low-income children between the first and third grades of the 250 children between the first and third grades, 148 or 59 percent had multiple caries (cavities). The district classified 84 cases as severe and 64 cases as moderate. Out of 250 children surveyed by the Corcoran School District, 124 or 49 percent had functional anemia.

The above statements on health problems bear out this crisis, since 60 percent of Kings County is on Welfare and receiving commodities.

In Kings County \$144 per capita is spent on Education well above the national average of \$100 per capita. However the county has a functional illiteracy rate of 14.9 percent in contrast to 8.4 percent for the U.S. Moreover only 33.8 percent of the county's population have completed the secondary level of education. On a personal interview with several school officials one of the major causes for this number is the lack of basic educational and language skills in the low-income families of the county. In Corcoran last year there were 130 retarded children in classes as classified by the school personnel. This figure was out of 2,000 students. As stated previously, the Williamson Act is certainly not helping this situation.

In a conference with officials of the Human Resource Development agency, it was stated that there was no employment service in Kings County.

The Public Low rent program in Kings County consists of 150 units in Hanford and 100 units in rural community of Corcoran. Although in 1966 Self-Help Enterprises reported a percentage of 35 to 40 percent substandard dwellings in Kings County. According to Officials from Self-Help Enterprises, in a recent article in the Fresno Bee, it was indicated that decent housing is being built, but at a rate that would take 30 to 40 years for the rural poor to have decent housing in Kings County. Provisions for senior citizens over 62 years of age are made by Farmers Home Administration. Rural housing loans are made only to the applicants who are unable to obtain credit from private lenders.

I have some news clippings that represent some of the statements that I have made here today.

I do want to say that I feel that as part of the testimony, that I am not here to bring out the problems as have been indicated here over and over again, but rather to appeal to you and to ask of you that these words do not go unheard. I ask that we have an opportunity to live as decent men and women. I cannot help thinking that these problems that I have presented here today are not only ours (the rural poor) but yours also. For a lot of us it is too late and we don't have the opportunity to go back in time, but must our children again suffer the same fate? It all depends on you.

Thank you.

Senator HARRIS. I agree. Thank you very much.

Senator HARRIS. Mr. McMillon, do you have anything to add to her statement?

DAVID McMILLON. Yes, my name is David McMillon and I live in Arvin, California. I reside in Kern County. What I have to say to you today is very short and to the point. Previous testimony by Mrs. Flores verifies conditions for the farm worker of the rural poor. Six years ago, Kern County Assemblyman John Williamson introduced a bill designed to give farmers tax protection against urban inflated land owners. The result in the grower control in the County of Kern is as follows: One million acres were put in reserve. Because of this there was a drop of \$55 million in the assessed values, losing \$5 million in tax revenue. Rural school districts are being hurt, such as Wasco High School District. Their total assessed value dropped 4.9 percent and the board has to raise 19 percent to make up the \$63,000 tax revenue lost. There is no need to further identify what has already happened, and has been said here today. I will bring it to the level that affects my immediate area.

About a year ago HEW funded a migrant clinic designated for the target area of Lamont-Tehachapi. HEW guidelines required 51 percent of that board must be farm workers from the target area. It has been over a year and still that regulation has not been adhered to. The target area elected farm worker representatives to represent them through the democratic process. Recently this board, which is called Los Campesinos, is not recognized.

The target area residents have demonstrated support by picketing and demonstrations. They have not been heard. Instead, it seems that political strings have been pulled against this board, because it has not been recognized. This example is what happened when large growers control the county. We need help, your help to obtain our pride and dignity in making it possible to be self-sustaining. I envision the possibilities of being able to obtain land, to be free of the large landowners that control our lives. In essence today we've been having this problem, and also in the Arvin area. We now represent the low income in our clinic in Tehachapi.

And we've been having quite a problem

with the non-consumer, really. The HEW guidelines indicate that 51 percent of the board should be consumer; 49 percent non-consumer. It seems that the non-consumers are taking control and at this point the 51 percent consumers literally are just kicked out of the picture with no input into the clinic, when at first it was designed for the low-income consumer people, who are the farm workers.

Today I'm here to plead the cause for these people, because I feel that they should have their own input into this clinic. The problems that they have are the problems we are most concerned about. I think that if the board would have the 51 percent consumers, they would have more input on conditions affecting their own lives. But, consequently, by not going the way that it should go, we're being limited in the kind of needs that the farm workers should have in that area. So this is why we're here today to bring this need, to bring this point, to you today to see if there can be something done in the progress of this clinic, which is of great benefit to the community.

It has really served the people, and I would say today that it is very essential in our area. As of right now, it's the first time in history that we have had a farm workers clinic that is giving the kind of services that we are giving at this clinic. In the past the only health facility that we had was the Kern General Hospital, and most of the low-income and the farm working people were more or less, if they didn't have ample or sufficient money to pay, denied care. Here with a nonprofit clinic, there is no charge right now, and I think it has been a big benefit to the farm working people.

Recently Mrs. Flores wrote up a proposal and submitted it to the Colorado Mine and Health Clinic, in which we asked them for resource money to put in for emergency food distribution throughout the clinic. Fortunately for the migrant's health, they did adhere to our call and our plea and did grant us some monies for an emergency food grant. This was a great help because now in this particular area there is very little work going on and these people have a very bad time of it right now.

We have three or four months in the year that there is almost no work going on, and these people either have to be placed on welfare, or some kind of agency, on commodities and various distributions given out through the legal agencies in town. That is becoming such a problem, because there are so many restrictions and it is so hard to get on, that the people are literally doing without, and I think that the clinic has been a big asset to the community.

I plead with you today to give this your undivided attention to see if there can be something done so that this clinic can continue to be there and continue to give the services it has given and that it was originally designed to give.

We thank you.

Senator HARRIS. Mrs. Flores and Mr. McMillon, I think you are to be commended for trying to organize people to try to make the American system work through some kind of organized power. Furthermore, it's an appalling thing to me that here we've had about 50,000 American boys die half way around the world in South Vietnam for what we say is the right of the people of South Vietnam to govern themselves. The reality hasn't worked out that way, but at least we say that's our goal. In too many places in this country, we don't even have self-government as a goal. You have no power to govern yourselves in those counties where huge landholdings, just as you said so well Mrs. Flores, turn out to mean political control as well as economic control, and the ordinary person is held in bondage while big landowners are so politically powerful they can avoid paying their

taxes. What we are engaged in here is talking about basic changes, such as land reform and breaking up these economic concentrations of power. I hope we can get these presidential candidates talking about some of these basic things, and that's one of the purposes of this hearing.

Mrs. FLORES. I don't know if David made it clear, I know he was talking of a project and we are here to talk about reform, but I think the thing that is very obvious to us is that many times the government is saying, "We give you a project and we understand," and we hear your needs, and all the beautiful political campaign speeches.

But in reality, what I think we are identifying is that the programs that are there are never controlled by people, they are controlled by political growers who have someone sitting on these boards; that in fact what does happen is that there is really nothing—it is only a make-believe for people that begin to think that maybe somewhere, someplace there is a future. But in reality what we're saying is that we see through this, we have tried to put this in context and we understand that the educational levels of farmworkers are low as well, and I think they should have the opportunity to be able to have land, to make a living. I guess basically that's what we are saying.

Senator HARRIS. You're saying it very well too. Thank you both very much.

DAVID McMILLON. I would like to add some more, including my agreement with Mrs. Flores, that recently in the process of trying to initiate educational status in our clinic for children to come and be further educated within the community, to get funded so that we can further educate the farm working people so that they can place themselves into our society. It's so hard when the higher ups make a level, for consequently that level doesn't penetrate lower than that specific level, and it doesn't meet the needs of the lower level—you know, below that level—that they have penetrated their forces to. This is the hurting part of our society today.

What about these people that are below our level, that society doesn't lift a finger to help? These people are human beings also. These people, I feel, should have a say in our democracy today, too. These are part of our society—whether they are below our level or they are above our level. And this I feel has been so badly misinterpreted in our democracy today. Because, what about the poor farm worker? I think if we will give some attention and penetrate some of our thought toward that person that's below our level, we can become more concerned about their individual needs.

I think then, and only then, that we can see the United States growing together as a people. But until that day comes, Senator, we will never be united. And I feel this very strongly, and I feel that in our area today—in the Bakersfield area—that we are trying to bring our forces together in a united type of way to where we can try to work together in every aspect, regardless of what category that person may belong in. And I feel today that if we can further penetrate our forces into an educational level to where we can meet the needs of the lower level, that we then can say we are doing something for our society.

Senator HARRIS. And in the process lift us all up. I agree. Thank you both very much.

STATEMENT OF LUPE QUINTERO, CALIFORNIA, RURAL LEGAL ASSISTANCE, IMPERIAL VALLEY, CALIF.

Senator HARRIS. Ms. Quintero, would you introduce those who are with you and then proceed however you please. I'm very pleased you are here. Are you all representing the California Rural Legal Assistance in the Imperial Valley?

LUPE QUINTERO. Yes, we are.

Senator HARRIS. O.K.

LUPE QUINTERO. My name is Lupe Quintero and I am a community worker for the CRLA and Gilbert Rodriguez was a volunteer worker at the CRLA, and John Osborn is a community worker for the CRLA.

Senator HARRIS. I know you have come a long way and I really appreciate it.

LUPE QUINTERO. What we have here is a statement from a small landowner in the Imperial Valley. She is from Brawley, and we thought it was very important what she did have to say about the big farmers and the big companies down there in the Valley. She has been in the Valley since 1923, and what she owns is about 120 acres. I'd like to read, when we interviewed her, some of the things she had to say, so I'll just read you.

Senator HARRIS. Good.

LUPE QUINTERO. She's a very nice lady, and she says:

"In the early days you could see a house on every 160 acres, at least, and the homes were surrounded by trees. Now the houses are situated so far apart and trees have been cleared out for farming. One of the things that concerns me is the fact of absentee ownership. So many of the huge companies lease the land. Some of the big farmers of the Valley itself don't even live on the land that they own."

She is saying that the big companies monopolize everything.

"To buy an acre today at the minimum costs at least \$800, and it saddens you very much that it's nearly impossible for anyone today to even attempt to get started in the Valley—even to start their own little farms."

I wanted to stress the fact about absentee ownership, because you have the people that own the land and they take money out of the Valley. The only reason they reinvest is to take care of maybe their high income taxes. I would also like to say on this absentee ownership that these people—I'm talking about the companies—get rich off of our people's sweat. And the poor people have never benefited; these people are merely used for cheap labor.

One of the problems that this lady has faced is being presently pressured by a local farmer, who obtained his wealth merely through family inheritance. He has not toiled the land—he sounds like a spoiled brat to me, really.

Senator HARRIS. Sounds like the old system where the king's eldest son under the rule of primogenity had complete sway over an area. . . .

LUPE QUINTERO. Right. She leases her land along side this farmer's land—she owns quite a bit of land down there. This farmer's name is John Benson. He built a cement ditch alongside her land. It's very clever how he did it exactly—it's really just illegal. He more or less scooted her land over, so that he could build a cement ditch to pressure her to sell. She had to have a survey done, which cost her \$900, and she is in the process right now of fighting this man.

One of the things that really touches me was that she said he already owns at least half of the land in the Valley, and why would he want her 40 acres. It is only 40 acres that she has alongside his land, and she is saying why would he want more when he already owns at least half of the Valley? But this is the type of people that the people have to deal with down in the Valley.

Now Benson, who as I said has inherited his wealth, and is an attorney, is Mayor of Brawley, one of the small towns we have in the Imperial Valley, and he has no concept absolutely of the poor down there. He doesn't sympathize with the Chicano. One of the problems that we have had . . . there was this incidence where a rancher killed—while drunk driving—killed this young Chicano. This man had been arrested previously two

times for drunk driving, yet nothing was done about this case. When the Chicanos of the community brought this to the City Council, Benson, the Mayor of the town, just absolutely put down the Chicano community for standing up for their rights. And this is the type of mentality that we have to put up with in the Imperial Valley. We feel that this must end.

One of the things that we have to see down there about the Imperial Valley is that these growers, once they have the economic power, it goes side to side with the political power. From the City Council, from the Board of Trustees on up, they run the Valley, and it's tough for us to get together. We have a lot of organizing to do, but we've got to get the people together.

Senator HARRIS. In other words, it didn't work out one man and one woman and one vote.

LUPE QUINTERO. Right. Right. Very true. One of the things that's going on in the Valley right now is—and this will be very general—is the geothermal. They've held some conferences down there because the Imperial Valley has a great source, great potential, in this geothermal project right now. But as usual, you have the big companies and private groups that are interested in this geothermal, but the last persons ever consulted about this, that could really reap from this, are the poor people. They're not consulted on something like this. One of the things is that our people—especially there's a type of paranoia, not only in the United States but in the Imperial Valley about the welfare problem. This is an incident that happened. The Department of Labor made available to the Imperial Valley \$80,000 for this emergency employment, and the Board of Supervisors, who run the Valley, said, "We are too busy to take this right now." Now, this was to employ the migrant worker, and yet they bitched about these people being on welfare, and they collect these subsidies. So the Calexico City Council, another small town there, moved on this. They made a popular resolution to get this \$80,000 and divide it among the different agencies. Now when the Board of Supervisors got a whiff of this—that this City Council was going to ask for this money—they quickly tried to move on this and for them to get the money, for them to get the control. But luckily the City Council had moved in and they got the money. But this is the type of thing we have to put up with down there—the grower might.

They run the schools, they run the Valley, and, as I stated, was the fact that saddened this lady very much that you no longer have the small farmer. It's an imposition that people, such as Benson, are forcing them to sell their lands. He's got so much property down there, and yet he's asking for her 40 acres. This is the type of thing that the small farmer has to put up with. They are just being eased out.

This is what I have to say on this, and I want to know if maybe. . . .

Senator HARRIS. Tell me first, about the California Rural Legal Assistance. How is that set up? What main kind of cases, just all kinds, that you get involved with?

LUPE QUINTERO. Yes, I, myself, as a community worker deal mainly with welfare cases. That's the majority of the problems you have done there—the welfare problems. And you have a county that seems to want to interpret the laws their own way. They see the regulation but they tend to more or less interpret it how it pleases the county. And the Welfare Department is run a lot, also controlled at lot, by the Board of Supervisors. So we deal a lot in the welfare cases.

Senator HARRIS. And with welfare rights? LUPE QUINTERO. Yes.

Senator HARRIS. Mr. Rodriguez, do you have anything to add?

GILBERT RODRIGUEZ. No.  
Senator HARRIS. Mr. Osborn?

JOHN OSBORN. Well, just basically taking off on the same thing. I think a lot of the problems in the Valley—I have only been in the Valley for about four years—centers around power. The Federal Government hasn't done very much to help people whose rights have been taken away to regain those rights. Through subsidizing agriculture, providing water from federally-financed projects to big farming interests, they have further strengthened the economic power of large agriculture, and hence the political powers. This is directly affecting the poor in Imperial Valley. The poor are powerless. They don't have a voice in what goes on in the Valley. It's one thing, I think, to recognize that poor people have to get together and organize themselves, but as long as the government continues to back large agriculture, it is very, very hard. It's like running into a stone wall. I worked in the schools for a year as a teacher's aid. I wasn't from the Valley and I couldn't believe it in the beginning, because there's just no freedom of expression. One thing that I'm concerned about is if more hearings of this type were held in the future, I would hope, that a heavy effort would be taken to contact the people of the Valley and the people of rural California. I can't speak for them, and it's really important, because those people have lost their voice and they have a lot to say.

Senator HARRIS. This is my own second effort here in California on this general issue. The earlier thing was a field trip into some of these valleys, just looking and talking with the people without trying to keep a formal record, and then this hearing. I want to do some more of this, particularly closer to the time when the presidential campaigns are going to be. I've been trying to figure out how can you get these issues . . . for example, there's still a notion persists that if you just give poor people enough advice, they'll quit it. I think that was one of the problems about the poverty program. But if the job's not there, if the economic power is not there, if the political power is not there, when you get through all you are doing is building up people's frustrations and not really giving them any additional chance. So I've been trying to figure out how's the quickest way by which you might begin to get the country, or a sufficient number of the people in the country, to understand that there has to be a better division of both economic and political power if we're really going to fundamentally change things. I've been focusing, first, on the fact that we are about to nominate a President—to nominate a Democratic President, I don't think we can change Nixon; I hope we can change Presidents. But in the process, it won't really do that much good if we just change Presidents and sort of add on to the present program. There will have to be a better division of things. So I've been focusing on the idea that if we could somehow have some impact on what all these candidates say, and on the platform, and try to force people to discuss basic things like land reform and dividing up economic power better, etc. Maybe that's the beginning way to have some impact. So that's the purpose of this hearing, more than any other purpose, and then to try to do some additional things like this as we get nearer to the primary in this state.

LUPE QUINTERO. I don't know if you would ever have the chance, but we would like to invite you to come down to the Valley. There is a young group who is trying to gain some say in this geothermal project that is going on down there.

Senator HARRIS. Good, I'd like to come visit them.

LUPE QUINTERO. They are trying to get a voice for the poor so that they can in the future obtain jobs for these people. Because

those that are going to invest in that are not going to consider the poor people. Another ripple—nothing's going to change down there.

Senator HARRIS. I would like to do that. I would accept that.

LUPE QUINTERO. Could we get a transcript of this?

Senator HARRIS. Yes, I meant to say earlier to those who are here, and I'll say now, anybody who would like to have a transcript of this hearing, if you'll write me in Washington I'll see that you get one. It will be published in the Congressional Record, and I'll see that everybody that participates gets one. Also anybody else who would like one, we'll do so.

I don't know how people like yourselves continue to get yourselves up in the morning and do what you do, but I'm sure glad there are people like you, and I appreciate your being here today.

Thank you.

STATEMENT OF MARILYN STOUT, NORTHRIDGE, CALIF.

Senator HARRIS. Last, I would like to call on Miss Marilyn Stout, Northridge, California. Miss Stout, I appreciate your allowing Miss Quintero and those with her to come on in advance, and I do appreciate your being here and your willingness to come and testify.

MARILYN STOUT. I'm glad we came, and I'm glad you're holding these hearings. I am particularly interested to hear what people have to say.

I'm a journalist and a housewife, and I live in Los Angeles—Northridge is a suburb of Los Angeles. I hear you're aware by now that we have four aqueducts bringing four rivers into Los Angeles. There is the Colorado Aqueduct, bringing in the Colorado River, then there is the Owens River, which is brought by two aqueducts and that is under the Control of the Department of Water and Power. Then there is the Sacramento River and the San Joaquin that come down through the California Aqueduct. These many aqueducts have brought more water to Los Angeles than either of the two public agencies could sell—the Metropolitan Water District or the Department of Water and Power. As a result of this, strangely enough, even in 1960 these agencies were living with the past mistakes of overbuilding dams and aqueducts by selling water for less than cost. You know, this happened in 1960 before the last two aqueducts were built. This has subjected the City of Los Angeles to a heavy debt which we are carrying on property taxes, and it's subjecting Los Angeles to increased density of population and all the ills of a mass population—more smog, more traffic. We have a speculative land belt around the city of about 70 miles.

There is pressure for the city to subsidize this speculative territory. We're constantly having battles in the City Council of Los Angeles to keep speculative developers from getting our school funds. The schools in Los Angeles are not really very good. Recently, for example, we had an opportunity to pass a bond issue to rebuild the schools that were subject to earthquakes in the Central City, and the people said, "Let the schools fall." They did not pass the bond measure. So now the School Board is in a problem trying to move bungalows from the outlying suburbs and trying to provide school rooms for the minorities.

I brought some maps. I think you've probably seen them before. This is a similar one to the one you couldn't show today. It's a very beat-up old map. It was made by Raymond Kilpatrick who was for forty years a member of the California Legislature.

Everytime there is another aqueduct built, it seems that the water is brought from somewhere, the money is obtained from Los An-

geles, and the land in the middle is the beneficiary. And this is the case again. The green line represents the California Aqueduct as it comes off the delta in the confluence of the two rivers up there—the Sacramento and the San Joaquin. The red territory is about 400,000 acres owned by Kern County Land, now Tenneco Corporation. The blue territory is . . .

Senator HARRIS. That's both those red pieces, all that?

MARILYN STOUT. All that red. And that blue territory is 168,000 acres of land owned by the Los Angeles Times Mirror Corporation. Now that company told us—all its million subscribers—to vote for this water bond measure, without telling us that Kern County or Tenneco had land which would increase in value a half a billion, and Los Angeles Times territory would increase in value a quarter billion when water hit those deserts. A figure of \$1500 an acre was put on this by Wayne Morse and Paul Douglas. That aqueduct continues down into Southern California.

By the way; the Los Angeles Times now holds 300,000 acres of land. Their holding in the Tejon Ranch has increased. I found that out in Walker's Manual. . . .

Senator HARRIS. I noticed a discrepancy in that from what I stated this morning, and I believe what Peter Barnes later stated too.

MARILYN STOUT. Yes. Now the aqueduct goes into Southern California and the west branch comes to Los Angeles, and the other branch goes into the Parris Reservoir in San Diego County. The Metropolitan Water District is paying 75 percent of the cost of that aqueduct. It will come out of the property taxpayers in the MWD, mostly Los Angeles. There is a price differential on the water. Up in the San Joaquin Valley, they get water for \$19.00 an acre foot. One of the people in the MWD told me that he calculated the price, transferred it from cubic feet per second to acre feet, and we pay about \$125 an acre foot for water in Los Angeles. So Los Angeles is really a victim of the water project. They're really not the beneficiary.

The outstanding research on this was done by the Hirschleifer, DeHaven, Milliman team—I gave you their addresses. Dr. Milliman is the head of the Department of Urban Affairs at the University of Southern California. Hirschleifer is in the Economics Department at UCLA, and Jim DeHaven is in the Rand Corporation.

Senator HARRIS. I'm glad to see them doing some other things besides Defense. (Laughter)

MARILYN STOUT. In Southern California, in addition to the City of Los Angeles, of course, is the great Irvine Ranch of 90,000 acres. In about eight holdings that were formerly owned by Pennsylvania Railroad, I understand Ford Motor Company owns one of them now, they try to pick up as many subsidies as they can. I have some newspapers which I'm going to make available to you. Here's the Irvine Ranch story and it tells—I've got this—the company-owned town, the company-owned agricultural firm and the company-owned branch of the University of California. . . . (Laughter)

Senator HARRIS. As a member of the Senate Finance Committee, I knew about them because of special tax advantages which they have, and desire more of.

MARILYN STOUT. Yes, right. And in addition to that they have aquifers, underground. You have to particularly watch underground aquifers in Orange County. The MWP price schedule is highest for urban and industrial commercial use, middle for agriculture's use, and lowest for underground aquifer water. So they get water at 35 percent discount below cost when it goes into the underground aquifers. Then there's a big argument about who owns the water. I heard an argument over at UCLA, "We own the aquifers, therefore the water is available to anybody to use without paying," and the

MWD men were arguing, "We own the water and you don't get any until you pay," you know that sort of thing goes on.

Another story we have here is one that I want you to be aware of. It's one that's caused a lot of fighting in California. It's 2 million acres to be sold in Riverside County. That is federal land; it's under federal control and we don't want it to get sold and put into real estate developments or farms, or anything like that. We want it held as federal land. Now the interesting thing about this is that we've had a big fight over the acreage limitation provision in the California Constitution.

Senator HARRIS. Now, what are the red and greens? Are they significant?

MARILYN STOUT. The nicest parts are the greens—those are the National Forests. The purple stuff is the National Parks, like Sequoia and Yosemite, and the yellow is the public domain, that is, the federally-owned, just plain land, and mostly desert. We'd rather have it kept as Desert National Park. The blue is wildlife refuge, and the pink is military reservations, and orange is Indian land. There is a lot of publicly-owned land in California—federally-owned land, and we like it that way.

There is an Article 17 in the California Constitution that limits property ownership and states this as a principle of California law. Twice, there have been attempts to throw this out on the ground that it was obsolete, this acreage limitation provision—there's no land available. We have these headlines to prove that developers are trying to get this land. So twice the people of the State of California have preserved the acreage limitation law, despite the efforts to knock it out.

And there's a third attempt happening now to remove acreage limitation from the California Constitution.

Here's a story that you might be interested in. The Los Angeles Times has never admitted to its owners how much property they own, or how much they would benefit from this. When the Nader's Raiders finally published information, the only admission they made was that, "It's not true." Maybe they did list some of their landowners, as I saw them. They did. Then they listed in their editorial, "Yes, we do own land, but it's only incidental."

I thought it was interesting that in the story just before the election in 1960, their headlines said many factors helped confuse the voters. They weren't being very clear. And I thought that was quite a slip that many factors helped confuse the voters. (Laughter)

This Irvine Ranch story was prepared well in advance, but it was not published until five days after the bond election.

We have some recommended strategies for change. I read your Family Farm Act of 1972. I liked that. And the Reclamation Land Authority Act, that's good. We have a list of the ten or eleven counties' subsidies, crop subsidies, income tax write-offs, etc. that the large landowners tried to obtain, and we are quite convinced that if you would strip those large corporations of all subsidies, they couldn't afford to hold that land.

Senator HARRIS. Yes, they're not more efficient, they're just more efficient at getting federal money.

MARILYN STOUT. Yes. We think they are like a dinosaur—not enough heart and brain, really, to sustain themselves. They need our transfusions of money and water, etc. (laughter) so that if you strip them of all these subsidies that would help in the effort to bring about land reform.

We think we ought to rely heavily on two forms of taxation. The property tax, we think, is an important index of wealth.

I don't care what Mr. Nixon thinks, we think the property tax is a good tax. We think it's a source of local government and school revenue, and we think it ought to be punitive for people who hold hundreds of thousands of acres of land. Naturally, it would be. Again, there is an attempt being made in California to relieve the property taxpayer, and we are afraid it will relieve people who own 400,000 acres of land and will be a burden to the rest of us.

We feel that assessors should be appointed, rather than elected. They should be certified public accountants who would lose their license for cheating, dishonesty, or any kind of hanky-panky in assessing. We also think the income tax is a good index of wealth. Income is, and it's an important tax and should be based on ability to pay. Income from any source ought to be taxed in the same way. There ought to be no special allowances—depletion allowance, capital gains, or any other loophole.

Furthermore, we have the idea that if we got out of the war in Vietnam, we could have a federal tax cut or a larger percentage of money should be returned to communities where the payees reside, and the income tax returned to communities on the basis of population. So if people decentralize—people are getting very clever, I mean they are using birth control methods, etc., and the population is dropping—all you need to do is inform people correctly when you start changing policies. If people get intelligent, they're going to start decentralizing and moving into smaller towns and moving back onto the farms if they are correctly informed. So we think that there's going to be a natural decentralization happening with information, and that the income tax refund, if there's going to be any, should shift with them. The distribution scheme should shift with them. The tax revenue sharing should not be based on the usual ten-year census figures; it should reflect where the population is now, not where it was ten years ago. You know, Nixon is always talking about tax sharing.

We positively believe in no incentives or subsidies for good planning, because these big corporations are great at catching the bait and avoiding the hook. We believe in Gunnar Myrdal's definition of free enterprise, and we have even found some in the Bible where Jesus said, "Get up and walk." That is a definition of free enterprise. (Laughter) The large corporations don't believe in it, but we think we ought to put them on free enterprise.

And that, plus the publications and notes, I would like to go into the Record.

Senator HARRIS. Wonderful, very good. I think the analogy to Lazarus is pretty good—"Take up thy bed and walk." It really is an outrage that somehow these big land holdings and big corporations use their tax subsidies to continue to convince us that it is a good deal for them to continue to exploit us. There is a kind of vicious circle there, and so many people believe it. But I do believe that one of the ways to get at it, as when I served on the Kerner Commission, people use to think it was sort of an old-fashioned Jeffersonian notion now outdated to think about getting back to smaller communities, etc. But when I served on the Kerner Commission we were beginning then to make some headway on the idea that you could not solve the problems of these cities so long as people continue to move on into them, where the problems of concentration were already enormous. Little-by-little, I think, we have more people believing that. But we haven't enough people yet thinking about the fundamental forces which brought the problems into being, and one of those fundamental forces, as you have pointed out very well, is how we subsidize those who push

people off the land and who have driven them into these larger cities. A good thing happening in the country, there's a feeling about going back to the land by a lot of younger people and other people as well. That is not a trend that is old-fashioned, but may be new-fashioned if we take out the forces that have prevented it from happening up to the present time.

You've done some wonderful work here and in the past, and I think your testimony today will be very helpful to us. I appreciate it very much.

MARILYN STOUT. One of the things in the area is something that really interested us. The State of Oklahoma, your state, is giving away free land—ten-acre farms.

Senator HARRIS. That's right, and it has been overwhelmed by people who want it. I understand there has been some problems—some of the oil companies are beginning to worry about that. It's amazing around the country those who just don't like the idea of having people around. I was in East Tennessee lately about strip mining, and one of the big land companies there—and they have the same problem, these big land companies, most of which are owned outside of East Tennessee—is ripping off the land with that coal and driving people out and exploiting people. One man said, "The only thing wrong with these hills are people." (Laughter) That's what these big landowners think. Another thing, some of that land there is owned by one of the biggest landowners, a British-owned corporation which, interestingly enough—wouldn't you know it—calls itself the American Corporation. (Laughter) It's wonderful that these euphemisms straighten things out and show us how it is. One of the best things they use against us is free enterprise—don't bother with us, we're involved in free enterprise. They're not at all.

Well, may I just say, I appreciate very much, Mrs. Stout, your being here and the chance to hold these hearings. I'm going to be back here. I'm not one of a kind. I think I'm a vanguard of the kind of politics that's beginning to dominate this country in the '70's. I think Americans are getting sick and tired of all this damn exploitation of land and resources and people by a lot of big people who are ripping folks out for their own private profit. And we're going to give an opportunity to all those who don't like what was said today to come and be heard—from Los Angeles Times to Tenneco and wherever else. And I hope we will be in contact with them and they'll want to have their say, too.

Thank you very much.

Documents submitted by Marilyn Stout follow:

Senator HARRIS. I would like to insert the following letter from Mr. Charles Davneport in the Record.

DAVIS, CALIFORNIA, March 8, 1972.

HON. FRED R. HARRIS,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR HARRIS: This replies to your letter of February 18 in which you asked if I could testify on the problem of land and resource monopoly, its effects on the people of California and possible strategies for change. Unfortunately, I cannot appear in person, but I have a few comments on our Federal tax system and this problem.

Our Federal income tax laws provide, in effect, a subsidy for certain kinds of farm investments by permitting the income from them to be taxed at a much lower rate than most investment income. Indeed sometimes the tax rate is reduced not only to zero but to a negative figure. At numerous other places I have outlined how this occurs indicating that it arises primarily from the use of overly generous tax accounting rules.

These rules allow premature deductions of capital costs, are said to allow deduction of large expense prepayments, and fail to require inventories in many cases where comparable businesses would be forced to use inventories. These benefits are made considerably better if the deducted costs are later returned and reported as long term capital gain. While some legislative action was taken in 1969, we all knew that those provisions would very largely be ineffective. It seems clear that experience has borne out this prognostication.

Also in other places, the kind of farmer that the tax loss would attract has been described. All commentators would, I think, agree that the provisions outlined above are most attractive to taxpayers who have a large source of outside income and who have available to them considerable credit. Also since the tax benefits are proportional to the size of the nonfarm income and the tax loss produced by the farming operation, one would expect that the tax dodge farmer would also desire a large farm. Taking these qualities into consideration, there is no difficulty in concluding that two kinds of investors should be attracted to tax dodge farming. They were corporate conglomerates which have substantial sources of nonfarm income which would, absent the tax loss, be taxed at a 48% tax rate and syndications of high bracket individuals.

If one reviews the last two decades of the farming industry (between 1950 and 1970), one finds a number of astounding phenomena. First, the nominal before tax rate of return on farm investments has declined from about 6% down to less than 4%. This compares with more than 10% for other manufacturing corporations during that period. But the decreasing returns did not prevent the flow of capital into agriculture. During that time, the assets producing farm crops increased by about 2½ times although total net farm income rose by less than 25%. This is a most unusual situation: declining returns on increasing investment.

Second, a profile of the farmer in 1950 would have shown that his nonfarm income was about 30% of his total income. By 1970 his nonfarm income was about 50% of his total income.

Third, while the productive assets in farming were increasing 2½ times, farm debt increased five or more times over this two decade span.

Thus, when we look at the last two decades, we find that before tax rates of return on farm investments were declining while investments were increasing. This combination would indicate that the before tax rate of return is not giving us the true picture. Indeed, there must be something more than the before tax rate of return. I speculate that in part the something more is the zero tax rate and the negative tax benefit flowing to certain kinds of farm investors. One also concludes that many of the farm investors in these decades had just the characteristics we would have expected had the tax benefits been the only inducement to farm investment.

Our judgment on this score may be further confirmed by viewing the roster of newly arrived farmers. In the last decade or two we have found that many of our country's largest corporations have entered the farming game: Tenneco, Gulf and Western Industries, Prochemco, Union Carbide, General Foods, and many others. The number of corporations in farming has increased dramatically. Some of these corporations are conglomerates which bring huge amounts of nonfarm income into combination with farm losses.

Also as we would have guessed, syndications among high bracket individuals is the hallmark of some kinds of farm investments. Just how high a tax bracket? Many of the promoters of these syndications suggest that the taxpayer not make the investment unless he has a net worth of from a quarter to a half-million dollars or has a marginal tax bracket of 50%. Neither of these characteristics is likely to be found among the farm population as a whole.

Just how extensive are these syndications? During 1970, there were offerings by cattle breeding and feeding syndicators in excess of \$175 million. Many of these offerings exceeded \$10 million, and some of them were reported to go as high as \$25 million. Incidentally, in many of them the promoter has already made arrangements for financing a large part or all of the investment to be made by the members of the syndicate. There were also numerous syndications in other crops.

There is thus empirical evidence that many of the new farmers are just the kinds of farmers who have the qualities to reap a tax harvest rather than rely on the product of the land. This new farmer may well be a large scale owner with considerable capital and financing at his fingertips. In almost all cases he is an absentee farmer who has turned his capital over to a business manager. The business manager does not have the flexibility and the social consciousness that an owner on the scene has.

In closing let me emphasize that certain kinds of farm investments are subsidized by the federal tax laws. These subsidies appear to have induced a large amount of absentee capital into the farm sector. This absentee capital is unfair competition for the farmer who must rely on his land for his income. The absentee owner who has a large source of outside income may combine a meager profit or even a loss with the tax benefits available to him and show a handsome return on his investment.

Since these benefits vary in proportion to the loss and the amount of outside income, there is an encouragement to owners of large amounts of capital who can control large amounts of farm resources. All of this tends toward concentration in the farming industry.

This situation need not be continued. It is unfair to the farmer. It is unfair to the American taxpayer. Solutions abound, but Congress has not been willing to adopt any of them.

I hope you find the foregoing helpful.

Sincerely yours,

CHARLES DAVENPORT.

P.S. For purposes of identification only, I teach income tax law at the University of California at Davis.

STATEMENT SUBMITTED BY MR. JOE BURNIAS, CORCORAN, CALIF.

My name is Joe Burnias. I am a farmworker and have traveled the migrant trail with my father and now with my family. I have worked in the fields throughout California wherever there is work available to support my family. In the last ten (10) years, because of mechanization work is hard to find. I do not have the education nor the skills to even think that I can support my family outside of field work. What I have are my calloused hands, my love for my family, a desire to provide a future for my family, my belief in God, and my love for the land that I work. For the last fifteen years the campesino has been discussed with regard to his family, his skills, his health, his housing, his future. I have not seen results in Kings County. What I have seen is less work for the campesino, and money appropriated to advance mechanization in farm labor. Millions of dollars for tax cuts under the Williamson Act and subsidies for large farm owners who control Kings County. The Williams Act has caused a loss of \$200,000 tax revenue for Corcoran.

I feel that you are aware of the present conditions of the campesino, and so in my simple way I ask, that the statements that have been stated here do not go unheard. That land and financing be made available so that the campesino and rural poor can begin to feel pride and dignity in himself and family. FHA was set up for and controlled by growers who have continued to utilize it for their personal gain. The time has come for projects to become available for the thousands of people such as myself. The campesino would benefit greatly from this wealth of knowledge all the research and subsidies too. The campesino cannot do it alone, and I appeal to you to bring justice and action on these matters.

Now we can talk all afternoon on the merits of different programs, unemployment and welfare plans, the migrant and seasonal campesinos, displacement by machinery, rural poverty, and I still won't know what the consequence of all these things will be and nobody else seems to know. What I am sure is that in our experience we have learned one simple thing—regardless of what the situation is, people will not be able to do anything constructive, anything to free them from the shackles of poverty, unless they have the power to cope with the situation, wherever it may be and whoever it may be. For the campesino such as myself, this age, this image, that power will come through financial and availability of land that will allow me to provide a future for my children, self esteem and pride in myself as a man, then we can hope to break the cycle and destiny of the campesino and his family that has starved him for decades.

Thank you.

## SENATE—Thursday, May 18, 1972

The Senate met at 12 noon and was called to order by Hon. JAMES B. ALLEN, a Senator from the State of Alabama.

### PRAYER

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

O Thou Eternal God, who can neither be fathomed nor dismissed, be very real to us in this reverent moment. Amid the

turbulence of the world without, bring peace to our troubled hearts that all who serve Thee here may think wisely, speak convincingly, and act bravely. Out of diversity and conflict bring the unity that enables this Nation, delivered from failure, sin, and unrighteousness, to go forward to the new day of justice, truth, compassion, and brotherhood. Lift all efforts for peace into the higher order of Thy kingdom and may the spirit of the

Prince of Peace rule in the hearts of all the people.

In the Redeemer's 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).