## PRIVATE BILLS AND RESOLUTIONS

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

By Mr. BAKER:

H.R. 1690. A bill for the relief of Farmers Chemical Association, Inc.; to the Committee on the Judiciary.

By Mr. BOLAND:

H.R. 1691. A bill for the relief of John C. Garand; to the Committee on the Judiciary.

H.R. 1692. A bill for the relief of Donald P. Lariviere; to the Committee on the Judiciary.

H.R. 1693. A bill for the relief of Luigi Santaniello; to the Committee on the Judiciary.

By Mr. BURLISON of Missouri:

H.R. 1694. A bill for the relief of Ossie Emmons and others; to the Committee on the Judiciary.

By Mr. DANIELSON:

H.R. 1695. A bill for the relief of Leon Z. Dimapilis; to the Committee on the Judiciary.

H.R. 1696. A bill for the relief of Sun Hwa Koo Kim; to the Committee on the Judiciary.

H.R. 1697. A bill for the relief of Giuseppe Orlando; to the Committee on the Judiciary.

By Mr. DUNCAN:

H.R. 1698. A bill for the relief of Natividad Cruz Lacusong; to the Committee on the Judiciary.

By Mr. FREY:

H.R. 1699. A bill to direct the Secretary of the Interior to convey to William H. Muntzing phosphate interests of the United States in certain real property located in the State of Florida; to the Committee on Interior and Insular Affairs.

H.R. 1700. A bill for the relief of Maria Francisca Bieira; to the Committee on the Judiciary.

H.R. 1701. A bill for the relief of Lucia S. David; to the Committee on the Judiciary.

H.R. 1702. A bill for the relief of Robert G. Pitman, Jr.; to the Committee on the Judiciary.

H.R. 1703. A bill for the relief of Teresa Ryan; to the Committee on the Judiciary.

By Mr. HANLEY:

H.R. 1704. A bill for the relief of the Rescue Mission Alliance of Syracuse; to the Committee on the Judiciary.

By Mr. HELSTOSKI:

H.R. 1705. A bill for the relief of Patrice J. Bergoeing; to the Committee on the Judiciary.

H.R. 1706. A bill for the relief of Mr. and Mrs. Alejandro de la Cruz Gonzalez Donoso; to the Committee on the Judiciary.

H.R. 1707. A bill for the relief of Amalia Lopez; to the Committee on the Judiciary.

H.R. 1708. A bill for the relief of Juan Carlos Lopez; to the Committee on the Judiciary.

H.R. 1709. A bill for the relief of Mr. and Mrs. Herman H. Molina and two minor children; to the Committee on the Judiciary.

H.R. 1710. A bill for the relief of Mr. and Mrs. Mario Petrone; to the Committee on the Judiciary.

H.R. 1711. A bill for the relief of Mr. and Mrs. Raul Jose Rojas and minor child; to the Committee on the Judiciary.

H.R. 1712. A bill for the relief of Raymond Szytenchelm; to the Committee on the Judiciary.

H.R. 1713. A bill for the relief of Mr. and Mrs. Osvaldo Aguirre Rivera and three minor children; to the Committee on the Judiciary.

By Mr. HELSTOSKI (by request):

H.R. 1714. A bill for the relief of Kazimierz Bielecki; to the Committee on the Judiciary.

By Mr. ROBISON of New York:

H.R. 1715. A bill for the relief of Cpl. Paul C. Amedeo, U.S. Marine Corps Reserve; to the Committee on the Judiciary.

H.R. 1716. A bill for the relief of Jean Albertha Service Gordon; to the Committee on the Judiciary.

By Mr. STRATTON:

H.R. 1717. A bill to authorize the President to appoint Vice Adm. Hyman G. Rickover, U.S. Navy-Retired, to the grade of admiral on the retired list; to the Committee on Armed Services.

By Mr. ZABLOCKI:

H.R. 1718. A bill for the relief of Mrs. Patricia Bukowski and Mr. John Juras; to the Committee on the Judiciary.

## PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

18. By the SPEAKER: Petition of 27 members of the Wisconsin State Assembly, Madison, Wis., relative to the war in Southeast Asia; to the Committee on Foreign Affairs.

19. Also, petition of the 1972 National Convention of the American Legion, relative to the House Committee on Internal Security; to the Committee on Internal Security.

# SENATE—*Tuesday, January 9, 1973*

The Senate met at 12 o'clock meridian and was called to order by the President pro tempore (Mr. EASTLAND).

### PRAYER

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

Almighty God, whose kingdom is above all earthly kingdoms and who judges all lesser sovereignties, look with pity and forgiveness upon this Nation Thou hast given us for our heritage. Forgive us for having left undone the things we ought to have done and for doing the things we ought not to have done. Deliver us from the national pride, the moral arrogance, and the self-will which obstruct the making of a world of justice, peace, and righteousness. Give us the character to be worthy of the peace for which we wearily long and earnestly strive. Grant us the wisdom, courage, and strength needful for our times.

Thankful for blessing through many generations, give us grace now to walk humbly with Thee, seeking only to love Thee with our whole heart and soul and mind and our neighbor as ourself; and to labor for the coming kingdom whose builder and maker Thou art.

In His name who taught us to pray "Thy kingdom come—Thy will be done, on earth, as it is in heaven." Amen.

## THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Saturday, January 6, 1973, be dispensed with.

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

## ATTENDANCE OF SENATORS

Hon. WARREN G. MAGNUSON, a Senator from the State of Washington, and Hon. JOSEPH R. BIDEN, JR., a Senator from the State of Delaware, attended the session of the Senate today.

## ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the conclusion of the two orders for the recognition of Senators today, there be a period for the transaction of routine morning business for not to exceed 30 minutes with statements therein limited to 3 minutes.

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

## ORDER FOR ADJOURNMENT TO THURSDAY, JANUARY, 11, 1973

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, when the Senate completes its business today, it stand in adjournment until 12 o'clock meridian on Thursday next.

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

## AUTHORIZATION FOR MAJORITY AND MINORITY LEADERS, OR THEIR DESIGNEES, TO SPEAK FOR 5 MINUTES INSTEAD OF 3

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, during the remainder of the first session of the 93d Congress, immediately following the prayer and disposition of the reading of the Journal each day, the distinguished majority leader and the distinguished Republican leader, or their designees, each be recognized for not to exceed 5 minutes.

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

Mr. ROBERT C. BYRD. Mr. President, by way of explanation, may I say that this request has not been cleared either with the distinguished Republican leader or the distinguished majority leader. I want to make it clear that they are not requesting it, but I think that from time to time we have noted that the distinguished leaders really require more than the usual 3 minutes, and I think it only fitting that each of them should be accorded 5 minutes each—rather than 3 minutes before the Senate proceeds with special orders, morning business, and so forth.

## ORDER FOR RECOGNITION OF SENATOR MOSS ON THURSDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, on Thursday next, immediately following the recognition of the two leaders or their designees, the distinguished Senator from Utah (Mr. Moss) be recognized for not to exceed 15 minutes.

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

## MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated

to the Senate by Mr. Geisler, one of his secretaries.

## REPORT ON TRADE AGREEMENTS PROGRAM—MESSAGE FROM THE PRESIDENT

The PRESIDENT pro tempore laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on Finance.

*To the Congress of the United States:*

In accordance with Section 402(a) of the Trade Expansion Act of 1962, I transmit herewith the Sixteenth Annual Report of the President on the Trade Agreements Program. This report covers developments during the twelve months ending December 31, 1971.

That year marked an historic turning point in international economic relations. Deepening crises in the spring and summer of 1971 dramatized the obsolescence and inequity of the rules and mechanisms developed at the end of World War II. Against this background, the Administration announced in August a series of measures designed in part to prevent further damage to the United States economic position. More fundamentally, actions were taken to open the way for reforming the world trade and monetary systems through multilateral cooperation.

Concurrently with monetary consultations which led to the Smithsonian Agreements in December of 1971, the United States opened bilateral discussions with our major trading partners. These discussions yielded valuable reductions during 1972 in a number of foreign barriers to our exports. Even more significant, however, was the conclusion reached among the United States, the European Community and Japan that permanent solutions could only be found through broad-based negotiations. The result of the discussions was an agreement to work actively for the opening in 1973 of a new round of comprehensive negotiations involving all elements of trade policy.

The nations of the world now have the opportunity to open a new era of international relations characterized by negotiation rather than confrontation across the whole range of foreign policy issues.

Our key objectives in reform of the international trading system are to reduce existing tariff and nontariff barriers affecting agricultural as well as industrial products, to establish new rules for the fairer conduct of world trade, and to open new opportunities for the poorer nations to earn the foreign exchange required for their development. Such far-reaching goals can be achieved only within a framework which provides for the equitable sharing of benefits and responsibilities and which includes a safeguard system that allows time for industries adversely affected by foreign competition to adjust to shifts in trade patterns.

Proposals which will enable the United States to negotiate effectively are now under intensive study in the executive branch. In the coming months, the Administration will be working closely with members of the Congress to determine how we can best meet the challenges and seize the opportunities which lie ahead.

I am confident we will be able to establish a new international economic framework within which trade can expand on an equitable basis for all participants—contributing to peace and prosperity for all nations of the world.

RICHARD NIXON.

THE WHITE HOUSE, *January 9, 1973.*

## REPORT OF OFFICE OF ALIEN PROPERTY, DEPARTMENT OF JUSTICE—MESSAGE FROM THE PRESIDENT

The PRESIDENT pro tempore laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on the Judiciary:

*To the Congress of the United States:*

In accordance with section 6 of the Trading With the Enemy Act, I herewith transmit the annual report of the Office of Alien Property, Department of Justice, for the fiscal year ended June 30, 1971.

RICHARD NIXON.

THE WHITE HOUSE, *January 9, 1973.*

## REPORT ON COMPARABILITY FOR THE FEDERAL STATUTORY PAY SYSTEMS—MESSAGE FROM THE PRESIDENT

The PRESIDENT pro tempore laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on Post Office and Civil Service:

*To the Congress of the United States:*

In accordance with the provisions of section 5305 of title 5, United States Code, I hereby report on the comparability adjustment I have ordered for the Federal statutory pay systems in January 1973.

The American system of career civil service is based on the principle of rewarding merit. As President I have a special appreciation of the contribution that the service makes to our Nation, and I am pledged to continue striving to make it an even more effective, responsive part of our Government. One way of achieving this is to maintain a salary scale for civil servants that is just and comparable to that received by equivalent individuals in the private sector.

The adjustment I have ordered is based on recommendations submitted to me by the Director of the Office of Management and Budget and the Chairman of the Civil Service Commission, who serve jointly as my "agent" for Federal pay. Their report, which is enclosed, compares Federal salaries with average private enterprise salaries as shown in the 1972 *National Survey of Professional, Administrative, Technical, and Clerical Pay,* and recommends a 5.14 percent increase in Federal salaries in order to achieve comparability with the private sector.

The report of the Advisory Committee on Federal Pay, which I appointed under the provisions of section 5306 of title 5, is also enclosed. The Advisory Committee generally agreed with the recommendations of the Director of OMB and the Chairman of the Civil Service Commission and endorsed their plans for studies and further refinements in the pay comparison process. However, the Advisory Committee also recommended that in addition to the 5.14 percent increase, an extra pay adjustment of approximately .36 percent be granted to make up for the three-month delay of this pay adjustment that was necessitated this year by the Economic Stabilization Act Amendments of 1971. Since such an increase would result in paying Federal employees higher salaries than comparable private enterprise employees as shown by the annual Bureau of Labor Statistics Survey, I have concluded that such additional increase would be neither fair nor justifiable.

Also transmitted is a copy of an Executive order promulgating the adjustments of statutory salary rates to become effective on the first day of the first pay period beginning on or after January 1, 1973.

Concurrent with the issuance of this Executive order adjusting pay for civil servants, I have also signed an Executive order providing a pay increase of 6.99 percent in the basic pay of members of our uniformed services. This Executive order complies with section 8 of Public Law 90–207 (81 Stat. 654), which provides that whenever the rates of the General Schedule of compensation for Federal classified employees are adjusted upwards, there shall immediately be placed into effect a comparable upward adjustment in the basic pay of members of the uniformed services.

RICHARD NIXON.

THE WHITE HOUSE, *January 9, 1973.*

## PROCEDURE FOR IMMEDIATE CONSIDERATION OF BILLS

Mr. SCOTT of Pennsylvania. Mr. President, I will not use all of my time as this is simply to get on record what I have told the distinguished assistant majority leader. I have sent him a resolution from our conference stating that the conference of the minority, on yesterday, voted unanimously to request the majority, in the matter of requests for immediate consideration of bills or resolutions, to give seasonable notice, as it customarily does to the minority leadership and the ranking member of the committee or committees involved.

I say this so as to explain what is meant by "seasonable." It is my understanding that it simply means opportunity to the leadership and the ranking minority member or members to be present on the floor and engage in colloquy if it seems to be necessary.

We of the minority hope that this is acceptable to the majority leader, as we believe it will facilitate the conduct of our business.

Mr. ROBERT C. BYRD. Mr. President, I am sure that the distinguished majority leader would have no objection to going along with what seems to be

a reasonable request on the part of the distinguished Republican leader.

Mr. SCOTT of Pennsylvania. I thank the assistant majority leader.

I yield back the remainder of my time.

## ORDER OF BUSINESS

The PRESIDENT pro tempore. Under the previous order, the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.) is now recognized for not to exceed 15 minutes.

## QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum, with the time to be taken out of the time allotted to the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.).

The PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the role.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HASKELL). Without objection, it is so ordered.

## ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the remaining time allotted to the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.) be given to the distinguished majority leader at this point. I understand that about 5 minutes remain.

The PRESIDING OFFICER. That is correct.

Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished majority leader yield me 30 seconds?

Mr. MANSFIELD. I yield.

## ORDER FOR RECOGNITION OF SENATOR ABOUREZK ON THURSDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that following the remarks of the distinguished Senator from Utah (Mr. Moss) on Thursday next, the distinguished Senator from South Dakota (Mr. ABOUREZK) be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

## THE 4-B'S STORY

Mr. MANSFIELD. Mr. President, 25 years ago, a man named Bill Hainline, his wife, his son, and his daughter opened the first of the 4-B restaurants in Missoula, Mont. Since that time, they have spread throughout the State and into the Northwest and have made a reputation which has spread far and wide.

I would like at this time to ask unanimous consent that a success story about this family be printed in the RECORD, because in my opinion it offers encouragement to others who start from scratch, who are able to make a success of themselves and to achieve a distinct place in the life of a State and a region.

Therefore, Mr. President, I ask unanimous consent that the article entitled "The 4-B's Story," published in the magazine "Montana—The Rocky Mountain North," be printed in the RECORD.

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

THE 4-B'S STORY

(By Don Ingels)

It all began 25 years ago—a man, his family, and an old fashioned idea about serving food to the public.

Bill Hainline, his wife Buddy, son Bill, Jr., and daughter Barbara (the four "B's") opened the first 4-B's Restaurant at 1359 West Broadway, in Missoula, Montana. From opening day in 1947 and ever since, the 4-B's restaurants, cafeterias and Red Lion Supper Clubs have rigidly followed Bill's formula—"Quality, Cleanliness and Hospitality equal Success."

The original 4-B's quickly became the early morning social center of Missoula. So many coins were dropped into the juke box that there was almost always music in the air, and the machine's receipts were so great that the rent was covered year after year. The building was constructed of logs. The Hainline's lived upstairs, all taking their turns on the job.

The popularity of the 4-B's food, service and cleanliness prompted expansion plans. The original restaurant was remodeled; then by 1950 the 4-B's name appeared in Deer Lodge and Helena. In 1953, the Hainline's established their own wholesale supply center in order to assure quality control and service for their three restaurants. Originally, the wholesale service cut the meats and baked the pastries for all three restaurants. Today it is a modern U.S. Government inspected, highly automated meat processing plant as well as a central supply center for the entire 4-B's chain. Al Powell is the manager and Don Hege is his assistant.

By 1962, Bill Hainline was ready for a new move. He liked the idea of self-service cafeterias which would have a deluxe decor, feature old fashioned, home cooking and appeal to all age groups. This kind of food service, he determined, should be located in a busy shopping center. The first 4-B's Cafeterias were built in Missoula and Great Falls. Later, Billings and Helena welcomed them, and in 1971 the 4-B's name appeared in Bismarck, North Dakota.

Bill Hainline's next venture was a logical expansion into the supper club domain. The popular Red Lion Supper Clubs follow the Hainline formula of Quality, Cleanliness and Service amid luxurious surroundings. They are already famous for their chicken bisque soup and complimentary Rosé wine served with every meal. Complete dinners are complemented with the continental touch of fresh fruit selections. Red Lion Supper Clubs appeared first in Missoula, then Great Falls, Havre, Kalispell, and the newest, Bozeman.

How do you measure a success story? Back in 1947 the Hainline's had 10 employees. Today there are nearly 700, many of whom have ten to twenty years of continuous service. The familiar 4-B's Restaurant sign has most recently appeared in Butte, Bozeman and Havre as well as Missoula, Deer Lodge, and Helena. All across Montana, motorists see billboards saying, "You're in 4-B County!" How many new cars have been sold, or insurance policies signed, or real estate deals closed over a friendly cup of coffee under the 4-B's sign? Does the fact that Vice President Robert W. Froelich needs three IBM computers to keep track of all aspects of the 4-B's business indicate success?

No, the success of 4-B's is couched in the name. Bill Hainline, his wife, Buddy (now deceased), his son, Bill Jr., and daughter, Barbara (now married and living in Spokane) started as a closely knit team devoted to a goal of service. Today, 20 different managers of 20 different 4-B's facilities continue that pledge. They are working managers who have grown within the system, just as the original team. Men such as Everett Edeno, the Supervisor, and George Spencer, Executive Chef, have grown within the system strengthening their convictions and passing them, undiluted, to others.

What could be a more fitting 25-year anniversary occasion than the opening of a bigger, more beautiful 4-B's Restaurant at 700 West Broadway, Missoula, Montana—just a few blocks from where it all began back in 1947?

## "MAN OF THE YEAR: WALLACE"

Mr. MANSFIELD. Mr. President, I was very much intrigued by an article in the Washington Post of December 31, 1972, by David S. Broder, entitled "Man of the Year: Wallace."

The man in reference is Governor Wallace of Alabama. I believe there is a great deal of merit and much to think about in David Broder's story of this man who suffered such a loss when there was an attempted assassination against him.

I ask unanimous consent that the article by Mr. Broder be printed in the RECORD.

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

[From the Washington Post, Dec. 31, 1972]

MAN OF THE YEAR: WALLACE

(By David S. Broder)

The man of the year, says Time magazine, is that strange hybrid, a Nixinger. There are several million magazine covers showing the heads of the President of the United States and national security adviser Henry Kissinger, carved from a single slab of marble, or something, to attest that this is the official choice.

I hate to say it, but I think that even with their double nomination, the editors of Time have blown it. As the Chief Executive or First Fan himself would say, they "did the easy thing" and thereby did a disservice to history. It took no great courage to pick the men who rediscovered China, ended the arms race with Russia, announced peace in Vietnam and, in their spare time, carried Spiro Agnew to victory in 49 of the 50 states.

The gutsy choice would have been to put George Wallace on the cover, and it's a choice that could have been defended. If you want the man who best symbolizes America in the year 1972, Wallace has far better qualifications than Kissinger or Nixon.

The latter two are the preeminent insiders—perhaps the only two Americans who have known every one of the last 366 days what the hell was happening in the matters that affected our fate. But this was the year of the outsider, the year when most Americans felt shut off from access to the things they really wanted to know, to see, to influence or control.

It was the year of the gripe—of saying to hell with the bigshots who wage wars, raise taxes, pass laws, hand down court orders, blackout football games and lie to you that they're doing it for your own good. And George Wallace was the spokesman and symbol of the teed-off, frustrated, fed up American who senses that he's been made an outsider at the party he's paying for.

"Send Them a Message," Wallace said last winter when he was beginning his campaign, and if Richard Nixon said anything all year that sums up the American mood any better than that, it doesn't come to mind.

Wallace unleashed the slogan in the Florida primary and his victory there gave the Democrats a shaking from which they never recovered. Ed Muskie and Hubert Humphrey,

who embodied what was left of the old tradition of Democratic liberalism, were trounced by a force neither comprehended. Only George McGovern felt the current of national frustration Wallace had tapped and in Wisconsin he immediately reshaped his own faltering campaign to exploit it.

Ironically, Wallace himself was unclear what to do with his opportunity. Like a lot of the frustrated citizens for whom he spoke, he had not bothered to read the fine print on the papers he had been shown. He did not understand the chance he had to pick up delegates in non-primary states under the new party rules. His confidence also wavered at this crucial point, and he delayed bringing his campaign north to Wisconsin—a delay just long enough to give McGovern a crucial victory and himself only a fast-closing second. By the time he grasped the strength of the tide he was riding, Wallace was being stalked by a would-be assassin. Before his major victories came, he had been cut down by gunfire.

As a victim of violence, too, he symbolizes America—a nation crippled by the weapons it cannot seem to stop using on itself or on others. Our national delusion is that release from frustration—be it an unsuccessful international negotiation or a thwarted personal desire—can be found by squeezing the trigger or pressing the bomb-release button. And Wallace is a symbol of the price we pay for that delusion.

Crippled, he left the campaign—left it to McGovern and to Nixon. Of the two, the President proved far more skillful in evoking the fears and playing to the frustrations Wallace had identified—the war, big government, school busing, job quotas, higher taxes, tolerance of politically or personally deviant behavior. And, thanks to Wallace's absence, Mr. Nixon won a handsome victory, running up his biggest margins, by no coincidence, in the states Wallace had carried as an independent candidate in 1968.

So, it is Nixon who will ride in triumph down Pennsylvania Avenue on Jan. 20, back to the White House, where he and Henry Kissinger will continue to read the cables and make the decisions that shape our lives, telling us only as much as they think it wise for us to know.

And George Wallace will sit there in that wheelchair, knowing where the power is, knowing now that at one moment of history, it might have been within his grasp, had he but realized it. He will sit there, better cared for but with no more hope of complete recovery than the hundreds of thousands of other victims of violence last year in Vietnam, in Ulster, or in the gunridden society of America. He will think of what might have been, and, like most of the frustrated citizens for whom he spoke, he will know that the power to shape his own life to his own ends is one he will never regain. He began by saying, "Send them a message," and now even his own legs do not respond.

To me, he is the man of the year.

## NOT ALL SPEECHES AND CREAM

Mr. MANSFIELD. Mr. President, in the New York Times of January 5, 1973, is a news story entitled "To New Senator, Not All Speeches and Cream," by James T. Wooten. It refers to our colleague, the distinguished Senator from Colorado (Mr. HASKELL) who is now presiding over the Senate; and I ask unanimous consent that the article be printed in the RECORD.

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

TO NEW SENATOR, NOT ALL SPEECHES AND CREAM

(By James T. Wooten)

WASHINGTON, Jan. 4.—The tall, thin man was enjoying himself immensely.

The last five people he had passed in the long marble hall had nodded courteously and called him "Senator," and with each greeting, his smile had broadened.

"I like it," Floyd K. Haskell said, and he chuckled. "I'm shocked when they call me that, but I'll get over it pretty soon, I'm sure. In fact," he said, smiling a bit less than before, "that's the very least of my problems."

Like the 11 other new Senators sworn in here yesterday, the 56-year-old Colorado Democrat had discovered in his first 24 hours on the job that the Congress of the United States is not all peaches and cream and public service.

DIFFERENT LIFE STYLE

His cramped office space was being threatened by a colleague and his seniority rank was established as third from the bottom.

Moreover, the Harvard-educated tax lawyer was a virtual stranger in a city very much unlike his own, and he was trying to adjust * * * from the one he had left behind.

"But all of that was expected," he said today amid the second-day confusion of his office. "Maybe not some of the specific headaches that have come up, but the general anticipation that there would be problems was pretty common among us all."

The main headache, he said, puffing the pipe that is his constant companion, "is mechanics—you know, just getting the office ranked up." He glanced around at Suite 5239 in the New Senate Office Building, a three-room suite subdivided into five rooms and crammed with filing cases, desks, cartons and crates.

MORE CIVILIZED IN HOUSE

Ultimately, a dozen people are scheduled to work in the office. "That's if we get to keep it," cautioned Paul Talmey, the Senator's administrative assistant.

Yesterday morning, soon after members of his staff had begun moving in, members of Senator William Proxmire's staff began "nosing around," as one of Senator Haskell's secretaries put it, sizing up the suite as a possible addition to the offices of their boss's principal committee.

Should the Wisconsin Democrat decide to take over the suite, Senator Haskell and his people would be evicted and begin the task all over again.

"They're much more civilized over in the House," said Mr. Talmey. "They draw numbers and the space goes much faster and with much more order. Over here on this side, it's chaos for the new people."

FORMER REPUBLICAN

One part of the problem for the Senator and his staff was the reluctance on the part of the people who had occupied the suite before them to move out.

"This was part of Senator [Karl E.] Mundt's space," another secretary explained, referring to the aging, ailing South Dakota Republican who did not seek re-election last year. "After all, they've only known for two years that they were leaving, but they waited till the last minute to start moving."

Senator Haskell, who was assigned the last seat on the last row in the Senate, is a former state legislator who left the Republican party in 1970 as a protest against President Nixon's Vietnam war policies, specifically his orders to invade Cambodia.

No one on his staff is expecting an invitation to the White House very soon.

When the committee appointments were announced today, Senator Haskell was not included on the Finance, the powerful, prestigious committee he had wanted.

But another of his choices, Interior, was honored. He was also named to the Committee on Aeronautical and Space Sciences and on the Select Committee on Small Business.

"REALLY FASCINATING"

"It's fascinating, really fascinating," the Senator said. He is a deep-voiced but soft-spoken man who seems enough of a stoic to survive. "It's like swimming—but not in water—swimming in some brand new element. I was very much at home as a lawyer back home, but here you have to start from scratch."

He and Mrs. Haskell have taken a month-by-month lease on an apartment within walking distance of the Capitol and plan to remain there while she deals with Washington's real estate establishment, a bright-eyed crowd in these days of bureaucratic shuffling.

The furnished quarters on G Street are adequate for them and their 20-year-old daughter, Pamela—one of three children—but as she said at a reception for her father yesterday, "It's not home, that's for sure."

The Haskells, a moderately wealthy family, left behind a comfortable home set on a sprawling site just outside Denver. "If you've ever lived in Denver you'd know the difference between it and Washington," said Miss Haskell.

"We all realize there are adjustments," Senator Haskell said today. "We're going to make them. After all, I wanted this job pretty badly, and I doubt that there's anybody in this town who's any happier to be here."

## TREATY WITH THE REPUBLIC OF COLOMBIA—REMOVAL OF INJUNCTION OF SECRECY

Mr. MANSFIELD. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the Treaty with the Republic of Colombia concerning the status of Quita Sueno, Roncador, and Serrana, signed at Bogotá on September 8, 1972—Executive A, 93d Congress, first session—transmitted to the Senate today by the President of the United States, and that the treaty with accompanying papers be referred to the Committee on Foreign Relations and ordered to be printed, and that the President's message be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The message from the President is as follows:

*To the Senate of the United States:*

I am transmitting for the Senate's advice and consent to ratification the Treaty between the Government of the United States of America and the Government of the Republic of Colombia, concerning the Status of Quita Sueno, Roncador and Serrana, signed at Bogotá on September 8, 1972.

Under the Treaty the United States renounces all claims to sovereignty over three uninhabited outcroppings of coral reefs in the Caribbean—Quita Sueno, Roncador and Serrana.

The Treaty assures that the fishing rights of each Government's nationals and vessels in the waters adjacent to Quita Sueno will be free from interference by the other Government or by its nationals or vessels. Colombia also agrees to guarantee to United States nationals and vessels a continuation of fishing in

the waters adjacent to Roncador and Serrana, subject to reasonable conservation measures applied on a nondiscriminatory basis.

The express purpose of the Treaty is to settle long-standing questions concerning the status of the three reefs, which are located between 380 and 460 miles from the Colombian mainland. In the late nineteenth century, the United States claimed them under the terms of the Guano Islands Act of 1856, following their discovery by an American citizen in 1869. In 1890 Colombia protested the extraction by United States nationals of Guano from these reefs, claiming that Colombia had inherited sovereign title to them from Spain. In 1928 the United States and Colombia recognized the existence of their dual claims and agreed to maintain a status quo situation which has existed to the present day.

Negotiation of the Treaty signed last September was a response to Colombia's desire to enhance its claim to sovereignty. The primary interest of the United States in the area is to protect the right of American nationals and vessels to continue fishing there. Another United States interest is the continued maintenance of navigational aids on the three reefs.

The Treaty meets the practical interests of both countries. It will satisfy the long-standing desire of the Colombian people that their claim to sovereignty not be encumbered by a conflicting claim by the United States. It will protect United States interests in maintaining fishing rights in the area and, through a related arrangement will provide for maintenance by Colombia of the navigational aids there in accordance with international regulations. The enclosed report of the Department of State more fully describes the provisions of the Treaty and its related arrangements.

This Treaty demonstrates once again the desire and willingness of the United States to settle, in a spirit of understanding and good will, differences which may exist in our relations with other countries particularly with our Latin American neighbors. I urge that the Senate act favorably on the Treaty in the near future.

RICHARD NIXON.

THE WHITE HOUSE, *January 9, 1973.*

## BIRTHDAY WISHES TO THE PRESIDENT OF THE UNITED STATES

Mr. SCOTT of Pennsylvania. Mr. President, I take this time to note that today is the birthday of the President of the United States. We wish for him success in his aims to bring about a more peaceful world, and we hope that good will may prevail through his efforts and through the efforts of Congress. I am sure it is the wish and the mood of the American people that the way to peace be found and our hopes go with him in this enterprise.

## TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the transaction of routine morning business for a period of not to exceed 30 minutes, with each Senator to be recognized for a period not to exceed 3 minutes.

## ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I send two unanimous-consent requests to the desk and ask for their immediate consideration.

## COMMITTEE MEMBERSHIP

The PRESIDING OFFICER. The first unanimous-consent request of the Senator from Montana will be read.

The assistant legislative clerk read the unanimous-consent request as follows:

Mr. President, I make the following unanimous consent request:

(1) that in addition to the committee memberships to which a Senator may be entitled under paragraph 6 of Rule XXV of the Standing Rules of the Senate, a Senator may serve during the 93d Congress as a member of any joint committee, if the Senate members of that committee may be selected only from among members of one or more of the standing committees named in paragraph 2 or 3 of that rule and specified in the provision of law relating to the selection of membership to such joint committee; and

(2) that a Senator, who on January 2, 1971, was a member of more than one committee of the classes described in the second sentence of paragraph 6(a) of Rule XXV of the Standing Rules of the Senate, may be assigned during the 93d Congress to other committees included within those classes, except that no Senator may serve on a number of committees of these classes greater than the numbers of such committees on which he was serving on such date.

The PRESIDING OFFICER. Without objection, the unanimous-consent request is agreed to.

The next unanimous-consent request will be read.

The assistant legislative clerk read the unanimous-consent request as follows:

Mr. President, I ask unanimous consent that the paragraph of Senate Resolution 12, agreed to January 4, 1973, relating to the majority party membership of the Committee on Government Operations, read as follows:

"Committee on Government Operations: Mr. Ervin (Chairman), Mr. McClellan, Mr. Jackson, Mr. Muskie, Mr. Ribicoff, Mr. Metcalf, Mr. Allen, Mr. Chiles, Mr. Nunn, Mr. Huddleston."

This request is made in order to correct an error in listing Senators according to their seniority on the Committee.

The PRESIDING OFFICER. Without objection, the unanimous consent request is agreed to.

Mr. MANSFIELD. Mr. President, to explain that, we had two of the Senators reversed in the positions in which they should have been. This unanimous consent corrects it.

I thank the distinguished Senator from Arizona for yielding.

## ORDER OF BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senator from Arizona is recognized.

## THE ENERGY CRISIS

Mr. FANNIN. Mr. President, great progress has been made in America in the past half-century.

We are better educated and the opportunities to acquire an education are more universally available.

Our economic system is more responsive to consumer demands and we enjoy a more equitable distribution of goods and services.

The scientific discoveries of the past 50 years are so numerous it would take months just to catalog them.

We are a vocal, literate people, enjoying instant communication and ultimate mobility.

Many reasons can be advanced to explain what has taken place in the past 50 years, but I want to suggest that the principal reason why we are recognized as the most advanced country by other nations in the world, is that more than any other group of people we have succeeded in substituting mechanical energy for animal energy.

Imagine for a moment what today's world would be if we were suddenly deprived of energy. Without electrical energy there would be:

No radio;
No television;
No air conditioning;
No modern lighting;
No elevators in our skyscrapers.

Without fossil fuels there would be no central heating;

No rapid transportation;
No petrochemicals.

In fact, without such energy as we have today we would be reduced to a loincloth, woodburning civilization.

Without energy most of us could not have come to this session today. The highly efficient distribution system which provides our food, our clothing, our entertainment, and our recreation would be impossible.

Most of us have seen the phrase "energy crisis." Unfortunately, because the shoe has not pinched our feet yet, we have declined to become emotionally or intellectually involved with the problem.

Mr. President, the immediacy and urgency of the energy crisis is demonstrated by an article in today's Arizona Republic. The news story reveals that there may be a statewide moratorium on the extension of gas lines to new homes and businesses in Arizona. There also is to be a curtailment of the gas supply to current industrial users for the next several days. I ask unanimous consent to have this article inserted in the RECORD.

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

MORATORIUM ON NEW GAS LINES EXPECTED

A statewide moratorium on extending gas lines to new homes and businesses loomed yesterday.

Citing a natural gas shortage, Arizona Public Service Co. the State Corporation Commission to approve a 90-day halt to APS customer hook-ups involving construction of gas facilities.

APS also said yesterday that it had been asked by El Paso Natural Gas Co. to curtail all industrial users of natural gas, beginning at 7 a.m. today. El Paso Natural Gas supplies

APS. The curtailment could continue for two or three days, El Paso said.

The reason for the curtailment is severe cold weather in the Midwest, South and the entire southwestern areas served by El Paso, the company said.

The commission scheduled the APS request for public hearing at 9 a.m. Jan. 22 and Commission Chairman Al Faron said other natural gas distributors will be asked to show why the proposed moratorium should not apply to them in view of the supply problem cited by APS.

Pending the commission's hearing and decision, APS has stopped accepting any new requests for gas service involving construction of facilities, said Keith Turley, executive vice president of the utility.

But the firm will honor its existing contracts to extend gas service to property developers, an APS spokesman added.

APS said its gas supplier, El Paso, faces "an immediate gas shortage which will increase in severity for at least the next several years."

Under an interim Federal Power Commission order binding upon El Paso until October 1973, or until a permanent order is issued, APS is unable to get additional natural gas from the source, Turley added.

Hence, APS does not want to promise gas service to new customers and have them invest in gas appliances that might prove useless in future years, a company spokesman said.

APS said that protecting existing customers comes first and that customers wanting gas turned on at an existing matter can get it.

An APS official said the company would use its requested 90-day moratorium to see if the natural gas shortage can be alleviated with propane.

APS also needs the time to calculate exactly how many customers can be served with the natural gas reaching the 150 points where the firm takes delivery from El Paso to serve most major southern Arizona towns, the APS official added.

Within the 90 days, APS would develop permanent guidelines for accepting or rejecting new gas service applications. Turley indicated.

Asked about claims in some quarters that talk of a worsening gas shortage is calculated to drive up gas prices, Corporation Commission Chairman Faron said the Jan. 22 hearing will go into the extent of the shortage.

Mr. FANNIN. Mr. President, this is happening all over the Nation.

As a member of the Committee on Interior and Insular Affairs I have benefited from participation in a national fuels and energy study which the committee has been conducting pursuant to Senate Resolution 45.

We have been working in conjunction with the Committee on Public Works and Commerce and the representatives of the Joint Committee on Atomic Energy.

During the 92d Congress, as a part of our studies we held 31 days of hearings on 18 different energy-related topics.

These hearings focused on a broad range of subject matter, including the structure of the Federal Government for energy policy decisionmaking—the Outer Continental Shelf—Federal leasing policy for energy resources—natural gas policy—deep water ports and super tankers—coal gasification—oil shale—geothermal steam—trends in exploration and development of oil and gas—and Federal policy for energy-related research and development.

I have been pleased to be able to participate in this effort. To date it has been evenhanded and nonpartisan. As we conclude it we must maintain the same objectivity and fair mindedness.

Energy is too important to the national interest to be treated otherwise.

As we wind up our energy study the focus is shifting from planning to action

What I mean to suggest here at the beginning of the 93d Congress is this is the time to accelerate positive action to meet our energy needs. To support such action we must have citizen awareness of the magnitude of that threat which confronts us.

At least six factors contribute to our energy crisis.

These are: first, escalating demands, particularly for oil and natural gas and electricity; second, the cost-price relalationships of producing energy; third, environmental constraints—both those which are reasonable and those which are purely emotional; fourth, inefficient uses of our present fuel; fifth, national security implications; and sixth, largely unfounded objections to the development of nuclear energy.

NATURAL GAS

Natural gas is our cleanest fuel. Present demand exceeds supply. Projected demands for natural gas in 1985 have been estimated at 107 billion cubic feet a day. Some forecasters have been predicting, however, that by 1985 the supply will be limited to 60 billion cubic feet, which leaves a deficit of 47 billion cubic feet a day.

Part of the explanation for this projected deficit can be found in the cost-price relationship. According to the U.S. Bureau of Mines, in 1970 the cost of finding an average thousand cubic feet of natural gas was 24 cents. But the average price due to Federal Power Commission regulation was only 18 cents a thousand cubic feet.

Thus, it was costing the industry 6 cents more a thousand cubic feet to find new gas than the regulated selling price. With this kind of negative incentive the exploration rate for new gas has seriously declined. Yet the regulated low price has strongly encouraged demand.

Recently, the Federal Power Commission removed some of the restrictions from the price of gas, which we hope will begin to encourage new exploration, but the effect of this regulatory change in actually producing needed supplies may not be felt for several years.

At the present time we are importing annually almost 1 trillion cubic feet of gas from Canada. Alaska's North Slope can produce over an additional trillion cubic feet per year by 1980.

Some U.S. industry representatives, however, have been negotiating with the Soviets regarding the purchase of about $30 billion worth of Russian gas over the next 25-year period.

Anyone acquainted, even casually, with the international tensions of the past 50 years must recognize that whenever we import substantial amounts of essential fuels from a foreign country we are placing ourselves at the mercy of the continuance of that supply.

We must recognize the national security implications, not to mention the balance-of-payments problems presented by foreign dependency for a growing part of our gas supplies. Adding to the difficulty is the fact that importing gas, which has to be liquified in order to transport, will cost U.S. consumers about three times the price of domestically produced gas.

PETROLEUM

And speaking of national security and balance-of-payments implications, nowhere is this problem more apparent than with petroleum.

Economists are predicting that by 1985 the United States will be over 50 percent dependent upon foreign sources of oil.

Mr. President, most of the imports will be coming from the Middle East and North Africa.

All of the major oil exporting countries belong to a tough-minded producers cartel—the Organization of Petroleum-Exporting Countries, or OPEC for short. Some of its members—Libya, Algeria, and Iraq—have already begun to nationalize the oil companies operating in their territory. They say to the oil companies, "What was yours yesterday is ours today." And they simply expropriate the assets. Others have used slightly less drastic measures such as substantially raising prices.

OPEC has successfully demanded a 51-percent equity participation in the oil companies by 1983 beginning with a 25-percent equity participation this year.

The OPEC countries control over 75 percent of the known oil reserves in the free world. With a seller's monopoly, they have the power to command much.

Most of these nations are Arab—fiercely anti-Israel—and one country, Libya, has threatened to cut off oil supplies to the United States unless we change our policies toward Israel.

King Fasial of Saudi-Arabia, however, has opposed using oil as a political tool. But the stability of present Middle Eastern governments is another question.

The Soviet Union, which is self-sufficient in oil, encourages the Arab countries to continue nationalizing U.S. oil companies in order to curb what they call capitalistic imperialism.

Assuming that oil would continue to flow at the rate the international market can absorb, some economists predict that the growing U.S. dependence on foreign oil will by 1985 result in an annual balance-of-payments deficits of $25 billion.

Our demands for oil are skyrocketing.

It is forecast to leap from a little over 16 million barrels a day in 1972 to over 30 million barrels a day in 1985. And more than half of this supply under present conditions would have to be imported.

Domestic oil is hard to find. In the 1930's the oil industry found 275 barrels of oil for each foot of exploratory drilling. In recent years the figure has fallen to 35 barrels.

Drilling deeper costs more.

The social demand for clean fuels has been escalating. Following the oil spill off Santa Barbara a few years ago, environmental litigators went to work to

oppose offshore operations of oil companies.

Opposition redoubled as the result of two additional offshore mishaps in the Gulf of Mexico. A Federal Court ordered the Interior Department to resubmit its environmental impact statement after expanding the discussion of alternatives to include foreign sources. The lease sale was then canceled.

Later realizing that the gulf contains large quantities of much needed oil and clean-burning gas, the litigants bringing the earlier action decided not to try to stop the recently held sale in offshore Louisiana.

Yet strong environmental resistance to conducting offshore lease sales on the Atlantic seaboard continues to develop. The east coast is where offshore oil and gas are needed most inasmuch as this fuel import-dependent area is quite vulnerable to potential disruptions of foreign energy supplies.

In order to lessen dependence on foreign oil, the construction of the trans-Alaska pipeline has been proposed. It would carry oil from the North Slope to Valdez, to be transported from there by tanker to the lower 48 States.

The North Slope of Alaska represents the largest domestic discovery made in recent years, which is estimated at nearly 10 billion barrels. But this oil must stay in the ground until the means of transporting it is agreed upon and constructed.

In the meantime, foreign oil continues to flow into U.S. ports. Moving the oil in small tankers costs more and the industry wants to carry it in supertankers to keep costs down.

The president of Shell Oil Co. has estimated that by 1985 we will need 300 supertankers on the high seas constantly to transport the oil America must have. But the United States does not have a single port capable of accommodating these supertankers.

The environmental impact on energy uses can also be felt at the other end.

Automobile emission standards, designed to help clean up our Nation's polluted air, have resulted in automotive engine design which burns from 5 to 15 percent more fuel than the preemission standard models did.

Notwithstanding the added fuel needs due to the emission standards, the automobile combustion is very inefficient. It has been estimated that only 5 to 20 percent of the gasoline burned is converted into mechanical energy which turns the wheels.

ELECTRICITY

For the residential, commercial, and industrial consumer electricity is one of the most convenient forms of energy.

In the beginning electricity was used primarily for lighting, but today it is the energy source which controls the temperature inside our homes, protects our food from spoiling, drives the air fan in our gas or oil furnace if we have one, and makes possible television and radio.

The demand for electricity in the United States has been growing at a rate of 7 percent per year—faster than the energy industry at large and faster than new powerplants are being constructed. The electrical share of the total energy sector is expected to grow from 20 percent in 1960 to 41 percent in 1990. But will this growth become a reality?

No longer can the electrical utilities find ample gas as a boiler fuel. In some parts of the country petroleum for boiler fuel is also in short supply. Air pollution control regulations are severely restricting the use of coal and certain high sulfur oils. In parts of the Nation this past year we have had power blackouts and unless we move to correct this situation, we can expect a repetition of this kind of disaster.

Utility companies must plan today for what is going to be required 10 years from now. It takes from 4 to 7 years to get a new conventional generating plant into commercial operation.

I would like to take my State of Arizona as an example. In Arizona we have been extremely fortunate. Our major suppliers—Arizona Public Service, the Salt River Project, the Tuscon Gas & Electric Co.—have planned ahead to meet the increasing demands for electricity.

These utilities, together with the Department of the Interior, are spending almost $800 million on the construction of the Navajo generating station at Page, Ariz. Two hundred million dollars of this cost is for antipollution devices.

APS is spending in excess of $200 million to construct two 250,000 kw. generators at the Cholla plantsite. And the Tucson Gas & Electric will receive a total of 330,000 kilowatt units from the San Juan generating station in northwest New Mexico.

In order to keep pace with the power demands of Arizona these three utilities must spend approximately $1.6 billion for capital construction during the next 5 years.

To help us understand what a tremendous capital outlay this is, let me point out that the total gross utility plant of these three companies at the end of 1971 was $1.4 billion.

In the next 5 years these companies must spend more new money than the present total gross value of their existing facilities.

COAL

And now I want to talk about coal.

We have enough coal to last several hundred years. Coal is the only primary fuel which presents absolutely no national security or balance-of-payments problems.

The U.S. Geological Survey estimates that two hundred billion tons of coal are recoverable under current technological and economic conditions, and yet we are mining less coal today than we did in 1947.

Coal is the ideal boiler fuel for electrical generation in the next decade. It is available, it is economically feasible, and the utilization of coal would provide needed employment for people in both the Eastern and Western States.

Why then is it that we are not moving rapidly forward to utilize this available natural resource? The problem is air pollution.

The coal beds of the Southwest can also provide our desperately needed natural gas through coal gasification process. But we are dragging our feet.

I propose that the Federal Government immediately increase its funding for research and development. Coal gasification and stack gas cleaning research in particular need to be expanded considerably. In fiscal year 1973 the Interior Department is spending only about $36.5 million on coal gasification research and EPA is spending only about $17 million on development of sulfur oxide control technology, including research on flue gas treatment. I believe that these amounts are inadequate and that spending for these programs alone should be doubled or tripled.

Additionally, at the Federal level we need to reorganize the many separate and ineffectively coordinated agencies dealing with energy policies and programs.

I am not suggesting the Government should engage in the business of supplying energy. What I am trying to underscore is that a multiplicity of present agencies, dealing with various aspects of the energy problem from the Federal Power Commission to the Bureau of Indian Affairs, have created an intolerable maze of redtape.

In the next decade our energy demands will continue to grow and to meet these expanding needs we must find means to use coal more effectively and cleanly. Certainly the technology which has permitted us to send men to the moon and bring them home can find a way to control the objectionable offstack gases and to gasify coal before burning.

Until now too much of this burden or research has been placed upon the generators of electricity, and to date they have done a commendable job.

I wish that all of you could go to the Four Corners plant and visually inspect the improvements which have been achieved through the installation of the wet scrubbers at a cost of $25 million, paid for by Arizona Public Service. But this is only the first of a whole new generation of equipment, which we can anticipate will permit the utilization of coal and allow us to remove all of the gases and all of the fly ash which has caused great concern to our environmentally sensitive citizens.

NUCLEAR

Nuclear power for generating electricity must be developed. But a series of events has prevented satisfactory progress. Of the 35 nuclear plants originally scheduled for operation during the period of 1970 to 1972, only nine will be in commercial operation by the end of this year.

Nuclear power is safe, dependable, and can be made available at a price within the reach of all consumers.

CONSERVATION

In any discussion of the energy crisis, we must also realize the need to conserve resources. We can conserve the 20 percent of our energy presently used for heating by better insulating buildings and by developing more efficient burners. The 25 percent of our energy which is used for transportation can be stretched through better mass transit and more efficient engines.

SUMMARY

These challenges, along with the challenge of developing our energy resources

to the fullest, can be accomplished. It is essential that we have a positive, optimistic approach to the energy crisis. This is no time for technological retreat.

Reports indicate we have potentially recoverable oil reserves sufficient to meet the present demands for 65 years. But we must explore and prove the reserves now.

Potentially recoverable gas reserves are sufficient to meet present demands for 50 years. Here again we must prove those reserves and make them deliverable.

Coal reserves are equivalent to nearly 300 years supply, but we must develop new technology to utilize this coal and protect the environment.

Uranium reserves sufficient to meet our present total electric power needs for 25 years are available, but we must proceed to build nuclear generating capacity.

And recoverable shale oil reserves are believed sufficient to meet our oil needs at present demand levels for about 35 years after our natural oil reserves are exhausted, but we must develop efficient methods of extracting the oil from shale.

We have the natural resources and we have the engineering talent.

What we must have now is the dedication, the understanding and the will to get the job done.

## THE LEGISLATIVE BUDGET—DOWNGRADING OF ARMS CONTROL AND DISARMAMENT AGENCY

Mr. PROXMIRE. Mr. President, I agree with President Nixon that we should hold down expenditures. However, I believe that he is not holding them down enough. I think that they should be held down to $245 billion. There should be ways of discriminating and deciding what to hold down and where.

This is why I think the proposed one-third cut in the Arms Control and Disarmament Agency is tragic. The $6 million budget apparently allotted for the Agency in fiscal year 1974 is about one-third the price of one F–14 airplane. Is this all the President is willing to pay for arms control?

### NEW NEGOTIATING POLICY

The President's new negotiating stance is taking form. Apparently he is going to deemphasize the role of the Arms Control and Disarmament Agency—ACDA—the only voice for arms control in the executive department, and allow the Pentagon to run the show.

The resignation of the widely esteemed Director of ACDA, Gerard C. Smith, is further evidence that the military has gained the upper hand in the executive department.

The negotiating replacement for Mr. Smith, U. Alexis Johnson, will not assume the directorship of the Arms Control Agency, thereby completely cutting that Agency out of its role in the delicate negotiations with the Soviet Union. This is an appalling turn of events.

If the proposed budgetary action is taken, it could mean the end of the Arms Control and Disarmament Agency as an independent voice in Government.

I intend to fight in the Senate to see that the Arms Control and Disarmament Agency is not stripped of its funding or its obligation to provide sound advice in arms control matters.

Mr. President, I ask unanimous consent that an article from the New York Times of January 9 dealing with the lack of progress at SALT II be printed in the RECORD at this point.

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

### LITTLE PROGRESS REPORTED IN UNITED STATES-SOVIET ARMS TALKS

(By Bernard Gwertzman)

WASHINGTON, January 8—Well-placed Administration officials said today that the United Sttaes and the Soviet Union had failed to make any significant progress in their latest round of talks on the limitation of strategic arms.

The officials, in separate interviews, provided the first details about the renewed talks on arms limitation, which took place in Geneva from Nov. 21 to Dec. 21.

The talks are scheduled to resume in Geneva on Feb. 27, with U. Alexis Johnson, who has been Undersecretary of State for Political Affairs, replacing Gerard C. Smith as the chief American negotiator. Mr. Johnson's nomination to the new job was confirmed by the White House today.

### OFFENSIVE ARMS DISCUSSED

The round of talks that ended in December marked the opening of the second phase of the arms-limitation discussions. They were devoted primarily to the quest for a comprehensive treaty putting limits on all offensive strategic weapons.

The first round of the talks was completed in Moscow last May with a comprehensive treaty on defensive strategic weapons and a five-year interim accord putting certain limits on land-based and submarine-launched offensive missiles. The two sides agreed to seek a more comprehensive agreement on offensive weapons in the second phase.

In the Geneva round, one high Administration official said, both sides took "extreme" positions, as expected, and the talks ended without narrowing of known differences.

Another official said he doubted that any breakthrough would occur until President Nixon met with Leonid I. Brezhnev, the Soviet Communist party leader, later this year.

According to the officials, the chief differences fell in the following areas:

The Americans made it clear that they were interested in an agreement that would end the Soviet Union's numerical advantage in land-based and submarine-launched missiles, and that would also include the strategic bombers of both sides. The bombers were not included in the five-year interim accord.

The Soviet Union agreed that the treaty on offensive weapons should be comprehensive, but insisted "in very strong terms," according to one Administration official, that the treaty also cover the 700 American tactical aircraft based in Europe and on carriers that can take nuclear weapons to the Soviet Union.

The United States, as it did in the Moscow discussions, said the tactical aircraft, known in arms-control terminology as forward-based systems, should not be included in talks limiting "offensive strategic weapons."

Both sides discussed the need to include in the accord multiple warheads, in which the United States has a technological lead, but the United States said some kind of outside inspection system must be provided to monitor what are known as multiple independently targeted re-entry vehicles, or MIRV's.

The Soviet Union said that any effective on-site inspection system would require the presence of foreign nationals on their territory and the Russians repeated their opposition to such a system, which they have traditionally regarded as a potential espionage threat.

The Administration officials said that the differences in approach did not surprise them, and they presumed that Moscow was not surprised either. One official said, "We need to feel our way with the Russians."

The officials said that the main stumbling block to an effective agreement on offensive weapons remained the Soviet insistence on including in the package the tactical aircraft that can carry nuclear weapons.

The United States has asserted that those aircraft serve primarily to defend Western Europe against attack and any reduction in their numbers should be matched by a cut the Soviet Union's intermediate-range missiles aimed at Western Europe.

The Russians, however, have said that they regarded any weapon as "strategic" if it could deliver a nuclear blow to the other side. Thus, in their view, the American tactical aircraft should be included because they can hit the Soviet Union, but the Soviet intermediate-range missiles should not because they cannot reach the United States.

The Soviet Union and the United States have agreed not to publicize the details of their negotiations. The information reported here was gathered independently, through a series of interviews with various officials, all of whom sought anonymity.

So far, the White House has not given much high-level attention to the second phase of the arms-limitation talks, one official said. He explained that President Nixon and his chief foreign policy adviser, Henry A. Kissinger, were "preoccupied" with the Vietnam talks.

Moreover, the arms negotiators knew that Mr. Smith was to be replaced by Mr. Johnson. Thus, one official said, there was a tendency to put off any major recommendations until Mr. Johnson had taken charge.

It has not been disclosed whether the other members of the American delegation to the arms talks will be changed, but one official said he doubted it.

### AGREEMENT ON MECHANICS

At the Geneva round, the two sides did agree on the mechanics for setting up a standing committee to discuss violations of the accords already agreed upon.

Mr. JAVITS. Mr. President, I would like to join the Senator from Wisconsin in the remarks he just made about the Arms Control Agency. I will join him in that effort. I consider it my duty as a member of the Foreign Relations Committee to do just that.

Mr. PROXMIRE. Mr. President, I thank the Senator from New York. There is no other Senator whose support I would rather have in this matter. I should be supporting him. He has been foremost in the fight for the Arms Control Agency.

## SENATE RESOLUTION 13—SUBMISSION OF A RESOLUTION RELATING TO ESTABLISHMENT OF SPECIAL AD HOC COMMITTEE TO STUDY QUESTIONS RELATED TO SECRET AND CONFIDENTIAL GOVERNMENT DOCUMENTS

Mr. JAVITS. Mr. President, in a little while I shall propose a resolution and ask for its immediate consideration. The resolution is on behalf of myself, Mr. BROOKE, Mr. CHILES, Mr. CHURCH, Mr. CRANSTON, Mr. HATFIELD, Mr. HUGHES, Mr. MATHIAS, Mr. PASTORE, Mr. RANDOLPH, and Mr. STEVENSON.

Mr. President, this is a bipartisan resolution. It would appoint a new 10-member committee, five from the majority, with the majority leader as chairman of the committee, and five from the minority, with the minority leader as the cochairman. The committee would report to us by June 30, 1973, as to what we should do about all matters related to the secrecy, confidentiality, and classification of Government documents.

Mr. President, this committee would in no way impinge upon the jurisdiction of any of the other committees. Their work would go on in this area. I refer to committees such as the Judiciary and Government Operations Committees. The resolution is only intended to get an overview and a recommendation as to what the Senate should do about this and related matters of general policy.

This resolution was passed in the same form in August of 1972 as Senate Resolution 299. In October of 1972, 10 Senators were appointed, with Mr. MANSFIELD as chairman, Mr. PASTORE, Mr. HUGHES, Mr. CRANSTON, and Mr. GRAVEL as majority members, and on the Republican side, Mr. SCOTT of Pennsylvania as cochairman, Mr. HATFIELD, Mr. HRUSKA, and Mr. COOK as minority members.

Because of our move toward adjournment at the time, the committee did not have a chance to organize, and it expired on January 2, 1973.

This resolution would extend the life of the committee to June 30 of this year. I believe it would give us time to study questions related to secret and confidential Government documents.

I have cleared the resolution with the majority and minority leaders. I have discussed it with the Senator from Nebraska (Mr. HRUSKA), who took a particular interest in the matter. And I hope that we can now go forward to do this work which was started when we looked into the so-called Gravel situation.

Mr. GRIFFIN. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. GRIFFIN. Mr. President, could the Senator from New York tell me whether the matter of the reporting date was cleared with and approved by the Senator from Nebraska (Mr. HRUSKA).

Mr. JAVITS. That was discussed with him and he had no objection.

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

The PRESIDING OFFICER. The clerk will report the resolution.

The assistant legislative clerk read as follows:

S. RES. 13

Resolution to establish a special ad hoc committee to study questions related to secret and confidential Government documents

*Resolved*, That there is hereby established a special ad hoc committee of the Senate to be composed of ten members, five from the majority and five from the minority. The majority leader shall be the chairman and the minority leader the cochairman. Of the remaining eight members, four will be appointed by the majority leader and four by the minority leader. Any member appointed under the provisions of this resolution shall be exempt from the provisions of the Reorganization Act relating to limitations on committee service.

The committee shall conduct a study and report its findings and recommendations to the Senate, by June 30, 1973, on all questions relating to the secrecy, confidentiality, and classification of Government documents committed to the Senate, or any Member thereof, and propose guidelines with respect thereto; and, the laws and rules relating to secrecy, confidentiality, and classification of Government documents and the authority therefor.

The PRESIDING OFFICER. The question is an agreeing to the unanimous-consent request of the Senator from New York.

Without objection, the Senate proceeded to consider the resolution (S. Res. 13), and it was agreed to.

---

## CONFIDENTIALITY OF GOVERNMENT DOCUMENTS

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

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

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

PREFACE

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

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

J. W. FULBRIGHT, *Chairman*.

I. INTRODUCTION

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

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

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

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

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

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

Many of the proposals relating to the classification problem aim at cutting down the amount of classified information or making

---

Footnotes at end of article.

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

II. THE ORIGIN AND LEGAL BASIS OF PRESENT CLASSIFICATION PROCEDURES

*A. Origin*

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

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

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

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

* * * * *

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

* * * * *

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

In a 1935 revision the term "Restricted" was introduced as a fourth category, to be used when a document contained information regarding research work on the design, test, production, or use of a unit of military equipment or a component thereof which was to be kept secret. It also emerged in 1935 that documents on projects with restricted status were to be marked:

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

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

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

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

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

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

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

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

*B. Legal basis*

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

1. Constitutional Provisions

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

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

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

Among the provisions of Article I of the Constitution which might be cited as giving Congress powers to legislate in this field would be the following: Section 1, "All legislative powers herein granted shall be vested in a Congress of the United States . . .;" Section 8, "The Congress shall have power to . . . provide for the common defense and general welfare of the United States; . . . to

Footnotes at end of article.

make rules for the government and regulation of the land and naval forces; . . . and to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

2. "Housekeeping" Act Prior to 1958 Amendment

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

3. Espionage Laws

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

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

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

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

The second provision mentioned, section 798, does refer to classified information, thus acknowledging its existence. However, it provides penalties only for actions relating to communications intelligence and cryptography, specifying four specific categories of classified information: (1) concerning the nature or preparation of codes; (2) concerning the apparatus used for cryptographic or communication intelligence purposes; (3) concerning the communication intelligence activities; or (4) obtained by the process of communication intelligence from the foreign government, with knowledge that it was so obtained. Moreover, this section which was added by Public Law 248 of October 31, 1951, makes it clear that its objective is to prevent the use of classified information relating to communication intelligence activities in a manner prejudicial to the safety of the United States, and not to prevent congressional access to it. Sec. 798(c) states:

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

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

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

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

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

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

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

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

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

4. National Security Act

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

"The most significant legislation, which set into motion the current document classification program, was enacted in 1947, when the Congress passed the National Security Act in order to provide an adequate and comprehensive program designed to protect the future security of our country. To accomplish this avowed purpose the act provided for the creation of a National Security Council within the executive branch subject to Presidential direction. Its job is to consider and to make appropriate recommendations to the President. Within the

Footnotes at end of article.

framework of this program, the Interdepartmental Committee on Internal Security (ICIS) came into being, and the activity of this committee was responsible for the issuance in 1951 of Executive Order 10290, which established the original document classification program. Thus it would appear that a document classification program is within the scope of the activities sought to be coordinated by the National Security Act of 1947, and that the issuance of an appropriate Executive order establishing such a program is consistent with the policy of the act." [25]

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

The Commission on Government Security contended that the National Security Act "set into motion" the current classification program; that the classification program "is within the scope of the activities sought to be coordinated by the National Security Act of 1947"; and that "the issuance of an appropriate Executive order establishing such a program is consistent with the policy of the act." [26] It did not contend that the National Security Act actually authorized the system.

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

5. Internal Security Act

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

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

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

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

"It shall be unlawful for any officer or employee of the United States or of any department or agency thereof, or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, to communicate in any manner or by any means, to any other person whom such officer or employee knows or has reason to believe to be an agent or representative of any foreign government or an officer or member of any Communist organization as defined in paragraph (5) of section 782 of this title, any information of a kind which shall have been classified by the President (or by the head of any such department, agency, or corporation with the approval of the President) as affecting the security of the United States, knowing or having reason to know that such information has been so classified, unless such officer or employee shall have been specifically authorized by the President, or by the head of the department, agency, or corporation by which this officer or employee is employed, to make such disclosure of such information." [29]

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

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

6. Atomic Energy Act

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

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

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

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

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

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

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

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

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

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

7. Freedom of Information Act Amending the Administrative Procedure Act

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

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

Footnotes at end of article.

provision that contemplated and assumed a system of security classification.

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

(f) Limitation of Exemptions—

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

8. Legislation on Foreign Relations

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

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

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

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

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

Section 45(b) states:

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

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

Through legislation such as this Congress has on occasion given recognition to the classification system although it has made no overall attempt to regulate it. To this extent it has sanctioned keeping information secret in the interest of national defense or foreign policy. At the same time, however, on a number of occasions (particularly the "disclosure of classified information" legislation relating to cryptographic intelligence passed in 1951, and the Freedom of Information Act of 1966), Congress has made clear its intention that provisions to keep security information secret were not to constitute authority to withhold information from Congress.

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

*A. Handling defense information*

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

1. Categories of Classified Material

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

These three categories are defined as follows:

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

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

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

2. Authority to Classify

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

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

3. Guidelines for Classification

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

4. Declassification and Downgrading

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

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

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

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

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

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

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

5. Limitations on Dissemination

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

Knowledge or possession of classified defense information shall be permitted only to persons whose official duties require such

Footnotes at end of article.

access in the interest of promoting national defense and only if they have been determined to be trustworthy."

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

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

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

7. Historical Research

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

8. Review

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

*B. Information provided to contractors and industry*

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

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

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

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

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

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

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

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

*C. Foreign policy information*

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

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

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

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

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

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

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

*D. Handling of controlled information by executive branch*

1. Limiting the Distribution of Sensitive Material

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

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

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

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

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

2. Administratively Controlled Information

Some types of information are controlled not in the interests of national defense but for administrative reasons. Thus, personnel records, medical reports, commercial and investigative data are considered privileged information and treated as confidential. In the Defense Department this type of material is

Footnotes at end of article.

marked "For Official Use Only"; in State it is designated "Limited Official Use." In either case, although the material is "non-classified," i.e., not related to the national defense, it is protected from indiscriminate disclosure.

*E. Compliance with regulations*

1. Overprotection

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

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

* * * * *

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

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

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

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

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

According to a recent editorial in the Christian Science Monitor:

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

Footnotes at end of article.

The purpose of the classifying officer in this case was no doubt to avoid any potential embarrassment to the United States. There are many occasions when the avoidance of embarrassment is more closely related to activities potentially affecting the national defense. One example, related to military security demands that certain aspects of weapons capabilities be classified, follows:

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

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

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

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

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

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

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

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

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

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

2. Leaks by Government Officials

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

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

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

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

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

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

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

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

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

"Legislators request and obtain classified information from the executive branch of the government for the purpose of helping them draft legislation. They do not always use it

for that purpose. They often use it to defeat legislation they don't like, and they often try to enlist the assistance of the press in their private battle. . . ." [58]

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

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

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

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

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

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

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

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

Obviously, the Secretary of Defense is concerned with the state of the country's defenses and the overall threat as he sees it Secretary Laird assumed office at a time when the U.S.S.R. was overtaking the United States in the number of land-based ICBM's deployed, and he foresaw the prospect of their catching up also in the number of antisubmarine-based launchers in a few years. Still another cause for concern was the megatonnage of the biggest Soviet ICBM, the SS–9, and the possibility that it would be fitted with multiple war heads capable of destroying the U.S. Minuteman missile in a preemptive strike. These and other considerations led him to make public a great deal more information about Soviet strategic programs, actual and anticipated than had either of his predecessors.

As Ashworth remarked:

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

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

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

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

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

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

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

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

Footnotes at end of article.

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

### *A. The congressional need to know*

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

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

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

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

### *B. Access of Congress to classified information*

The classification of information does not automatically mean that Members of Congress cannot obtain it. Long ago, before the classification system, President Washington recognized the right of the Senate to access

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

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

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

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

"In the rare case where there is a question as to whether particular information may be furnished to a Member or Committee of Congress, even in confidence, it will normally be possible to satisfy the request through some alternate means acceptable to both the requester and the DOD. In the event that an alternate reply is not acceptable, no final refusal to furnish such information to a Member of Congress shall be made, except with the express approval of the Head of the DOD Component concerned, or of the Secretary of Defense. The Assistant to the Secretary of Defense (Legislative Affairs) shall be informed of any such submissions to the Head of a DOD Component or to the Secretary of Defense. A final refusal to a Committee of Congress may be made only with the concurrence of the Assistant to the Secretary of Defense (Legislative Affairs), who shall be responsible for insuring compliance with all procedural requirements imposed by the President or pursuant to his direction." [65]

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

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

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

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

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

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

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

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

The Subcommittee on Security Agreements and Commitments Abroad stated in its final report of December 21, 1969:

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

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

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

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

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

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

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

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

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

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

Footnotes at end of article.

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

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

*C. Congress, classified information, and public opinion*

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

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

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

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

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

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

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

To meet this problem, Congress has played an important part in getting information declassified to make it available to all. A process of negotiation has been used by congressional committees to make testimony given in secret or in closed hearings by executive branch representatives a matter of public record. The transcripts of the hearings given in executive session are submitted to the executive agency involved for review. The agency marks those portions of the testimony which, in its opinion, should remain classified. When the agency gives reasons for classifying a certain portion other than security, the committee attempts to persuade the officials to declassify more information. Walter Pincus, former chief consultant to the Symington Subcommittee on United States Security Agreements and Commitments Abroad of the Senate Foreign Relations Committee, discovered that "the declassification of some security information and almost all of the political material—at any level of classification, even top secret—was negotiable." [77] In one particular hearing, Pincus relates, the Administration deleted 60 to 70 percent for reasons of "security." After negotiation with the subcommittee, almost 80 percent of the hearings were made public. Pincus concluded that the amounts of "secret" material was sharply reduced, not for any reason other than it probably did not deserve to be classified in the first instance.[78]

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

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

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

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

V. PROPOSALS FOR CHANGING THE CLASSIFICATION SYSTEM

*A. Past efforts*

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

1. Coolidge Committee

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

2. Commission on Government Security

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

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

3. Special Government Information Subcommittee Proposals

The House Committee on Government Operations has recommended various changes

Footnotes at end of article.

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

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

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

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

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

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

*B. Current study in executive branch*

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

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

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

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

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

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

*C. Other recent proposals*

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

1. Temporary Study Commission or Committee

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

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

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

2. An Independent Review Board or Commission

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

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

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

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

Footnotes at end of article.

dations to make the security programs of various agencies uniform, consistent, and effective.[93]

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

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

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

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

3. Permanent Joint Congressional Committee on Security Information

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

Several bills have been introduced in the 92nd Congress calling for the establishment of a Joint Congressional Committee on Classified Information. These are quite similar in the functions they provide for the committee but vary in the size and composition of the membership. The joint committee would be responsible for continuing investigation of practices and methods used in the executive branch to classify information for defense and security purposes, and of suspected misuse of such classification for purposes contrary to the public welfare. Upon findings of such misuse the committee could initiate such action as it deemed necessary to prohibit such misuse, sometimes including making any classified information which it considered ought not to be classified available to the public. The joint committee would also be responsible for assuring that classified information was available to Congress unless it agreed otherwise.

As an example of the way the joint committee might be composed, H.J. Res. 745, introduced by Congressman Addabbo on June 24, 1972, and in the 91st Congress as H.J. Res. 1131, would create a committee of 18 members to be composed of the chairman and ranking minority members of the House and Senate Armed Services Committee, the Foreign Relations and Foreign Affairs Committees, the Defense Appropriations Committees of the House and Senate, three other members of the Senate appointed by the President of the Senate, and three other members of the House appointed by the Speaker of the House.

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

4. Legislation Revising Classification Procedures

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

Senator Mansfield has said:

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

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

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

5. Legislation Providing for Automatic Declassification

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

6. Study by Qualified Historians

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

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

7. Congressional Vigilance

Whether or not new laws relating to classified information are enacted or new machinery for classification and declassification is established, there may be a considerable amount that can be done to minimize the impediments which classified information places on the work of Congress in the field of foreign affairs. For example, reporting pro-

Footnotes at end of article.

visions in legislation can require that certain information be transmitted to Congress. Resolutions can be passed requesting the release of specified information if enough members believe that the information should be released. New legislation can be reviewed to ascertain whether it sanctions classification of information by such means as requiring clearances for access to certain information, and if so whether the legislation also provides safeguards against withholding information from Congress. Congressional review and oversight activities can be intensified over the areas and agencies in which large amounts of classified information render inadequate the amount of information available to the general public.

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

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

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

If any event, the many proposals which have been introduced in Congress indicate that a new attitude toward classified information is developing. A greater awareness of the hazards in Executive Branch secrecy is leading to a greater vigilance on the part of Congress against misuse of the classification system. A new determination by Congress to play its full constitutional role in the making of foreign policy may be bringing an end to an era in which persons without access to classified information were often made to feel that they could not debate foreign policy issues on a par with officials in the Executive Branch.

FOOTNOTES

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

[2] U. S. Congress, Senate, Executive Journal, vol. I, p. 55 (Aug. 4, 1970).

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

[4] Ibid.

[5] Ibid., p. 7.

[6] Ibid., p. 16.

[7] Ibid., p. 21.

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

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

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

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

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

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

[14] Ibid., p. 2010.

[15] Ibid.

[16] Ibid., p. 2011.

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

[18] Ibid.

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

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

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

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

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

[24] Ibid., p. 24.

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

[26] Ibid.

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

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

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

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

[31] "Security Agreements and Commitments Abroad Hearings," op. cit., p. 2003.

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

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

[34] Ibid., p. 43.

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

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

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

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

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

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

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

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

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

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

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

[46] Ibid., sec. 901.4.

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

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

[49] Ibid.

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

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

[52] Ibid.

[53] Florence, op. cit.

[54] Harvard Law Review, Cambridge, Mass., February 1970, p. 923.

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

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

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

[58] Ibid.

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

[60] Ibid, p. 6.

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

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

[63] Uniform State/AID/USIA Regulations, sec. 948.1.

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

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

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

[67] U.S. Congress, House, Committee on Government Operations, 20th report, "Executive Branch Practices in Withholding Information From Congressional Committees," 86th Cong., 2d sess., H. Rept. No. 2207, Aug. 30, 1960, p. 6.

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

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

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

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

[72] Ibid., p. 63.

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

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

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

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

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

[78] Ibid.

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

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

[81] Pincus, op. cit.

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

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

[84] Ibid., p. 181.

[85] Ibid., p. 183–184.

[86] U.S. Congress, House, Committee on Government Operations, 25th report, "Safeguarding Official Information in the Interests of the Defense of the United States (The Status of Executive Order 10501)." H. Rept. 2456, 87th Cong., 2d sess., Washington, Government Printing Office, 1962, p. 13.

[87] Ibid.

[88] Ibid.

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

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

[91] Remarks by Senator Edmund S. Muskie, Garden City, N.Y., June 20, 1971, Congressional Record, vol. 117, pt. 20, p. 25946.

[92] Ibid., p. 25947.

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

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

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

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

[97] Congressional Record, vol. 117, pt. 17, p. 22271.

[98] Congressional Record, vol. 117, pt. 17, p. 22509.

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

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

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

[102] U.S. Congress, House, Committee on Government Operations, 25th Report, "Executive Branch Practices in Withholding Information From Congressional Committees," 86th Cong., 2d sess., H. Rept. No. 2267, Aug. 30, 1960, p. 14.

## Basic Documents on Security Classification of Information for National Security Purposes

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

### Executive Order 10501—Safeguarding Official Information

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Physically Connected Documents. The classification of a file or group of physically

connected documents shall be at least as high as that of the most highly classified document therein. Documents separated from the file or group shall be handled in accordance with their individual defense classification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Storage of Secret and Confidential Information and Material. As a minimum, Secret and Confidential defense information and material may be stored in a manner authorized for Top Secret information and material, or in steel file cabinets equipped with steel lockbar and changeable three-combination dial-type padlock or in other storage facilities which afford equal protection and which are authorized by the head of the department or agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Transmitting Secret Information and Material. Secret information and material shall be transmitted within and between the forty-eight contiguous States and the District of Columbia, or wholly within Alaska, Hawaii, the Commonwealth of Puerto Rico, or a United States possession, by one of the means established for Top Secret information and material, by authorized courier, by United States registered mail, or by the use of protective services provided by commercial carriers, air or surface, under such conditions as may be prescribed by the head of the department or agency concerned. Secret information and material may be transmitted outside those areas by one of the means established for Top Secret information and material, by commanders or masters of vessels of United States registry, or by the United States registered mail through Army, Navy, Air Force, or United States civil postal facilities; provided that the information or mate-

rial does not at any time pass out of United States Government control and does not pass through a foreign postal system. For the purposes of this section registered mail in the custody of a transporting agency of the United States Post Office is considered within United States Government control unless the transporting agent is foreign controlled or operated. Secret information and material may, however, be transmitted between United States Government or Canadian Government installations, or both, in the forty-eight contiguous States, the District of Columbia, Alaska, and Canada by United States and Canadian registered mail with registered mail receipt. Secret information and material may also be transmitted over communications circuits in accordance with regulations promulgated for such purpose by the Secretary of Defense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXECUTIVE ORDER NO. 10865—SAFEGUARDING CLASSIFIED INFORMATION WITHIN INDUSTRY

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

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

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

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

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

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

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

(b) Under agreement between the Department of Defense and any other department or agency of the United States, including, but not limited to, those refererd to in subsection (c) of this section, regulations pre-

scribed by the Secretary of Defense under subsection (a) of this section may be extended to apply to protect releases (1) of classified information to or within United States industry that relate to bidding on, or the negotiation, award, performance, or termination of, contracts with such other department or agency, and (2) other releases of classified information to or within industry which such other department or agency has responsibility for safeguarding.

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

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

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

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

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

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

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

(5) An opportunity to be represented by counsel.

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

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

SEC. 4. (a) An applicant shall be afforded an opportunity to cross-examine persons who have made oral or written statements adverse to the applicant relating to controverted issue except that any such statement may be received and considered without affording such opportunity in the circumstances described in either of the following paragraphs:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 9. Nothing contained in this order shall be deemed to limit or affect the responsibility and powers of the head of a department to deny or revoke access to a specific classification category if the security of the nation so requires. Such authority may not be delegated and may be exercised only when the head of a department

determines that the procedures prescribed in sections 3, 4, and 5 cannot be invoked consistently with the national security and such determination shall be conclusive.

DWIGHT D. EISENHOWER.

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

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

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

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

Agency for International Development

Office of Emergency Planning

Peace Corps

President's Foreign Intelligence Advisory Board

United States Arms Control and Disarmament Agency

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

Federal Maritime Commission

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

JOHN F. KENNEDY.

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

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

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

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

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

JOHN F. KENNEDY.

NOTES OF DECISIONS

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

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

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

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

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

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

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

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

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

ESPIONAGE ACT

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

Chapter 37.—ESPIONAGE AND CENSORSHIP

Sec.



*Amendments*

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

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

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

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

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

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

§ 792. Harboring or concealing persons.

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

*Legislative History*

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

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

Mandatory punishment provision was rephrased in the alternative.

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

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

*Canal Zone*

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

*Cross references*

Federal retirement benefits, forfeiture upon conviction of offenses described under this section, see section 2282 of Title 5, Executive

[1] So enacted.

Departments and Government Officers and Employees.

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

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

Jurisdiction of offenses, see section 3241 of this title.

Misprision of felony, see section 4 of this title.

§ 793. Gathering, transmitting or losing defense information.

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

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

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

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

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

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

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

(g) If two or more persons conspire to violate any of the foregoing provisions of this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy. (June 25, 1948, ch. 645, 62 Stat. 786; Sept. 23, 1950, ch. 1024, title I, § 18, 64 Stat. 1003.)

*Legislative History*

*Reviser's Note.*—Based on sections 31 and 36 of title 50, U.S.C. 1940 ed., War and National Defense (June 15, 1917, ch. 30, title I, §§ 1, 6, 40 Stat. 217, 219; Mar. 28, 1940, ch. 72, § 1, 64 Stat. 79).

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

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

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

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

*Amendments*

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

*Indictment for Violating This Section; Limitation Period*

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

*Canal Zone*

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

*Cross References*

Activities affecting armed forces—

Generally, see section 2387 of this title.

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

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

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

Jurisdiction of offenses, see section 3241 of this title.

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

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

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

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

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

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

*Legislative History*

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

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

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

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

Minor changes were made in phraseology.

*Amendments*

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

*Temporary extension of war period*

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

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

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

*Indictment for violating this section; limitation period*

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

*Canal Zone*

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

*Cross references*

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

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

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

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

Jurisdiction of offenses, see section 3241 of this title.

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

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

§ 795. Photographing and sketching defense installations.

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

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

*Legislative History*

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

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

Minor changes were made in phraseology.

*Canal Zone*

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

Ex. Ord. No. 10104. Definitions of Vital Military and Naval Installations and Equipment

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

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

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

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

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

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

(d) Any naval harbor closed to foreign vessels.

(e) Any area required for fleet purposes.

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

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

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

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

*Cross references*

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

§ 796. Use of aircraft for photographing defense installations.

Whoever uses or permits the use of an aircraft or any contrivance used, or designed for navigation or flight in the air for the purpose of making a photograph, sketch, picture, drawing, map, or graphical representation of vital military or naval installations or equipment, in violation of section 795 of this title, shall be fined not more than $1,000 or imprisoned not more than one year, or both. (June 25, 1948, ch. 645, 2 Stat. 738.)

*Legislative history*

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

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

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

Minor changes were made in phraseology.

*Canal Zone*

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

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

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

*Legislative History*

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

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

Minor changes were made in phraseology.

*Canal Zone*

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

§ 798. Disclosure of Classified Information.[2]

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

(1) concerning the nature, preparation, or use of any code, cipher, or cryptographic

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

system of the United States or any foreign government; or

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

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

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

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

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

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

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

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

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

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

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

*Canal Zone*

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

*Cross References*

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

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

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

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

The provisions of section 794 of this title, as amended and, extended by section 1 (a) (29) of the Emergency Powers Continuation Act (66 Stat. 333), as further amended by Public Law 12, Eighty-third Congress, in addition to coming into full force and effect in time of war shall remain in full force and effect until six months after the termination of the national emergency proclaimed by the President on December 16, 1950 (Proc. 2912, 3 C.F.R. 1950 Supp., p. 71), or such earlier date as may be prescribed by concurrent resolution of the Congress, and acts which would give rise to legal consequences and penalties under section 794 when performed during a state of war shall give rise to the same legal consequences and penalties when they are performed during the period above provided for. (Added Jan. 30, 1953, ch. 175 § 4, 67 Stat. 133.)

*References in Text*

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

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

*Canal Zone*

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

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

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

*Codification*

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

*Canal Zone*

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

CLASSIFYING, DECLASSIFYING OF PAPERS

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

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

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

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

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

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

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

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

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

would or could defeat the purposes of the program to which security classification would be applied.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ture military operations. Further, classification, downgrading and declassification always depend upon a judgment currently made as to the immediate and future national defense interests of the United States.

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

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

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

§ 301. Departmental regulations.

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

*Historical and revision notes*

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

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

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

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

"All laws, orders, regulations, and other actions relating to the National Military Establishment, the Department of the Army, the Navy, or the Air Force, or to any officer or activity of such establishment or such departments, shall, except to the extent inconsistent with the provisions of this Act, have the same effect as if this Act had not been enacted; but, after the effective date of this Act, and such law, order, regulation, or other action which vested functions in or otherwise related to any officer, department, or establishment, shall be deemed to have vested such function in or relate to the officer or department, executive or military, succeeding the officer, department, or establishment in which such function was vested. For purposes of this subsection the Department of Defense shall be deemed the department succeeding the National Military Establishment, and the military departments of Army, Navy, and Air Force shall be deemed the departments succeeding the Executive Departments of Army, Navy, and Air Force."

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

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

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

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

*Public Law 89–487—July 4, 1966*

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

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

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

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

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

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

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

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

of financial institutions; and (9) geological and geophysical information and data (including maps) concerning wells.

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

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

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

Approved July 4, 1966.

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

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

*Subchapter XI.—Control of information*

PRIOR PROVISIONS

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

§ 2161. Policy of Commission.

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

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

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

§ 2162. Classification and declassification of Restricted Data.

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

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

(c) Joint determination on atomic weapons; Presidential determination on disagreement. In the case of Restricted Data which the Commission and the Department of Defense jointly determine to relate primarily to the military utilization of atomic weapons, the determination that such data may be published without constituting an unreasonable risk to the common defense and security shall be made by the Commission and the Department of Defense jointly, and if the Commission and the Department of Defense do not agree, the determination shall be made by the President.

(d) Same; removal from Restricted Data category.

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

(e) Joint determination on atomic energy programs.

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

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

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

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

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

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

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

DWIGHT D. EISENHOWER.

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

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

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

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

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

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

JOHN F. KENNEDY.

§ 2163. Access to Restricted Data.

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

*Amendments*

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

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

§ 2164. International cooperation.

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

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

(2) civilian reactor development;

(3) production of special nuclear material;

(4) health and safety;

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

(6) research and development relating to the foregoing:

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

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

(1) the development of defense plans; ;

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

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

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

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

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

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

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

(d) Communication of data by other Governmental agencies. The President may authorize any agency of the United States to communicate in accordance with the terms and conditions of an agreement for cooperation arranged pursuant to subsection (a), (b), or (c) of this section, such Restricted Data as is determined to be transmissible under the agreement for cooperation involved. (Aug. 1, 1946, ch. 724, § 144, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 942, and amended July 2, 1958, Pub. L. 85–479, §§ 5–7, 72 Stat. 278).

*Amendments*

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

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

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

§ 2165. Security restrictions.

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

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

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

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

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

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

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

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

AMENDMENTS

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

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

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

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

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

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

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

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

*Cross reference*

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

§ 2166. Applicability of other laws.

(a) Sections 2161—2165 of this title shall not exclude the applicable provisions of any other laws, except that no Government

agency shall take any action under such other laws inconsistent with the provisions of those sections.

(b) The Commission shall have no power to control or restrict the dissemination of information other than as granted by this or any other law. (Aug. 1, 1946, ch. 724, § 146, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 943.)

SECURITY REGULATIONS: PHYSICAL AND PROCEDURAL

(State Department/AID/USIA: Selected excerpts—Uniform State/AID/USIA regulations.)

900—Physical and Procedural Security

(NOTE.—* indicates revision; * * indicates new material.)

901 Policy

901.1 Interests of National Defense

The interests of national defense require the preservation of the ability of the United States to protect and defend itself against all hostile or destructive action by covert or overt means, including espionage as well as military action. Therefore, certain official information *including that in the field of foreign relations* affecting the national defense must be protected against unauthorized disclosure. *(See section 911.2.)*

901.2 Safeguarding Official Information

Executive Order No. 10501 of November 5, 1953 (18 F.R. 7047), as amended (note following 50 U.S.C. 401), provides for the safeguarding of official information which requires protection in the interests of national defense. *For the types of foreign policy information which may fall within the criteria of national defense, see sections 911.2 and 911.4.*

* *901.3 Safeguarding Other Official Information

The Freedom of Information Act (5 U.S.C. 552) recognizes the necessity for the Government to withhold from public disclosure certain categories of records in addition to those containing information specified in Executive Order 10501 and other Executive Orders. These include, but are not limited to, records the disclosure of which would be a clearly unwarranted invasion of personal privacy or would violate a privileged relationship.

The absence of a security classification or an administrative control designation on a record should not be regarded as authorizing the public disclosure of information contained therein without independent consideration of the appropriateness of the disclosure. In this regard, Department and Agency policy with respect to disclosure of information under the Freedom of Information Act, or otherwise, does not alter the individual's responsibility arising from his employment relationship with the Department or Agency.* *

Source.—U.S. Department of State, Uniform State/AID/USIA security regulations, physical and procedural. [Washington, U.S. Govt. Print. Off.] 1969. 1 v. (various pagings)

901.4 Limitation

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

901.5 Scope

These regulations prescribe the security rules for classifying, marking, reproducing, handling, transmitting, disseminating, storing, regrading, declassifying, decontrolling, and destroying official material in accordance with its relative importance. They are intended to ensure accurate and uniform classification of such information and to establish standards for its protection, as required by Executive Order 10501.

901.6 Responsibility

a. Primary. The specific responsibility for the maintenance of the security of classified or controlled information rests with each person having knowledge or physical custody thereof, *no matter how obtained.*

b. Individual. Each employee is responsible for familiarizing himself with and adhering to all security regulations.

c. Supervisory. The ultimate responsibility for safeguarding classified and administratively controlled information as prescribed in these regulations rests upon each supervisor to the same degree that he is charged with functional responsibility for his organizational unit. Supervisors may, however, delegate the performance of any or all of these functions relating to the safeguarding of materials.

d. Organizational. The Office of Security in State, USIA, and A.I.D. are responsible for physical and personnel security in their respective agencies. The Office of Communications in the Department of State is responsible for cryptographic security. For administration and enforcement, see section 990.

**e. Limitation. Responsibility for safeguarding classified and controlled information and records shall not be construed as authority to determine whether records may be withheld from the public when requests for their disclosure are made under the Freedom of Information Act (5 U.S.C. 552). Such requests must be referred in the manner described in section 943.2 for processing in accordance with applicable agency regulations. (State, 5 FAM 480; A.I.D., M.O. 820.1; USIA, 22 CFR 503.5–503.7.) **

910 Classification and Control of Information and Material

911 Authorized Classifications

911.1 Classification Categories

Classification of official information requiring protection in the interests of national defense shall be limited to one of the three authorized categories of classification, which in descending order of importance are: Top Secret, Secret, and Confidential. No other classification shall be used to identify defense information, including military information, requiring protection in the interests of national defense, except as expressly provided by statute.

911.2 Defense *and Foreign Policy* Information

The Attorney General of the United States on April 17, 1954, advised that defense classifications may be interpreted, in proper instances, to include the safeguarding of information and material developed in the course of conduct of foreign relations of the United States whenever it appears that the effect of the unauthorized disclosure of such information or material upon international relations or upon policies being pursued through diplomatic channels could result in serious damage to the Nation. The Attorney General further noted that it is a fact that there exists an interrelation between the foreign relations of the United States and the national defense of the United States, which fact is recognized in section 1 of Executive Order 10501. Illustrative examples of such information which may require classification include but are not confined to:

a. Information and material relating to cryptographic devices and systems.

b. Information pertaining to vital defense or diplomatic programs or operations.

c. Intelligence or information relating to intelligence operations which will assist the United States to be better prepared to defend itself against attack or to conduct foreign relations.

d. Information pertaining to national stockpiles, requirements for strategic materials, critical products, technological development, or testing activities vital to national defense.

e. Investigative reports which contain information relating to subversive activities affecting the internal security of the United States.

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

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

911.3 Classification of Defense Information

911.3–1 Top Secret

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

911.3–2 Secret

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

911.3–3 Confidential

Except as may be expressly provided by statute, the use of the classification Confidential shall be authorized, by an appropriate official, only for defense information or material the unauthorized disclosure of which could be prejudicial to the conduct of United States foreign relations or the defense interests of the Nation.

911.3–4 Unclassified

Normally, unclassified material should not be marked or stamped "Unclassified" unless it is essential to convey to its recipient that it has been examined specifically for the need of a defense classification or control designation and has been determined not to require such classification or control. However, preprinted forms such as telegrams, which make provision for an assigned classification, shall include the term "Unclassified" if the information contained the text is neither classified nor administratively controlled. * Envelopes containing unclassified information to be sent by diplomatic pouch must be marked or stamped "Unclassified" on both sides. (See section 956.5b.) *

911.4 Authorized Administrative Control Designation

911.4–1 Limited Official Use

The administrative control designation Limited Official Use is authorized to identify * non-classified information which requires physical protection comparable to that given "Confidential" material in order to safeguard it* from unauthorized access. Matters which should be administratively controlled include information received through privileged

sources certain personnel, medical, investigative *commercial, and financial* records; specific references to contents of diplomatic pouches; and other similar material.

**Documents which routinely would be made available to the public upon request pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552) should not be administratively controlled. See State, 5 FAM 480; A.I.D., M.O. 320.1; USIA, M.O.A. III 526.**

911.5 Restricted Data

a. "Restricted Data" is a term used in connection with atomic energy matters. Section 11r of the Atomic Energy Act of 1954 defines Restricted Data as follows:

"The term 'Restricted Data' means all data concerning:

"(1) Design, manufacture, or utilization of atomic weapons;

"(2) The production of special nuclear material; or

"(3) The use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data Category."

b. Restricted Data shall be classified Top Secret, Secret, or Confidential. Before any person may be permitted to have access to Restricted Data, he must have a "Q" clearance from, or the special permission of, the Atomic Energy Commission. Nothing in these regulations shall be construed as superseding any requirements of the Atomic Energy Act of 1954. Restricted Data shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act of 1954 and the regulations of the Atomic Energy Commission.

*c. A cover sheet, JF–42, Restricted Data, bearing the appropriate defense classification top and bottom, shall be used to cover each copy of each document marked "Restricted Data." (See Appendix V (p. 18.))*

911.6 Limitations

No other security classification or administrative control designation shall be used on documents originating in the Department, USIA, and A.I.D. without the specific approval of the appropriate Office of Security.

912 Principles of Classification and Control

912.1 Assigning a Classification or Control Designation

a. The originator of a document is responsible for the original assignment of its classification or control designation. Documents or materials shall be classified or controlled according to their own content and not necessarily according to their relationship to other documents. Each document or item of material shall be assigned the lowest classification or control designation consistent with the proper protection of the information in it. *Documents or material containing references to classified material which do not themselves reveal classified information are not to be classified. (See sections 912.2 and 912.3.)*

b. The practice of assigning to a document a classification or control designation exceeding the degree of protection required may appear to be a simple, innocuous means of providing extra protection in the interests of security. To the contrary, overclassification and unnecessary control of documents result in the establishment of cumbersome administrative procedures and seriously hamper operations, especially abroad, even to the extent of defeating the purposes for which the documents are intended. Overclassification and unnecessary control cause delays in handling and may preclude the accessibility of documents to personnel who should be working with them.

912.2 Physically Connected Documents

The classification or administrative control designation assigned to a file or group of physically connected documents must be at least as high as that of the most highly classified or controlled document in it. Documents separated from the file are handled in accordance with their individual classification or control designation. A cover sheet, JF–18, Classified or Controller File, may be placed on the front of each file or group of physically connected documents, marked to indicate the highest classication or control designation it covers, or the front and back of the folder must be stamped or marked according to the highest classification or designation of the combined information contained in it.

912.3 Transmitting Communication

A transmitting communication shall bear a classification or control designation at least as high as the most highly classified or controlled document it covers. The transmitting communication also must be marked with its appropriate group marking. (See section 966.1).

912.4 Foreign Government Classified Information

Information furnished by a foreign government or by an international organization with restrictions on its dissemination must be protected according to the instructions specified by the foreign government or international organization furnishing the information.

912.5 Multiple Classifications or Control Designations

A document must bear a classification or administrative control designation at least as high as that of its most highly classified or controlled component. Pages, paragraphs, sections, or components may bear different classifications or a control designation, but the document shall bear only one over-all classification or control designation. When separate portions of a document are marked with different classifications or control designations, each portion bearing a single classification or control designation (including "Unclassified") shall be set off with the phrases:

"Begin ———" (Insert classification or designation.)

"End ———" (Insert classification or designation.)

940 Safeguarding and Dissemination of Classified and Administratively Controlled Information

941 Principles Governing the Safeguarding of Classified and Controlled Information

941.1 Authorization for Access and Use

Classified or administratively controlled information must be given only to those persons who require and are authorized to receive the information in the course of the performance of their official duties; who have an appropriate and current security clearance; and who have adequate facilities for protection of documents or other tangible matters.

Special and specifically authorized clearances are required for access to information identified as Restricted Data, Cosmic, SEATO, CENTO, Cryptographic, Intelligence, Office of Security, and other information given special protection by law or regulation.

941.3 Need-to-Know Doctrine

A person is not entitled to receive classified or administratively controlled information solely by virtue of his official position or by virtue of having been granted security clearance. The "need-to-know" doctrine shall be enforced at all times in the interest of good security.

941.3 In Conversation

The discussion of classified or administratively controlled information must not be held in the presence or hearing of persons who are not authorized to have knowledge thereof.

Classified of administratively controlled information must not be discussed in telephone conversations.

941.4 Control of Dissemination

The dissemination of classified or administratively controlled information must be carefully controlled at all times. This includes maintenance of adequate records of transmission and receipt and the imposition of strict limitations on the number of copies prepared or reproduced.

941.5 Restriction on Personal Use

Classified or administratively controlled information must not be used for personal interests of any employee and must not be entered in personal diaries or other nonoffical records.

941.6 Access by Foreign National Employees

Classified information must not be dictated to, typed or otherwise prepared by local employees. This restriction must not be circumvented by the assignment or classifications after a local employee has prepared a particular document. However, when warranted, information collected by local employees and prepared in report form by such employees may receive classification protection by appending such reports to classified transmittal reports prepared by U.S. employees.

Except as noted in section 941.6–, 941–6–2, and 941.6–3, classified or administratively controlled information must not be made available to, or left in the custody of, Foreign Service local employees or alien employees resident in the United States; nor will such employees be permitted to attend meetings where classified or administratively controlled information is discussed.

941.6–1 When local employees obtain information from privileged sources or otherwise develop information warranting an administrative control designation or must be given access to administratively controlled information or material originated elsewhere in order to perform their official duties, they may be authorized limited access to such information provided that:

(a) The local employee's U.S. citizen supervisor requests authority to permit access to administratively controlled material in writing, specifying the reasons the employee must have access in order to perform his official duties and describing the type of material, reports, etc., contemplated for access.

(b) The regional security officer concurs in the request, issues a memorandum of limited access, and recommends approval to the principal officer of the post concerned.

(c) The principal officer must authorize the limited access in writing. Such authority shall be reviewed by each succeeding principal officer, and he shall affirm or discontinue such authority as he deems appropriate.

(d) The employee's access is not construed to mean blanket authority to receive administratively controlled information or material. Select local employees authorized to have access to administratively controlled material shall be permitted access only to that type of material specified in paragraph (a) of this section on a strict "need-to-know" basis.

941.6–2 When it is essential that information contained in classified documents (excluding Top Secret) be disseminated to the broadcasting service alien personnel resident in the United States, in order for them to perform their duties, such information must be given verbally. They are prohibited access to Top Secret information and are not authorized visual access to classified documents or material.

** 941.6–3 Foreign Service local employees in very limited cases, may be permitted access to Confidential information coming from or to be delivered to the government of the host country. The internal procedures for granting access are the same as those provided in the foregoing parts of section 941.6 with regard to local employee access to administratively controlled material. Almost all instances of use of this authority will involve necessary translations. Access to such

material should be allowed only after consideration of the host government's reaction to the particular Foreign Service local employee's having such access. When and where feasible, the local employee should be given such access only after a responsible agency of the host country has indicated it has no objection to the specific local employee's access to the information.**

941.7 Access by Binational Center Grantees

Since appointments of Binational Center grantees are made only upon completion of a full field investigation, classified information that applies to their assignments and is necessary in the performance of their duties may be made available to them. Under no circumstances will classified documents be given to them for retention at a Binational Center. (This authority does not apply to those U.S. citizens appointed locally whose salaries are paid from Binational Center operating funds.)

942 Report of Missing or Comprised Documents

Any employee who discovers that a classified or administratively controlled document is missing must make a prompt report to the Office of Security or regional security officer via his unit or post security officer. In the case of a known or suspected compromise of a Top Secret document or cryptographic material, the report must be made immediately. Telegraphic or oral reports must be followed by a prompt submission** of a memorandum addressed to the Office of Security or regional security officer, which includes the following information:

a. Complete identification of the material, including, when possible, the date, subject, originator, address, serial or legend markings, classification, and type of material (i.e., telegram, memorandum, airgram, etc.).

b. Where compromise is believed to have occurred, a narrative statement detailing the circumstance which gave rise to the compromise, the unauthorized person who had or may have had access to the material, the steps taken to determine whether compromise in fact occurred and the office or post evaluation of the importance of the material compromised.

c. Where a document is lost or missing, the narrative statement should detail the movements of the material from the time it was received by the post or office, including to whom it was initially delivered; later routings; the persons having access to the material; the time, date, and circumstances under which loss was realized; and the steps taken to locate the material.**

**d. When material is either compromised or missing, identify if possible the person responsible and state the action taken with regard to the person and/or procedures to prevent a recurrence.

Where cryptographic material is involved, a report is also to be made to the Office of Communications (OC/S) using FS-507, Report of Violation of Communications Security.**

943 Official Dissemination

943.1 Distribution to Other Agencies

Classified or administratively controlled material may be sent to other Federal departments or agencies or to officials and committees of Congress or to individuals therein only through established liaison or distribution channels. An exception is permitted when a post transmits classified or administratively controlled material to an office of another U.S. Government agency within the executive branch located outside the United States.

Classified or administratively controlled material originated in another U.S. department or agency must not be communicated to a third department or agency without the consent of the originating department or agency, including material originated in State, USIA, and A.I.D. Such approval must be obtained in writing, and a record of the approval and communication must be maintained by the communicator.

943.2 Referral of Public Requests

**Requests from the public for classified records, whether made to a Department or Agency office within the United States, or to a post abroad, must be referred to the Chief, Records Services Division (State); Director, Information Staff (A.I.D.); or Assistant Director, Office of Public Information (USIA), as appropriate.

Administratively controlled and unclassified records may be released upon approval by chiefs of mission at Foreign Service posts in accordance with 5 FAM 482.2. Administratively controlled and unclassified records abroad of A.I.D. and of USIA may also be released by the A.I.D. country mission director and by the USIA country public affairs officer respectively. See M.O. 820.1 and M.O.A. III 526.

Requests for classified or for administratively controlled records which the chief of mission (for A.I.D., the mission director, or for USIA, the public affairs officer) has declined to make available on his own authority, should be submitted to the appropriate agency, by operations memorandum for State and USIA and by airgram for A.I.D., containing sufficient information to permit consideration of the request.

Classified or administratively controlled records to be made available to the public by the above-identified authorized officers in the United States and abroad must first be declassified or decontrolled in accordance with the provisions of 5 FAM 966.4.

For more detailed procedures on releasing records to the public, see the appropriate Department or Agency regulations. (State, 5 FAM 480, A.I.D., M.O. 820.1; USIA, M.O.A. III 526.)**

943.3 Clearance for Publication

**Any employee writing for publication, either in an official or private capacity, must submit his manuscript for agency clearance if the content may reasonably be interpreted as related to the current responsibilities, programs, or operations of the employee's agency or to current U.S. foreign policy, or may reasonably be expected to affect U.S. foreign relations. For detailed clearance procedures, see 3 FAM 628 and 1865, M.O. 831.1 and MOA II 120.**

943.4 Use of Official Records

The regulations governing access to official records are set forth in 5 FAM 480, M.O. 820.1, and MOA III 526. They include procedures to be followed for access to official records for purposes of historical research.

943.5 Release of Material to U.S. Citizen Personnel Outside the Executive Branch

Classified and administratively controlled material must not be released to persons who are not security cleared U.S. citizen employees of the executive branch of the U.S. Government until appropriate security checks and briefings have been completed. Release of such material or information shall be made only when consistent with security and administrative requirements. Responsibility for authorizing release is vested as follows:

*Top Secret, Secret, Confidential, and Limited Official Use Material*—The concurrence of both the director of the originating or action office and the director of the Office of Security must be obtained prior to the release of any classified or administratively controlled information. Either the originating or action office concerned with the substance of the information may decide whether it can be declassified or decontrolled and released or whether it can be released without such action. If the information to be released remains classified or administratively controlled, the Office of Security must specify the manner in which the release is to be effected including special markings, receipts, and such other safeguards as are deemed necessary to ensure that the information receives appropriate protection.

943.6 Dissemination Ordered or Requested by a Court of Law or Other Official Body

**a. Except as provided in section 943.2 any subpena, demand, or request for classified or controlled information or records from a court or law or other official body shall be handled in accordance with the regulations of the agency concerned which prescribe procedures for responding to subpenas (State 5 FAM 485; USIA, MOA III 527 and 625.6)**

b. Testimony involing classified or administratively controlled information must not be given before a court or other official body without the approval of the head of the Department or Agency concerned. An employee called upon to give such testimoney without prior authorization shall state that he is not authorized to disclose the information desired and that a written request for the specific information should be transmitted to the head of the Department or Agency concerned. Such testimony, when so approved, shall be given only under such conditions as the head of the department or agency may prescribe.

c. Reports rendered by the Federal Bureau of Investigation and other investigative agencies of the Executive branch are to be regarded as confidential. All reports, records, and files relative to the loyalty of employees or prospective employees (including reports of such investigative agencies) shall be maintained in confidence, and shall not be transmitted or disclosed except as a required in the efficient conduct of business, and then, only in accordance with the provisions * of the President's directive of March 13, 1948. (See Appendix II) *

944 Dissemination to Foreign Governments

944.1 Dissemination of Clasified Defense Information to Foreign Governments and International Organizations

For detailed instructions governing the release of classified information to foreign governments and international organizations, see 11 FAM 600.

d. In the domestic service specific approval to remove classified or administratively controlled material for overnight custody must be obtained from an office director or higher authority. At posts, specific approval must be obtained from the principal officer or officers designated by him to approve such removals.

964.3 Transporting Classified and Administratively Controlled Material Across International Borders

Classified and administratively controlled material is carried across international borders by professional diplomatic couriers. Nonprofessional diplomatic couriers are given such material for international transmission only in emergencies when the professional service will not cover the area into which the pouch must be carried or the post to which the pouch is addressed within the time that official business must be conducted. In such isolated cases, the nonprofessional diplomatic courier must be in possession of a diplomatic passport and courier letter, and his material must be enclosed in sealed diplomatic pouches until delivered to its official destination. Special procedures are in effect for U.S.-Mexican border posts.

964.4 Personal Responsibilities

The safeguarding of classified or administratively controlled material removed from official premises remains the personal responsibility of the removing officer even though all conditions of section 964 have been met.

964.5 Office Working or Reference Files

Information and working files accumulated in the course of Government employment are not personal files as denfied in section 432, M.O. 520.1, and MOA III Exhibit 610A. The transfer or removal of such working or reference files shall be in accordance with the provisions of sections 417 and 443.2, M.O. 520.1, and MOA III 512.6.

965 Storage and Access of Classified and Administratively Controlled Material by Persons not Regularly Employed

965.1 Storage

Authorized consultants and contractors engaged in work involving classified or administratively controlled material may not store classified or administratively controlled material overnight on their premises unless the Office of Security has granted approval for such storage. No classified or administratively controlled material may be made available to consultants or contractors off the official premises or transmitted to such persons off the premises except with the approval of the Office of Security.

965.2 Access

Contractors or consultants may not have access to classified administratively controlled materials until a personnel security clearance has been given or confirmed by the Office of Security. Employees are personally responsible for obtaining clearance from the Office of Security prior to release or transmitting of classified or administratively controlled material to a consultant or contractor addressee off the premises. Normally such material is sent through the Office of Security.

966 Downgrading, declassification, and decontrol

966.1 Automatic Changes

Classified and administratively controlled materia should be kept under review and be downgraded, declassified, or decontrolled as soon as conditions permit. When material is assigned a classifiaction or control designation, it must also be assigned a group marking and/or identifying notation to effect its automatic downgrading, declassification, or decontrol when the material no longer requires its original degree of protection. There are five standard group markings and identifying notations associated with the automatic downgrading and declassification of classified material and two identifying notations associated with the automatic decontrol of administratively controlled material. In atypical situations where the standard group markings and notations do not adequately describe the method or time-phase intended to accomplish the automatic downgrading procedure, the notations may be enlarged upon or amended. Group markings and identifying notations should be placed, whenever possible, two spaces above the defense classification or control designation appearing at the bottom of page one on all copies.

966.2 Classified Documents

966.2–1 Group 5 document are those which do not require a classification protection for any regulatory period of time specified for the protection of documents assigned to Groups 4 through 1. To the greatest extent possible, classified documents that can be assigned to Group 5 should be so assigned and be marked:

Group 5—(Declassified following date or conclusion of specific event, or removal of classified enclosures or attachments)

966.2–2 *Group 4 documents* are those requiring protection for a minimum number of years, at the conclusion of which they may be declassified. Group 4 documents are automatically downgraded one step each 3 years and are automatically declassified 12 years after date of origin. Such documents should be marked:

Group 4—Downgraded at 3-year intervals. Declassified 12 years after date of origin.

966.2–3 *Group 3 documents* are those which may be automatically downgraded but not automatically declassified. Such documents should be marked:

Grade 3—Downgraded at 12-year intervals, not automatically declassified.

966.2–4 *Group 2 documents* are Top Secret and Secret documents which are so extremely sensitive that in the interests of national defense they must retain their classification for an indefinite period of time. Only an official empowered to exercise original Top Secret classification authority may assign a document to Group 2. Such documents must be signed by the exempting official when his identity is not apparent from the document itself and must be marked:

Group 2—Exempted from automatic downgrading by (Signature and Title of Exempting Official).

966.2–5 *Group 1 documents* are those classified documents excluded from the automatic downgrading and declassification provisions because they contain information or material as follows:

a. Originated by foreign governments or international organizations not subject to the classification jurisdiction of the U.S. Government.

b. Provided for by statutes, such as the Atomic Energy Act.

c. Specifically excluded from these provisions by the head of the Department or Agency.

d. Requiring special handling, such as intelligence and crytography.

Group 1 documents should be marked:

Group 1—Excluded from automatic downgrading and declassification.

966.2–6 Administratively Controlled Documents

*Limited Official Use documents* will be processed in one of two categories: (1) exempted from automatic decontrol or (2) decontrolled upon the conclusion of a specific event, removal of controlled attachments, or the passage of a logical period of time. Such documents must bear an appropriate notation but no group marking and shall be identified as follows:

Exempted from automatic decontrol.

Or:

Decontrolled following (Date or conclusion of specific event, or removal of administratively controlled enclosures or attachments.)

966.3 Classified and Administratively Controlled Telegrams

Information contained in Top Secret, Secret, Confidential, and Limited Official Use telegrams is subject to automatic downgrading, declassification, and decontrol procedures to the same extent as the substantive contents of nontelegraphic documents. In order to eliminate costly transmissions, code symbols have been substituted for group markings and identifying notations which shall appear at the end of the message text as the final paragraph as follows:

GP 4 for Group 4.
GP 3 for Group 3.
GP 2 for Group 2.
GP 1 for Group 1.

Instructions for downgrading or declassifying information should be appended as the final unnumbered paragraph of the message text, when such instructions do not coincide with one of the four GP code symbols.

Since there is no GP code symbol for administratively controlled documents, the appropriate notation must be added as the final unnumbered paragraph of the message text.

SECURITY CLASSIFICATION OF OFFICIAL INFORMATION, DOD 5201.47 (DEPARTMENT OF DEFENSE); SELECTED EXCERPTS—SECURITY CLASSIFICATION OF OFFICIAL INFORMATION

References:

(a) DoD Directive 5120.33, "Classification Management Program," January 8, 1963.

(b) DoD Instruction 5120.34, "Implementation of the Classification Management Program," January 8, 1963.

(c) DoD Directive 5122.5, "Assistant Secretary of Defense (Public Affairs)," July 10, 1961.

(d) DoD Directive 5200.1, "Safeguarding Official Information in the Interests of the Defense of the United States," July 8, 1957.

(e) DoD Directive 5400.7, "Availability to the Public of DoD Information," June 23, 1967.

(f) DoD Directive 5200.10, "Downgrading and Declassification of Classified Defense Information," July 26, 1962.

(g) DoD Directive 5230.9, "Clearance of Department of Defense Public Information," December 24, 1966.

(h) OASD(M) multi-DoD memo., "DoD Instruction 5210.47, Security Classification of Official Information," January 27, 1965 (hereby cancelled).

*I. Purpose and applicability*

In accordance with references (a) and (b), this Instruction provides guidance, policies, standards, criteria and procedures for the security classification of official information under the provisions of Executive Order 10501, as amended, for uniform application throughout the Department of Defense, the components of which, in turn, through their implementation of this Instruction, shall accomplish its application to defense contractors, sub-contractors, potential contractors, and grantees. Determinations whether particular information is or is not Restricted Data are not within the scope of this Instruction.

*II. Definitions*

The definitions given below shall apply hereafter in the Department of Defense Information Security Program.

SOURCE.—U.S. Department. Security classification of official information. [Washington] 1964. 1 v. (various pagings) At head of title: Department of Defense Instruction. "Number 5210.47, Dec. 31, 1964."

*Classification:* The determination that official information requires, in the interests of national defense, a specific degree of protection against unauthorized disclosure, coupled with a designation signifying that such a determination has been made.

*Classified Information:* Official information which has been determined to require, in the interests of national defense, protection against unauthorized disclosure and which has been so designated.

*Declassification:* The determination that classified information no longer requires, in the interests of national defense, any degree of protection against unauthorized disclosure, coupled with a removal or cancellation of the classification designation.

*Document:* Any recorded information regardless of its physical form or characteristics, including, without limitation, written or printed material; data processing cards and tapes; maps; charts; photographs; negatives; moving or still films; film strips; paintings; drawings; engravings; sketches; reproductions of such things by any means or process; and sound, voice or electronic recordings in any form.

*Downgrade:* To determine that classified information requires, in the interests of national defense, a lower degree of protection against unauthorized disclosure than currently provided, coupled with a changing of the classification designation to reflect such lower degree.

*Formerly Restricted Data:* Information removed from Restricted Data category upon determination jointly by the Atomic Energy Commission and Department of Defense that such information relates primarily to the military utilization of atomic weapons and that such information can be adequately safeguarded as classified defense information. (See subparagraph VIII, D. 13, below, regarding foreign dissemination.)

*Information:* Knowledge which can be communicated by any means.

*Material:* Any document, product or substance on or in which information may be recorded or embodied.

*Official Information:* Information which is owned by, produced by or is subject to the control of the United States Government.

*Regrade:* To determine that certain classified information requires, in the interests of national defense, a higher or a lower degree of protection against unauthorized disclosure than currently provided, coupled with a changing of the classification designation to reflect such higher or lower degree.

*Research:* All effort directed toward increased knowledge of natural phenomena and environment and toward the solution of problems in all fields of science. This includes basic and applied research.

*Basic Research,* which is the type of research directed toward the increase of knowledge, the primary aim being a greater knowledge or understanding of the subject under study.

*Applied Research,* which is concerned with the practical application of knowledge, material and/or techniques directed toward a solution to an existent or anticipated military or technological requirement.

*Restricted Data:* All data (information) concerning (1) design, manufacturer or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but not to include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended, and "Formerly Restricted Data.")

*Technical Information:* Information, including scientific information, which relates to research, development, engineering, test, evaluation, production, operation, use and maintenance of munitions and other military supplies and equipment.

*Technical Intelligence:* The product resulting from the collection, evaluation, analysis and interpretation of foreign scientific and technical information which covers (1) foreign developments in basic and applied research, and in applied engineering techniques; and (2) scientific and technical characteristics, capabilities, and limitations of all foreign military systems, weapons, weapon systems and material, the research and development related thereto, and the production methods used in their manufacture.

*III. Policies*

A. Protection Essential Information

1. The Preamble, Executive Order 10501, as amended, provides in part as follows:

"Whereas the interests of national defense require the preservation of the ability of the United States to protect and defend itself against all hostile or destructive action by covert or overt means, including espionage as well as military action [,] . . . it is essential that certain official information affecting the national defense be protected uniformly against unauthorized disclosure."

2. The primary objective of the Classification Management Program is to assure that official information is classified accurately under Executive Order 10501, as amended, when in the interests of national defense it needs protection against unauthorized disclosure.

3. Consistent with the above objective, the use and application of security classification to accomplish such protection shall be limited to only that information which is truly essential to national defense because it provides the United States with:

a. A military or defense advantage over any foreign nation or group of nations; or

b. A favorable international posture; or

c. A defense posture capable of successfully resisting hostile or destructive action from within or without, overt or covert; which could be damaged, minimized or lost by the unauthorized disclosure or use of the information.

B. Informing the Public

The Department of Defense, in accordance with the policy of the United States Government, shall inform the American public of the activities of the Department of Defense to the maximum extent consistent with the best interests of national defense and security. Nothing contained herein, however, shall be construed to authorize or require the public release of official information. In this connection see reference (c).

C. Regrading and Declassification

In order to preserve the effectiveness and integrity of the classification system, assigned classifications shall be responsive at all times to the current needs of national defense. When classified information is determined in the interests of national defense to require a different level of protection than that presently assigned, or no longer to require any such protection, it shall be regraded as declassified.

D. Improper Classification

Unnecessary classification and higher than necessary classification shall be scrupulously avoided.

E. Misuse of Classification

Classification shall apply only to official information requiring protection in the interests of national defense. It may not be used for the purpose of concealing administrative error or inefficiency, to prevent personal or departmental embarrassment, to influence competition or independent initiative, or to prevent release of official information which does not require protection in the interests of national defense.

F. Safeguarding privately owned information

1. Privately owned information, in which the Government has not established a proprietary interest or over which the Government has not exercised control, in whole or in part, is not subject to classification by the private owner under the authority of this Instruction. However, a private owner, believing his information requires protection by security classification, is encouraged to provide protection on a personal basis and to contact the nearest office of the Army, Navy, or Air Force for assistance and advice.

2. Section 793(d), Title 18 United States Code provides penalties for improper disclosure of "information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation."

3. Sections 224 to 227 of the Atomic Energy Act of 1954, as amended, provided penalties for the improper obtaining, disclosure or use of Restricted Data.

G. *Safeguarding official information which is not subject to security classification*

Office information which does not qualify for security classification or has been declassified, and which pursuant to lawful authority requires protection from unauthorized disclosure or public release for reasons other than national security or defense, shall be handled in accordance with reference (c) and (g).

*IV. Classification Categories*

A. *General*

All official information which requires protection in the interests of national defense shall be classified in one of the three categories described below. Unless expressly provided by statute, no other classifications are authorized for United States classified information. Appendix A gives examples of information which may come within the various categories. Section VI. below provides specific criteria for determining whether information falls within these categories.

B. Top Secret

The highest level of classification. Top Secret, shall be applied only to that information or material the defense aspect of which is paramount, and the unauthorized disclosure of which could result in *exceptionally grave* damage to the Nation; such as, leading to a definite break in diplomatic relations affecting the defense of the United States, an armed attack against the United States or its allies, a war, or the compromise of military or defense plans, or intelligence operations, or scientific or technological developments vital to the national defense. The use of the Top Secret classification shall be severely limited to information or material which requires the utmost protection. (See Part I, Appendix A.)

C. Secret

The second highest level of classification, Secret, shall be applied only to that information or material the unauthorized disclosure of which could result in *serious damage* to the Nation; such as, by jeopardizing the international relations of the United States, endangering the effectiveness of a program or policy of vital importance to the national defense, or compromising important military or defense plans, scientific or technological developments important to national defense, or information revealing important intelligence operations. (See Part II, Appendix A).

D. Confidential

The lowest level of classification, Confidential, shall be applied only to that information or material the unauthorized disclosure of which could be *prejudicial* to the defense interests of the Nation. (See Part III, Appendix A.) The designation "Confidential-Modified Handling Authorized," which is not a separate classification category, identifies certain Confidential information pertaining to combat or combat-related operations which, because of combat or combat-related operational conditions, cannot be afforded the full protection prescribed for Confidential information. The designation C–MHA shall be applied to that Confidential information pertaining to military operations involving planning, training, operations, communications and logistical support of combat units when combat or combat-related conditions, actual or simulated, preclude the full application of the rules and procedures governing dissemination, use, transmission and safekeeping prescribed for the protection of Confidential information. The designation may be applied prior to the introduction of the information into combat areas, actual or simulated, when the information is intended for such use and dissemination, but the rules and procedures for handling the information shall not be modified until the information is so introduced. C–MHA cannot be applied to material containing Restricted Data.

E. Foreign Classified Information

1. Section 3(e), Executive Order 10501, provides as follows:

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

2. Foreign security classifications generally parallel United States classifications. A Table of Equivalents is contained in Appendix B.

3. Top Secret, Secret, and Confidential. If the foreign classification marking is in English, no additional U.S. classification marking is required, if the foreign classification marking is in a language other than English, an equivalent U.S. classification marking as shown in Appendix B will be added.

4. Restricted.* Many foreign governments, and international organizations such as, for example, NATO, CENTO, and SEATO, use a fourth security classification "Restricted" to denote a foreign requirement for security protection of a lesser degree than Confidential. Such foreign Restricted information released to the United States Government under international agreement requiring its protection, usually does not require or warrant United States security classification under Executive Order 10501. Under the agreement covering the release of information, however, certain protection is required. In the usual case, therefore, in order to satisfy this requirement, a document or other material containing foreign Restricted information shall show, or be marked additionally to show, in English, the name of the foreign government or international organization of origin and the word "Restricted," e.g., UK-Restricted; NATO-Restricted. (See Appendix B.) Any document or other material marked as aforesaid shall be protected in the manner specified in reference (d). Documents or other material on hand failing in the category which already have been marked so as to require protection as "Confidential" or "C–MHA," as they are withdrawn from the file for any purpose, shall be re-marked in accordance with this subparagraph and the previously applied marking shall be obliterated or excised. Henceforth, the provisions of this subparagraph shall apply thereto.

5. The origin of all material bearing foreign classifications, including material extracted and placed in Department of Defense documents or material, shall be clearly indicated on or in the body of the material to assure, among other things, that the information is not released to nationals of a third country without consent of the originator.

V. *Authority to classify*

A. Original Classification

1. *Original* classification is involved when—

a. An item of information is developed which intrinsically requires classification and such classification cannot reasonably be derived from a previous classification still in force involving in substance the same or closely related information; or

b. An accumulation or aggregation of items of information, regardless of the classification (or lack of classification) of the individual items, collectively requires a separate and distinct classification determination.

2. For the purpose of assuring both positive management control of classification determinations and ability to meet local operational requirements in an orderly and expeditious manner, the Assistant Secretary of Defense (Manpower) will exercise control over the granting and exercise of authority for original classification of official information. Pursuant thereto, such authority must be exercised only by those individuals who at any given time are the incumbents of those offices and positions designated in or pursuant to subparagraph 3 below and Appendix C, including the officials who are specifically designated to act in the absence of the incumbents. The following general principles are applicable:

a. Appendix C designates specifically the officials who may exercise *original* Top Secret or Secret classfication authority and who among them may make additional designations. All such additional designations shall be specific and in writing.

b. The authority to classify is personal to the holder of the authority. It shall not be exercised for him or in his name by anyone else, nor shall it be delegated for exercise by any substitute or subordinate.

* The effective date of this paragraph 4 is postponed. See paragraph XIV. B.

AUTOMATIC, TIME-PHASED DOWNGRADING AND DECLASSIFICATION OF CLASSIFIED DEFENSE INFORMATION, DOD 5200.10 (DEPARTMENT OF DEFENSE); SELECTED EXCERPTS

SOURCE.—U.S. Department of Defense. Downgrading and declassification of classified defense information [Washington, 1962] 4. 24 p. At head of title: Department of Defense Directive. "Number 5200.10, July 26, 1962."

*1. Purpose*

The purpose of this regulation is to apply the provisions of Section 4 and Section 5(a). Executive Order 10501, as amended by Executive Order 10964, 20 September 1961; and to implement the provisions of DoD Directive 5200.9 and 5200.10. It establishes a continuing system based on the passage of time for automatically downgrading, or automatically downgrading and declassifying, classified defense information originated by or under the jurisdiction of the Department of Defense (DoD), the Federal Aviation Agency (FAA), and the National Aeronautics and Space Administration (NASA). It also declassifies by category, effective January 1, 1964, certain Group–3 documents and materials originated prior to January 1, 1940, described in subparagraphs 6. a. (3), (4), (5), and (6) of this regulation. This regulation is not a guide for the assignment of a classification to information; it applies only to defense information which is assigned a classification by competent authority.

*2. Explanation of Terms*

The meanings of some terms used in this regulation are given below:

a. Declassify: To *cancel* the security classification of an item of classified material.

b. Downgrade: To assign a *lower* security classification to an item of classified material.

c. Weapon System: A general term used to describe a weapon and those components required for its operation.

*3. Scope and application*

a. DoD, FAA, and NASA Information

(1) This regulation applies to all classified information originated by or under the jurisdiction of the Department of Defense or by its contractors, or by a precedessor agency of the Department of Defense or its contractors. Specifically, this includes all classified material originated by the Office of the Secretary of Defense and Department of Defense agencies; the present and former Joint Chiefs of Staff and Joint Staff; the Department of the Army and former War Department; the Department of the Navy; the Department of the Air Force and former Army Air Forces; the United States Coast Guard when acting as a part of the Navy; joint committees or agencies comprised entirely of representatives from within the Department of Defense or its predecessor agencies; other Government agencies whose functions have been officially transferred to the Department of Defense; and contractors in the performance of contracts awarded by or on behalf of the Department of Defense, its components, or its predecessors.

(2) By agreement between the Department of Defense, the Federal Aviation Agency, and the National Aeronautics and Space Administration, this regulation also applies to all classified information originated by or under the jurisdiction of FAA and NASA. This includes all classified information originated by the Federal Aviation Agency, its components and predecessors, including the Civil Aeronautics Administration of the Department of Commerce, and the Airways Modernization Board; the National Aeronautics and Space Administration, its components and predecessors, including the National Advisory Committee for Aeronautics; joint committees, boards and agencies comprised entirely of representatives from the above agencies or from the Department of Defense, its components and predecessors; and contractors in the performance of contracts awarded by or on behalf of FAA, NASA, their components or predecessor agencies.

b. Other Departments and Agencies

By Executive Order 10964, the automatic, time-phased down-grading and declassification system applies to all classified information originated by or under the jurisdiction of all departments and agencies of the Executive Branch. However, custodians of classified material originated by or under the jurisdiction of US departments or agencies other than those described in *a* above, shall defer action with regard to such material until advised of the implementing instruction issued by the department or agency concerned. Pending that implementation, such material (other than Group–1 material defined herein) shall not be marked or assigned to a Group under this regulation; if the information is incorporated into DoD, FAA, or NASA material, an appropriate explanation shall be included in the text (for example: "Paragraph 2 contains information classified by the State Department; the automatic downgrading-declassification group cannot be determined until appropriate instructions are issued by that department").

c. Authority of Classifying Officials

(1) Nothing in this regulation shall be construed to relieve of responsibility, or to limit the authority of, those officials designated by competent authority to classify, downgrade, or declassify official defense information. Immediate action should be taken by such officials to downgrade or declassify information when it needs less protection or when it no longer requires such protection.

(2) Any DoD, FAA or NASA classified information, whether or not affected by this regulation, may be downgraded or declassified by the official who has been given that authority under pertinent regulations. Pursuant to that authority, the official who has primary functional responsibility for an item of classified information can prescribe earlier downgrading and declassifying (including assigning it to a less restrictive Group) than that provided by this regulation. However, except as authorized in paragraphs 5 and 6b he cannot assign information to a *more* restrictive Group than provided herein.

d. Material Officially Transferred

When material is transferred by or pursuant to statute or Executive Order is the classifying, downgrading, and declassifying authority for all purposes under this regulation. Official transfers result in the material becoming part of the official files or the property of the recipient (e.g., Army Air Forces material officially transferred to the newly established Department of the Air Force in 1948). Transfers merely for the purpose or storage do not constitute an official transfer of classification authority.

e. Material Not Officially Transferred

When any department or agency has in its possession any classified material which has become 5 years old, and a review of the material indicates that it should be downgraded or declassified and it appears that either (*i*) the material originated in an agency which has since become defunct and whose files and other property have not been officially transferred to another department or agency within the meaning of *d* above, or (*ii*) it is impossible for the possessing department or agency to identify the originating agency, the possessing department or agency shall have power to downgrade or declassify the material or to assign it to a downgrading-declassification Group according to this regulation. If it appears probable that another department or agency may have a

substantial interest in whether the classification of any particular information should be maintained, the possessing department or agency shall not exercise the power stated in this subparagraph, except with the consent of the other department or agency, until 30 days after it has notified such other department or agency of the nature of the material and of its intention to downgrade or declassify it. During that 30-day period, the other department or agency may, if it so desires, express its objections to downgrading or declassifying the particular material, but the power to make the ultimate decision shall reside in the possessing department or agency.

f. General Information

The effect of the automatic, time-phased downgrading and declassification system is that all classified information and material heretofore and hereafter received or originated by the Executive Branch, its components, and its contractors, is assigned to one of four groups, described in the following paragraphs. (The attachment shows in graphic form how each Group is affected by the automatic time-phased system.) Upon receipt of this regulation and without further notice, each holder of classified material originated by or under the jurisdiction of DoD, FAA, or NASA, is authorized and required to Group, mark, downgrade, or declassify, as prescribed herein, the material in his custody or possession. In addition, classified material originated by or under the jurisdiction of other Executive departments and agencies shall be Grouped, marked, downgraded, or declassified in accordance with the instructions of the originating agency, when issued.

*4. Group-1 material*

Material in this Group is completely excluded from the automatic downgrading and automatic declassification provisions of this regulation either because it has been removed from such provisions or because it contains information not subject to the classification jurisdiction of the Executive Branch of the U.S. Government.

a. *Definition.* Specifically, Group-1 comprises material:

(1) Originated by or containing classified information clearly attributed to foreign governments or their agencies, or to international organizations and groups, including the Combined Chiefs of Staff. This does not include US classified information hereafter furnished to a foreign government or international organization. the US classified information shall be Grouped and marked as otherwise prescribed herein.

(2) Concerning communications intelligence or cryptography, or their related activities.

(a) This includes information concerning or revealing the processes, techniques, technical material, operation, or scope of communications intelligence, cryptography, and cryptographic security. It also includes information concerning special cryptographic equipment, certain special communications systems designated by the department or agency concerned, and the communications portion of cover and deception plans.

(b) However, provided the material does not reveal the foregoing information, this does not include radar intelligence or electronic intelligence, or such passive measures as physical security, transmission security, and electronic security.

(3) Containing Restricted Data or Formerly Restricted Data.

(4) Containing nuclear propulsion information or information concerning the establishment, operation, and support of the US Atomic Energy Detection System, unless otherwise specified by the pertinent AEC–DOD classification guide.

(5) Containing special munition information as defined in AG Ltr AGAM-P(M)311.5, (17 Sept. 60) DCS/Ops 19 Sept 60; OPNAVINST 008190.1 series; or AFR 205–17.

(6) Information concerning standardized BW agents.

*5. Group-2 documents*

This Group is established as a means whereby authorized officials can exempt individual documents containing extremely sensitive information from both automatic downgrading and automatic declassification. This Group applies only to documents originally classified Top Secret or Secret.

*6. Group-3 material*

This Group contains certain types of information or subject matter that warrants some degree of classification for an indefinite period. There are two kinds of Group-3 material: (i) that containing the subject matter normally assigned to Group-3 according to *a* below; and (ii) documents which are individually and specifically assigned to Group-3 under the optional exemption provisions of *b* below. Group-3 documents and materials originated prior to January 1, 1940, which fall within the descriptions of subparagraphs 6. a. (3), (4), (5), or (6), without at the same time falling within the descriptions of subparagraphs 6. (a), (1), (2), or (7), are hereby declassified, effective January 1, 1964.

a. *Definition—Normal Group-3.*

The specific information or subject matter normally comprising Group-3 is as follows:

(1) Plans for an operation of war that were prepared by an organization *higher than* Army division, Navy task force, numbered Air Force, or other military command of comparable level. This includes but is not limited to:

(a) Plans for combat operations; and information concerning or revealing long-range operational concepts and the employment of forces.

(b) Plans on cover or deception, including information on operations relating thereto.

(c) Information concerning or revealing escape or evasion plans, procedures, and techniques.

(d) Planning and programming information which concerns or reveals service-wide force objectives, over-all force deployments, and complete service-wide combat unit priority listings; or which contains or reveals detailed service-wide planning or programming data.

(e) Targeting data on foreign areas, or information which would reveal strategic targeting plans.

(2) DoD and FAA intelligence and counterintelligence.

(3) Information concerning or revealing the capabilities, limitations, or vulnerabilities of a weapon, weapon system, or space system in current use or in development for future use. This is limited to information concerning significant combat capabilities.

8

#First amendment (Ch. 3, 11/15/63)

*7. Group-4 material*

a. *Definition.*

Group-4 includes all classified material which does not qualify for, or is not assigned to, one of the first three Groups.

(1) Normally, information such as logistical data, production schedules, budget and cost figures, dimensions or weights, and similar subjects shall be assigned to Group-4, even if the equipment or material to which it applies is in Group-3.

(2) Defense information classified in accordance with a topic of a joint AEC–DoD classification guide shall not be assigned to Group-4 unless such an assignment is clearly indicated under the pertinent topic in the joint guide.

(3) . . . vulnerabilities, knowledge of which could be exploited by an enemy to counter, render ineffective, neutralize, or destroy the weapon or system; or limitations which degrade the combat effectiveness of the weapon or system. However, it specifically includes:

(a) Target detecting devices for proximity VT fuses.

(b) Biological weapon system information which reveals the scientific name or designation of the agent and the non-descriptive code designation of the agent.

(c) Technical information concerning electronic countermeasure or counter-countermeasure equipment, processes, or techniques and technical data concerning infrared detection or suppression.

(d) Research and development information concerning or revealing significant combat capabilities of a future weapon or space system or subsystem. This is limited to information concerning or revealing significant new technological developments or adaptations beyond normal evolutionary improvements.

(e) Information pertaining to combat-type naval vessels which reveals structural, performance, or tactical data, such as armor and protective systems, war damage reports, damage control systems, power speed, range, propeller RPM, and maneuvering characteristics.

(4) Information which could be used by an enemy to develop target data for an attack on the United States or its allies, such as geodetic and gravimetric survey data, reductions of survey data that can be used for intercontinental datum connections or for determining the size of the earth, or the precise (in seconds of arc) coordinates of facilities that are essential elements of a weapon system or that are essential elements of a weapon system or that are essential to the conduct of a war.

(5) Technical information concerning or revealing explosive ordnance demolition techniques.

(6) Defense information (other than Group–1 material) classified according to AEC–DoD classification guides, unless otherwise specified by the pertinent guide.

(7) Material prepared by a theater headquarters, military government headquarters, military mission headquarters, or other headquarters of comparable or higher level, which concern or affect the formulation and conduct of U.S. foreign policy, and plans or programs relating to international affairs.

---

TITLE 3—THE PRESIDENT—EXECUTIVE ORDER 11652

CLASSIFICATION AND DECLASSIFICATION OF NATIONAL SECURITY INFORMATION AND MATERIAL

The interests of the United States and its citizens are best served by making information regarding the affairs of Government readily available to the public. This concept of an informed citizenry is reflected in the Freedom of Information Act and in the current public information policies of the executive branch.

Within the Federal Government there is some official information and material which because it bears directly on the effectiveness of our national defense and the conduct of our foreign relations, must be subject to some constraints for the security of our Nation and the safety of our people and our allies. To protect against actions hostile to the United States, of both an overt and covert nature, it is essential that such official information and material be given only limited dissemination.

This official information or material, referred to as classified information or material in this order, is expressly exempted from public disclosure by Section 552(b)(1) of Title 5, United States Code. Wrongful disclosure of such information or material is recognized in the Federal Criminal Code as providing a basis for prosecution.

To ensure that such information and ma-

terial is protected, but only to the extent and for such period as is necessary, this order identifies the information to be protected, prescribes classification, downgrading, declassification and safeguarding procedures to be followed, and establishes a monitoring system to ensure its effectiveness.

Now, therefore, by virtue of the authority vested in me by the Constitution and statutes of the United States, it is hereby ordered:

SECTION 1. *Security Classification Categories.* Official information or material which requires protection against unauthorized disclosure in the interest of the national defense or foreign relations of the United States (hereinafter collectively termed "national security") shall be classified in one of these categories, namely "Top Secret," "Secret," or "Confidential," depending upon the degree of its significance to national security. No other categories shall be used to identify official information or material as requiring protection in the interest of national security, except as otherwise expressly provided by statute. These classification categories are defined as follows:

(A) *"Top Secret."* "Top Secret" refers to that national security information or material which requires the highest degree of protection. The test for assigning "Top Secret" classification shall be whether its unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to the national security. Examples of "exceptionally grave damage" include armed hostilities against the United States or its allies; disruption of foreign relations vitally affecting the national security; the compromise of vital national defense plans or complex cryptologic and communications intelligence systems; the revelation of sensitive intelligence operations; and the disclosure of scientific or technological developments vital to national security. This classification shall be used with the utmost restraint.

(B) *"Secret."* "Secret" refers to that national security information or material which requires a substantial degree of protection. The test for assigning "Secret" classification shall be whether its unauthorized disclosure could reasonably be expected to cause serious damage to the national security. Examples of "serious damage" include disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security, revelation of significant military plans or intelligence operations; and compromise of significant scientific or technological developments relating to national security. The classification "Secret" shall be sparingly used.

(C) *"Confidential."* "Confidential" refers to that national security information or material which requires protection. The test for assigning "Confidential" classification shall be whether its unauthorized disclosure could reasonably be expected to cause damage to the national security.

SEC. 2. *Authority to Classify.* The authority to originally classify information or material under this order shall be restricted solely to those offices within the executive branch which are concerned with matters of national security, and shall be limited to the minimum number absolutely required for efficient administration. Except as the context may otherwise indicate, the term "Department" as used in this order shall include agency or other governmental unit.

(A) The authority to originally classify information or material under this order as "Top Secret" shall be exercised only by such officials as the President may designate in writing and by:

(1) The heads of the Departments listed below;

(2) Such of their senior principal deputies and assistants as the heads of such Departments may designate in writing; and

(3) Such heads and senior principal deputies and assistants of major elements of such Departments, as the heads of such Departments may designate in writing.

Such others in the Executive Office of the President as the President may designate in writing.

Central Intelligence Agency.
Atomic Energy Commission.
Department of State.
Department of the Treasury.
Department of Defense.
Department of the Army.
Department of the Navy.
Department of the Air Force.
United States Arms Control and Disarmament Agency.
Department of Justice.
National Aeronautics and Space Administration.
Agency for International Development.

(B) The authority to originally classify information or material under this order as "Secret" shall be exercised only by:

(1) Officials who have "Top Secret" classification authority;

(2) Such subordinates as officials with "Top Secret" classification authority under (A (1) and (2) above may designate in writing; and

(3) The heads of the following named Departments and such senior principal deputies or assistants as they may designate in writing.

Department of Transportation.
Federal Communications Commission.
Export-Import Bank of the United States.
Department of Commerce.
United States Civil Service Commission.
United States Information Agency.
General Services Administration.
Department of Health, Education, and Welfare.
Civil Aeronautics Board.
Federal Maritime Commission.
Federal Power Commission.
National Science Foundation.
Overseas Private Investment Corporation.

(C) The authority to originally classify information or material under this order as "Confidential" may be exercised by officials who have "Top Secret" or "Secret" classification authority and such officials as they may designate in writing.

(D) Any Department not referred to herein and any Department or unit established hereafter shall not have authority to originally classify information or material under this order, unless specifically authorized hereafter by an Executive order.

SEC. 3. *Authority to Downgrade and Declassify.* The authority to downgrade and declassify national security information or material shall be exercised as follows:

(A) Information or material may be downgraded or declassified by the official authorizing the original classification, by a successor in capacity or by a supervisory official of either.

(B) Downgrading and declassification authority may also be exercised by an official specifically authorized under regulations issued by the head of the Department listed in Sections 2(A) or (B) hereof.

(C) In the case of classified information or material officially transferred by or pursuant to statute or Executive order in conjunction with a transfer of function and not merely for storage purposes, the receiving Department shall be deemed to be the originating Department for all purposes under this order including downgrading and declassification.

(D) In the case of classified information or material not officially transferred within (C) above, but originated in a Department which has since ceased to exist, each Department in possession shall be deemed to be the originating Department for all purposes under this order. Such information or material may be downgraded and declassified by the Department in possession after consulting with any other Departments having an interest in the subject matter.

(E) Classified information or material transferred to the General Services Administration for accession into the Archives of the United States shall be downgraded and declassified by the Archivist of the United States in accordance with this order, directives of the President issued through the National Security Council and pertinent regulations of the Departments.

(F) Classified information or material with special markings, as described in Section 8, shall be downgraded and declassified as required by law and governing regulations.

SEC. 4. *Classification.* Each person possessing classifying authority shall be held accountable for the propriety of the classification attributed to him. Both unnecessary classification and over-classification shall be avoided. Classification shall be solely on the basis of national security consideration. In no case shall information be classified in order to conceal inefficiency or administrative error, to prevent embarrassment to a person or Department, to restrain competition or independent initiative, or to prevent for any other reason the release of information which does not require protection in the interest of national security. The following rules shall apply to classification of information under this order:

(A) *Documents in General.* Each classified document shall show on its face its classification and whether it is subject to or exempt from the General Declassification Schedule. It shall also show the office of origin, the date of preparation and classification and, to the extent practicable, be so marked as to indicate which portions are classified, at what level, and which portions are not classified in order to facilitate excerpting and other use. Material containing references to classified materials, which references do not reveal classified information, shall not be classified.

(B) *Identification of Classifying Authority.* Unless the Department involved shall have provided some other method of identifying the individual at the highest level that authorized classification in each case, material classified under this order shall indicate on its face the identity of the highest authority authorizing the classification. Where the individual who signs or otherwise authenticates a document or item has also authorized the classification, no further annotation as to his identity is required.

(C) *Information or Material Furnished by a Foreign Government or International Organization.* Classified information or material furnished to the United States by a foreign government or international organization shall either retain its original classification or be assigned a United States classification. In either case, the classification shall assure a degree of protection equivalent to that required by the government or international organization which furnished the information or material.

(D) *Classification Responsibilities.* A holder of classified information or material shall observe and respect the classification assigned by the originator. If a holder believes that there is unnecessary classification, that the assigned classification is improper, or that the document is subject to declassification under this order, he shall so inform the originator who shall thereupon re-examine the classification.

SEC. 5. *Declassification and Downgrading.* Classified information and material, unless declassified earlier by the original classifying authority, shall be declassified and downgraded in accordance with the following rules:

(A) *General Declassification Schedule.* (1) *"Top Secret."* Information or material originally classified "Top Secret" shall become automatically downgraded to "Secret" at the end of the second full calendar year following the year in which it was originated, downgraded to "Confidential" at the end of the fourth full calendar year following the year in which it was originated, and de-

classified at the end of the tenth full calendar year following the year in which it was originated.

(2) *"Secret."* Information and material originally classified "Secret" shall become automatically downgraded to "Confidential" at the end of the second full calendar year following the year in which it was originated, and declassified at the end of the eighth full calendar year following the year in which it was originated.

(3) *"Confidential."* Information and material originally classified "Confidential" shall become automatically declassified at the end of the sixth full calendar year following the year in which it was originated.

(B) *Exemptions from General Declassification Schedule.* Certain classified information or material may warrant some degree of protection for a period exceeding that provided in the General Declassification Schedule. An official authorized to originally classify information or material "Top Secret" may exempt from the General Declassification Schedule any level of classified information or material originated by him or under his supervision if it falls within one of the categories described below. In each case such official shall specify in writing on the material the exemption category being claimed and, unless impossible, a date or event for automatic declassification. The use of the exemption authority shall be kept to the absolute minimum consistent with national security requirements and shall be restricted to the following categories.

(1) Classified information or material furnished by foreign governments or international organizations and held by the United States on the understanding that it be kept in confidence.

(2) Classified information or material specifically covered by statute, or pertaining to crypotography, or disclosing intelligence sources or methods.

(3) Classified information or material disclosing a system, plan, installation, project or specific foreign relations matter the continuing protection of which is essential to the national security.

(4) Classified information or material the disclosure of which would place a person in immediate jeopardy.

(C) *Mandatory Review of Exempted Material.* All classified information and material originated after the effective date of this order which is exempted under (B) above from the General Declassification Schedule shall be subject to a classification review by the originating Department at any time after the expiration of ten years from the date of origin provided:

(1) A Department or member of the public requests a review;

(2) The request describes the record with sufficient particularity to enable the Department to identify it; and

(3) The record can be obtained with only a reasonable amount of effort.

Information or material which no longer qualifies for exemption under (B) above shall be declassified. Information or material continuing to qualify under (B) shall be so marked and, unless impossible, a date for automatic declassification shall be set.

(D) *Applicability of the General Declassification Schedule to Previously Classified Material.* Information or material classified before the effective date of this order and which is assigned to Group 4 under Executive Order 10501, as amended by Executive Order No. 10964, shall be subject to the General Declassification Schedule. All other information or material classified before the effective date of this order, whether or not assigned to Groups 1, 2, or 3 of Executive Order No. 10501, as amended, shall be excluded from the General Declassification Schedule. However, at any time after the expiration of ten years from the date of origin it shall be subject to a mandatory classification review and disposition under the same conditions and criteria that apply to classified information and material created after the effective date of this order as set forth in (B) and (C) above.

(E) *Declassification of Classified Information or Material After Thirty Years.* All classified information or material which is thirty years old or more, whether originating before or after the effective date of this order, shall be declassified under the following conditions.

(1) All information and material classified after the effective date of this order shall, whether or not declassification has been requested, become automatically declassified at the end of thirty full calendar years after the date of its original classification except for such specifically identified information or material which the head of the originating Department personally determines in writing at that time to require continued protection because such continued protection is essential to the national security or disclosure would place a person in immediate jeopardy. In such case, the head of the Department shall also specify the period of continued classification.

(2) All information and material classified before the effective date of this order and more than thirty years old shall be systematically reviewed for declassification by the Archivist of the United States by the end of the thirtieth full calendar year following the year in which it was originated. In his review, the Archivist will separate and keep protected only such information or material as is specifically identified by the head of the Department in accordance with (E)(1) above. In such case, the head of the Department shall also specify the period of continued classification.

(F) *Departments Which Do Not Have Authority For Original Classification.* The provisions of this section relating to the declassification of national security information or material shall apply to Departments which, under the terms of this order, do not have concurrent authority to originally classify information or material, but which formerly had such authority under previous Executive orders.

SEC. 6. *Policy Directives on Access, Marketing, Safekeeping, Accountability, Transmission, Disposition and Destruction of Classified Information and Material.* The President acting through the National Security Council shall issue directives which shall be binding on all Departments to protect classified information from loss or compromise. Such directives shall conform to the following policies:

(A) No persons shall be given access to classified information or material unless such person has been determined to be trustworthy and unless access to such information is necessary for the performance of his duties.

(B) All classified information and material shall be appropriately and conspicuously marked to put all persons on clear notice of its classified contents.

(C) Classified information and material shall be used, possessed, and stored only under conditions which will prevent access by unauthorized persons or dissemination to unauthorized persons.

(D) All classified information and material disseminated outside the executive branch under Executive Order No. 10865 or otherwise shall be properly protected.

(E) Appropriate accountability records for classified information shall be established and maintained and such information and material shall be protected adequately during all transmissions.

(F) Classified information and material no longer needed in current working files or for reference or record purposes shall be destroyed or disposed of in accordance with the records disposal provisions contained in Chapter 33 of Title 44 of the United States Code and other applicable statutes.

(G) Classified information or material shall be reviewed on a systematic basis for the purpose of accomplishing downgrading, declassification, transfer, retirement and destruction at the earliest practicable date.

SEC. 7. *Implementation and Review Responsibilities.* (A) The National Security Council shall monitor the implementation of this order. To assist the National Security Council, an Interagency Classification Review Committee shall be established, composed of representatives of the Departments of State and Justice, the Atomic Energy Commission, the Central Intelligence Agency and the National Security Council Staff and a Chairman designated by the President. Representatives of other Departments in the executive branch may be invited to meet with the Committee on matters of particular interest to those Departments. This Committee shall meet regularly and on a continuing basis review and take action to ensure compliance with this order, and in particular:

(1) The Committee shall oversee Department actions to ensure compliance with the provisions of this order and implementing directives issued by the President through the National Security Council.

(2) The Committee shall, subject to procedures to be established by it, receive, complaints from persons within or without the government with respect to the administration of this order, and in consultation with the affected Department or Departments assure that appropriate action is taken on such suggestions and complaints.

(3) Upon request of the Committee Chairman, any Department shall furnish to the Committee any particular information or material needed by the Committee in carrying out its functions.

(B) To promote the basic purposes of this order, the head of each Department originating or handling classified information or materiai shall:

(1) Prior to the effective date of this order submit to the Interagency Classification Review Committee for approval a copy of the regulations it proposes to adopt pursuant to this order.

(2) Designate a senior member of his staff who shall ensure effective compliances with and implementation of this order and shall also chair a Departmental committee which shall have authority to act on all suggestions and complaints with respect to the Department's administration of this order.

(3) Undertake an initial program to familiarize the employees of his Department with the provisions of this order. He shall also establish and maintain active training and orientation programs for employees concerned with classified information or material. Such programs shall include, as a minimum, the briefing of new employees and periodic reorientation during employment to impress upon each individual his responsibility for exercising vigilance and care in complying with the provisions of this order. Additionally, upon termination of employment or contemplated temporary separation for a sixty-day period or more, employees shall be debriefed and each reminded of the provisions of the Criminal Code and other applicable provisions of law relating to penalties for unauthorized disclosure.

(C) The Attorney General, upon request of the head of a Department, his duly designated representative, or the Chairman of the above described Committee, shall personally or through authorized representatives of the Department of Justice render an interpretation of this order with respect to any question arising in the course of its administration.

SEC. 8. *Material Covered by the Atomic Energy Act.* Nothing in this order shall supersede any requirements made by or under the Atomic Energy Act of August 30, 1954, as amended. "Restricted Data," and material designated as "Formerly Restricted Data" shall be handled, protected, classified, downgraded and declassified in conformity with

the provisions of the Atomic Energy Act of 1954, as amended, and the regulations of the Atomic Energy Commission.

SEC. 9. *Special Departmental Arrangements.* The originating Department or other appropriate authority may impose, in conformity with the provisions of this order, special requirements with respect to access, distribution and protection of classified information and material, including those which presently relate to communications intelligence, intelligence sources and methods and cryptography.

SEC. 10. *Exceptional Cases.* In an exceptional case when a person or Department not authorized to classify information originates information which is believed to require classification, such person or Department shall protect that information in the manner prescribed by this order. Such persons or Department shall transmit the information forthwith, under appropriate safeguards, to the Department having primary interest in the subject matter with a request that a determination be made as to classification.

SEC. 11. *Declassification of Presidential Papers.* The Archivist of the United States shall have authority to review and declassify information and material which has been classified by a President, his White House Staff or special committee or commission appointed by him and which the Archivist has in his custody at any archival depository, including a Presidential Library. Such declassification shall only be undertaken in accord with: (i) the terms of the donor's deed of gift, (ii) consultation with the Departments having a primary subject-matter interest, and (iii) the provisions of Section 5.

SEC. 12. *Historical Research and Access by Former Government officials.* The requirement in Section 6(a) that access to classified information or material be granted only as is necessary for the performance of one's duties shall not apply to persons outside the executive branch who are engaged in historical research projects or who have previously occupied policy-making positions to which they were appointed by the President: *Provided*, however, that in each case the head of the originating Department shall:

(i) determine that access is clearly consistent with the interests of national security, and

(ii) take appropriate steps to assure that classified information or material is not published or otherwise compromised.

Access granted a person by reason of his having previously occupied a policy-making position shall be limited to those papers which the former official originated reviewed, signed or received while in public office.

SEC. 13. *Administrative and Judicial Action.* (A) Any officer or employee of the United States who unnecessarily classifies or overclassifies information or material shall be notified that his actions are in violation of the terms of this order or of a directive of the President issued through the National Security Council. Repeated abuse of the classification process shall be grounds for an administrative reprimand. In any case where the Departmental committee or the Interagency Classification Review Committee finds that unnecessary classification or overclassification has occurred, it shall make a report to the head of the Department concerned in order that corrective steps may be taken.

(B) The head of each Department is directed to take prompt and stingent administrative action against any officer or employee of the United States, at any level of employment, determined to have been responsible for any release or disclosure of national security information or material in a manner not authorized by or under this order or a directive of the President issued through the National Security Council. Where a violation of criminal statutes may be involved, Departments will refer any such case promptly to the Department of Justice.

SEC. 14. *Revocation of Executive Order No. 10501.* Executive Order No. 10501 of November 5, 1953, as amended by Executive Orders No. 10816 of May 8, 1959, No. 10901 of January 11, 1961, No. 10964 of September 20, 1961, No. 10985 of January 15, 1962, No. 11097 of March 6, 1963 and by Section 1(a) of No. 11382 of November 28, 1967, is superseded as of the effective date of this order.

SEC. 15. *Effective date.* This order shall become effective on June 1, 1972.

RICHARD NIXON.

THE WHITE HOUSE, *March 8, 1972.*

[FR Doc. 72-3782 Filed 3-9-72; 11:01 am]

---

EXECUTIVE ORDER 10501—SAFEGUARDING OFFICIAL INFORMATION IN THE INTERESTS OF THE DEFENSE OF THE UNITED STATES

Whereas it is essential that the citizens of the United States be informed concerning the activities of their government; and

Whereas the interests of national defense require the preservation of the ability of the United States to protect and defend itself against all hostile or destructive action by covert or overt means, including espionage as well as military action; and

Whereas it is essential that certain official information affecting the national defense be protected uniformly against unauthorized disclosure:

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

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

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

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

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

SEC. 2. *Limitation of Authority to Classify.* The authority to classify defense information or material under this order shall be limited in the departments and agencies of the executive branch as hereinafter specified. Departments and agencies subject to the specified limitations shall be designated by the President:

(a) In those departments and agencies having no direct responsibility for national defense there shall be no authority for original classification of information or material under this order.

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

(c) In those departments and agencies not affected by the provisions of subsection (a) and (b), above, the authority for original classification of information or material under this order shall be exercised only by responsible officers or employees, who shall be specifically designated for this purpose. Heads of such departments and agencies shall limit the delegation of authority to classify as severely as to consistent with the orderly and expeditious transaction of Government business.

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

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

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

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

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

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

SEC. 4. *Declassification, Downgrading, or Upgrading.* Heads of departments or agencies originating classified material shall designate persons to be responsible for continuing review of such classified material for the purpose of declassifying or downgrading it

whenever national defense considerations permit, and for receiving requests for such review from all sources. Formal procedures shall be established to provide specific means for prompt review of classified material and its declassification or downgrading in order to preserve the effectiveness and integrity of the classification system and to eliminate accumulation of classified material which no longer requires protection in the defense interest. The following special rules shall be observed with respect to changes of classification of defense material:

(a) *Automatic Changes.* To the fullest extent practicable, the classifying authority shall indicate on the material (except telegrams) at the time of original classification that after a specified event or date, or upon removal of classified enclosures, the material will be downgraded or declassified.

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

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

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

(e) *Classified Telegrams.* Such telegrams shall not be referred to, extracted from, paraphrased, downgraded, declassified, or disseminated, except in accordance with special regulations issued by the head of the originating department or agency. Classified telegrams transmitted over cryptographic systems shall be handled in accordance with the regulations of the transmitting department or agency.

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

(g) *Upgrading.* If the recipient of unclassified material believes that it should be classified, or if the recipient of classified material believes that its classification is not sufficiently protective, it shall be safeguarded in accordance with the classification deemed appropriate and a request made to the reviewing official, who may classify the material or upgrade the classification after obtaining the consent of the appropriate classifying authority.

(h) *Notification of Change in Classification.* The reviewing official taking action to declassify, downgrade, or upgrade classified material shall notify all addressees to whom the material was originally transmitted.

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

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

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

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

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

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

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

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

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

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

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

Use of alternative marking concerning "Restricted Data" as defined by the Atomic Energy Act is authorized when appropriate.

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

(a) *Storage of Top Secret Material.* Top Secret defense material shall be protected in storage by the most secure facilities possible. Normally it will be stored in a safe or a safe-type steel file container having a three-position, dial-type, combination lock, and being of such weight, size, construction, or installation as to minimize the possibility of surreptitious entry, physical theft, damage by fire, or tampering. The head of a department or agency may approve other storage facilities for this material which offer comparable or better protection, such as an alarmed area, a vault, a secure vault-type room, or an area under close surveillance of an armed guard.

(b) *Secret and Confidential Material.* These categories of defense material may be stored in a manner authorized for Top Secret material, or in metal file cabinets equipped with steel lockbar and an approved three combination dial-type padlock from which the manufacturer's identification numbers have been obliterated, or in comparably secure facilities approved by the head of the department or agency.

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

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

fied defense material authorized for storage in the safekeeping equipment concerned.

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

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

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

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

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

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

(c) *Information Originating in Another Department or Agency.* Except as otherwise provided by section 102 of the National Security Act of July 26, 1947, c. 343, 61 Stat. 498, as amended, 50 U.S.C. sec. 403, classified defense information originating in another department or agency shall not be disseminated outside the receiving department or agency without the consent of the originating department or agency. Documents and material containing defense information which are classified Top Secret or Secret shall not be reproduced without the consent of the originating department or agency.

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

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

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

(c) *Transmitting Secret Material.* Secret material shall be transmitted within the continental United States by one of the means established for Top Secret material, by an authorized courier, by United States registered mail, or by protected commercial express, air or surface. Secret material may be transmitted outside the continental limits of the United States by one of the means established for Top Secret material, by commanders or masters of vessels of United States registry, or by United States Post Office registered mail through Army, Navy, or Air Force postal facilities, provided that the material does not at any time pass out of United States Government control and does not pass through a foreign postal system. Secret material may, however, be transmitted between United States Government and/or Canadian Government installations in continental United States, Canada, and Alaska by United States and Canadian registered mail with registered mail receipt. In an emergency, Secret material may also be transmitted over military communications circuits in accordance with regulations promulgated for such purpose by the Secretary of Defense.

(d) *Transmitting Confidential Material.* Confidential defense material shall be transmitted within the United States by one of the means established for higher classifications, by registered mail, or by express or freight under such specific conditions as may be prescribed by the head of the department or agency concerned. Outside the continental United States. Confidential defense material shall be transmitted in the same manner as authorized for higher classifications.

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

SEC. 9. *Disposal and Destruction.* Documentary record material made or received by a department or agency in connection with transaction of public business and preserved as evidence of the organization, functions, policies, operations, decisions, procedures or other activities of any department or agency of the Government, or because of the informational value of the data contained therein, may be destroyed only in accordance with the act of July 7, 1963, c. 192, 57 Stat. 380, as amended, 44 U.S.C. 366–380. Non-record classified material, consisting of extra copies and duplicates including shorthand notes, preliminary drafts, used carbon paper, and other materials or similar temporary nature, may be destroyed, under procedures established by the head of the department or agency which meet the following requirements, as soon as it has served its purpose:

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

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

SEC. 10. *Orientation and Inspection.* To promote the basic purposes of this order, heads of those departments and agencies originating or handling classified defense information shall designate experienced persons to coordinate and supervise the activities applicable to their departments or agencies under this order. Persons so designated shall maintain active training and orientation programs for employees concerned with classified defense information to impress each such employee with his individual responsibility for exercising vigilance and care in complying with the provisions of this order. Such persons shall be authorized on behalf of the heads of the departments and agencies to establish adequate and active inspection programs to the end that the provisions of this order are administered effectively.

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

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

SEC. 13. *"Restricted Data" as Defined in the Atomic Energy Act.* Nothing in this order shall supersede any requirements made by or under the Atomic Energy Act of August 1, 1946, as amended. "Restricted Data" as defined by the said act shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Eenergy Act of 1946, as amended, and the regulations of the Atomic Energy Commission.

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

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

information would be transmitted in the ordinary course of business), with a request that such department, agency, or person classify the information.

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

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

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

SEC. 19. *Revocation of Executive Order No. 10290.* Executive Order No. 10290 of September 24, 1951 is revoked as of the effective date of this order.

SEC. 20. *Effective Date.* This order shall become effective on December 15, 1953.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, *November 5, 1953.*

---

LEGAL BASIS FOR THE CLASSIFICATION PROGRAM

Information on the legal basis for the security classification program was previously furnished to the Chairman of the Senate Foreign Relations Committee by letter of April 30, 1970, from the Legal Adviser of the Department of State, John R. Stevenson. (Copy Attached).

The legal statement then provided was taken from the 1957 Report of the Commission on Government Security, and it is set forth below for ease of reference.

AUTHORITY FOR THE PROGRAM

"As previously noted, the current legal authority for the document classification program is Executive Order 10501, which became effective December 15, 1953, and revoked Executive Order 10290.

---

APRIL 30, 1970.

Hon. J. WILLIAM FULBRIGHT,
*Chairman, Committee on Foreign Relations U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: I refer to your inquiry of March 26, 1970 as to the statutory authority for Executive Order 10501, concerning the safeguarding of official information. In 1957 a Commission on Government Security, appointed by President Eisenhower, the Speaker of the House of Representatives, and the President of the Senate, pursuant to Public Law 304, Eighty-Fourth Congress, considered the legal basis for Executive Order 10501. I am enclosing for your information the pertinent section of the Commission's report. You should be aware that one of the statutes cited in the report, 5 U.S.C. § 22 (now 5 U.S.C. § 301), was amended in 1958 and is no longer relevant.

In addition to the statutes cited by the Report, there are other statutory provisions that contemplate and assume a system of classification of information. For example, section 142 of the Atomic Energy Act of 1954 (42 U.S.C. § 2162 (c)) provides that, upon joint determination of the Atomic Energy Commission and the Department of Defense, data which relate primarily to the military utilization of atomic weapons and "can be adequately safeguarded as defense information" may be removed from the classification of "restricted data". This provision is obviously predicated on the system for protection provided for in Executive Order 10501. See also the exception, in the Freedom of Information Act, for classified information "specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy," 5 U.S.C. 552(b)(1)).

We have discussed this matter with Assistant Attorney General Rehnquist of the Department of Justice who informs us that the Justice Department agrees with the Commission's report regarding the legal basis for Executive Order 10501 subject to the points made above.

I hope this information is helpful to you.

Sincerely,

JOHN R. STEVENSON,
*The Legal Adviser.*

---

REPORT OF THE COMMISSION ON GOVERNMENT SECURITY

LEGAL BASIS

*Authority for the program*

As previously noted, the current legal authority for the document classification program is Executive Order 10501, which became affective December 15, 1953, and revoked Executive Order 10290.[1]

*Legal justification for the order*

The preamble of the order contains the standard recitation that it was issued, "By virtue of the authority vested in me by the Constitution and statutes as President of the United States." Therefore, to be valid, Executive Order 10501 must be the product of a proper exercise of executive power derived either from executive authority conferred by the Constitution or from statutory authority, or both.

A. EXECUTIVE AUTHORITY CONFERRED BY THE CONSTITUTION.—Pertinent sections of the Constitution appear to contain no express authority for the issuance of an order such as Executive Order 10501. However, the requisite implied authority would seem to lie within article II which says in section 1: "The executive power shall be vested in a President of the United States of America"; and in section 2: "The President shall be Commander in Chief of the Army and Navy of the United States"; and in section 3: ". . . he shall take care that the laws be faithfully executed."

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

B. STATUTORY AUTHORITY.—While there is no specific statutory authority for such an order or Executive Order 10501, various statutes do afford basis upon which to justify the issuance of the order.

A statute frequently cited as affording some implied authority for the issuance of Executive Order 10501 is found in 5 U.S.C.A. 22 which authorizes the heads of departments and agencies, among other things "to prescribe regulations, not inconsistent with law, for . . . the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it." The primary purpose is to afford a check or brake upon the general flow into the public domain of such agency information which might reflect upon internal management or proposed policy, and the publication of which could impede or prejudice efficient agency operation. The fact that such information may involve national security matters is not essential in giving proper effect to the statutory language.

The espionage laws have imposed upon the President a duty to make determinations respecting the dissemination of information having a relationship to the national defense. For example, 18 U.S.C. 795 (a) provides that "Whenever, in the interests of national defense, the President defines certain vital military and naval installations or equipment as requiring protection against the general dissemination of information relative thereto, it shall be unlawful to make any photograph, sketch, picture, . . ., etc." Proceeding under this statute the President issued Executive Order 10104 which covers information classified by the agencies of the military establishments.[2]

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

The most significant legislation, which set into motion the current document classification program, was enacted in 1947, when the Congress passed the National Security Act[3] in order to provide an adequate and comprehensive program designed to protect the future security of our country. To accomplish this avowed purpose the act provided for the creation of a National Security Council within the executive branch subject to Presidential direction. Its job is to consider and study security matters of common interest to the departments and agencies and to make appropriate recommendations to the President. Within the framework of this program, the Interdepartmental Committee on Internal Security (ICIS) came into being, and the activity of this committee was responsible for the issuance in 1951 of Executive Order 10290, which established the original document classification program. Thus it would appear that a document classification program is within the scope of the activities sought to be coordinated by the National Security Act of 1947, and that the issuance of an appropriate Executive order establishing such a program is consistent with the policy of the act.

Prior to issuance of Executive Order 10290, Congress had apparently recognized the existing Presidential authority to classify information within the executive branch when it passed the Internal Security Act of 1950.[4] Contained therein were provisions defining two new criminal offenses involving classified information.

---

[1] Executive Order 10501 is entitled "Safeguarding Official Information in the Interests of the Defense of the United States." In summary, it establishes the classification categories of "confidential," "secret," and "top secret." It is designed to regulate the day-by-day handling of national security information within the various executive agencies and departments by prescribing uniform procedures governing the classification, transmission, dissemination, custody, and disposal of such information. In addition, there is provision for review of the entire classification program to insure adequate protection of the national security as well as to insure that no information is withheld thereunder which the people of the United States have a right to know.

[2] 15 F.R. 597, Feb. 1, 1950.

[3] 61 Stat. 496, July 26, 1947.

[4] 64 Stat. 987–1031.

Section 4(b) of the act makes it a crime for any Federal officer or employee to give security information classified by the President, or by the head of any department, agency, or corporation with the approval of the President, to any foreign agent or member of a Communist organization, and section 4 (c) makes it a crime for any foreign agent or member of a Communist organization to receive such classified security information from a Federal employee.[5]

*Conclusion*

It is concluded, therefore, that in the absence of any law to the contrary, there is an adequate constitutional and statutory basis upon which to predicate the Presidential authority to issue Executive Order 10501.

PRESENT PROGRAM

*Introduction*

This survey, by definition, is concerned with the activities of the Federal Government as they involve policies and practices with respect to classified documents. It is not intended to cover information control policies and practices that do not involve material subject to the classified information provisions of Executive Order 10501. Although departmental and agency policies with respect to information control may impinge upon the area of document classification, they are governed by different criteria. The criteria of document classification involve application of narrowly defined standards of national security and defense. The criteria of information control, on the other hand, involve the broadest kind of standards. They range from the traditional claim against privileged information to the arguments for the "housekeeping" privileges required in the normal operation of the executive branch.

*Scope of the program*

Although all Federal agencies have rules of some type to control documents and information in their possession, relatively few have the authority to restrict general availability of their material on grounds of its relevance to either national defense or security. Under Executive Order 10501 the authority to apply the top secret, secret, or confidential classification to Federal documents was severely limited. The following 28 agencies were denied authority to apply original classification to material originated by them:

American Battle Monuments Commission; Arlington Memorial Amphitheater Commission; Commission on Fine Arts; Committee on Purchases of Blind-Made Products; Committee for Reciprocity Information; Commodity Exchange Commission; Export-Import Bank of Washington; and Federal Deposit Insurance Corporation.

---

LEGAL BASIS

AUTHORITY FOR THE PROGRAM

As previously noted, the current legal authority for the document classification program in Executive Order 10501, which became effective December 15, 1953, and revoked Executive Order 10200.

"Executive Order 10501 is entitled 'Safeguarding Official Information in the Interests of the Defense of the United States.' In summary, it establishes the classification categories of 'confidential,' 'secret,' and 'top secret.' It is designed to regulate the day-by-day handling of national security information within the various executive agencies and departments by prescribing uniform procedures governing the classification, transmission, dissemination, custody and disposal of such information. In addition, there is provision for review of the entire classification program to insure adequate protection of the national security as well as to insure that no information is withheld thereunder which the people of the United States have a right to know.

[5] 50 U. S. C. A. 783.

"LEGAL JUSTIFICATION FOR THE ORDER

"The preamble of the order contains the standard recitation that it was issued. 'By virtue of the authority vested in me by the Constitution and statutes as President of the United States.' Therefore, to be valid, Executive Order 10501 must be the product of a proper exercise of executive power derived either from executive authority conferred by the Constitution or from statutory authority, or both.

"A. *Executive Authority Conferred by the Constitution.*—Pertinent sections of the Constitution appear to contain no express authority for the issuance of an order such as Executive Order 10501. However, the requisite implied authority would seem to lie within article II which says in section 1: 'The executive power shall be vested in a President of the United States of America'; and in section 2: 'The President shall be Commander in Chief of the Army and Navy of the United States'; and in section 3: '. . . he shall take care that the laws be faithfully executed.'

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

"*B. Statutory Authority.*—While there is no specific statutory authority for such an order or Executive Order 10501, various statutes do afford a basis upon which to justify the issuance of the order.

"A statute frequently cited as affording some implied authority for the issuance of Executive Order 10501 is found in 5 U.S.C.A. 22, which authorizes the heads of departments and agencies, among other things "to prescribe regulations not inconsistent with law; for . . . the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it." The primary purpose is to afford a check or brake upon the general flow into the public domain of such agency information which might reflect upon internal management or proposed policy, and the publication of which could impede or prejudice efficient agency operation. The fact that such information may involve national security matters is not essential in giving proper effect to the statutory language.

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

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

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

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

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

"CONCLUSION

"It is concluded, therefore, that in the absence of any law to the contrary, there is an adequate constitutional and statutory basis upon which to predicate the Presidential authority to issue Executive Order 10501."

---

## ORDER FOR ADJOURNMENT UNTIL FRIDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 o'clock meridian on Friday.

The PRESIDING OFFICER. Without objection, it is so ordered.

---

## ORDER FOR RECOGNITION OF SENATORS MOSS AND ABOUREZK ON FRIDAY INSTEAD OF THURSDAY

Mr. ROBERT C. BYRD. I ask unanimous consent that the special orders previously granted with respect to the Senator from Utah (Mr. Moss) and the Senator from South Dakota (Mr. ABOUREZK) on Thursday be transferred to Friday.

The PRESIDING OFFICER. Without objection, it is so ordered.

---

## TRANSACTION OF ROUTINE MORNING BUSINESS ON FRIDAY

Mr. ROBERT C. BYRD. I ask unanimous consent that at the conclusion of the remarks of the two Senators afore-

mentioned on Friday, and of any other Senators for whom special orders may today be entered, there be a period for the transaction of routine morning business of not to exceed 30 minutes, with statements therein limited to 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ORDER FOR ADJOURNMENT FROM FRIDAY UNTIL TUESDAY, JANUARY 16, 1973

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business on Friday, it stand in adjournment until 12 o'clock meridian on Tuesday next.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I ask unanimous consent that the time I have taken be charged against myself, and not against the Senator from Illinois.

The PRESIDING OFFICER. Without objection, it is so ordered.

## TERMINATION OF HOUSING PROGRAMS

Mr. PERCY. Mr. President, I deeply regret the decision of the executive branch to suspend immediately the operation of our subsidized housing programs without consultation with the Congress. If any Member of this body here today, or if the minority or majority leadership is aware that there has been consultation with Congress, I would stand to be corrected, but I am not aware of any.

No one argues that these programs are beyond criticism or should not be constantly monitored and evaluated for effectiveness. I have spoken on this floor myself many times in recent years about abuses that have crept into these programs through failure to provide counseling services and through failure to provide oversight supervision as provided for in the 1968 Housing Act itself. And no one can deny that it is a responsibility of the Department of Housing and Urban Development to propose changes in existing programs or to suggest new directions for public policy when these programs can be improved, and I feel certain that they can and constantly should be improved.

It is not in the public interest, however, for the executive branch to act unilaterally to virtually kill those programs designed to provide a better housing and a better environment for low- and moderate-income people, particularly those who live in our major urban areas.

It is not in the public interest, because these programs—particularly interest subsidy programs such as the 235 and 236 programs—have resulted in more decent homes in the last 3 years for low- and moderate-income families than were provided in the entire period from 1940 to the present.

Just one program for instance, section 235, for the first time in the history of this country, has provided Government support for homeownership opportunities for lower income families that has been provided for 30 years by the Government to American families of moderate- and middle-income, to try to stabilize certain urban and rural areas of America, to give such families a real stake in our country and something to work for, and the opportunity to acquire a home of their own.

It is not in the public interest because so much of the scandal currently surrounding HUD programs—including rapidly escalating default and foreclosure rates—is the result of unsubsidized programs, ones which apparently will remain in operation. The scandals are also the result of the widely documented mismanagement by HUD of essentially sound concepts.

It is not in the public interest because keeping our pledge to the American people of a decent home in a decent environment will be an extremely costly proposition. It cannot be done quickly or inexpensively. I believe the Congress and the public both recognize this simple fact and they are willing to pay the necessary price to achieve a major domestic priority.

This action is not in the public interest because it is a negative step, a backward step, in a situation which requires bold and affirmative action. We are shutting down a major program without an alternative one in place.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HARRY F BYRD, JR. Mr. President, if the Chair will recognize me, I yield my 3 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator is recognized for that purpose.

Mr. PERCY. I thank my distinguished colleague from Virginia very much.

To continue, I feel most strongly that this is not in the public interest, primarily because it was accomplished without consultation with the Congress, the body which helped create, which authorized and funded these housing programs and which has the ultimate power under the Constitution to abolish, amend, redesign, or renew the enabling legislation. I consider this action to be an unfortunate attack on the authority and responsibility of the legislative branch and its duly constituted committees.

Mr. President, I am pleased that the distinguished chairman of the Committee on Banking, Housing and Urban Affairs (Mr. SPARKMAN) has already indicated that he will be scheduling hearings to assess the need for Federal housing programs. I think it is vital that he, the able ranking minority member of the Committee, Senator TOWER, and the members of the Housing subcommittee, assess also the impact that this action will have on the housing industry and the economy as a whole. I shall be pleased to work with all my colleagues in fashioning an appropriate and responsible response to the present unhappy situation, and would hope that we can work in a spirit of harmony and cooperation with the administration.

## ORDER FOR RECOGNITION OF SENATOR HARRY F. BYRD, JR., TODAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the conclusion of routine morning business today, the distinguished senior Senator from Virginia (Mr. HARRY F. BYRD, JR.) be recognized for not to exceed 15 minutes, at the conclusion of which there be a resumption of the period for the transaction of routine morning business with statements therein limited to 3 minutes, the period not to extend longer than 30 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

## TRIBUTE TO DR. EBERHARD REES OF NASA

Mr. ALLEN. Mr. President, a change of directors has been announced at the NASA Marshall Space Flight Center in Huntsville, Ala. The change is marked by the retirement of one of the truly great technical pioneers of rocketry and his replacement by a man who, while younger, has also devoted the major part of his life to space exploration.

After 27 years in the forefront of the Nation's rise to preeminence in the uncharted realm of space, Dr. Eberhard F. M. Rees will retire on January 19, 1973.

One of the guiding engineering geniuses of the space program, Dr. Rees has demonstrated many times his ability to direct multiple programs. He kept a watchful eye on all phases of Saturn launch vehicle development and was recognized for overcoming many technical problems, especially in the engine test stand facilities, in development of the hydrogen engine for Saturn upper stages, and in overall development of the powerful first stage of the Saturn V. Beyond the awesome responsibilities of the Saturn program, Dr. Rees undertook, at the request of the Apollo program manager, the substantial additional task of helping the Apollo spacecraft through early development problems with potential impact on the lunar landing schedule. In giving him this assignment, our top space planners were fully confident that his widely known competence and drive were equal to so momentous a task. The outstanding success of subsequent Apollo flights stand as testimony that this confidence was justified.

Dr. Rees was named Director of the Marshall Space Flight Center in March 1970. He guided the Center in five Saturn V launches—Apollo 13 through Apollo 17. He has maintained a deep personal involvement in the Skylab program from its inception until the present, holding to tough schedules. Bound throughout by tight schedules and demanding requirements, the program is in good shape for its planned launch in April of this year.

Dr. Rees is undoubtedly one of the world's foremost space engineers. He will be missed.

Dr. Rees will be succeeded as Director of the Marshall Center by Dr. Rocco A. Petrone. Dr. Petrone, as Apollo program director since September 1, 1969, has borne on his shoulders the overall responsibility for direction and management of the lunar flights. This was a huge, intricate task requiring fortitude, dedication, and unusual technical skill—all possessed by Dr. Petrone in good

measure. All aspects of the program—the preparations for launch, the liftoff, the mission itself, the tracking network, and the splashdown—were tied together by Dr. Petrone, beginning with Apollo 12 and ending with Apollo 17. It was without doubt, one of the world's most complex jobs.

Dr. Petrone, a graduate of the U.S. Military Academy, first became associated with NASA in 1960 when he was assigned to what is now the Kennedy Space Center, on loan from the Army. At Kennedy, he directed the buildup of our largest launch complex, used in Project Apollo and planned for use in Skylab and the Apollo Soyuz test project. Included in this construction was the Vehicle Assembly Building, at the time the world's largest building, the pads and launch towers, the enormous crawlers, and the mobile service structures.

After the facilities and ground equipment were completed, Dr. Petrone assumed personal direction of launch operations. Weeks of painstaking preparation were required before each flight. All countdowns were rehearsed; all the complex facilities were continuously inspected; and the Saturn vehicle itself maintained in peak condition.

Dr. Petrone has proven himself a totally capable man and one who can continue the tradition to leadership at the Marshall Center. This is important because he takes over at a time when efficiency and determined leadership are more important than ever.

The Marshall Center has become a multiproject management and engineering establishment, shaking off its old image as a rocket-oriented center. Under Dr. Rees, many new assignments have placed emphasis on scientific activity and space applications.

The heritage of the Marshall Center ranges from the orbiting of early unmanned satellites to the development of the giant Saturn V lunar vehicle and the small lunar roving vehicle for astronaut transportation on the moon's surface. In the final lunar mission, engineers at the Marshall Center played a dramatic role when troubled developed in the final seconds of the countdown, a difficulty that could well have compromised the mission. The Marshall crew, working at top speed and under great pressure, reached a tentative solution, checked it out in simulation, and passed the solution to the Kennedy Space Center, after which the countdown and the mission continued.

Mr. President, Alabamians extend our best wishes to Alabama's adopted son, Dr. Eberhard Rees, and wish him many more long productive years. At the same time, we welcome back to Alabama Dr. Rocco A. Petrone, another of the brightest men in the space program today and one who began his career in missilery and space at Redstone Arsenal.

## CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. HATHAWAY). Is there further morning business? If not, morning business is concluded.

## ORDER OF BUSINESS

The PRESIDING OFFICER. Under the previous order, the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.) is now recognized for 15 minutes.

(The remarks of Mr. HARRY F. BYRD, JR., on the introduction of S.J. Res. 13 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

## QUORUM CALL

Mr. HARRY F. BYRD, JR. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the transaction of routine morning business for a period not to exceed 30 minutes, with each Senator to be recognized for not to exceed 3 minutes.

## ORDER FOR ADJOURNMENT TO THURSDAY, JANUARY 11, 1973

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 o'clock meridian on Thursday next.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ORDERS FOR RECOGNITION OF SENATORS ON THURSDAY, JANUARY 11, 1973

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the orders which were previously agreed to with respect to Friday next be transmitted to Thursday next.

The PRESIDING OFFICER. Without objection, it is so ordered.

## QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum. I hope and believe this will be the final quorum call of the day.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ORDER FOR ADJOURNMENT FROM THURSDAY, JANUARY 11, 1973, TO MONDAY, JANUARY 15, 1973

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business on Thursday next, it stand in adjournment until 12 o'clock meridian on Monday next.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ORDER FOR RECOGNITION OF MR. HARRY F. BYRD, JR., ON THURSDAY, JANUARY 11, 1973

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the conclusion of the remarks of Mr. ABOUREZK on Thursday next the distinguished senior Senator from Virginia (Mr. HARRY F. BYRD, JR.) be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

## QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## CONCLUSION OF MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask that morning business be closed.

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

## ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the distinguished Senator from Minnesota (Mr. HUMPHREY) be recognized for not to exceed 15 minutes, at the conclusion of which there be a resumption of morning business for a period of not to exceed 12 minutes, with statements limited therein to 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ISRAEL AND SENATOR NELSON CELEBRATE A 25TH ANNIVERSARY

Mr. HUMPHREY. Mr. President, I wish to have placed in the RECORD a splendid address that was delivered by our distinguished colleague from the State of Wisconsin (Mr. NELSON). Senator NELSON made note of the fact that the State of Israel was celebrating its 25th anniversary, but I should note that Senator NELSON himself is celebrating 25 years in public service. In his speech he paid a very fine tribute to the remarkable accomplishments of the State of Israel.

I ask unanimous consent that the entire speech delivered by Senator NELSON be printed in the RECORD.

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

SPEECH BY SENATOR GAYLORD NELSON

For many reasons I am pleased for the opportunity to share this evening with you but more particularly I am pleased for two very special reasons. We are on the threshold of the twenty-fifth anniversary of two historic events. The first, the birth of Israel as a free and independent nation, was an event of worldwide significance. The twenty-fifth anniversary of that event will be celebrated by thoughtful free peoples around the world. The second event was an occasion twenty-five years ago, not of worldwide significance, but rather an event that could be described more accurately as an event of family-wide significance. A family of five will celebrate that event if the husband and father of the family is persuasive enough to convince them that in fact the event justifies a celebration. The event is the twenty-fifth anniversary of Gaylord Nelson's election to the Legislature.

In due course I will inform you whether pursuant to the democratic procedures of our household the majority came down on my side.

On this anniversary one must look upon Israel with wonder, even astonishment at the remarkable accomplishments of this free country in the brief period of a quarter century. No other nation in world history has done so much with so little in so short a time. Despite three wars, a pitiful paucity of critical resources—land, water, minerals, oil and forests—this people has overnight designed and built a remarkable modern industrial and agricultural society with a high standard of living while maintaining its freedom and independence in a hostile climate.

How could it be done at all let alone in such a brief period of time? What lesson does this hold for developing nations around the world, most of them much more abundantly blessed with resources than Israel? It is the lesson of a unified, dedicated, free people who have an uncommon commitment to excellence and an understanding of the value of education, science and morality in the quest of their goals.

A visit to a Kibbutz a few years ago gave me some insight about this country and its people. Visiting this collective where a small group of dedicated individuals had organized their lives into a commune which fit their egalitarian ideology was a new, very exciting and exhilarating experience. To better understand this human endeavor, I searched for a personal link between myself and the people of the Kibbutz.

Naturally I was interested in the Kibbutz's dairy barn. It may seem strange, but I learned a rather profound lesson on my visit to that barn. I gained some special understanding of Israel's success in economic development by chatting that day with the 75-year-old herdsman responsible for the Kibbutz's dairy cattle.

He knew I was from Wisconsin, so he asked me a matter-of-fact, Wisconsin-related question. "What's to become of the Pabst herd." It surprised me that this man who spoke English with a thick accent, who had never set foot in the United States, whose whole world seemed to be this tiny Agrarian settlement, should be asking me about the herd of specially-bred cattle nearly halfway around the world which had just been sold at auction.

This man's question threw a whole new light on the Israeli Nation-building experience for me. From all outside appearances, this man was a foreigner to America. But there were aspects of America which were not foreign to him. What counted for him, for his Kibbutz, and for his nation, was to know all he could about dairy cattle. His job was to be the best informed and best in practice dairyman possible. Part of that job was to keep up to date on dairy literature—trade journals and academic publications—from everywhere including America. This attitude, it seems to me, is a key to Israel's success in development.

Tonight it is appropriate to reflect on Israel's successful twenty-five years of economic development. While Israel is the special accomplishment of a special people—people with an indestructible idealism fortified by the strength and resiliency of an indestructible pragmatism—its development, nevertheless, owes much to supporters and friends throughout the world, Jews and non-Jews alike. Those more than two million people who have purchased Israel development bonds with great loyalty and magnanimity are almost as much responsible for Israel's development as are the Israelis themselves who have tilled the soil and turned the lathe since the beginnings of labor zionism in Palestine at the turn of this century.

"What we have achieved in our economy," according to Golda Meir, "could not have been done without you, without your confidence that Israel bonds are not only good and necessary for Israel, but they are a sound investment as well."

Pinchas Sapir, minister of Israel, has restated that case quite clearly:

"Without the seed money which Israel bonds provided to build up our agriculture, to develop our industries, to exploit our meagre natural resources, to establish our new irrigation projects, we could never have had the economic strength to win our struggle for survival. Economic progress was the backbone of our victories in the past, and it will be the backbone of our victories in the future."

Since its inception in 1951 the Israel bond organization has been the principal source of funds for Israel's development budget.

From 1951 to this year, the sale of Israel bonds has made more than $2.1 billion available to Israel to help finance every aspect of the country's economic growth.

(Israel pays for its $1.3 billion defense budget and the United Jewish Appeal takes care of social welfare.)

Israel bond funds have stimulated the development of Israel's limited natural resources. The dead sea potash and bromine works have been expanded, as have mining and refining facilities at King Soloman's copper mines at Timna. Large phosphate deposits are being mined at Oron and Arad, where a huge new chemical complex, now under construction, is expected to increase substantially Israel's industrial exports.

The economy's fuel needs have been largely met with oil pumped from tankers berthed at Elath to the Haifa refineries through pipelines built with the aid of Israel bonds. A new giant 42-inch oil pipeline is expected to have an annual capacity of sixty million tons, thereby making it possible for large quantities of oil to be transshipped from the Red Sea to the Mediterranean and European countries.

The story of Israel is a saga of reconstruction—not destruction. It is a story of reclaiming wasteland to productive farmland. Truly modern day Israel's accomplishments qualify her to be as were the ancient Israelites: "a light unto the nations."

There is justifiable pride in this accomplishment. Supporters of Israel can with justification share that pride even as it shared the dream of Israel and so generously contributed toward its fulfillment.

But the dream is far from realization.

Through decades of difficulties, through the holocaust in Europe, and agony of war and bloodshed, the people of Israel have managed to create a place which any Jew may now call "home". For centuries, the Jews had a holy land but not a homeland. Their hearts and souls found refuge in prayers and poetry glorifiying Zion. But there never was a physical haven.

Today thousands of refugees and immigrants arrive in Israel for the first time in their lives and it is "home". Home for those who left the ghettoes of Europe. Home for those who survived the nightmares of Nazi concentration camps. Home for those who fled medieval villages in the Arab world. And it is home for the thousands of Russian Jews escaping the long-range Soviet government's efforts to crush increasing Jewish consciousness in the Soviet Union.

The dream of the freedom of Israel is strong, even though it is a troubled land embroiled in the hostile arena of international power politics. As you well known, Israel symbolizes for oppressed Jews everywhere a land of religious tradition and a haven for a unique way of life.

It is this unique way of life that has been so important throughout the world through the hard centuries of oppression and persecution. And it is this way of life that has made it possible for Jews to survive.

Zion is no longer only a dream of a 19th century Judeo-European ideology. Nor is Jerusalem only a vision of ancient and medieval Jews. Today thanks to the selfless toil of its energetic people, the State of Israel is a thriving, modern, technologically-advanced country with a sophisticated, free and democratic political community.

Israel bonds provide the economic capacity to enable Israel to perform these miracles of survival, absorption and reconstruction which have written the most inspiring chapter in modern history.

The latest chapter in that heroic saga finds Israel still faced with the immediate needs of food, housing, and safety from the horrors of war. Meanwhile she is attempting to master more sophisticated—but equally crucial—crises.

Golda Meir is of the pioneer generation. But as Israel opens new frontiers and responds to new challenges, today's generation must be pioneers blazing their own trails in new, modern-day technology.

With the courage, tenacity, and foresight of the veterans of zionist colonization in Palestine, Israeli Scientists today are coping with the crucial problem of water.

Israel's ninety percent use of feasible water resources is a world record. But it is not enough. Israel has reached the limit of utilizing water supplies by conventional methods. By 1984 Israel will face a water crisis. The only way to solve that crisis is desalination.

Recognizing the imminent crisis, I introduced legislation in the Senate on August 13, 1969, which would assist Israel in the construction of a prototype desalination plant. At the time I stated that U.S. assistance would "help develop a process which would insure the survival and growth of vast regions and whole countries which today face aridity and economic desolation from lack of water."

The legislation which I introduced passed the Congress back in 1969. Congress approved a $20 million appropriation for planning, design, specifications for the prototype plant.

Unfortunately the project lay dormant for almost three years until this July. At that time, Israel provided the United States with complete plans for a multi-stage distillation plant now under construction in Eilat.

Israeli scientists are hopeful that the new process in Eilat will help all water-short countries by cutting costs of desalination. The million-gallon-a-day plant at Eilat is designed to produce fresh water 10 to 15 percent cheaper than the most modern unit in the west, and almost 40 percent cheaper than older units.

Israel's success is the world's success. The new plant represents a technological breakthrough which the entire world can share. For example, part of the Israel-U.S. agreement is that the United States will apply Israeli advances in technology in a similar demonstration plant at San Diego.

Israel is repaying its debt and fulfilling its national commitment to humanity as no new nation has ever done.

The world today is urgently seeking effective ways of giving and receiving help that can close the hazardous gap between rich and poor—between ignorance and knowledge—between privilege and deprivation.

The relationship between giver and receiver is a difficult one. But Israel is showing us that the soundest relationship among nations is not giving and receiving but sharing.

It seems to me that this is the best way for us all—at this Israel bond dinner—to celebrate Israel's twenty-fifth anniversary.

## REHABILITATION ACT OF 1973

Mr. HUMPHREY. Mr. President, I have been pleased to join in sponsoring S. 7, the Rehabilitation Act of 1973. Immediately forthcoming consideration of this legislation by the Senate Committee on Labor and Public Welfare, clearly indicates a firm belief that the President's veto of identical legislation after the adjournment of the last Congress was unwarranted and cannot be permitted to stand.

It is essential that this progressive legislation be enacted, to promote innovative and comprehensive approaches in rehabilitation services for mentally and physically handicapped and severely handicapped persons, and to focus upon applied research and the development of technology and devices to help solve rehabilitation problems of handicapped individuals. Providing for the coordination of numerous Federal agency responsibilities and programs in this increasingly important field, this bill correctly emphasizes the need to serve more severely handicapped individuals, to make services responsive to individual needs, and to make every effort to enable handicapped persons to lead a productive and financially independent life.

I welcome the additional requirement in this bill for an affirmative action program under which Federal contractors shall undertake to employ and advance in employment qualified handicapped individuals. Moreover, another section of this bill specifically prohibits discrimination against an otherwise qualified handicapped or severely handicapped individual, solely by reason of his or her handicap, resulting in that person being excluded from participation in, or denied the benefits of, any program or activity receiving Federal financial assistance.

I am deeply gratified at the inclusion of these provisions, which carry through the intent of original bills which I introduced jointly with the Senator from Illinois (Mr. PERCY) in the last Congress, S. 3044 and S. 3458, to amend, respectively, titles VI and VII of the Civil Rights Act of 1964, to guarantee the right of persons within a mental or physical handicap to participate in programs receiving Federal assistance, and to make discrimination in employment because of these handicaps, and in the absence of a bona fide occupational qualification, an unlawful employment practice. The time has come to firmly establish the right of these Americans to dignity and self-respect as equal and contributing members of society, and to end the virtual isolation of millions of children and adults from society.

I am also pleased that my original amendment, in revised form, has again been incorporated in this bill, to provide for vocational and comprehensive rehabilitation services for public safety officers disabled in the line of duty in dealing with a criminal act or working under a hazardous condition. Such assistance is of crucial importance if these public servants, handicapped in the course of protecting society, are to be helped by society to help themselves in pursuing new occupational careers and again having that vital sense of continuing usefulness.

Moreover, I welcome the continued inclusion in this bill of a provision calling for a comprehensive study of important problems confronting handicapped persons in sheltered work situations, to be conducted by the Secretary of Health, Education, and Welfare. It will be recalled that in the course of Senate debate on this bill last September, notice was taken of my proposed amendment to establish a demonstration program to determine the feasibility of wage supplement payments to mentally and physically handicapped and severely handicapped individuals who are employed on a long-term basis in rehabilitation facilities which are sheltered workshops or work activities centers. I believe that it is profoundly wrong that these persons should be institutionalized when with a modest income they could be enabled to live independently and function normally in their families and communities.

Then as now, however, it was recognized that a thorough study of sheltered work situations should be undertaken, and that action should be expedited on legislation to revise and extend vital vocational rehabilitation programs across America. While it is my intention to revise my amendment for introduction as an original bill in this Congress, I wish to take this opportunity to indicate my continuing support for early action on the Rehabilitation Act of 1973. At the same time, I strongly urge that legislative action be facilitated to provide for the additional income that handicapped persons employed in sheltered work situations require to become reasonably self-sufficient and contributing members of society, rather than to experience an isolation from society and at additional public expense.

I was, to say the least, shocked, dismayed, and saddened by the President's veto of this piece of legislation, which passed overwhelmingly here in the Congress in the late months of 1972. I cannot understand how the President ever justified that veto. Surely, this legislation did not make a raid on the public treasury. I would like the President of the United States some time, if he ever decides to come out of hiding, to tell the people of America why the physically handicapped, the mentally retarded, and the mentally ill are not worthy of the compassion and care of the people of this country.

Of all the vetoes I have observed in my 25 years of public service, this was the most cruel and, I might say, the most unsubstantiated; and I am so pleased that Members of this Congress are now joining together to reintroduce this legislation and bring about its passage. I urge that it be done quickly.

There are hundreds of thousands of people who are suffering because a President did not agree. The veto came when we had no chance to override it, because the Congress was in adjournment.

Not long ago, Mr. President, I was in Los Angeles, Calif., addressing a dinner to help raise funds for the Reiss-Davis Child Study Center. This center provided assistance to mentally disturbed, emotionally disturbed children. One whole section of the center has had to be closed down because of the lack of slightly over $100,000 of funds from the Federal Government. Hundreds of children are being denied the care that they need.

Every time I think of another bomb being dropped in Vietnam and think of these vetoes, I wonder what has gone wrong with the President and the Presidency and the value system of this Government. I hope that Congress will act promptly on this measure.

## CHILD HEALTH CARE

Mr. HUMPHREY. Mr. President, on two recent occasions I was given the opportunity to discuss critical needs in child health care across America. I firmly believe that child health and development must be given the highest priority in the agenda of the 93d Congress. It is profoundly wrong that almost three-fourths of our children living in poverty have never seen a dentist, that several million children continue to be afflicted with mental retardation, cerebral palsy, epilepsy, and other disabilities attributable to neurological impairments, and that childhood malnutrition should remain prevalent across the Nation.

In an address at the dedication dinner for Children's Health Center and Hospital in Minneapolis, Minn., I outlined a national program to combat childhood illness—a comprehensive program of prepaid material and child health care; the nationwide establishment of child care and development programs; the immediate extension and expansion of children's dental care projects; increased appropriations for research and training on childhood diseases and medical treatment; and the enactment of universal child nutrition and nutrition education legislation.

In this address, on December 14, 1972, I also pointed out major innovations in comprehensive child health care services being undertaken by Children's Health Center and Hospital. Some of these services, such as dental care and mental health, are without parallel in the entire upper Midwest.

Another institution setting the standard for the future is the Reiss-Davis Child Study Center in Los Angeles, Calif. Over its 22-year history, this unique facility has developed an integrated program of diagnosis and treatment, ongoing research, professional training, and extensive community education on childhood emotional disturbance.

In my remarks before the annual meeting of the Reiss-Davis Child Study Center, held on December 19, 1972, I strongly criticized the low priority given by the administration to mental health, and the seriously inadequate mental health care available to the Nation's

children. It has been reported, for example, that there are only 3,000 child psychiatrists in the country, and that the number of children in State and county mental hospitals has doubled since 1963. Emotional disturbance strikes 10 million children and youth in America, but only 1 million receive any help at all.

In my address, I called for full funding for mental health research and training programs, expanded programs under the Developmental Disabilities Services and Facilities Construction Act, and a substantial increase in authorizations under the Community Mental Health Centers Act, as well as a new focus in this act upon community education and the full utilization of local resources to meet extensive mental health needs. I also reiterated my concern that a nationwide program of maternal and child health care be established. And I called for a fundamental commitment to ending the isolation from society of children with mental and physical handicaps.

Mr. President, the time has come to guarantee to every American child the right to health, and the right to hope in a full life of challenge and opportunity. Let us make the establishment of these rights a hallmark in the record of this Congress.

Mr. President, I conclude my statement by saying that in the month of December it was my privilege to visit the American Children's Research Hospital at Krakow, Poland. That hospital was sponsored here in Congress. It was my privilege to be the sponsor of legislation that made possible this gift from the American people to the children of Europe and indeed the children of the world. I intend in the time that I have in the Senate to give a good deal of attention to the needs of the children of this land and, indeed, the children of the world.

I read in the paper from time to time that we are now entering into a period they call a conservative era in which we are going to trim back, to cut back, and do away with many of the programs that have been related directly to the health and well-being of the disadvantaged, the elderly, and the children of this Nation.

I just want to serve notice politely and gently today that I will not permit it if I have it within my power to stop it. I want to serve notice on the President of the United States that this Senator does not intend to stand idly by while we cut the heart out of programs benefiting human resources. I seek to cooperate with the President and I seek a partnership in this Government. But if the President feels that somehow or other this country cannot afford to take care of the sick, the indigent, the elderly, and the children, I want the President to know that he is in for a fight and that the floor of the Senate will be used day in and day out for that purpose.

I know this body and I think that I know something about those who serve in it. I do not believe that the Senate of the United States or, indeed, the Congress, is going to permit the work of two generations of people who were and are concerned about the future of our country to be emasculated and to be cut back in the name of efficiency and economy.

I suggest that the President look around the Government for other areas in which to economize rather than in the area of programs for the benefit of the children, the old people, the sick, and the disabled. If he cannot find such areas, some of us would be glad to cooperate and pinpoint them for him.

Mr. President, I ask unanimous consent that the text of my remarks at the dedication dinner for Children's Health Center and Hospital, and the text of my address at the annual meeting of Reiss-Davis Child Study Center, be printed at this point in the RECORD.

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

REMARKS BY SENATOR HUBERT H. HUMPHREY, DEDICATION DINNER FOR CHILDREN'S HEALTH CENTER AND HOSPITAL

This dinner rightly celebrates a tremendous accomplishment in several important respects.

Children's Health Center is the product of a deep public commitment to provide comprehensive health care for children—a commitment reflected in a fund-raising campaign involving some 1,000 volunteers, and in citizen contributions, and private donations and pledges, totalling over $3,500,000.

Children's Health Center is an outstanding example of cooperative planning within a metropolitan health care delivery system to control costs and assure the availability of health services. By operating as the pediatric "core" of the five-hospital complex making up the Minneapolis Medical Center and by sharing basic as well as highly specialized facilities in these units, the Center will be assured adequate occupancy capacity and will be able to hold down capital and operating costs.

And by this decisive private initiative, Children's Health Center can be a model for the Nation of what innovative and comprehensive health care services for children are meant to be and can be. Dr. Arnold S. Anderson, your President and a good friend whose wise counsel I have been privileged to receive over the years, has well stated the crucial need to make a 100-per cent effort in providing health services that are especially sensitive to the needs of children. This is essential, if there is to be any progress in a community's effort to provide these services and if we are to keep pace with modern knowledge and technology in this field.

I am deeply impressed by the child health care specialties and research and training programs that will be available at this Center. But I am especially gratified that this voluntary, non-profit hospital will be operated for the benefit of the entire community, becoming a one-stop health facility that will not refuse medical care to any child who needs it.

Only through such centralized, comprehensive and innovative health care services can a community maintain the vital resource of practicing pediatricians and allied health professions personnel—and this is of particular importance to Minneapolis, where it is expected that by 1980 the child population will have doubled over two decades.

Only through a Center that moves out boldly in launching major new research and service programs can we begin to make progress in the diagnosis, treatment, and prevention of childhood illnesses and conditions that have crippled the lives of millions of people in previous generations. I am particularly impressed with such Center services as:

A Pediatric Dental Clinic—the only such facility in the Upper Midwest;

A comprehensive program of services at birth and for critical care of newborn infants;

A very important mental health program designed to establish a positive and sensitive attitude throughout the entire hospital;

Family care units providing "live-in" accommodations for the parents of child patients;

Clinical training for the students of nearby schools of nursing;

And a range of services from physical exams to the treatment of burns and poisoning, and the provision of psychiatric counselling and resources for school and learning problems.

However, of special importance is the fact that Children's Health Center has taken seriously its responsibilities to the inner city where it is located. This concern was already foreshadowed in the Walk-In Counselling Center and Teen-Age Medical Service run almost entirely by professional staff volunteering their services. These programs have directly confronted the critical and extensive problems among our youth of drug abuse, unwanted pregnancies, and venereal disease, as well as a fundamental need for down-to-earth communication.

Beyond this, however, and even beyond a commitment to providing needed child health care, irrespective of a parent's ability to pay, the Children's Health Center intends to take its part in combatting the poverty of the Model City area, by training and employing up to one-half of its staff from that area.

It is my profound hope that the United States Congress will express a similar firm commitment to meeting the pervasive and critical child health and development needs of America, that are all too frequently the heart-rending reality of poverty.

As one who pushed through legislation some fifteen years ago to create the National Institute of Child Health and Human Development, I am determined that this commitment now be carried through.

As one who played a direct role in the establishment of the Headstart program, I am committed to a renewed legislative effort to override past Presidential vetoes of the establishment of comprehensive child care and development programs across America. We know that there are over six million children who need these programs, including health care, daily nutritious meals, and individual guidance services. They simply must not be denied educational opportunities when a major part of a child's intellectual development occurs in his or her earliest years.

And as part of the Administration which several years ago proposed the establishment of a universal child dental health program, I believe the time has come for Congress to enact the Children's Dental Health Act, passed by the Senate last year. I will urge the early reintroduction of this legislation, which authorize $50 million in Federal grants over a three-year period for projects providing comprehensive dental care—prevention, treatment, and correction—for children, including major pilot projects focused on disadvantaged children almost three-fourths of whom have never seen a dentist.

Moreover, I believe the time is long overdue for squarely confronting the extensive problem of inadequate nutrition among children across America—a condition that is not limited to the children of lower-income families. I intend to renew work on the Universal Child Nutrition and Nutrition Education Act which I introduced in the last Congress.

I was gratified by subsequent favorable action taken on my amendments to expand and increase funding for child feeding programs, including a new emphasis on the nutrition needs of mothers and infants. But it has been clear that Congress must wage an unceasing battle with the Department of Agriculture to assure that the intent of the law in this area is, in fact, carried out.

The same has been true with respect to

research and training programs under the National Institute of Child Health and Human Development, where the Administration has called for cutbacks in programs and severe reductions in training grants. Yet there is serious need right now for more personnel professionally trained in perinatal and neonatal care, as well as mental retardation. I find it unconscionable that Federal Budget reductions should be proposed in this critical area, on top of earlier Administration actions to cut back medical research programs on childhood diseases.

It has been said that child health and development will be a major social policy issue in the current decade. I intend to do everything possible to see to it that this is, in fact, the case, and that the issue is quickly settled in favor of the children of America. During my term as Vice President, the Administration secured the enactment of comprehensive child health care services under Medicaid, yet these programs have been repeatedly delayed. And in the last Congress, I was one of those Senators who insisted that under pending so-called "welfare reform" legislation, the educational, health, nutritional, and other needs of children must be as important in child care programs as enabling parents to obtain employment.

However, it is now clear that Congress intends to move forward in giving higher visibility to major child health and development needs in America. It enacted a major program of Federal assistance for communicable disease control, focused on tuberculosis, measles, and venereal disease. It passed the National Sickle Cell Anemia Act to promote intensive research on this crippling disease, and to establish voluntary screening and counselling programs. And the Senate passed legislation to give high priority to research on the cause and cure of sudden infant death syndrome, and to expand programs for the prevention of lead-based paint poisoning. And, in addition to the passage of legislation providing for the evaluation of the status of current research on multiple sclerosis, work was begun on further bills to assist in the prevention of child abuse, and to promote further services to address mental retardation and other physical and mental disabilities borne by millions of children.

These are but a few examples of what I see as a definite trend toward establishing the health and development of America's children as a high priority in national policy and programs.

But there is so much more work that must be done if this goal is to be achieved. It is profoundly wrong that in a nation with the highest standard of living and which is supposedly devoted to the welfare of its children—

About one-third of the low-income preschool children are anemic;

Nearly half a million children have cerebral palsy;

Half a million suffer from epilepsy;

Several million are mentally retarded;

And more than two and a half million children have orthopedic handicaps.

I firmly believe that a total national effort must be launched to address these problems. In addresses across the Nation, I have outlined a program of maternal and child health care that must be established if the right of children to health is to be guaranteed.

Basically, this would be a comprehensive program of prepaid medical care under Social Security for all pregnant women and for children in their earliest years. It would cover all physician services and hospital and laboratory costs. But of equal importance, it would also be directed at the child's home situation, through the provision of home health and outpatient counselling services. Treatment and care would also be provided for those children under six whose health has been threatened or seriously impaired by major trauma or catastrophic illness. And, to address the critical situation in America where several million children are isolated from society because of mental retardation and other physical and mental handicaps, this program would provide for early identification of these health care needs through periodic screening and complete diagnostic services, followed by individual care and rehabilitation programs.

Such a comprehensive and intensive approach to guaranteeing child health can and must be launched without further delay. And I intend to work jointly with my Senate colleagues to see to it that this approach is an integral part of a national health insurance program, whose enactment must have the highest priority in the next Congress.

In proclaiming October 2, 1972, as Child Health Day, President Nixon said:

"This Nation's children represent our greatest responsibility and our greatest hope. We all share a continuous obligation to do all we can to safeguard and promote their health and well being."

I now call upon the President to work with Congress in translating these words into action to fulfill this obligation. Millions of American parents ask only that their children be given a decent chance in life. A child who is given the right to hope, has everything. I intend to see that every child is guaranteed that right.

---

REMARKS BY SENATOR HUBERT H. HUMPHREY, ANNUAL MEETING, REISS-DAVIS CHILD STUDY CENTER

One criticism frequently made of newspapers is that, having covered a dramatic event in exciting prose, they rarely follow up this story with an analysis of its aftermath—less exciting, perhaps, but equally real and newsworthy. Recently, however, my attention was captured by a follow-up story of a case of senseless violence. The article in the November 30th issue of the Washington Post was headed: "Gang Beating Leaves Mental Scars on Youth."

That beating of a 14 year old boy by fellow teenagers who, apparently, wanted nothing more than a moment of excitement, had occurred over six months ago. It had left the boy hospitalized with a blood clot on his brain, but apparently on the way to physical recovery after surgery.

But *mental* recovery was another matter. Checking up on this earlier story, the Washington Post reported confronted a boy clutching at his mother as she prepared to leave his room at a psychiatric institute, and then kicking and screaming in the tantrum of a preschooler. The psychiatrist's report was that this boy, unable to cope with the trauma of that physical attack, had retreated into the safety of his early childhood.

And what of the "trauma" of the parents, financial as well as emotional? Already holding hospital bills totalling more than $16,000, they face the additional expense of institutional care and treatment, amounting to over $100 a day, for an unknown period of months. The father, a painting contractor, obtains contracts intermittently. Last year he made about $8,000. He and his wife, who is also trying to find work, have no car. To save money, they have moved in with relatives.

Something is wrong when an affluent and supposedly child-centered society cannot find a way to help these people—a boy who could, after intensive care and rehabilitation, make it back into society and eventually become a contributing member of that society, rather than be "put away" somewhere and yet remain a permanent burden upon a society that says "out of sight, out of mind." Something is very wrong when we cannot help thousands upon thousands of parents who face the crisis of not even being able to find help for their emotionally "fragmented" children, either because of the expense of institutional care or because they are far down on the waiting list for even an initial interview.

We know that emotional illness is now the number one health problem in the nation. But do we have any concept of how extensive this problem is among our children?

The 1970 report of the Joint Commission on Mental Health of Children estimated that emotional disturbance strikes ten million of the 100 million children and youth of America—and this figure includes 2 million who are classified as psychotic. And yet, only one million children are getting any help at all.

In testimony before the Platform Committee of the Democratic National Committee last June, representatives of the American Psychiatric Association reported that there are only 3,000 child psychiatrists in America, and that there is a serious shortage of mental health facilities. As a result, the number of children in state and county mental hospitals, now 55,000, has doubled since 1963.

These harsh statistics ought to shock this nation into action. There is no question that dramatic steps would be taken if these figures applied to a disease epidemic, such as diphtheria or measles or polio. But apparently, society continues to regard the whole area of mental health in a different light. Despite major initiatives launched by Congress in the last decade to address this extensive health problem, federal programs continue to languish for want of adequate funding, and mental health remains low on the Administration's list of human resource priorities in annual federal budget requests.

It is sharply clear to me that a concerted effort must be made in the present decade to bring America out of the dark age of ignorance about mental illness, and to focus upon the direct connection between mental and physical health. And yet, this is precisely the point that Dr. Oscar Reiss and Dr. David Davis were making 22 years ago when the Reiss-Davis Child Study Center was opened in a converted warehouse in Los Angeles. Perhaps far ahead of their time, these pediatricians recognized the critical need for an integrated program of diagnosis and treatment, ongoing research, professional training, and extensive community education on childhood emotional disturbance.

Now occupying a uniquely designed facility—the result of Hill-Burton assistance and a major community and fund-raising effort—this Center is an outstanding example of advanced approaches to childhood mental health problems that ought to be going forward all across this nation. Here you will find a total investmnt in the rehabilitation of emotionally disturbed children, where each case is made the deep concern of a clinical team of professionals in psychiatry, psychology, and psychiatric social services.

But from the beginning, the Center saw each child as a member of a family unit and of his or her community, and it reached out to this total social situation, through directing counselling and help to the parents as well as the child, and through launching extensive and highly successful institutes and seminars for schoolteachers. I find it remarkable that such an obviously essential approach to mental health should not have received national recognition until the enactment of the Community Mental Health Centers Act of 1963. For it is that family and community society, from which the child has withdrawn, which will ultimately provide his or her "cure" and which, at the same time, will be a better society for having been given his opportunity."

In this regard, I can only applaud the Center's basic treatment program on an outpatient basis and to which a long-term commitment is made. I cannot accept the alternative of institutionalization, any more than I can believe that childhood emotional

disturbance should be simply "controlled" through quickly administered palliatives. I know that a major fund-raising effort is underway to expand this basic treatment program, and hopefully, to reinstitute the richly promising programs of the Day Treatment Center for even more severely disturbed children. And you have my deepest wish for success in this vital undertaking, to enable this nationally accredited and recognized independent institution—only one of five of its type in the nation—to fulfill its promise.

But the time has come to establish an equal commitment across this nation that every child shall be guaranteed the right to mental health. And it is my personal commitment that Congress shall play a decisive role in securing this right.

We must begin by overruling continuing objections by the Nixon Administration, to provide full funding for medical research and training programs—for example, psychiatric residency training, where the loss of federal support would cut the number of present residents almost in half.

Similarly, when the Community Mental Health Centers Act comes up for renewal in 1974, we must substantially increase authorizations if we are to meet the original goal of establishing 2,000 fully operational centers by 1980.

I find it incredible that, almost ten years after this law was enacted, there are only 452 centers operational today. Community mental health programs have played a vital role in addressing problems of drug addiction, alcoholism, and mental health problems of minority groups, veterans, children, adolescents, and the aged. And these community services have probably saved millions of dollars that would otherwise have been required for long-term institutional care and the treatment of cases that would have become more severe.

Next, Congress must enact legislation to extend and expand programs under the Developmental Disabilities Services and Facilities Construction Act. This law focuses upon the handicaps that originate in childhood—children who are victims of cerebral palsy, epilepsy, and similar disabilities attributable to neurological impairments.

But it is a law which has never been given the chance to do the job in its first three years, because the Administration has requested only $120 million of the $295 million authorized by Congress for these comprehensive services.

This law amended the 1963 Act providing for federal assistance for the construction of community facilities for the mentally retarded. And several million mentally retarded children remain the largest constituency of those having a serious need for services under the 1970 Act. It is profoundly wrong that these children should be isolated from society, denied the educational opportunities that are vital to the development of a child's capabilities to his or her fullest potential. We know that the major type of mental retardation arises from adverse environmental and cultural situations. Stated simply, many children unable to compete in school or in society lacked the early childhood developmental experiences necessary to prevent functional retardation.

It was precisely to address such prevalent conditions that last year I introduced legislation that went right to the heart of the matter where children, youth, and adults are denied an equal chance in life solely because of a mental or physical handicap. My bills, therefore, would have amended the Civil Rights Act to prohibit discrimination, on the basis of such handicaps, both in all programs receiving federal assistance and in employment.

But this is only one example of the comprehensive approach that must be taken to establishing the right to mental health for all our people. We know, for example, that the high incidence of mental retardation in areas of poverty has one direct cause in pervasive malnutrition. Here we confront the organic causes of mental illness—for example, Pellagra, associated with a diet deficient in niacin and protein. For this reason, I have placed strong emphasis in my legislative work on expanding federal assistance for such programs as maternal and infant nutrition. And it is my intention to introduce again the Universal Child Nutrition and Nutrition Education Act—to assure that every American child receives nourishing daily meals.

What I am suggesting is that what is termed "preventive intervention" must be regarded as of equal importance with comprehensive rehabilitation services in combatting mental illness, particularly among children. That is why, for example, I have presented a nationwide program of maternal and child health care:

A comprehensive program of prepaid medical care for all pregnant women and for children in their earliest years;

A program that is also directed at the child's home situation;

A program geared to the early prevention of physical and mental illness through periodic screening and complete diagnostic services;

And a program to provide treatment and care to children under six years of age whose health has been threatened by major trauma or catastrophic illness.

Such a comprehensive and intensive approach to guaranteeing child health should be in integral part of a national health insurance program, whose enactment should have the highest priority in the next Congress. But with respect to national health insurance, I fully agree with the position of the American Psychiatric Association that this program must also include coverage of a full range of services and facilities for the mentally ill and emotionally disturbed.

However, the time has also come to coordinate and substantially expand services for the treatment and rehabilitation of emotionally disturbed and mentally ill children and youth. The high rate of juvenile suicides, homicides, and drug overdose deaths demands this national action without further delay.

I believe that an effective method by which this can be accomplished is through providing federal assistance for "full-service" mental health programs in our communities. The approach I am suggesting would sharpen the focus of the Community Health Centers Act. This approach would make mental health clearly a responsibility of the total community. By pulling together vital resources, it would make mental health services more clearly identifiable and available to a far broader range of families at the lowest possible cost.

The Reiss-Davis Child Study Center program has two aspects of particular relevance to what I have in mind. First, it offers a central clinic providing special services, but tied in with an ongoing educational program involving local school districts. Second, it has set the standard by reserving treatment for the children of families who cannot afford private care.

I believe that federal project grants should be provided to promote this constructive interaction of professional services and local school districts, whereby educators are sensitized to potential emotional disturbance, mental illness, and learning disability problems of children. And through providing incentives for state and local matching assistance for the development of professional centers, these children can be reached at the earliest possible time, while the children themselevs are enabled to enjoy a normal social atmosphere to the fullest feasible extent.

Finally, to further the goal of establishing well-rounded mental health programs with maximum outreach, communities would be encouraged to establish mental health associations, both to promote communication and citizen participation, and to expand services through fund-raising campaigns, educational programs, and the training of citizen volunteers.

Only in this way, can we reaffirm the rights of bilingual, handicapped, or slow-learning children to education in the public schools, instead of being wrongly classified as retarded or uneducable and dismissed.

Only through so expanding the horizon of our awareness of what is going on in our communities, will we begin to take action to help the so-called "naive offender"—the retarded youth who lacks perception or intuitive judgment about the offense with which he is charged—and the law enforcement officer or court official who sees no alternative to placing him in a jail cell. And it is only through achieving such heightened concern by the total community that we will address the profound problem of tens of thousands of people receiving only custodial care in mental institutions—where all too frequently we are confronting shocking cases of human degradation.

And yet, in the end I come back to that 14-year-old boy who has withdrawn from society, and I think of the thousands of children and youth like him whose view of society is blocked by a tightly drawn curtain, while parents sit in the next room in the silence of despair and anxiety.

American society dare not withdraw from them. The curtain must be opened. Hope must be restored. A nation of compassion can do no less. A people who are concerned can do so much more.

---

## CIVIL RIGHTS: THE PAST AS PROLOG

Mr. HUMPHREY. Mr. President, I wish to call to the attention of my colleagues an extremely significant event that took place during adjournment of the Congress—the civil rights symposium sponsored jointly by the University of Texas at Austin and the Lyndon Baines Johnson Library. The symposium—"Equal Opportunity in the United States"—was held in conjunction with the opening of President Johnson's civil rights papers on deposit in the library.

It was noted in the invitation from Harry Middleton, director of the LBJ Library that—

The purpose of the symposium will be not to look back, but rather to look ahead to see what this Nation should be doing to fulfill its commitments in the decade ahead.

As a matter of fact, the symposium, with its outstanding roster of participants, both looked backward—to recapture a sense of the achievements of the 1950's and 1960's—and developed a compelling agenda of action for the balance of the 1970's.

In this time of uncertainty and doubt concerning the course of civil rights progress in America, it is particularly important to understand the breakthroughs that were won against political obstacles every bit as intractable as the ones we face today. Retired Chief Justice of the United States, Earl Warren, and the executive secretary of the NAACP, Roy Wilkins, spoke to these achievements with an honesty and forthrightness that has been rarely heard in recent years.

The Chief Justice, in his keynote address, spoke of America's long history of

segregation and separation of the races culminating in the Supreme Court's decision in Plessy against Ferguson, 1896.

The Chief Justice said:

The euphonious phrase "separate but equal," became the touchstone for a torrent of racist legislation and governmental practices in the Southern States that brought the black people there close to a condition of apartheid in the twenties and thirties of the twentieth century.

But in the fifties and sixties, following the Supreme Court's decision in Brown against Board of Education, 1954, that declared unconstitutional the doctrine of "separate but equal," the Congress and the executive branch moved decisively to strike down this entire structure of racist legislation, statutes, and tradition.

Roy Wilkins, in his address, described this period as "one of those constituting a great leap forward for our Nation in this civil rights field. It was a time of significant history."

And so it was, as many of my colleagues in the Senate will recall. People who are today discouraged by the outlook for renewed civil rights progress should remember that the outlook in this body was equally grim when we began debating the Civil Rights Act of 1964. It took 75 days—the longest uninterrupted debate in Senate history—to bring this legislation successfully through to final passage. But the combination of the firm Presidential leadership of Lyndon Johnson and the dedicated efforts of Senators of both parties eventually prevailed. The greatest legislative breakthrough in civil rights history had been achieved.

Vernon Jordan, the successor to the late Whitney Young as executive director of the National Urban League, provided a brilliant analysis of the civil rights agenda that we must face in the seventies. Jordan said, in part:

In the sixties, the issue was the right to sit on the bus; today the issue is where that bus is going and what does it cost to get there. In the sixties, the issue was the right to eat at the lunch counter; today the issue is the hunger and malnutrition that stalk the land. In the sixties, the issue was fair employment opportunity. Today, that can no longer be separated from full employment of black people and equal access to every kind and level of employment, up to and including top policy-making jobs.

The strategies black people and committed white people must develop in the seventies will revolve around issues like revenue sharing, metropolitan government, and internal regulations of federal and state regulatory agencies. The battleground has shifted from the streets where people marched to end segregation on buses, to the computer rooms where analysts will have to examine data on bus routes, on where black people live and where they travel to work, and on alternate rate structures that will make riding cheaper for poor people.

So civil rights in the seventies will be less dramatic and less popular. It will be an era of trench warfare, requiring knowledgeable technicians skillfully monitoring and exposing racism in the twilight zone of America's institutional policymaking processes.

In one of his very infrequent public speeches, former President Lyndon Johnson demonstrated once again why historians will judge his administration to be the turning point in America's struggle to translate the promises of the Declaration of Independence into reality for all citizens of this country. He spoke of the backlog of deprivation and inequality that has been the constant companion of practically every black American. And he spoke of the urgent need to rectify these two centuries of injustice through compensatory action that will enable whites and blacks—together—to share equally in the opportunity and promise of this Nation.

This was a stirring challenge but it is also, quite frankly, a most difficult challenge. As our front pages are filled with controversies over schoolbusing, or quotas, or scatter site housing, we cannot avoid recognizing the political obstacles that today block the kind of enlightened and activist strategy proposed by Vernon Jordan. But, equally, we cannot avoid the imperatives to action laid down by Lyndon Johnson.

In my remarks to the symposium, I suggested the beginnings of a political strategy that once again could build a working majority in Congress for a revitalized attack on a host of urgent domestic problems—problems that affect not only blacks and other minorities, but the large majority of American families.

I suggested that we are in a vitally important period in our national life where our lack of direction in the civil rights arena is no greater than our lack of direction generally. But to redefine our direction as a people we must look broadly to the needs of all the people of this country.

In the political arena, for example, there just are not enough blacks, Chicanos, Indians, and Puerto Ricans to form an electoral majority. What is needed is the creation of a climate of identity between the needs—the hopes and fears—of the minorities and the needs—the hopes and fears—of the majority.

This, I submit, is the great challenge of the 93d Congress.

And we can move to meet this challenge if we heed the great lesson, in my view, of the civil rights symposium: namely, that despite setbacks and disappointments, this Nation in the fifties and sixties took giant strides toward the creation of a more just and free society through the determined efforts of the Congress, the Presidency, and the courts. These battles were not easy. The results were not preordained. But through unremitting effort and a certain amount of political commonsense, we finally were able to secure these advances.

This is precisely the formula that we must follow today if we are to break out of our present deadlock: unremitting effort and a certain amount of political commonsense.

We will have our opportunities in the 93d Congress. And if we take advantage of them—in the spirit that was so abundantly evident at the civil rights symposium—I believe we might surprise ourselves at what can be achieved.

Mr. President, I ask unanimous consent that my remarks at the civil rights symposium at the LBJ Library be printed at this point in the RECORD.

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

REMARKS BY SENATOR HUBERT H. HUMPHREY

It is a great privilege for me to participate in this civil rights symposium sponsored jointly by the Lyndon Baines Johnson Library and the University of Texas.

I am even tempted to suggest that this is a historic occasion. Although I recognize that the term "historic" has been used to excess in certain quarters, I am fully prepared to defend this gathering as properly being placed in the historical category.

It is historic in the sense that today we observe the opening of the civil rights papers on deposit in the LBJ Library. Scholars of post-World War II America will find these documents to be a rich source of information and social challenge—the quest for racial justice and opportunity.

And no man was more crucial to this struggle—no man gave more of himself to this cause and asked more of us—than U.S. Senator and then President Lyndon Johnson.

But this symposium is historic in other equally significant ways. Just the fact of its being held is historic. It has been more years than I care to count since such a distinguished group of national leaders have come together for something called a "civil rights symposium." This is the kind of gathering that one attended regularly in the 1960's, such as the civil rights convocation held at Georgetown University at the height of our efforts to pass the Civil Rights Act of 1964. The fact that today this symposium generates such interest and comment is striking evidence of the profound changes that have taken place since these earlier years of optimism and hope.

Finally, this meeting is historic because it offers a rare opportunity to speak honestly and directly to the unfinished agenda of civil rights that still confronts this nation. I do not accept the proposition that most Americans believe that two centuries of racial injustice have somehow vanished from this land, however, they may feel personally about school busing, or scatter-sight housing, or the Philadelphia plan. I believe most Americans understand that the job is far from finished.

It is, therefore, vitally important that we seize the opportunity to remind our fellow citizens of this unfinished agenda. But if we did no more than this—if we only enumerated the wrongs and injustices that remained—we would be throwing away our chance to carry forward the struggle of eradicating these living denials of justice and freedom.

To make this a truly historic conference, we must face directly the kind of tough political problems that we faced many years ago and that, through years of unremitting effort, we eventually surmounted. And it is to this task that I thought I might usefully direct my remarks this afternoon.

I recognize that it has been fashionable in some circles to suggest that white politicians no longer have much to offer in this struggle, that blacks, Chicanos and Indians have now taken over the full burden of organizing the political forces to end the racial abuses that offend us all. While it is certainly true that a great deal of this responsibility has shifted to persons who actually suffer under these wrongs, I flatly reject the notion that this burden is theirs alone.

I do so for two reasons. First, we have said many times—and I still believe—that racial injustice and prejudice is more a white problem than a black, brown, or red problem. If that is so, I am unable to understand how the problem can be solved without full and active participation by whites—public officials and private citizens, alike.

Second, I know that real progress will be achieved only when the overwhelming majority of Americans are committed to action and are prepared to communicate this mes-

sage to their elected representatives in cities, states and in the Congress and White House.

We look back at the civil rights battles of the 1950's and 1960's with an air of nostalgia. In those years the legaislative goals were relatively well defined: the removal of a host of legal barriers to civil equality and equal opportunity.

More than this, the legal barriers existed primarily in one section of the country so that the lives of most Americans would be unaffected by whatever reforms we might achieve in Congress. We were, in a sense, working with a civil rights agenda that was uniquely suited to legislative remedy.

We now look back on those times as the easy days of the civil rights struggle.

But if we think a moment longer—and in this I defer to my good friend, Clarence Mitchell, who will be participating in tomorrow's panel—these easy days were not so easy. In the early 1950's, the number of U.S. Senators who were actively committed to passing the pending civil rights legislation could caucus in the rear corner of the Senate cloakroom. And I have the distinct impression that the Senate establishment of those years was decidedly unenthusiastic about these bills. One might even say downright hostile.

As Clarence Mitchell remembers, these were years of unrelieved frustration and failure, until Senate Majority Leader Lyndon Johnson decided that we could postpone no longer the most urgent portions of the pending legislation. In what still must be regarded as one of the Senate's most amazing demonstrations of parliamentary skill, the Civil Rights Act of 1957 become law when Lyndon Johnson maneuvered the legislation through the Senate without a filibuster.

By the early 1960's, these initial steps were no longer sufficient as remedies for the problems that remained: equal access to public accommodations, equal job opportunity, the non-discriminatory use of federal funds, and greater protection of the right to vote. The legislative outlook was as dismal as it had been ten years earlier.

The dramatic events in Birmingham; the decision by President Kennedy to seize the legislative initiative, his tragic assassination, and the total commitment of President Johnson to realizing these objectives produced a more hospitable legislative climate.

But, even then, the outlook in the Senate was grim. Our eventual triumph was not preordained, by any means. At numerous points in the 75 day battle to break the filibuster the legislation could have been compromised irretrievably. The fact that none of this happened was due almost entirely to the political strategy that had been mapped out and that was followed even in the most difficult moments of debate.

These brief retrospective remarks have only one purpose: to suggest again that the struggle for civil rights in Congress has never been easy and that, in many respects, our present difficulties are no more insuperable than the barriers we faced back in the good old days. Different, to be sure, but not insuperable.

Other participants in this symposium will speak to the substance of the remaining problems: racially-restrictive suburbs, racially-exclusive schools, racially protected jobs, crime, drugs, and the host of other intertwined domestic problems. We will talk at length about the new Northern battlegrounds where many of these issues will be resolved. But I would like to devote the remainder of my remarks to the political strategy that must be devised if we are to continue the progress of the 1960's in this decade.

I begin with this proposition: unless we agree on a strategy that can attract a majority coalition in the Congress and the nation at large, we can look forward to little in the way of concrete results. This lesson is as true today as it was twenty years ago.

Between the two extremes of empty appeals to the nation's moral consciousness and premeditated violence and intimidation is a broad field for constructive political action. And it is in this area where we must begin to think more creatively.

It is now commonplace in current political analysis to suggest that the national constituency in support of continued civil rights progress has vanished. The Nixon landslide in the general election; the surprising showing of Governor Wallace in the primaries; and the reams of polling data are offered as evidence of this decline. The momentum toward greater racial justice of the 1960's apparently has given way to a growing sense of retrenchment and disquiet.

But, on the other hand, if one looks behind these highly visible developments at other examples of the public's attitude, the outlook is less stark and more hopeful.

The Gallup Poll, for example, has discovered a marked decline among Southern white parents who object to sending their children to schools with blacks. In 1963, 61 percent of Southern white parents said they objected to such a development; in 1970, seven years later, Gallup asked the same question and discovered that 16 percent said they would object. Gallup described this as one of the most dramatic shifts in the history of public opinion polling.

Or consider this bit of evidence: in 1958, 39 percent of the voters interviews in another national Gallup Poll said they would vote for a generally well-qualified black man for President; 53 percent said they could not support such a candidate. Last year Gallup asked the same question: 69 percent said they would vote for a generally well-qualified black presidential candidate of their party, an increase of 31 percent. On the basis of this survey, Gallup reported that prejudice toward blacks in politics had declined to its lowest point yet recorded.

These findings are significant if they do no more than remind us that the integration—a good word, I continue to believe—of blacks into our educational and political structure has moved forward in the past decade, even as we read of the bitter opposition of a specific group of whites to a local busing plan or the defeat of a particular black candidate at the polls.

We are, it seems to me, in a peculiar but vitally important period of our national life, where our lack of direction in the civil rights arena is no greater than our lack of direction generally. The American people and their elected leaders are deeply confused and ambivalent about where we should be heading as a nation and, consequently, deeply divided about our shorter-range objectives.

This is certainly true about the Democratic Party itself, long the nation's principal source of vision and initiative. What *is* the Democratic Party? *Why* the Democratic Party? These are not easy questions to answer.

The 1972 elections did little to clarify this situation. It is regrettable but nonetheless true that many people voted *against* Senator McGovern or against President Nixon, rather than for either candidate. And an alarmingly large number of eligible voters didn't vote at all. The issues of the campaign become hopelessly muddled and many people voted against positions that neither candidate actually advocated. Thus we emerge from this presidential election no better informed about our future than when the campaign began more than a year ago.

But I think this much can be said: drawing from the election returns and our knowledge of current public attitudes, it seems clear that any political appeal that appears, rightly or wrongly, as favoring one group or class of people over another is going to be rejected by a majority of the American electorate.

The Democratic Party got into trouble when its internal reforms came to be perceived as establishing specific quotas that favored young people, women and blacks over the more traditional elements of the party, particularly ethnic Americans, blue collar workers, the elderly and elected Democratic officials.

And, by the same token, I would argue that the civil rights movement got into trouble when more and more people came to see it as an effort to give blacks a special break that was afforded no other group in American society. We know this perception is wrong. But it exists, whether we like it or not.

I would argue, however, that it is within our power to break out of this impasse and to begin the mobilization of political resources that can restore the positive momentum of the 1960's, not only for civil rights but for the nation generally.

How is this to be done?

I am not sure at all that I have the answers. But I can point up several facts that should be kept in mind as we search for more lasting solutions.

First, I subscribe totally to Vernon Jordan's thesis that President Nixon has within his grasp an extraordinary opportunity to move to the forefront of the quest for racial justice in this country.

Just as he confounded his critics with his dramatic trips to China and the Soviet Union, or his adoption of wage and price controls, Mr. Nixon could just as easily seize the initiative on the civil rights front.

I know, or at least I assume, that a second-term President must begin to think seriously about the historical judgments of his administration. And I can imagine no more harsh indictment than his having failed to lead the United States in the most critical and urgent area of domestic concern.

Such a move by President Nixon would be supported and applauded by the large majority of Democrats and, I suspect, by a significant number of Republicans. It would bring back to life, almost overnight, the bi-partisan coalition that was responsible for all the civil rights legislation of the 1960's.

Presidents, however, do not operate in a vacuum. So I would supplement the Jordan thesis with this proposal: we should be devising a political strategy that will assist President Nixon make this kind of affirmative decision.

There is good historical precedent for this approach. We forget that the early 1960's was a time of convincing President Kennedy to adopt a more aggressive posture in support of the civil rights legislation that had been pending in the Congress for many years. We forget that his initial civil rights proposals in 1963 were judged totally inadequate by the Leadership Conference on Civil Rights. It was only after the dramatic events in Birmingham that the Kennedy administration became fully committed to the legislative package that eventually became the Civil Rights Act of 1964.

The times and circumstances are very different today. But there are several factors that President Nixon should be reminded of as he looks ahead to his second term of office.

He should be reminded that the defeat of George McGovern was not a repudiation by the voters of the programs and policies advocated by other Presidents and passed by Democratic Congresses. In particular, there is solid evidence that a majority of Americans strongly favor closing tax loopholes and creating a far more equitable tax structure. In like fashion, there is significant national support for cutting out non-essential defense expenditures.

This is significant because progress in these two areas—only possible with strong presidential leadership—would begin to provide the federal government with the financial resources that are essential in any realistic attack on our most urgent domestic problems: education, jobs, health care, housing, crime, the environment and transportation. As you attack these problems, either directly by the federal government or through the

states and cities, you are touching the areas of daily life that now comprise most of what we mean by civil rights.

This new budgetary flexibility also means that these goals can be achieved without seeming to advocate special advantages for one group at the expense of another. There is virtually no segment of our society that would not benefit directly from meaningful progress in each of these areas.

In this context, I intend to argue strongly that the entire concept of civil rights be broadened to include the rights and opportunities that should be available to other disadvantaged groups in America. I am thinking in particular of the physically handicapped, the mentally retarded and the elderly, all of whom must face many of the same barriers of misunderstanding and prejudice that confront black and other minority citizens. And we know that we are in a period where the issue of women's rights and political power must be included in a broader definition of civil rights.

In other words, I think it can be demonstrated that the success of President Nixon's second term depends in large measure upon his willingness to take the lead on a number of issues that were raised in the campaign by Senator McGovern. Moreover, there already exists a base of popular support if Mr. Nixon elects such a course of action.

It is, then, imperative that we begin to organize the political forces that can help bring President Nixon to this point of view.

I intend to urge the Democratic congressional leadership, working in close cooperation with black and other minority leadership, to speak out forcefully on these matters at the beginning of the 93rd Congress. I would hope that state leaders—governors, mayors, and county executives—would do likewise.

As I see it, we must identify the struggle for civil rights as an all-embracing struggle for the rights, privileges, and duties of all Americans.

In the political arena, there just aren't enough blacks, Chicanos, Indians, and Puerto Ricans to form an electoral majority. Overemphasis on the needs of these identifiable groups can be and has been counterproductive.

What is needed is the creation of a climate of identity between the needs—the hopes and fears—of the minorities and the needs—the hopes and fears—of the majority.

For example, we ought to be emphasizing that the important new dimension of civil rights is the right of every American to an opportunity to use his or her talents, to develop his or her abilities and capacities, to make a constructive contribution to society.

In plain simple language, this means identifying the cause of civil rights with quality education for all children.

Remember, millions of parents, white and black, feel that the education system is not satisfying the needs of their children.

We must identify civil rights with the civil right of every American to health care. Remember white Americans, as well as black, brown, or red Americans, are all too often the victims of inadequate health care.

What I'm saying is that we must find common denominators—mutual needs, mutual wants, common hopes, the same fears—and use this body of accepted information as the binding that holds together a coalition of people: a coalition representing the hopes and fears of the majority.

Out of this coalition of needs, hopes, fears, and injustices, we must fashion a new Bill of Rights for all Americans:

The right to a meaningful life free from poverty.

The right to full and equal protection of the law.

The right to productive and gainful employment.

The right to economic, political and social opportunity free from the obstruction of discrimination based on race, creed, or sex.

The right to a clean and decent neighborhood.

The right to life free from violence and terrorism.

The right to privacy, free from official or private invasion.

The right to safety, including protection of person and property.

The right to quality education at all levels, free from segregation.

The right to live in good health under a system of comprehensive insurance providing and assuring modern health care for all.

The right to be free of hunger.

The right to recreation.

The right to a clean and wholesome environment.

These are rights, not just for the blacks or the Chicanos or the Indians, but for the blue collar worker, the poor white, the student, the farmer, the office or shop worker—yes, for everyone.

Without these rights being alive and well—being applicable and accepted—there are no real civil rights.

We now have the formalities of law, the legal protections, but we have not had the kind of social acceptance that is required.

The new dimensions of civil rights are to be found in the living and working conditions of our people.

It is not enough to have laws that declare discrimination in employment illegal. We must have jobs and income.

It is not enough to ban segregation in education. We must have modern, well-equipped schools with competent, well-paid teachers.

It is not enough to have government employ blacks and other minorities. We must insist that corporate industry, finance, and institutions of higher education practice true equal opportunity and equal treatment in all of their economic, management, and employment functions.

The emphasis must be on developing the American political and economic system to its fullest potential so that all may benefit. In the context of the ending of the Vietnam War, this appeal may well generate far more political support than some of our more cynical political commentators would imagine.

This last point is very important. As U.S. participation in the war ends and as our prisoners of war are returned, we will, in a very real sense, be liberated from a burden that has stifled and blurred our vision of what is possible in this country. It is not just a question of the diversion of billions of dollars to support our military effort in Southeast Asia. It is equally a question of our energy, of our awareness and of our willingness to buckle down to hard domestic matters as long as the Vietnam War was continuing.

Although it may not happen immediately, I am confident that, over time, we will come to know a political climate free of the hatred and antagonism that arose as a consequence of the war.

In such a political climate it will be much more feasible to win the support of the American people for a renewed attack on the unfinished agenda of domestic concerns.

But, you ask, do we have *enough* time? How can you expect black Americans, Chicanos, Indians and other deprived minorities to postpone for one day longer their full and fair participation in American life. The answer is simple: you can neither expect nor ask them to be this patient.

On the other hand, one of the factors that always amazed me throughout many years of public life has been the degree of faith in the American system that has been retained by blacks and other minorities. In many respects, they have kept the democratic faith more fully from the system.

Early next year the Potomac Associates will release a study that will show that blacks expressed just about as much sense of personal progress from the past to the present as whites, but that blacks are *more* optimistic than whites about their personal futures. These findings at least raise questions about the notion that members of the black community are overwhelmed by feelings of personal frustration and hopelessness.

I do not cite these results to suggest, in any way, that what we have achieved in the past is adequate or that we have been truly responsive to the problems that remain. I cite them only to suggest that blacks, and I believe most other minority group members, have not given up on this country.

If those who have suffered most have not given up, then I fail to see how those of us who have suffered least can even contemplate such a course.

This means getting back to work—understanding the problems that remain and searching for the avenues of solution that eventually can be found.

That is what we did in the 1950's and 1960's. We can do no less today and tomorrow.

## SENATE YOUTH PROGRAM

Mr. HUMPHREY. Mr. President, 1973 will mark the 11th year of the Senate youth program, under which 918 high school students have been given the opportunity to observe at first hand our Government in action. Sponsored and operated by the William Randolph Hearst Foundation, this program has been an outstanding success in enabling students who have been elected to student body offices, to have a solid indoctrination into the operation of the U.S. Senate and the Federal Government.

It was my privilege in the 87th Congress to have joined with former Senator Thomas H. Kuchel in introducing Senate Resolution 324, which established the U.S. Senate youth program, and to have worked to obtain its unanimous adoption. I also had the opportunity as a member of the program's advisory committee, to observe the impressive development of this program, through the personal involvement of George and Rosalie Hearst and the continuing commitment of Randolph A. Hearst, and under the capable guidance of Ira P. Walsh, director of the William Randolph Hearst Foundation. It is especially noteworthy that, 5 years after the program's inception, the trustees of the foundation acted to award a $1,000 scholarship to each high school delegate, to help that young man or woman to pursue 2 years of courses in American government, history, or related subjects, in the college of his or her choice.

I regard the U.S. Senate youth program as a vital contribution to promoting an intelligent understanding of our political processes and the functioning of our National Government, by the citizens of the United States, and as an incentive to alert, talented, and vigorous competition for political leadership—the bedrock of an enduring constitutional democracy. I know that with the ongoing full support of Members of the Senate, this program will continue to provide a warm welcome in Washington to many enthu-

siastic and highly capable youth of America.

The 11th annual U.S. Senate youth program will be held in Washington from February 3 to February 10, 1973. I am particularly pleased to announce that Miss Paula Christine Pope, of Circle Pines, Minn., and Mr. Frank James Kinzie, of Winona, Minn., will be among the 102 outstanding high school delegates visiting our Nation's Capital at that time. Paula serves on the staff of the newspaper and the yearbook of Centennial Senior High School, is secretary of the Minnesota State Student Councils Association, and was actively engaged in voter registration and in the presidential election campaign. Jamie is president of the Winona Senior High School student council as well as of the Southeastern Minnesota Association of Student Councils, and among other notable accomplishments is a member of the National Honor Society.

Our State is justly proud of these young people who have demonstrated the leadership abilities, civic concern, and solid capabilities that are so vital to our Nation's future. It will be my great pleasure to welcome them in their visit to the U.S. Senate.

## ANTISECRECY IN COMMITTEE SESSIONS RULE CHANGE

Mr. HUMPHREY. Mr. President, I ask unanimous consent that a press release that relates to secrecy in the committee sessions of the Congress be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HUMPHREY. It is my judgment that we should open up our processes ever more. This is the public's business and the public has a right to know what we are doing about their business.

I am hopeful that the appropriate committee, the Committee on Rules and Administration of the Senate, will act very promptly on this matter. I think it is of the highest importance for us to modernize the structure of this assembly.

The public is more and more aware of the Government, as it should be, and this Senate should be more and more aware of its responsibility to open the processes of our Government and of this body to the public.

I am joined in this effort by the distinguished Senator from Delaware (Mr. ROTH). Together we will pursue diligently the effort to bring what I have called the bright light of sunshine into the processes of congressional government, as one of the ways to start the reforms which are necessary in the Congress of the United States.

EXHIBIT 1

HUMPHREY AND ROTH INTRODUCE "ANTI-SECRECY" IN COMMITTEE SESSIONS RULE CHANGE

WASHINGTON, D.C., January 2.—Senator Hubert H. Humphrey (D-Minn.) and Senator William V. Roth, Jr. (R-Del.) announced today they would introduce next week and seek early adoption of an "anti-secrecy" rule governing Senate committee sessions.

The Senators explained their resolution would require, with national security and personal rights exemptions permitted if ordered by majority vote, that all meetings of Senate committees and subcommittees be open to the public.

In a statement mailed to their colleagues, Humphrey and Roth said that "as Common Cause and others have pointed out, Congressional committees do the public business. To the extent they do it in secrecy, the accountability between elected officials and their constituents is clouded."

"We believe," the two Senators said, "this is one of the major reform efforts which should be made early in the coming session." They said an anti-secrecy rule could be adopted by each party caucus or as a rules change within each committee, but that they concluded the adoption of a uniform rule by the Senate as a whole would be the best approach.

In a statement released from his Washington office, Senator Humphrey said, "The main target of our proposal, of course, is the so-called executive or mark-up session of the subcommittee and committee. In the Senate nearly all such sessions—which are at the crucial stage of the legislative process—are closed to the public. While there may have been convincing reasons for development of closed sessions in earlier years, I believe it is time to recognize that the public has a right to share in the development of legislative policy at every stage."

Humphrey summarized the benefits of an open-sessions policy as follows:

"Senators, as committee members, will be fully accountable to their constituents at the crucial stage of the legislative process, both as to their leadership within committee and their votes.

"An open-sessions procedure will increase public respect for the legislative process and for the Congress as a whole.

"The elimination of secrecy will strengthen legislation by making expert points of view available in the crucial moments when a bill is written in final form.

"Open sessions will increase the influence of the informed public and of public interest groups in open competition with the Executive Branch and the special interests who now have special access to mark-up sessions in many cases.

"Open committee and subcommittee sessions will provide insurance against hidden provisions or poorly drafted ones in legislation reported to the Senate.

"Full access to committee sessions will improve the reporting and understanding of legislation by the news media."

Senator Roth said, commenting on the resolution in a separate statement, "This resolution is part of an effort to put the people of this country in closer touch with their government and to make the government of this country more accountable to the people. If passed, our resolution would open up the business of the Senate to the people who elect the Senators. This is the proper place to start. As I stated on the Senate floor last year, 'Too often we in Congress have viewed secrecy in government—and its attendant credibility gaps—as problems of the Executive Branch. This is clearly not true.' Last year 38% of all meetings of Congressional Committees were held in secret and 98% of all business meetings were secret. This secrecy hides from the public a crucial part of the work of their Congress." He added, "Committee secrecy opens the opportunity for a number of abuses contrary to the spirit of democratic procedure.

"The Humphrey-Roth resolution will put a stop to this in the Senate. Then, I think, we will be in a better position to press for more openness from the Executive Branch as well."

## TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. HATHAWAY). Under the previous order, the Senate will now resume the transaction of routine morning business for a period of not to exceed 12 minutes, with each Senator to be recognized for a period of not to exceed 3 minutes.

Mr. HUMPHREY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

REPORT OF NATIONAL FOREST RESERVATION COMMISSION

A letter from the Secretary of the Army, President, National Forest Reservation Commission, transmitting, pursuant to law, a report of that Commission, for the fiscal year ended June 30, 1972 (with an accompanying report); to the Committee on Agriculture and Forestry.

REPORT ON OVEROBLIGATION OF AN APPROPRIATION

A letter from the Deputy Director, Office of Management and Budget, Executive Office of the President, reporting, pursuant to law, that the appropriation to the Internal Revenue Service for "Accounts, collection and taxpayer service," for the fiscal year 1973, had been reapportioned on a basis which indicates the necessity for a supplemental estimate of appropriation; to the Committee on Appropriations.

PROPOSED DONATION OF SURPLUS PROPERTY

A letter from the Chief of Legislative Affairs, Department of the Navy, reporting, pursuant to law, on the proposed donation of certain surplus property to the Pacific Southwest Railway Museum Association (with accompanying papers); to the Committee on Armed Services.

NOTICES OF PROPOSED DISPOSITION OF CERTAIN MATERIAL NOW HELD IN THE NATIONAL STOCKPILE

A letter from the Acting Administrator, General Services Administration, transmitting, pursuant to law, notices of the proposed disposition of certain material now held in the national stockpile (with accompanying papers); to the Committee on Armed Services.

PROPOSED LEGISLATION

A letter from the General Counsel of the Department of Defense, transmitting a draft of proposed legislation to amend section 269(d) of title 10, United States Code, to authorize the voluntary assignment of certain reserve members who are entitled to retired or retainer pay to the Ready Reserve, and for other purposes (with accompanying papers); to the Committee on Armed Services.

PROPOSED LEGISLATION

A letter from the Secretary of the Army, transmitting a draft of proposed legislation to amend title 10, United States Code, and the Military Selective Service Act, to permit the oversea assignment of members of the Armed Forces who have completed basic

training and who have been awarded a military specialty (with accompanying papers); to the Committee on Armed Services.

PROPOSED LEGISLATION

A letter from the Secretary of the Army, transmitting a draft of proposed legislation to increase the number of authorized Deputy Chiefs of Staff for the Army Staff, and eliminate the provisions for Assistant Chiefs of Staff for the Army Staff (with accompanying papers); to the Committee on Armed Services.

PROPOSED LEGISLATION

A letter from the Secretary of the Army, transmitting a draft of proposed legislation to amend titles 10, 32, and 37, United States Code, with respect to accountability and responsibility for U.S. property, and for other purposes (with accompanying papers); to the Committee on Armed Services.

REPORT OF BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM ON TRUTH IN LENDING

A letter from the Vice Chairman, Board of Governors of the Federal Reserve System, transmitting pursuant to law a report of that Board for the year 1972, with an accompanying report); to the Committee on Banking, Housing and Urban Affairs.

REPORT OF NATIONAL COMMISSION ON CONSUMER FINANCE

A letter from the Chairman, National Commission on Consumer Finance, transmitting, pursuant to law, a report of that Commission (with an accompanying report); to the Committee on Banking, Housing and Urban Affairs.

REPORT OF AVIATION ADVISORY COMMISSION

A letter from the Chairman, Aviation Advisory Commission, transmitting, pursuant to law, a report of that Commission (with an accompanying report); to the Committee on Commerce.

REPORT ON CERTAIN PERMITS AND LICENSES FOR HYDROELECTRIC PROJECTS ISSUED BY THE FEDERAL POWER COMMISSION

A letter from the Chairman, Federal Power Commission, transmitting, pursuant to law, a report on certain permits and licenses for hydroelectric projects, issued by that Commission, for the fiscal year ended June 30, 1972 (with an accompanying report); to the Committee on Commerce.

REPORT ON PROGRAMS, PROJECTS, AND FACILITIES OF THE DISTRICT OF COLUMBIA GOVERNMENT

A letter from the Assistant Director, Office of Planning and Management, District of Columbia Government, transmitting, pursuant to law, a report entitled "For Your Information" (with an accompanying report); to the Committee on the District of Columbia.

PROGRESS REPORT ON COMMISSION ON THE ORGANIZATION OF THE GOVERNMENT OF THE DISTRICT OF COLUMBIA

A letter from the Mayor-Commissioner, Washington, D.C., transmitting, pursuant to law, a progress report of the Commission on the Organization of the Government of the District of Columbia, dated December 29, 1972 (with an accompanying report); to the Committee on the District of Columbia.

THIRD AND FOURTH ANNUAL REPORT OF THE DISTRICT OF COLUMBIA CITY COUNCIL

Two letters from the Chairman, District of Columbia City Council, transmitting, pursuant to law, reports concerning the Council's functions for the years ended June 30, 1971, and June 30, 1972 (with accompanying reports); to the Committee on the District of Columbia.

REPORT OF DISTRICT OF COLUMBIA GOVERNMENT

A letter from the Commissioner, District of Columbia Government, transmitting, pursuant to law, a report entitled "For Your Information" (with an accompanying report); to the Committee on the District of Columbia.

REPORT OF THE CHESAPEAKE & POTOMAC TELEPHONE CO.

A letter from the vice president and general manager, the Chesapeake & Potomac Telephone Co., transmitting, pursuant to law, a report of the company for the year 1972 (with an accompanying report); to the Committee on the District of Columbia.

REPORT OF LIABILITIES AND FINANCIAL COMMITMENTS OF THE U.S. GOVERNMENT

A letter from the Secretary of the Treasury, transmitting pursuant to law, a report of liabilities and other financial commitments of the U.S. Government as of June 30, 1972 (with an accompanying report); to the Committee on Finance.

REPORTS OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Examination of Financial Statements of the Veterans' Canteen Service for Fiscal Year 1972," Veterans' Administration, dated January 4, 1973 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Audit of the U.S. Capitol Historical Society, for the year ended January 31, 1972," dated January 2, 1973 (with an accompanying report); to the Committee on Government Operations.

REPORT ON OPERATION OF THE COLORADO RIVER

A letter from the Assistant Secretary of the Interior, transmitting, pursuant to law, the second annual report on the operation of the Colorado River (with an accompanying report); to the Committee on Interior and Insular Affairs.

THIRD PREFERENCE AND SIXTH PREFERENCE CLASSIFICATION FOR CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, reports concerning third preference and sixth preference classification to certain aliens (with accompanying papers); to the Committee on the Judiciary.

TEMPORARY ADMISSION INTO THE UNITED STATES OF CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders granting temporary admission into the United States of certain aliens (with accompanying papers); to the Committee on the Judiciary.

ADMISSION INTO THE UNITED STATES OF A DEFECTOR ALIEN

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, a copy of orders entered granting admission into the United States of a defector alien (with accompanying papers); to the Committee on the Judiciary.

REPORT ON JUDGMENTS RENDERED BY THE U.S. COURT OF CLAIMS

A letter from the Clerk, U.S. Court of Claims, transmitting, pursuant to law, a report setting forth all the judgments rendered by the Court for the year ended September 30, 1972 (with an accompanying report); to the Committee on the Judiciary.

REPORT OF NATIONAL SAFETY COUNCIL

A letter from the President, National Safety Council, transmitting, pursuant to law, its report to the nation for 1972 (with an accompanying report); to the Committee on the Judiciary.

REPORT OF THE GOVERNMENT PRINTING OFFICE

A letter from the Acting Public Printer, U.S. Government Printing Office, transmitting, pursuant to law, a report of the Printing Office for the fiscal year ended June 30, 1972 (with an accompanying report); to the Committee on Rules and Administration.

## PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the PRESIDENT pro tempore:

A resolution adopted by the council of the city of Toledo, Ohio, relating to the rehabilitation loan program; to the Committee on Government Operations.

A resolution adopted by the Central Vermont Chamber of Commerce, in support of an amendment to the Constitution relating to apportionment of State legislatures; to the Committee on the Judiciary.

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. SCOTT of Pennsylvania:

S. 252. A bill to grant a Federal charter to the American Golf Hall of Fame Association. Referred to the Committee on the Judiciary.

By Mr. SCOTT (for himself and Mr. SCHWEIKER):

S. 253. A bill to provide an additional permanent judgeship for the middle district of Pennsylvania. Referred to the Committee on the Judiciary.

By Mr. SCHWEIKER:

S. 254. A bill to prohibit assaults on State and local law enforcement officers, firemen, and judicial officers. Referred to the Committee on the Judiciary.

By Mr. EAGLETON:

S. 255. A bill to repeal certain provisions, which become effective January 1, 1974, of the Food Stamp Act of 1964 and section 416 of the Agricultural Act of 1949 relating to eligibility to participate in the food stamp program and the direct commodity distribution program. Referred to the Committee on Agriculture and Forestry.

By Mr. HANSEN (for himself and Mr. MCGEE):

S. 256. A bill to construct an Indian Art and Cultural Center in Riverton, Wyo., and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. MCGEE (for himself and Mr. HANSEN):

S. 257. A bill to provide for the establishment of a national cemetery in the State of Wyoming. Referred to the Committee on Veterans' Affairs.

By Mr. EASTLAND (for himself and Mr. THURMOND):

S. 258. A bill to amend chapter 84 of title 18 of the United States Code relating to the assaulting, injuring, or killing of police officers and firemen, and for other purposes. Referred to the Committee on the Judiciary.

By Mr. METCALF:

S. 259. A bill for the relief of Juan G. Parra. Referred to the Committee on the Judiciary.

By Mr. CHILES (for himself, and Mr. CLARK, Mr. COOK, Mr. CRANSTON, Mr. HART, Mr. HATFIELD, Mr. HUMPHREY, Mr. MATHIAS, Mr. METCALF, Mr. MONDALE, Mr. NELSON, Mr. PACKWOOD, Mr. PROXMIRE, Mr. ROTH, Mr. STAFFORD, Mr. STEVENSON, Mr. TUNNEY, and Mr. WEICKER):

S. 260. A bill to provide that meetings of Government agencies and of congressional committees shall be open to the public, and

for other purposes. Referred to the Committee on Government Operations.

By Mr. MUSKIE (for himself, Mr. BAKER, Mr. BROCK, Mr. CHILES, Mr. GURNEY, and Mr. METCALF):

S. 261. A bill to amend the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to provide for minimum Federal payments for four additional years, and for other purposes. Referred to the Committee on Government Operations.

By Mr. ALLEN (for himself and Mr. SPARKMAN):

S. 262. A bill to provide for the establishment of the Tuskegee Institute National Historical Park, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. MOSS (for himself and Mr. HANSEN):

S. 263. A bill to establish mining and mineral research centers, to promote a more adequate national program of mining and minerals research, to supplement the act of December 31, 1970, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. MOSS (for himself, Mr. MCGEE, and Mr. HANSEN):

S. 264. A bill for the relief of William Allen and Marie Allen, his wife, Rock Springs, Wyo. Referred to the Committee on the Judiciary.

By Mr. MOSS:

S. 265. A bill to authorize the Secretary of the Interior to sell certain mineral rights in certain lands located in Utah to the record owner thereof. Referred to the Committee on Interior and Insular Affairs.

By Mr. MOSS:

S. 266. A bill for the relief of Charles Phillip Anthony Mills. Referred to the Committee on the Judiciary.

By Mr. JACKSON (for himself and Mr. FANNIN):

S. 267. A bill to abolish the Joint Committee on Navajo-Hopi Indian Administration. Referred to the Committee on Interior and Insular Affairs.

By Mr. JACKSON (for himself, Mr. BELLMON, Mr. BENNETT, Mr. CHURCH, Mr. DOMINICK, Mr. FANNIN, Mr. GRAVEL, Mr. GURNEY, Mr. HATFIELD, Mr. HUMPHREY, Mr. INOUYE, Mr. MAGNUSON, Mr. METCALF, Mr. MOSS, Mr. PASTORE, Mr. RANDOLPH, Mr. RIBICOFF, Mr. STEVENS, Mr. TAFT, and Mr. TUNNEY):

S. 268. A bill to establish a national land use policy, to authorize the Secretary of the Interior to make grants to assist the States to develop and implement State land use programs, to coordinate Federal programs and policies which have a land use impact, to coordinate planning and management of Federal lands and planning and management of adjacent non-Federal lands, and to establish an Office of Land Use Policy Administration in the Department of the Interior, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. WILLIAMS:

S. 269. A bill to amend the National Flood Insurance Act of 1968 to increase flood insurance coverage, to authorize the acquisition of certain properties, to require known flood-prone communities to participate in the program, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. BURDICK:

S. 270. A bill for the relief of Merle Jacobson. Referred to the Committee on the Judiciary.

S. 271. A bill to improve judicial machinery by amending the requirement for a three-judge court in certain cases and for other purposes. Referred to the Committee on the Judiciary.

By Mr. CANNON:

S. 272. A bill to amend the Communications Act of 1934 with respect to the consideration of applications for renewal of station licenses. Referred to the Committee on Commerce.

By Mr. HUMPHREY:

S. 273. A bill for the relief of Mr. Jerome O. Gbemudu. Referred to the Committee on the Judiciary.

By Mr. HARTKE:

S. 274. A bill to amend section 9 of the River and Harbor Act of 1899 in order to define the term "causeway." Referred to the Committee on Public Works.

By Mr. HARTKE (for himself, Mr. THURMOND, Mr. TALMADGE, Mr. RANDOLPH, Mr. CRANSTON, Mr. HUGHES, Mr. HANSEN, Mr. MONDALE, Mr. PELL, Mr. WILLIAMS, and Mr. EASTLAND):

S. 275. A bill to amend title 38 of the United States Code increasing income limitations relating to payment of disability and death pension, and dependency and indemnity compensation. Referred to the Committee on Veterans' Affairs.

By Mr. HARTKE:

S. 276. A bill to amend the Department of Transportation Act and title 23 of the United States Code, relating to highways, in order to provide that certain provisions relating to the preservation of parklands shall apply to areas including water. Referred to the Committee on Public Works.

By Mr. CRANSTON:

S. 277. A bill to amend the Immigration and Nationality Act with respect to the waiver of certain grounds for exclusion and deportation. Referred to the Committee on the Judiciary.

S. 278. A bill for the relief of Manuela C. Bonito; and

S. 279. A bill for the relief of Maria Alicia Tinoco Cahue. Referred to the Committee on the Judiciary.

S. 280. A bill for the relief of Lenora Lopez; and

S. 281. A bill for the relief of Arthur E. Lane. Referred to the Committee on the Judiciary.

By Mr. CRANSTON (for himself and Mr. TUNNEY):

S. 282. A bill to regulate and foster commerce among the States by providing a uniform system for the application of sales and use taxes to interstate commerce. Referred to the Committee on Finance.

S. 283. A bill to declare that the United States holds in trust for the Bridgeport Indian Colony certain lands in Mono County, Calif. Referred to the Committee on Interior and Insular Affairs.

By Mr. CRANSTON (for himself, Mr. HARTKE, Mr. TALMADGE, Mr. RANDOLPH, Mr. HUGHES, Mr. STAFFORD, Mr. SAXBE, Mr. HUMPHREY, Mr. HANSEN, Mr. THURMOND, and Mr. SCHWEIKER):

S. 284. A bill to amend chapter 17 of title 38, United States Code, to require the availability of comprehensive treatment and rehabilitative services and programs for certain disabled veterans suffering from alcoholism, drug dependence, or alcohol or drug abuse disabilities, and for other purposes. Referred to the Committee on Veterans Affairs.

By Mr. HARRY F. BYRD, JR. (for himself, Mr. ALLEN, Mr. THURMOND, and Mr. NUNN):

S.J. Res. 13. A joint resolution proposing an amendment to the Constitution of the United States with respect to the reconfirmation of judges after a term of 8 years. Referred to the Committee on the Judiciary.

## STATEMENTS ON INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

By Mr. SCOTT of Pennsylvania (for himself and Mr. SCHWEIKER):

S. 253. A bill to provide an additional permanent judgeship for the middle district of Pennsylvania. Referred to the Committee on the Judiciary.

ADDITIONAL PERMANENT JUDGESHIP FOR MIDDLE DISTRICT OF PENNSYLVANIA

Mr. SCOTT of Pennsylvania. Mr. President, in the spring of 1970, Congress enacted a bill which created a number of additional judgeships. With respect to Pennsylvania's middle district, Congress provided for one more judge, but on a temporary basis. In his request for this new position, Chief Judge Michael H. Sheridan noted that the weighted caseload per judgeship in the middle district was the highest in the entire third circuit. He said that the increase in land condemnation cases for recreation projects and highways and habeas corpus cases more than justified the need for an additional judge. The chief judge of the third circuit, William H. Hastie, agreed and further pointed out that another judge was necessary to forestall an expected backlog of cases.

The bill I am introducing today will make permanent the temporary judgeship we created in 1970. The onslaught of cases predicted by Judges Sheridan and Hastie materialized. By the summer of 1971, for example, there were nearly 400 tracts of land awaiting trial under condemnation proceedings. Some of the cases on the dockets were over 3 years old. It is obvious at this point in time that the middle district needs to have a permanent judge rather than a temporary one.

Present law prohibits the filling of the existing temporary judgeship if a vacancy occurs. My bill simply names the incumbent judge as the permanent judge. No new judgeship is being created. Testifying in support of this effort several years ago I noted that Pennsylvania's middle district was quite unique geographically, since it included 32 counties and covered more than half the area of the Commonwealth. The district needs at least four judges, on a permanent basis, and I hope my colleagues will agree.

---

By Mr. SCHWEIKER:

S. 254. A bill to prohibit assaults on State and local law enforcement officers, firemen, and judicial officers. Referred to the Committee on the Judiciary.

Mr. SCHWEIKER. Mr. President, I introduce a bill to prohibit assaults on State and local law enforcement officers, firemen, and judicial officers and ask that it be appropriately referred.

This bill makes it a Federal crime to assault, injure, or kill any State or local law enforcement officer, fireman, or judicial officer because of his official position. Let me emphasize that this legisla-

tion is designed to apply to situations where an official is singled out and attacked as a symbol of the establishment because of his official position—for example, killing a policeman simply because he is a policeman.

This bill is similar to a bill I introduced in the 91st Congress, S. 4348, and reintroduced in the 92d Congress as S. 120.

On September 18, 1972, I introduced this bill as an amendment to S. 33. I was pleased when the Senate voted overwhelmingly, 46 to 23, to accept my amendment. Regrettably, the bill died in conference, so my amendment failed to become law.

Just yesterday, a sniper in New Orleans killed three policemen and other citizens, and wounded a fireman. Seven people, including the sniper, died during the 2-day battle. Allegations have been made that the New Orleans killings were part of a national conspiracy to shoot policemen. These particular allegations are unproven as yet, but during the 91st Congress the Senate Internal Security Subcommittee held hearings on my bill, as well as similar bills introduced by Senators EASTLAND, WILLIAMS, and Dodd, and several witnesses indicated their strong belief that national conspiracies to shoot policemen were involved in a number of killings.

Increasingly in recent years, we have witnessed brutal and often fatal attacks on State and local policemen by radical revolutionaries. These attacks have often been essentially politically oriented, conceived by the twisted minds of individuals bent on destroying law and order in our society. We must declare in no uncertain terms that such attacks are intolerable and that we intend to stand by and protect the loyal men and women who serve in these capacities in our government. Existing legislation covers Federal employees in these capacities, but no similar provisions cover State and local officials.

My bill does the following:

First, in any case where an individual has traveled in interstate commerce or used any instrumentality of, or facility for interstate commerce with the intent of assaulting, injuring, or killing such officials, or where a dangerous or deadly weapon which has been transported in interstate commerce is used to commit the crime. Federal officials would be able to assist local authorities in investigating the crime and tracking down the criminals. The crime would be punishable under Federal statutes.

Second, in addition, my bill includes provisions covering conspiracies to kill or injure police officers, firemen, and judicial officers.

Furthermore, the bill includes provisions similar to the Lindberg kidnapping law which creates a presumption that the assailant has traveled in interstate commerce if he has not been captured within 24 hours after the crime was committed. This helps to assure that very little delay occurs between the commission of the crime and the involvement of the Federal law enforcement authorities.

This bill has the strong support of the Fraternal Order of Police, the International Conference of Police Associations, and the International Association of Firefighters.

The number of police officers killed has been increasing at a startling rate in the past few years. In 1961, 37 were killed. In 1971, 125 killed—about 3½ times the rate only 10 years before. The most recent figures available for 1972 indicate that through November, 96 policemen were killed. In 1970, 100 were killed; in 1969, 86. Twenty of the 1971 killings resulted from ambush-type attacks.

Mr. President, how many more policemen must be killed? How much more evidence do we require of the urgent need for this legislation?

We must show these loyal public servants that the U.S. Congress stands solidly behind them. We can do this by acting on this legislation making these ruthless killings a Federal crime and triggering the full range of Federal law enforcement authority against these senseless murders.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD at this point.

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

S. 254

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That

(a) Chapter 51 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1116. Assaults on State law enforcement officers, firemen or judicial officers because of their official position

"(a) Whoever travels in interstate commerce or uses any instrumentality of, or facility for, interstate commerce, including, but not limited to the mail, telegraph, radio or television, in furtherance of—

"(1) a conspiracy, attempt or solicitation to assault, injure or kill any law enforcement officer, fireman or judicial officer because of his official position; or

"(2) a killing, injuring or assault upon any law enforcement officer, fireman or judicial officer because of his official position;

and who during the course of such travel or use or thereafter performs or attempts to perform any other overt act for any purpose specified in subparagraphs (1) or (2) of this paragraph; or

"Whoever assaults, injures, or kills or attempts to assault, injure or kill by means of any dangerous or deadly weapon which has been transported in interstate commerce, any law enforcement officer, fireman, or judicial officer because of his official position as a law enforcement officer, fireman, or judicial officer; or

"Whoever transports, causes to be transported, or aids or abets another in transporting, or receives, causes to be received, or aids or abets another in receiving, in interstate commerce or through the use of any instrumentality of or facility for interstate commerce any dangerous or deadly weapon with knowledge that it will be used or with intent that it be used to assault, injure, or kill any law enforcement officer, fireman, or judicial officer because of his official position as a law enforcement officer, fireman, or judicial officer—

"Shall be fined not more than $10,000, or imprisoned for not more than 10 years, or both; or if death results, shall be punished as provided under sections 1111 and 1112 of this title.

"(b) As used in this section, the term—

"(1) 'dangerous or deadly weapon' includes any object, item or device which, when used as a weapon, is capable of causing physical injury or death;

"(2) 'law enforcement officer' means any officer or employee of any State who is charged with the enforcement of any criminal laws of such State;

"(3) 'fireman' means any person serving as a member of a fire protective service organized and administered by a State or a volunteer fire protective service organized and administered under the laws of a State;

"(4) 'judicial officer' means any judge, officer or other employee of a court of any State;

"(5) 'interstate commerce' means commerce (A) between any State or the District of Columbia and any place outside thereof: (B) between points within any State or the District of Columbia, but through any place outside thereof; or (C) wholly within the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States; and

"(6) 'State' means any State of the United States, the Commonwealth of Puerto Rico, any political subdivision of any such State or Commonwealth, the District of Columbia, and any territory or possession of the United States."

"(c) Whenever a law enforcement officer, fireman, or judicial officer is willfully killed, injured or assaulted, while such law enforcement officer, fireman or judicial officer is engaged in his official duties, and no person alleged to have committed such offense has been apprehended and taken into custody within twenty-four hours after the commission of such offense, it shall be presumed in the absence of proof to the contrary that the person who committed such offense has moved or traveled in interstate of foreign commerce to avoid prosecution or custody under the laws of the place at which the offense was committed.

"(d) This section shall not be construed to evidence an intent on the part of the Congress to prevent the exercise by any State of jurisdiction over any offense with respect to which such State would have had jurisdiction if this section had not been enacted by the Congress."

(b) The section analysis of chapter 51 of title 18 of the United States Code is amended by adding at the end thereof the following new item:

"1116. Assaults on State law enforcement officers, firemen, or judicial officers because of their official position."

---

By Mr. EAGLETON:

S. 255. A bill to repeal certain provisions, which become effective January 1, 1974, of the Food Stamp Act of 1964 and section 416 of the Agricultural Act of 1949 relating to eligibility to participate in the food stamp program and the direct commodity distribution program.

FOOD STAMPS AND SURPLUS FOODS

Mr. EAGLETON. Mr. President, I am introducing today legislation to restore to low-income aged, blind, and disabled persons the eligibility for food stamps and surplus foods which they are now scheduled to lose on January 1, 1974.

Last year, as part of H.R. 1, the social security amendments of 1972, Congress authorized a new Federal program of assistance to the aged, blind, and disabled beginning in January 1974.

At the same time, it provided that all persons eligible for assistance under the new supplemental security income program would become ineligible for food assistance.

I believe this to be a very unwise and unjustifiable decision and one that should be reversed by Congress this year.

Although Public Law 92–603 provides that the States may make a cash payment to cover the loss of food stamps with the guarantee that their total costs for assistance to the aged, blind, and disabled will not exceed their costs in calendar 1972, this is not an adequate substitute for participation in the food stamp or surplus food programs.

First, the cash replacement covered by the savings clause is limited to the bonus value of food stamps as of January 1972. There has already been one cost-of-living increase in food stamps value since that time and there will be another increase prior to 1974. Therefore, any cash replacement of food stamps likely to be provided by a State will be several dollars per month less than the 1974 bonus value of food stamps.

Second, there is no guarantee that all States will choose to replace the lost food stamps with cash. To do so would be to substitute State funds for what is now a Federal benefit. While all States would be able to do this without exceeding their 1972 adult welfare budgets, a decision not to do so would almost always result in a saving of State funds.

Third, even if every State should take the maximum action covered by the savings clause with respect to both supplemental benefits and cash replacement of food stamps, substantial numbers of aged, blind, and disabled persons will still have incomes below the poverty level

As long as there are food assistance programs for those with incomes so low as to preclude the purchase of a nutritionally adequate diet there can be no justification for excluding from those programs one group of citizens simply because all or part of their income is derived from the supplemental security income program.

Moreover, their exclusion would result in gross inequities. For instance, a person with a monthly social security benefit of $160 might be eligible for food stamps while a person with a social security benefit of $125—and therefore eligible for $5 per month from SSI—would be ineligible. Similarly, a low-income person age 64 or younger would be eligible for food assistance while a person with the same income age 65 or over would be ineligible.

In recent months the administration has undertaken a commendable effort, known as Project FIND, to locate and enroll in food assistance programs some 2½ million eligible elderly persons. How ironic it would be if these new participants in the food stamp and surplus food programs should find their eligibility terminated next January.

Mr. President, the issue is clear. Unless Congress takes the action I am proposing today, 3.3 million needy aged, blind, and disabled individuals who are now automatically eligible to participate in the food stamp or surplus food programs will, 1 year from now, be automatically ineligible regardless of whether they then have more, the same, or less income than they now have.

Further, it is estimated that as many as 3 million persons who do not now receive public assistance may be eligible for assistance under SSI. These persons, many of whom now receive food stamps or surplus foods, will also become automatically ineligible for food assistance.

The bill I am introducing today would amend the Food Stamp Act of 1964 and section 416 of the Agricultural Act of 1949 so as to repeal that language which makes ineligible for participation in the food stamp and surplus food programs any person eligible for supplemental security income under title XVI of the Social Security Act.

I urge early consideration of this measure so final action may be taken by Congress before the end of the year.

---

By Mr. HANSEN (for himself and Mr. McGEE):

S. 256. A bill to construct an Indian Art and Cultural Center in Riverton, Wyo., and for other purposes. Referred to the Committee on Interior and Insular Affairs.

INDIAN ART AND CULTURAL CENTER ACT

Mr. HANSEN. Mr. President, today my distinguished colleague (Mr. McGEE) and I have the privilege of introducing legislation to establish an Indian Art and Cultural Center on the campus of the Central Wyoming College, located within the Wind River Reservation.

This proposal which was introduced intially during the 92d Congress has the full support of the Joint Shoshone and Arapahoe Business Council. At this time, I would like to request unanimous consent that a letter of December 27, 1972, endorsing this project be printed at this point in the RECORD.

Mr. President, I would respectfully urge the early consideration and favorable approval of this legislation.

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

SHOSHONE & ARAPAHOE TRIBES,
*Fort Washakie, Wyo., December 27, 1972.*

Hon. CLIFFORD P. HANSEN,
*U.S. Senate Bldg.,*
*Washington, D.C.*

DEAR SENATOR HANSEN: Thank you for your letter of December 11, 1972, concerning the establishment of the Indian Art and Cultural Center at the Central Wyoming College.

Your letter was read and discussed in the Joint Business Council meeting on December 20.

It was voted that the Business Council will continue to endorse the proposal to establish the Indian Art and Cultural Center on the campus of the Central Wyoming College in Riverton, Wyoming.

Sincerely yours,

ROBERT N. HARRIS, SR.,
*Chairman, Shoshone Business Council.*
JESSE MILLER,
*Chairman, Arapahoe Business Council.*

By Mr. McGEE (for himself and Mr. HANSEN):

S. 257. A bill to provide for the establishment of a national cemetery in the State of Wyoming. Referred to the Committee on Veterans' Affairs.

Mr. HANSEN. Mr. President, recently my distinguished colleague, Senator McGEE, and I introduced legislation to establish a national cemetery in our State of Wyoming.

In considering this legislation I think we should note the importance of continuing the tradition of providing national cemeteries for our men and women who have served and continue to serve our Nation.

These individuals give so much of themselves, and it is only fitting that this Nation provide our veterans with a final resting place among others who have also served their Nation.

Justifiable concern has been expressed in recent years over the diminishing space in national cemeteries. It is my hope that through bills like the one Senator McGEE and I have submitted, Congress can find a solution to this problem and create a national cemetery in the State of Wyoming.

The State of Wyoming has a land area of 98,000 square miles, yet the nearest national cemetery is located in Colorado; and it is my hope that the Congress acting on the advice of the Veterans' Affairs Committee will face up to the national cemetery problem and in doing so will enact proper legislation.

---

By Mr. CHILES (for himself and Mr. CLARK, Mr. COOK, Mr. CRANSTON, Mr. HART, Mr. HATFIELD, Mr. HUMPHREY, Mr. MATHIAS, Mr. METCALF, Mr. MONDALE, Mr. NELSON, Mr. PACKWOOD, Mr. PROXMIRE, Mr. ROTH, Mr. STAFFORD, Mr. STEVENSON, Mr. TUNNEY, and Mr. WEICKER):

S. 260. A bill to provide that meetings of Government agencies and of congressional committees shall be open to the public, and for other purposes. Referred to the Committee on Government Operations.

GOVERNMENT IN THE SUNSHINE ACT

Mr. CHILES. Mr. President, I ask unanimous consent that a copy of the legislation being introduced and a section-by-section analysis be printed in full at the end of my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibits 1 and 2.)

Mr. CHILES. Mr. President, Supreme Court Justice Louis D. Brandeis once wrote:

Publicity is justly commended as a remedy for social and industrial disease. Sunlight is said to be the best disinfectant and electric light the most efficient policeman.

I believe Justice Brandeis could just as well have applied these remedies to the operation of our Government. Democratic self-government and informed citizenry just naturally go hand in hand, making essential the conduct of public

business in the open, "in the sunshine." Only with such openness can the public judge and express, through its vote or voice, whether governmental decisions are just and fair.

When I first came to the Senate in 1971 I was very disturbed by the amount of public business I found being conducted behind closed doors and by the attitude of secrecy I saw in our Federal Government agencies. I am not surprised that people are suspicious of our motives and are losing confidence in their government when they are shut out of the decisionmaking process.

Near the end of the 92d Congress I introduced a bill, S. 3881, the Federal Government in the Sunshine Act—which sought to assure the openness of our governmental process and to restore public confidence in those processes.

It sought to do this through a simple requirement: All meetings of Federal agencies and congressional committees shall, subject to certain exemptions, be open to the public. Citizens would have the right to attend meetings in which they had a personal interest, and news media and other interested groups would have access which would insure a broader dissemination of information on public affairs. The proposal provided for open meetings of all Federal governmental agencies except the courts and the military.

I was pleased to see that legislation was approved last Congress by a Senate-House conference of which I was a member, which would open up meetings of the multitude of so-called advisory commissions. Our effort to open up government to the people should clearly not be a partisan issue—and the list of Senators cointroducing the redraft of my bill, S. 3881, this morning reflects that bipartisan support.

I am deeply committed to the idea of government in the sunshine—but not wedded to the specific language of S. 3881. S. 3881 provided for certain exemptions to the openness requirement, but I knew these exemptions would have to be further specified. I knew, too, that the procedure for implementation of the sunshine law needed to be more specifically outlined. And so while the redraft we are introducing this morning retains the same concepts as S. 3881, it is somewhat more lengthy; various exemptions from the open meeting requirement for congressional committees and multimember administrative agencies have been made more specific; and committees and agencies are required to keep transcripts of all meetings and make such transcripts publicly available except for the confidential portions falling within one of the specific exemptions.

Senator RIBICOFF, chairman of the Executive Reorganization Subcommittee, has indicated that hearings will be held on this proposal early this session. And I am confident this whole issue will be completely gone into and thoroughly studied.

Joining with me in the introduction of this proposal are Senators CLARK, COOK, CRANSTON, HART, HUMPHREY, MATHIAS, METCALF, MONDALE, NELSON, PACKWOOD, PROXMIRE, ROTH, STAFFORD, STEVENSON, TUNNEY, and WEICKER. As I stressed last year—I sincerely hope this whole area will be completely gone into and thoroughly studied. And we must start now to expose our governmental process to the fullest extent possible. I believe it is time to open the doors and windows and let the disinfecting sunshine in. Our efforts to open up Government to the people can only lead to better lawmaking and greater public confidence in our governmental system.

EXHIBIT 1

S. 260

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SHORT TITLE

SECTION 1. This Act may be cited as the "Government in the Sunshine Act".

DECLARATION OF POLICY

SEC. 2. It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decision-making processes of the Federal Government.

DEFINITIONS

SEC. 3. For purposes of this Act—

(1) "National Security" means—

(A) the protection of the United States against actual or potential attack or other hostile acts of a foreign power;

(B) the obtaining of foreign intelligence information deemed essential to the security of the United States;

(C) the protection of national security information against foreign intelligence activities; or

(D) the protection, to the extent deemed necessary by the President of the United States against the overthrow of the Government by force; and

(2) "Person" includes an individual, partnership, corporation, associated governmental authority, or public or private organization.

TITLE I—CONGRESSIONAL PROCEDURES

SENATE COMMITTEE HEARING PROCEDURE

SEC. 101. (a) The Legislative Reorganization Act of 1946 is amended—

(1) by striking out the third sentence of section 133(b);

(2) by striking out subsections (a), (b), and (f) of section 133A;

(3) by adding after section 133B the following:

"OPEN SENATE COMMITTEE MEETINGS

"SEC. 133C. (a) Each meeting of each standing, select, or special committee or subcommittee of the Senate, including meetings to conduct hearings, shall be open to the public, provided, that a portion or portions of such meetings may be closed to the public if the committee or subcommittee as the case may be determines by vote of a majority of the members of the committee present that the matters to be discussed or the testimony to be taken at such portion or portions—

"(1) will disclose matters necessary to be kept secret in the interests of national security or the confidential conduct of the foreign relations of the United States;

"(2) will relate solely to matters of committee staff personnel or internal staff management or procedure;

"(3) will tend to charge with crime or misconduct, or to disgrace, injure the professional standing or otherwise expose to public contempt or obloquy any individual, or will represent a clearly unwarranted invasion of the privacy of any individual, provided, that this subsection shall not apply to any government officer or employee with respect to his official duties or employment, and, provided further, that as applied to a witness at a meeting to conduct a hearing, this subsection shall not apply unless the witness requests in writing that the hearing be closed to the public;

"(4) will disclose the identity of any informer or law enforcement agent or of any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement; or

"(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person where—

"(A) the information has been obtained by the Federal Government on a confidential basis other than through an application by such person for a specific government financial or other benefit; and

"(B) Federal statute requires the information to be kept confidential by government officers and employees; and

"(C) the information is required to be kept secret in order to prevent undue injury to the competitive position of such person.

A separate vote of the committee shall be taken with respect to each committee or subcommittee meeting that is closed to the public pursuant to this subsection, and the committee shall make available within one day of such meeting, a written explanation of its action. The vote of each committee member participating in each such vote shall be recorded and published and no proxies shall be allowed.

"(b) Each standing, select, or special committee or subcommittee of the Senate shall make public announcement of the date, place, and subject matter of each meeting (whether open or closed to the public) at least one week before such meeting unless the committee or subcommittee determines by a vote of the majority of its members that committee business requires that such meeting be called at an earlier date, in which case the committee shall make public announcement of the date, place and subject matter of such meeting at the earliest practicable opportunity.

"(c) A complete transcript, including a list of all persons attending and their affiliation, shall be made of each meeting of each standing, select, or special committee or subcommittee (whether open or closed to the public). Except as provided in subsection (d) of this section, a copy of each such transcript shall be made available for public inspection within 7 days of each such meeting, and additional copies of any transcript shall be furnished to any person at the actual cost of duplication.

"(d) In the case of meetings closed to the public pursuant to subsection (a) of this section, the committee or subcommittee may delete from the copies of transcripts that are required to be made available or furnished to the public pursuant to subsection (c) of this section, those portions which it determines by vote of the majority of the committee or subcommittee consist of materials specified in paragraph (1), (2), (3), (4), or (5) or subsection (a) of this section. A separate vote of the committee or subcommittee shall be taken with respect to each such transcript. The vote of each committee or subcomittee member participating in each such vote shall be recorded and published, and no proxies shall be allowed. In place of each portion deleted from copies of the transcript made available to the public, the committee or subcommittee shall supply a

written explanation of why such portion was deleted, and a summary of the substance of the deleted portion that does not itself disclose information specified in paragraphs (1), (2), (3), (4), (5) of subsection (a). The committee or subcommittee shall maintain a complete copy of the transcript of each meeting (including those portions deleted from copies made available to the public) for a period of at least one year after such meeting.

"(e) A point of order may be raised in the Senate against any committee vote to close a meeting to the public pursuant to subsection (a) of this section, or against any committee or subcommittee vote to delete from the publicly available copy a portion of a meeting transcript pursuant to subsection (d) of this section, by committee or subcommittee members comprising one-fourth or more of the total membership of the entire committee or subcommittee, as the case may be. Any such point of order shall be raised in the Senate within five legislative days after the vote against which the point of order is raised, and such point of order shall be a matter of highest personal privilege. Each such point of order shall immediately be referred to a Select Committee on Meetings consisting of the President pro tempore, the leader of the majority party, and the leader of the minority party. The select committee shall examine the complete verbatim transcript of the meeting in question and shall rule whether the vote to close the meeting was in accordance with subsection (a) of this section or whether the vote to delete a portion or portions from publicly available copies of the meeting transcript was in accordance with subsection (d) of this section, as the case may be. The select committee should report to the Senate within five calendar days (excluding days where the Senate is not in session) a resolution containing its findings. If the Senate adopts a resolution finding that the committee vote in question was not in accordance with the relevant subsection, it shall direct that there be made publicly available the entire transcript of the meeting improperly closed to the public or the portion or portions of any meeting transcript improperly deleted from the publicly available copy, as the case may be.

"(f) The Select Committee on Meetings shall not be subject to the provisions of subsections (a), (b), (c), or (d) of this section."

(b) Subsection (a) of subsection 242 of the Legislative Reorganization Act of 1970 is repealed.

(c) Title I of the table of contents of the Legislative Reorganization Act of 1946 is amended by inserting immediately below item 133B the following:

"Sec. 133C. Open Senate Committee Meetings."

SEC. 102. Clause 27(f)(2) of Rule XI of the Rules of the House of Representatives is amended to read as follows:

"(2)(A) Each meeting of each standing, select, or special committee or subcommittee, including meetings to conduct hearings, shall be open to the public, provided, that a portion or portions of such meetings may be closed to the public if the committee or subcommittee as the case may be determines by vote of a majority of the members of the committee or subcommittee present that the matter to be discussed or the testimony to be taken at such portion or portions—

"(i) will probably disclose matters necessary to be kept secret in the interests of national security or the confidential conduct of the foreign relations of the United States;

"(ii) will relate solely to matters of committee staff personnel or internal staff management or procedure;

"(iii) will tend to charge with crime or misconduct, or to disgrace, injure the professional standing or otherwise expose to public contempt of obloquy any individual, or will represent a clearly unwarranted invasion of the privacy of any individual, provided, that this subsection shall not apply to any government or officer or employee with respect to his official duties or employment, and, provided further, that as applied to a witness at a meeting to conduct a hearing, this subsection shall not apply unless the witness requests in writing that the hearing be closed to the public;

"(iv) will probably disclose the identity of any informer or law enforcement agent or of any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement; or

"(v) will disclose information relating to the trade secrets of a financial or commercial information pertaining specifically to a given person where—

"(I) the information has been obtained by the Federal Government on a confidential basis other than through an application by such person for a specific government, financial or other benefit;

"(II) Federal statute requires the information to be kept confidential by government officers and employees, and

"(III) the information is required to be kept secret in order to prevent undue injury to the campetitive position of such persons. A separate vote of the committee shall be taken with respect to each committee or subcommittee meeting that is closed to the public pursuant to this subsection, and the committee shall make available within one day of such meeting, a written explanation of its action. The vote of each committee member participating in each such vote shall be recorded and published and no proxies shall be allowed.

"(B) Each standing, select, or special committee or subcommittee shall make public announcement of the date, place, and subject matter of each meeting (whether open or closed to the public) at least one week before such meeting unless the committee or subcommittee determines that committee business requires that such meeting be called at an earlier date, in which case the committee shall make public announcement of the date, place and subject matter of such meeting at the earliest practicable opportunity.

"(C) A complete transcript, including a list of all persons attending and their affiliation, shall be made of each meeting of each standing, select, or special committee or subcommittee meeting (whether open or closed to the public). Except as provided in paragraph (D), a copy of each such transcript shall be made available for public inspection within 7 days of each such meeting, and additional copies of any transcript shall be furnished to any person at the actual cost of duplication.

"(D) In the case of meetings closed to the public pursuant to subparagraph (A), the committee or subcommittee may delete from the copies of transcripts that are required to be made available or furnished to the public pursuant to subparagraph (C), portions which it determines by vote of the majority of the committee or subcommittee consist of material specified in clauses (i), (ii), (iii), (iv) or (v) of subparagraph (A). A separate vote of the committee or subcommittee shall be taken with respect to each transcript. The vote of each committee or subcommittee member participating in each such vote shall be recorded and published, and no proxies shall be allowed. In place of each portion deleted from copies of the transcript made available to the public, the committee shall supply a written explanation of why such portion was deleted and a summary of the substance of the deleted portion that does not itself disclose information specified in subsections (i), (ii), (iii), (iv), or (v) of subsection (a). The committee or subcommittee shall maintain a complete copy of the transcript of each meeting (including those portions deleted from copies made available to the public), for a period of at least one year after such meetings.

"(E) A point of order may be raised against any committee or subcommittee vote to close a meeting to the public pursuant to subparagraph (A), or against any committee or subcommittee vote to delete from the publicly available copy a portion of a meeting transcript and pursuant to subparagraph (D), by committee or subcommittee members comprising one fourth or more of the total membership of the entire committee or subcommittee. Any such point of order must be raised before the entire House within 5 legislative days after the vote against which the point of order is raised, and such point of order shall be a matter of highest privilege. Each such point of order shall immediately be referred to a Select Committee on Meetings consisting of the Speaker of the House of Representatives, the majority leader, and the minority leader. The Select Committee shall report to the House within 5 calendar days (excluding days where the House is not in session) a resolution containing its findings. If the House adopts a resolution finding that the committee vote in question was not in accordance with the relevant subsection, it shall direct that there be made publicly available the entire transcript of the meeting improperly closed to the public or the portion or portions of any meeting transcript improperly deleted from the publicly available copy.

"(F) The Select Committee on Meetings shall not be subject to the provisions of subparagraphs (A), (B), (C), or (D).

CONFERENCE COMMITTEES

SEC. 103. The Legislative Reorganization Act of 1946 is amended—by inserting after section 133(c), as added by section 101(3) of this Act the following new section:

OPEN CONFERENCE COMMITTEE MEETINGS

"SEC. 133D. (a) Each meeting of a committee of conference shall be open to the public, provided, that a portion or portions of such meetings may be closed to the public if the committee determines by vote of a majority of the members of the committee present that the matters to be discussed or the testimony to be taken at such portion or portions—

"(1) will disclose matters necessary to be kept secret in the interests of national security or the confidential conduct of the foreign relations of the United States;

"(2) will relate solely to matters of committee staff personnel or internal staff management or procedure;

"(3) will tend to charge with crime or misconduct, or to disgrace, injure the professional standing or otherwise expose to public contempt or obloquy any individual, or will represent a clearly unwarranted invasion of the privacy of any individual: *Provided*, That this subsection shall not apply to any government or officer or employee with respect to his official duties or employment: *And, provided further*, That as applied to a witness at a meeting to conduct a hearing, this subsection shall not apply unless the witness requests in writing that the hearing be closed to the public;

"(4) will disclose the identity of any informer or law enforcement agent or of any information relating to the investigation or prosecution of a criminal offense that is re-

quired to be kept secret in the interests of effective law enforcement; or

"(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person where—

"(A) the information has been obtained by the Federal Government on a confidential basis other than through an application by such person for a specific government, financial or other benefit;

"(B) Federal statute requires the information to be kept confidential by government officers and employees; and

"(C) the information is required to be kept secret in order to prevent undue injury to the competitive position of such persons;

A separate vote of the committee shall be taken with respect to each meeting that is closed to the public pursuant to this subsection, and the committee shall make available within one day of such meeting, a written explanation of its action. The vote of each committee member participating in each such vote shall be recorded and published and no proxies shall be allowed.

"(b) Each committee of conference shall make public announcement of the date, place and subject matter of such meeting at the earliest practicable opportunity.

"(c) A complete transcript, including a list of all persons attending and their affiliation, shall be made of each meeting of each committee of conference (whether open or closed to the public). Except as provided in subsection (d) of this section, a copy of each such transcript shall be made available for public inspection within 7 days of each such meeting, and additional copies of any transcript shall be furnished to any person at the actual cost of duplication.

"(d) In the case of meetings closed to the public pursuant to subsection (a) of this section, the committee of conference may delete from the copies of transcripts that are required to be made available or furnished to the public pursuant to subsection (c) of this section, those portions which it determines by vote of the majority of the committee consist of materials specified in paragraphs (1), (2), (3), (4), or (5) of subsection (a) of this section. A separate vote of the committee shall be taken with respect to each such transcript. The vote of each committee member participating in each such vote shall be recorded and published, and no proxies shall be allowed. In place of each portion deleted from copies of the transcript made available to the public, the committee shall supply a written explanation of why such portion was deleted, and a summary of the substance of the deleted portion that does not itself disclose information specified in paragraphs (1), (2), (3), (4), or (5) of subsection (a) of this section. The committee shall maintain a complete copy of the transcript of each meeting (including those portions deleted from copies made available to the public) for a period of at least one year after such meeting.

"(e) A point of order may be raised against any committee vote of a committee of conference to close a meeting to the public pursuant to subsection (a) of this section or any committee vote to delete from the publicly available copy a portion of a meeting transcript pursuant to subsection (d) of this section by committee members comprising one fourth or more of the total membership of the entire committee. Any such point of order shall be raised in either House within 5 legislative days after the vote against which the point of order is raised, and such point of order shall be a matter of highest personal privilege. Each such point of order shall immediately be referred to a Select Conference Committee on Meetings consisting of the President pro tempore of the Senate, the Speaker of the House of Representatives, and the Majority and Minority Leaders from each House. The Select Committee shall examine the complete verbatim transcript of the meeting in question and shall rule whether the vote to close the meeting was in accordance with subsection (a) of this section or whether the vote to delete a portion or portions from publicly available copies of the meeting transcript was in accordance with subsection (d) of this section, as the case may be. The Select Committee reports to both Houses a concurrent resolution within 5 calendar days (excluding days where either House is not in session) a resolution containing its findings. If both Houses adopt such a resolution finding that the committee vote in question was not in accordance with the relevant subsection, they shall direct that there be made publicly available the entire transcript of the meeting improperly closed to the public or the portion or portions of any meeting transcript improperly deleted from the publicly available copy, as the case may be.

"(f) The Select Conference Committee on Meetings shall not be subject to the provisions of subsections (a), (b), (c), or (d) of this section."

(b) Title I of the table of contents of the Legislative Reorganization Act of 1946 is amended by inserting immediately below item 133C, as added by section 101(c) of this Act, the following:

"Sec. 133D. Open conference committee meetings."

TITLE II—AGENCY PROCEDURES

SEC. 201. (a) This section applies, according to the provisions thereof, to any agency, as defined in section 551(1) of title 5, United States Code, where the body comprising the agency consists of two or more members. Except as provided in subsection (b), all meetings (including meetings to conduct hearings) of such agencies at which official action is considered or discussed shall be open to the public.

(b) Subsec. (a) shall not apply to any portion or portions of an agency meeting where the agency determines by vote of a majority of its entire membership—

(1) will probably disclose matters necessary to be kept secret in the interests of national security or the confidential conduct of the foreign relations of the United States;

(2) will relate solely to individual agency personnel or to internal agency office management and procedures or financial auditing;

(3) will tend to charge with crime or misconduct, or to disgrace, injure the professional standing or otherwise expose to public contempt of obloquy any individual, or will represent a clearly unwarranted invasion of the privacy of any individual, provided, that this subsection shall not apply to any government or officer or employee with respect to his official duties or employment, and, provided further, that as applied to a witness at a meeting to conduct a hearing, this subsection shall not apply unless the witness requests in writing that the hearing be closed to the public;

"(4) will probably disclose the identity of of any informer or law enforcement agent or of any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

"(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person where

"(A) the information has been obtained by the Federal Government on a confidential basis other than through an application by such person for a specific government financial or other benefit; and

"(B) Federal statute requires the information to be kept confidential by government officers and employees, and

"(C) the information is required to be kept secret in order to prevent undue injury to the competitive position of such persons.

(6) will relate to the conduct or disposition (but not the initiation of a case of adjudication governed by the provisions of the first paragraph of Section 554(a) of Title 5, United States Code, or of Subsections (1), (2), (4), (5), or (6) thereof. A separate vote of the agency members shall be taken with respect to each agency meeting that is closed to the public pursuant to this Subsection. The vote of each agency member participating in such vote shall be recorded and published and no proxies shall be allowed. In the case of any closing of portions of a meeting to the public pursuant to this Subsection, the agency shall promptly publish an explanation of its action.

(c) Each agency shall make public announcement of the date, place, and subject matter of each meeting at which official action is considered or discussed (whether open or closed to the public) at least one week before each meeting unless the agency determines by a vote of the majority of its members that agency business requires that such meetings be called at an earlier date, in which case the agency shall make public announcement of the date, place, and subject matter of such meeting at the earliest practicable opportunity.

(d) A complete transcript, including a list of all persons attending and their affiliations, shall be made of each meeting of each agency at which official action is considered or discussed (whether open or closed to the public). Except as provided in subsection (e) of this section a copy of each such meeting shall be made available to the public for inspection, and additional copies of any transcript shall be furnished to any person at the actual cost of duplication.

(e) In the case of meetings closed to the public pursuant to subsection (b) of this section, the agency may delete from the copies of transcripts made available or furnished to the public pursuant to subsection (d) of this section those portions, which the agency determines by vote of a majority of its membership consists of materials specified in paragraphs (1), (2), (3), (4), or (5) of subsection (b) of this section. A separate vote of the agency shall be taken with respect to each transcript. The vote of each agency member participating in such vote shall be recorded and published, and no proxies shall be allowed. In place of each portion deleted from copies of the meeting transcript made available to the public, the agency shall supply a written explanation of why such portion was deleted and a summary of the substance of the deleted portion that does not itself disclose information specified in paragraphs (1), (2), (3), (4), or (5) of subsection (a). The agency shall maintain a complete verbatim copy of the transcript of each meeting (including those portions deleted from copies made available to the public) for a period of at least two years after such meeting.

(f) Each agency subject to the requirements of this section shall, within 180 days after the enactment of this Act, following published notice in the Federal Register of at least 30 days and opportunity for written comment by interested persons, promulgate regulations to implement the requirements of subsections (a) through (e) inclusive of this section. Any citizen or person resident in the United States may bring a proceeding in the United States Court of Appeals for the District of Columbia Circuit—

(1) to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein; or

(2) to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (a) through (e) of this section inclusive, and to require the promulgation of regulations that are in accord with such subsections.

(g) The district courts of the United States shall have jurisdiction to enforce the requirements of subsections (a) through (e) inclusive of this section by declaratory judgment, injunctive relief, or otherwise. Such actions may be brought by any citizen or person resident in the United States. Such actions shall be brought in the district wherein the plaintiff resides, or has his principal place of business, or where the agency in question has its headquarters. In deciding such cases the court may examine any portion of a meeting transcript that was deleted from the publicly available copy. Among other forms of equitable relief, the court may require that any portion of a meeting transcript improperly deleted from the publicly available copy be made publicly available for inspection and copying, and, having due regard for orderly administration and the public interest, may set aside any agency action taken or discussed at an agency meeting improperly closed to the public.

(h) In any action brought pursuant to subsection (f) or (g) of this section, costs of litigation (including reasonable attorney's and expert witness fees) may be apportioned to the original parties or their successors in interest whenever the court determines such award is appropriate.

(i) The agencies subject to the requirements of this section shall annually report to Congress regarding their compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section.

SEC. 202. (a) Title 5 of the United States Code is amended by adding after section 557 the following:

§ 557a. Ex parte communications in agency proceeding

This section applies, according to the provisions thereof, to the following proceedings—

"(1) any proceeding to which section 557 (a) of this Title applies;

"(2) any rule-making proceeding with respect to which an agency is required by section 553 of this Title to afford public notice and opportunity for participation by interested persons, provided, that for purposes of this section the exemption from such requirements in section 553(a)(2) of matters relating to public property, loans, grants, benefits or contracts shall not be effective; or

"(3) any proceeding to prepare an environmental impact statement required by section 102(2)(c) of the National Environmental Policy Act.

"(b) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

"(1) no interested person (including members or employees of other government agencies) shall make or cause to be made to any member of the agency in question, hearing examiner or employee who is or may be involved in the decisional process of said proceeding, an ex parte communication relevant to the events of the proceeding.

"(2) no member of the agency in question hearing examiner or employee who is or may be involved in the decisional process of such proceeding, shall make or cause to be made to an interested person an ex parte communication relevant to the merits of the proceeding.

"(3) a member of the agency in question, hearing examiner or employee who is or may be involved in the decisional process of said proceeding, who receives a communication in violation of this subsection shall place in the public record of the proceeding—

"(A) written material submitted in violation of this subsection; or

"(B) memoranda stating the substance of all oral communications submitted in violation of this subsection; or

"(C) responses to the materials described in subparagraphs (A) and (B) of this subsection.

"(4) upon receipt of a communication in violation of this subsection from a party to any proceeding to which this section applies, the hearing examiner or employee presiding at the hearings may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the persons or party to show cause why his claim or interest in the proceeding should not be discussed, denied, disregarded, or otherwise adversely affected by virtue of such violation; and

(5) The prohibitions of this subsection shall apply at such time as the agency shall designate, having due regard for the public interest in open decisionmaking by agencies, but in no case shall they apply later than the time at which a proceeding is noticed for hearing or opportunity for participation by interested persons unless the person responsible for the communication has knowledge that it will be noticed, in which case said prohibition shall apply at the time of his acquisition of such knowledge.

"(c) Each agency subject to the requirements of this section shall, within 180 days after the enactment of this section, following published notice in the Federal Register of at least 30 days and opportunity for written comment by interested persons, promulgate regulations to implement the requirements of Subsection (b) of this section. Any citizen or person resident in the United States may bring a proceeding in the U.S. Court of Appeals for the District of Columbia Circuit—

"(1) to require any agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein;

"(2) to set aside agency regulations issued pursuant to this Subsection that are not in accord with the requirements of subsection (b) of this section;

and to require the promulgation of regulations that are in accord with such subsection.

"(d) The district courts of the United States shall have jurisdiction to enforce the requirements of subsection (b) of this section by declaratory judgment, injunctive relife, or otherwise. Such action may be brought by any citizen of or person resident in the United States. Such actions shall be brought in the district wherein the plaintiff resides or has his principal place of business or where the agency in question has its headquarters. Where a person other than an agency, agency member, hearing examiner or employee is alleged to have participated in a violation of the requirements of subsection (b) of this section such person may, but need not be joined with the agency as a party defendant; for purposes of joining such person as a party defendant, service may be had on such person in any district. Among other forms of equitable relief, the court may require that any ex parte communication made or received in violation of the requirements of subsection (b) of this section be published, and, having due regard for orderly administration and the public interest, may set aside any agency action taken in a proceeding with respect to which the violation occurred.

"(e) In any action brought pursuant to subsection (c) or (d) of this subsection, cost of litigation (including reasonable attorney's and expert witness fees) may be apportioned to the original parties or their successors in interest whenever the court determines such award is appropriate."

SEC. 203. This title and the amendments made by this title do not authorize withholding of information or limit the availability of records to the public except as provided in this title. This title is not to be construed as authority to withhold information from Congress.

---

EXHIBIT 2

SECTION-BY-SECTION ANALYSIS OF THE FEDERAL "GOVERNMENT IN THE SUNSHINE ACT"

Section 1: Provides that the Act may be cited as the "Government in the Sunshine Act."

Section 2: Declares it to be the policy of the United States that the public is entitled to the fullest practicable disclosure concerning the decision making processes of the Federal government.

Section 3: Defines the terms "national security" and "person" for purposes of the Act.

Title 1: Concerns the hearing and meeting procedures of congressional committees.

Section 101: Amend the Legislative Reorganization Act of 1946 as applicable to the Senate to establish a basic norm of open meetings by all committees unless a majority of the committee determines on a recorded vote that the matters to be considered or discussed at the meeting will fall within the following narrowly defined exemptions:

National security or confidential conduct of foreign relations;

Internal committee staff personnel or management matters;

Defamation of an individual other than a government officer or employee with respect to his employment (except that in the case of a witness at a hearing, the hearing can be closed only if he requests that it be closed);

The identity of informers or enforcement agents or similar sensitive information vital to law enforcement;

Information relating to trade secrets or financial information that has been obtained by the Federal government on a confidential basis; information required to be kept secret by federal statute; and information the disclosure of which would injure a person's competitive position.

This section would rather provide that committees must normally give 7 days public notice of all meetings; that a complete transcript of each meeting should be prepared and made available to the public for inspection and copying; there may be deleted from the publicly available version of the transcript portions which the committee determines fall within the exemptions specified above.

This section further provides that a point of order against a committee vote to close a hearing or delete a portion from the transcript available to the public may be raised by ¼ of the members of the committee present. The point of order would be a matter of highest privilege and would be referred to a Select Committee on Meetings, consisting of the President Pro Tempore and the majority and minority leaders. Their findings as to whether the secrecy was justified or not

would be subject to vote of the entire Senate. If it were determined that a meeting or portion thereof had been improperly kept secret, the transcript of the meeting or portion would be made publicly available.

Section 102: Would impose identical requirements concerning open meetings on House committees. The Select Committee on Meetings would consist of the Speaker and the majority and minority leaders.

Section 103: Would impose the same open meeting requirements on conference committees. A Select Conference Committee on Meetings consisting of the Speaker, the President Pro Tempore, and the majority and minority leaders from each House would initially rule on points of order raised against closed meetings or deletions from the publicly available transcript of a meeting.

Section 104: Provide that no court would have jurisdiction to review any of the votes or rulings pursuant to the above requirements unless a person's constitutional rights were infringed.

Title 2: Concerns the decision making process of the administrative agencies in the Federal government.

Section 201: Provides that meetings of all multi-member federal agencies at which official action is considered or discussed must normally be open to the public. Such meetings could be closed to the public only if the agency determines by a majority of its entire membership that the matters to be discussed fall within one of the specific exemptions applicable in the case of Congressional committee meetings; or that the meeting would deal with a case of adjudication where the agency is acting in an essentially judicial capacity. The agency would normally be required to give 7 days public notice of all meetings, to make a complete transcript of all meetings, and to make available to the public for inspection and copying the transcript of each meeting. Portions of the meeting transcript consisting of confidential matters falling within the exemptions specified above could be deleted from the copy made available to the public.

In addition, each agency subject to the above requirements would be required to publish implementing regulations and annually report to Congress on their compliance with the open meeting requirements. The section would further provide that any person could bring a court action to challenge the agency's implementing regulations or its decision in a particular instance to close a meeting or delete material from the publicly available transcript. The court would in such suits require that matters improperly kept secret be publicly disclosed, and could in its discretion set aside agency action taken or discussed at meetings improperly kept secret and also award attorney's fee to either party to the lawsuit.

Section 202: Would apply to all federal administrative agencies with respect to the following types of proceedings:

Any case of agency adjudication or rule making on the record which under the Administrative Procedure Act is subject to a requirement of trial-type procedures;

Any agency rule making proceedings with respect to which the agency is required by the Administrative Procedure Act to afford public notice and opportunity for comment by interested persons;

Any proceeding to prepare an environmental impact statement required under the National Environmental Policy Act.

The section deals with any ex parte (outside) communications between an interested person and a member or employee of the agency in such proceedings, and the agency would be required to publish any such ex parte communications on the public record. The prohibition against ex parte communications would become effective at such time as the agency might designate, but in no event later than the time the proceeding in question was publicly noticed or the time that a party to the communication became aware that the proceeding would be so noticed.

Each agency subject to the requirements of the section would be required to promulgate implementing regulations.

Any person could bring a court action to review the implementing regulations or any alleged improper ex parte communication. The court could require that any improper ex parte communication be made public, and could use its discretion to set aside agency action taken in a proceeding with respect to which the improper communication occurred, and to award attorney's fees to either party.

Section 203: Provides that the provisions of Title 2 do not authorize withholding of information from the public and are not authority to withhold information from Congress.

The redrafted version of the Federal "Government in the Sunshine Act," while somewhat more lengthy than the first version, S. 3881, retains its essential purposes. The various exemptions from the open meeting requirement for congressional committees and multi-member administrative agencies have been made more specific. In addition, congressional committees and administrative agencies are required to keep transcripts of all meetings and make such transcripts publicly available except for confidential portions falling within one of the specific exemptions.

In the case of meetings by congressional committees, the redrafted version of the Act provides an enforcement mechanism for cases where a meeting is claimed to have been improperly closed. One fourth of the members of a committee can challenge the closing of a meeting by raising a point of order which must promptly be referred to a Select Committee on Meetings, consisting of the legislative leadership, for a ruling. The committees' ruling would be subject to the vote of the entire body.

The redrafted version of the Act also applies the open meeting requirement to conference committees.

As applied to administrative agencies, the open meeting requirement could be enforced by any person in a court action.

The redrafted version of the Act also contains an additional requirement, applicable to all federal agencies, that would prohibit all ex parte communications in cases of rule making or adjudication by the agency or the proceedings to prepare an Environmental Impact statement pursuant to the National Environmental Policy Act. This requirement which could be enforced by court action by any person, would further advance the goal of open government decision making by prohibiting off the record pressures on agencies by interested outside parties.

Mr. ROTH. Mr. President, I am very pleased to join the junior Senator from Florida in cosponsoring the "Government in the Sunshine Act." Senator CHILES is doing this country a fine public service in offering this legislation for consideration and debate.

I want to point out that this effort is entirely complementary with the resolution that Senator HUMPHREY and I will introduce later this week to create a new Senate rule requiring committee meetings be open to the public except when a majority of the committee vote to close the meeting for national security reasons or because the reputation of an individual is involved. I feel that if we first put our own House in order, we will be in a much better position to press for the more general antisecrecy legislation embodied in the "Government in the Sunshine Act."

I am cosponsoring "Government in the Sunshine Act," not because it represents the whole response to the problem of governmental secrecy, but because it is important to have hearings on a range of different kinds of legislation dealing with both executive and legislative secrecy and with the processes of Government as well as Government documents.

I am looking forward to participating with Senator CHILES and with our other colleagues on the Committee on Government Operations in studying and debating this antisecrecy legislation. I certainly hope that our committee work on this legislation will be "in the sunshine."

Mr. STAFFORD. Mr. President, I am pleased to be included as one of the original cosponsors of the legislation that has been introduced by the Senator from Florida (Mr. CHILES). For some time I have been concerned over the growing evidence of declining public confidence in Government, politicians, and politics.

I think one of the major reasons the public is suspicious about Government and politics, particularly at the national level, is that so much of our activity takes place away from public view. For that reason, I am pleased to join as a sponsor of legislation that would require all meetings of Federal agencies and congressional committees be open to the public, with only certain limited exceptions. This measure would permit the public to assume its rightful role as a full working partner in the operations of its Government.

Too much of our activity is carried on in shadows that block the view of the public, but which build the suspicion of the public. I think we should eliminate those shadows with the bright light of public disclosure.

I intend, later in this session, to reintroduce the Open Government Act, which would require full and complete financial disclosure of all lobbying activities related to the Congress. And, I hope to have the opportunity to give my support once again to legislation that would require full and public disclosure of the financial status of Members of Congress and their senior staff members.

Each of these measures is designed to open up Government and politics to public view and I am delighted that the Senator from Florida, Mr. CHILES, is pressing ahead with his legislation.

---

By Mr. MUSKIE (for himself, Mr. BAKER, Mr. BROCK, Mr. CHILES, Mr. GURNEY, and Mr. METCALF):

S. 261. A bill to amend the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to provide for minimum Federal payments for 4 additional years, and for other purposes. Referred to the Committee on Government Operations.

UNIFORM RELOCATION ACT AMENDMENTS

Mr. MUSKIE. Mr. President, with Senators BAKER, BROCK, CHILES, GURNEY, and

METCALF, I introduce legislation to amend the Uniform Relocation Assistance and Real Property Acquisition Act of 1970.

The Uniform Relocation Act of 1970, a major legislative step toward providing fair and equitable treatment of persons forced to move from their homes or businesses by federally assisted projects, provided that the Federal Government make full payment of the first $25,000 per displacee until July 1, 1972. However, since that date, State and local governments have been required to participate in the cost of relocation payments prescribed by the act to the same degree that they share in other project costs.

The bill I am introducing today would continue until July 1, 1976—full Federal funding of the first $25,000 in relocation costs per individual displacee.

Without this legislation, cities across the country will face a new and substantial financial burden in fiscal 1973. In my home State of Maine, for example, the city of Portland anticipates having to come up with $335,000 in local funds to pay its share of relocation costs. The city of Bangor projects that its fiscal 1973 obligation for relocation costs will be in excess of $87,000 in local funds. The cities of Lewiston, Westbrook, and Waterville expect that they will have to pay $235,000 in local shares for relocation costs. Across the country, local governments will have to find as much as $125 million during fiscal 1973 to meet their relocation obligations.

The legislation I submit today is identical to that agreed upon by a House-Senate conference committee during the final days of the 92d Congress. Although the conference report was agreed to by both House and Senate conferees, neither body was able to act before adjournment. The Congress now has the responsibility to complete this important unfinished business.

Congress passed the Uniform Relocation Act of 1970 to provide fair and equitable treatment for persons displaced by federally assisted projects. It is now necessary for us to provide the Federal assistance necessary to assure the implementation of that objective.

Mr. GURNEY. Mr. President, in joining as a cosponsor of Senator MUSKIE'S proposal to amend the Uniform Relocation Act as recommended by the last Congress' conference committee on S. 1819, I would like to emphasize the need for prompt action on this legislation. Both the Senate and the House have held full hearings on this legislation; both the Senate and the House have approved their respective companion bills; and both the Senate and House conferees have agreed on the compromise version now being introduced. Therefore, I urge that this legislation be handled as expeditiously as possible.

Perhaps the best explanation of the need for promptness is to look as a specific example of the effect of delay on just one urban renewal project in my home State of Florida. The following two letters, the first written to me by the chairman of the urban renewal agency of the city of Palatka, Fla., and the second written to that agency from the Department of Housing and Urban Development, are self-explanatory.

I ask unanimous consent that the letters be printed at this point in the RECORD.

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

URBAN RENEWAL AGENCY,
*Palatka, Fla., December 29, 1972.*

HON. EDWARD J. GURNEY,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR GURNEY: As you are aware, S. 1819, a bill to amend the Uniform Relocation Act of 1970, was not passed by the Congress even though the conferees of the House of Representatives and the Senate had agreed upon compromise legislation.

This has had a most unfavorable effect upon the Urban Renewal program of the City of Palatka. At this point, there is pending a capital grant of about $3,250,000 for the City of Palatka to undertake an urban renewal project, number R-36. The project planning is completed, and we are ready to undertake this worthwhile project. Local funding is contingent, however, on the successful passage of this bill. To make the relocation costs a part of the project costs would add about $250,000 to the City's overall project cost. Since the city has already arranged to spend about $680,000 in either cash or non cash local contributions, this additional cost would add an impossible burden which the City could not afford.

Now, to get to the heart of the crisis which faces us, we have received several extensions of time for the submission of an acceptable Part II of our Urban Renewal application. By letter of November 2, 1972 to our mayor, copy attached, Mr. Forrest Howell has given us until February 28, 1973 to reach a satisfactory solution to our problem. Beyond that date, the project will be terminated. In summary then, we are faced with the loss of a very worthwhile project if the relocation bill is not passed and signed into law prior to February 28, 1973, or a way is not found to keep our project in the survey and planning stage beyond that date until S. 1819 can be passed and put into effect.

We sincerely appreciate your past support for this project. The people of the City of Palatka have indicated their overwhelming support for this project. Please help us by working to secure the prompt passage of this legislation as soon as possible after the new Congress convenes.

Very truly yours,
JOHN D. ARRINGTON, Jr.,
*Chairman.*

---

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,
*Jacksonville, Fla., November 2, 1972.*

Subject: Urban Renewal Project R–36 (Part I) Extension of Time for Submission of Part II of Urban Renewal Application.

HON. EUGENE L. WALKER,
*Mayor, City of Palatka,*
*Palatka, Fla.*

DEAR MAYOR WALKER: This is to advise that we will concur in the extension of time from November 7, 1972 to February 28, 1973 for the submission on an acceptable Part II Application for the subject Urban Renewal project.

Under the present policy of Community Development, it is not permissable for any Urban Renewal project to remain in survey and planning beyond the period of February 28, 1973.

If a solution has not been reached by February 28, 1973, it will be necessary to terminate this project.

Sincerely,
FORREST W. HOWELL,
*Area Director.*

Mr. GURNEY. Mr. President, the plight of the Palatka Urban Renewal Agency is but one example of what could happen to many worthwhile projects throughout the Nation if action on this legislation is further delayed. I urge the most expeditious possible passage of this urgently needed legislation.

---

By Mr. ALLEN (for himself and Mr. SPARKMAN):

S. 262. A bill to provide for the establishment of the Tuskegee Institute National Historical Park, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

ESTABLISHMENT OF TUSKEGEE INSTITUTE NATIONAL HISTORICAL PARK

Mr. ALLEN. Mr. President, I send to the desk on behalf of my distinguished senior colleague (Mr. SPARKMAN) and myself a bill to provide for the establishment of the Tuskegee Institute National Historical Park and for other purposes.

During the 92d Congress, on June 1, 1972, Mr. SPARKMAN and I introduced an identical bill (S. 3662). S. 3662 was referred to the Committee on Interior and Insular Affairs, and the hearing on the bill was held by the Subcommittee on Parks and Recreation, at which the able and distinguished senior Senator from Nevada (Mr. BIBLE) presided. Such hearing was held on Wednesday, September 27, 1972, and a 41 page report of such hearing was printed. There seems to be no opposition to the bill and, in fact, it seems that the establishment of the Tuskegee Institute National Historical Park would be entirely in line with President Nixon's February 1971 directive to the Interior Department and its National Park Service to take action to refresh the interest of all Americans in their historical and cultural heritages.

Under the National Historic Sites Act of 1935, the Secretary of the Interior may enter into cooperative agreements with public or private agencies for the preservation and interpretation of historical areas in non-Federal ownership. Under such an agreement, the national significance of Tuskegee Institute has already been attested to by its designation as a national historic landmark. Yet this honor has brought with it no funds for historic preservation or interpretation.

Tuskegee Institute was established in 1881. Its founder was Booker T. Washington who put into practice a program of industrial and vocational education to ameliorate the economic condition of the Negro.

In its second decade, Tuskegee acquired a teacher who would become as famous as its founder, George Washington Carver came to Tuskegee in 1896 to take charge of an agricultural experiment station to be run in connection with the school's agricultural department. Here Carver carried out his noted work in agricultural science until his death in 1943.

Unlike that of many historic places, the significance of Tuskegee Institute does not lie only in the past. It is an ongoing institution.

Continuity at Tuskegee is evidenced physically by the campus, 13 buildings of which date from the early decades of the

school. Included are the home of Booker T. Washington and student-built dormitories and structures housing classrooms, industrial educational facilities, and administrative offices. The continued use by students, faculty, and staff of many of these buildings is the best form of historic preservation and "living history," and is entirely in keeping with this proposal for National Park Service involvement at Tuskegee Institute. The Booker T. Washington Monument, a symbolic statue by Charles Keck; the Carver Museum, with exhibits pertaining to Carver's work; and the graves of Washington and Carver further reflect Tuskegee's past.

Other significant historic resources at Tuskegee are the Booker T. Washington and the Negro history collections. Since 1889 the institute has collected, preserved, and disseminated information on the Negro in America and Africa. Photographs, letters and documents, manuscripts, rare books, reports, and other materials are made available to scholars visiting from this Nation and abroad. Since funds for staffing and preservation have not kept pace with the growth of these resources, it is hoped that means may be found to inventory, house, and administer the collections in a manner befitting their importance.

Apart from its historical values, Tuskegee has become noted worldwide for its creative and practical approaches to the solution of basic problems of mankind. The institute presents a program from which emanates a spirit many people desire to experience. In many important ways, this is a national shrine of international repute.

Tuskegee Institute serves comprehensively. Though it is a fully accredited university of distinction, it maintains a commitment to serve the disadvantaged. To develop a national historical park here, therefore, is to serve the "man lowest down" as well as educators of the highest order.

This bill envisions the National Park Service playing three roles in partnership with Tuskegee Institute:

First. It will participate in a rational program of preservation-commemoration and modern development carried out by relevant public agencies and private groups. In addition to the institute and the Service, such agencies and groups may include the city of Tuskegee, the Department of Health, Education, and Welfare, the Department of Housing and Urban Development—through the local Model Cities program—and private philanthropy.

Second. It will develop and operate those historic and commemorative features that fall within its capabilities and authorities. Service attention would focus on a new George Washington Carver Visitor Center and Museum, "The Oaks"—the home of Booker T. Washington—and the Varner-Alexander house, an antebellum mansion adjacent to the campus illustrative of the "Old South."

Third. It will offer technical advice and assistance and such funds as may be provided for the preservation and restoration of such other buildings as may be designated historic.

The national park system now contains no sites whose primary value lies in illustrating the story of education in America. The significant role of black Americans in our history is the principal theme at three areas administered by the National Park Service; the Frederick Douglass Home in Washington, D.C., Booker T. Washington National Monument in Virginia, and George Washington Carver National Monument in Missouri. Yet none of these sites are fully illustrative of the achievements of the men they honor. Douglass's home being his residence in later life and the Washington and Carver monuments their birthplaces. One place that above all others demonstrates black achievement—and achievement in the important now unrepresented theme of education—is Tuskegee Institute.

The national significance of Tuskegee Institute has been attested to by its designation as a National Historic Landmark. Yet this honor has brought with it no funds for historic preservation or interpretation. Tuskegee is a privately supported functioning educational institution, and suffers the same difficulties in fundraising as any private institution. Money must be spent for education. Meanwhile, the history here is gradually being lost. Old buildings are harder to maintain. People have forgotten the place where the first brickyard and lumbermill were; they do not know what the campus looked like when Booker T. Washington had been here 10 years; they will never know, perhaps, that three U.S. Presidents have visited Tuskegee Institute. Those who do know or who can remember are becoming fewer. Old areas of the campus are being torn up for new construction. The institute is forced to use most of Booker T. Washington's home for offices.

There is a danger that little will be left in 8 years when Tuskegee Institute will celebrate its 100th anniversary as a force in the lives of Negro people—and as a national heritage for all Americans.

With downtown renewal being planned by the city of Tuskegee under its model cities program, the building where Booker T. Washington's wife founded the first "Mothers' Club" and Booker T. Washington himself established a night school for adults—local examples of Tuskegee Institute's earliest outreach programs—will be demolished unless funds to preserve them can be obtained. This and other community sites—like that of the railroad station where President McKinley's train arrived when he visited Tuskegee Institute—will be lost.

Because there is no center where visitors may come to see exhibits—and no money to develop them—that depict the early days when Tuskegee Institute and the community shared experiences, the fact of the sharing is being lost. There is no place pointing out that the largest VA hospital for Negroes—now integrated—is adjacent to, and was initiated by, Tuskegee Institute. No center tells that the first Air Force training base for Negroes was established on this campus.

Specific components to be developed and maintained by the National Park Service in connection with Tuskegee National Historical Park are:

The George Washington Carver Visitor Center and Museum.

"The Oaks," home of Booker T. Washington.

The Varner-Alexander House.

With action by the Congress, the preservation and interpretation of historic Tuskegee Institute by the National Park Service could soon begin. In 9 years, much of the work of site identification, preservation and restoration, interpretative planning, and construction of a visitor center would be done in time for a centennial celebration. Perhaps then another President of the United States will visit Tuskegee to dedicate another National Park Service facility established to commemorate our American heritage.

My distinguished senior colleague (Mr. SPARKMAN) and I are hopeful that the bill will be approved by the Senate at an early date.

---

By Mr. MOSS (for himself and Mr. HANSEN):

S. 263. A bill to establish mining and mineral research centers, to promote a more adequate national program of mining and minerals research, to supplement the act of December 31, 1970, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

MINING AND MINERALS RESEARCH ACT OF 1973

Mr. MOSS. Mr. President, in order to solve many of our environmental problems we need Federal Government participation in the form of grants and appropriations to aid in research and development and increase our technological skills including scientific solutions to energy substitutes and better mined land reclamation techniques.

The Nation has become painfully aware of our deteriorating environment. The mining industry is also aware of many of the environmental problems associated with the extraction of minerals, and has, in many instances, developed practical solutions for dealing with them. But, as further environmental improvement is sought, the technical difficulties and the cost of gaining each new increment of quality, greatly increases the costs of operation and may make the difference between feasibility and infeasibility in a mine's economic picture. In Senate report (No. 91-390) on the National Mining and Minerals Policy Act (Public Law 91-631), it was stated:

> Research can be particularly beneficial in assisting the mining industry to cope with the many new requirements that our increased concern over environmental quality placed upon mine operators. The Federal Government should engage in long-range research programs which will provide the technology necessary for private industry to implement practices designed to improve the quality of our environment. It should establish and maintain policies and programs which supply the needed trained specialists, and publish and disseminate data and technical information relevant to environmental quality matters.

A bill embodying these concepts and providing funds to tax supported schools throughout the country for science and engineering research was introduced by the distinguished Senator from Colorado, Gordon Allott, in the 92d Congress as S. 635. After the lengthy conference, the conference report was accepted by both bodies in October of 1972. The bill un-

fortunately was pocket vetoed by the President.

The bill before the Senate Interior Committee had the bipartisan support of that committee.

I offer to the Senate on behalf of myself and my good friend from Wyoming, Senator HANSEN, who shares my concern, a new bill embodying the concepts of S. 635 to establish mining and mineral research centers, to promote a more adequate national program of mining and minerals research and to supplement the act of December 31, 1970.

---

By Mr. JACKSON (for himself, Mr. BELLMON, Mr. BENNETT, Mr. CHURCH, Mr. DOMINICK, Mr. FANNIN, Mr. GRAVEL, Mr. GURNEY, Mr. HATFIELD, Mr. HUMPHREY, Mr. INOUYE, Mr. MAGNUSON, Mr. METCALF, Mr. MOSS, Mr. PASTORE, Mr. RANDOLPH, Mr. RIBICOFF, Mr. STEVENS, Mr. TAFT, and Mr. TUNNEY):

S. 268. A bill to establish a national land use policy, to authorize the Secretary of the Interior to make grants to assist the States to develop and implement State land use programs, to coordinate Federal programs and policies which have a land use impact, to coordinate planning and management of Federal lands and planning and management of adjacent non-Federal lands, and to establish an Office of Land Use Policy Administration in the Department of the Interior, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

LAND USE POLICY AND PLANNING ASSISTANCE ACT OF 1973

Mr. JACKSON. Mr. President, I introduce for myself and several of my colleagues Land Use Policy and Planning Assistance Act of 1973, a bill to assist the States to develop land use programs for critical areas and uses of more than local concern.

This measure would provide Federal technical and financial assistance to the States to encourage the development of better information, institutions, procedures, and methods for land use planning and management so as to remedy the increasingly evident inadequacies in much of today's land use decisionmaking. The States would be encouraged to strengthen the land use decisionmaking authority and capacity of local governments and to develop, in full partnership with those governments, land use programs concerning land use decisions which have impacts way beyond the localities' jurisdictions. The measure also provides important new authority designed to improve coordination between the public lands planning efforts of the Federal Government and the planning activities of State and local governments.

Mr. President, this measure was first introduced by me in January of 1970. After 4 days of hearings, the Senate Committee on Interior and Insular Affairs reported the proposal in December of 1970. As no floor action was taken in the 91st Congress, I again introduced the proposal early in 1971. The administration also proposed a similar measure which was featured in the President's 1971 and 1972 environmental messages to Congress. Ten days of hearings were held on the Land Use Policy and Planning Assistance Act in the Senate during the 92d Congress, four by the Interior Committee and three each by the Commerce and the Banking, Housing and Urban Affairs Committees. After numerous executive sessions and consultations with the National Governors' Conference, the League of Cities-Conference of Mayors, representatives of industry, and environmental groups, the Interior Committee again reported the Land Use Policy and Planning Assistance Act. On September 19, 1972, after considering and accepting several excellent amendments offered or endorsed by my distinguished colleagues, Mr. BAYH, Mr. BOGGS, Mr. BUCKLEY, Mr. COOPER, Mr. FANNIN, Mr. HANSEN, Mr. RANDOLPH, Mr. SPARKMAN, Mr. TALMADGE, and Mr. TUNNEY, the Senate passed the act by a vote of 60 to 18.

As is well known, I was and remain opposed to two successful amendments striking the sanctions from the act and reducing the funding by two-thirds. Several amendments proposed by Mr. MUSKIE which were not adopted did raise significant issues which deserve further scrutiny. Therefore, although the proposal I introduce today is virtually identical to the Senate-passed measure, the committee will hold hearings early in February where these issues and the critical questions of funding and sanctions can be fully explored.

Mr. President, the Land Use Policy and Planning Assistance Act is a realistic and widely favored proposal. It has received the endorsement of the administration, the National Governor's Conference, nearly 30 individual Governors, the National Association of Counties, the League of Cities-Conference of Mayors, all of the major environmental organizations, many users of the land—industry, forest products representatives, farm groups, and water resource associations—and such prestigious and varied publications as Business Week, the New York Times, the Wall Street Journal, both the Washington Post and Star, the Boston Globe, the St. Louis Post-Dispatch, the Christian Science Monitor, and the Minneapolis Star. The need for land use policy legislation has been identified by the Douglas Commission, the Kerner Commission, the Kaiser Committee, and the Advisory Commission on Intergovernmental Relations. Congress recognizes and must respond to this need.

The Land Use Policy and Planning Assistance Act of 1972 is of critical importance if this Nation is to meet the increasing pressures of industrialization, technological advances, population growth, and rapid urbanization, and to attain our economic, social, and environmental goals. As land use increasingly becomes the focal point for conflicts over national, State, and regional goals, public officials and private citziens alike view with dismay the chaotic, ad hoc, short-term, crisis-by-crisis, case-by-case land use decisionmaking employed all too frequently today.

Sobering statistics suggest that, unless our land use decisionmaking processes are vastly improved at all levels of government—local, State, and Federal—the United States will be unable to meet the emerging land use crisis. Over the next 30 years, the pressures upon our finite land resource will result in the dedication of an additional 18 million acres or 28,000 square miles of undeveloped land to urban use. Urban sprawl will consume an area of land approximately equal to all the urbanized land now within the 228 standard metropolitan statistical areas—the equivalent of the total area of the States of New Hampshire, Vermont, Massachusetts, and Rhode Island. Each decade, new urban growth will absorb an area greater than the entire State of New Jersey. The equivalent of 2½ times the Oakland-San Francisco metropolitan region must be built each year to meet the Nation's housing goals. In the next two decades, one industry alone—the energy industry—will require vast areas of land: New high-voltage transmission lines will consume 3 million acres of new rights-of-way, while at least 225 new major generating stations will require hundreds of thousands of acres of prime industrial sites.

In short, between now and the year 2000, we must build again all that we have built before. We must build as many homes, schools, and hospitals in the next three decades as we built in the pervious three centuries. In the past, many land use decisions were the exclusive province of those whose interests were selfish, short-term and private. In the future—in the face of immense pressures on our limited land resource—these land use decisions must be long-term and public.

These and other statistics made it strikingly evident that, to avoid a national land use crisis and to advance a design calculated to meet, without dictating, national goals, values, and requirements, we must enact legislation to assist State and local governments to improve their land use planning and management capability. This view is shared by the administration, the National Governors Conference and many individual Governors, and almost all of the witnesses who appeared before the Senate Interior Committee in the last 3 years.

Russell Train, Chairman of the Council on Environmental Quality, stated:

> It is a matter of urgency that we develop more effective nationwide land use policies and regulations . . . Land use is the single most important element affecting the quality of our environment which remains substantially unaddressed as a matter of national policy. Land is our most valuable resource. There will never be any more of it.

Not only is land finite, but unlike air, water, and many minerals and materials, land too often cannot be "recycled." Mountains carved by strip mines, wetlands dredged and filled, or streams channelized frequently cannot be returned to their former use or beauty. Land, once committed to a use today, be it social, economic, or environmental, may be unable to support uses which our children will find preferable in the future. As President Nixon noted in a let-

ter to me—CONGRESSIONAL RECORD, volume 118, part 23, pages 30694–30695:

As a Nation we have taken our land resources for granted too long. We have allowed ill-planned or unwise development practices to destroy the beauty and productivity of our American earth . . . The country needs this (legislation) urgently.

Future land use decisionmaking, however, should serve more than environmental values alone. It should not be viewed as mission-oriented either in the narrow sense of fostering a specific set of functional activities or in the larger sense of pursuing exclusively a specific goal, be it protecting the environment, improving social services, or increasing economic benefits. Rather, it must balance competing environmental, economic, and social requirements and values to avoid the costly mistakes of both thoughtless, precipitate development and unwarranted, dilatory opposition to beneficial development.

Many of the most crucial problems and conflicts facing all levels of government in the areas of protection of environmental quality, siting of energy facilities and industrial plants, design of transportation systems, provision of recreational opportunities, and development of natural resources are the direct result of past failures to anticipate public requirements for land and to plan for its use. The economic loss, the delays, the resource misallocations, and the social and environmental costs which this failure to plan has cost the Nation are in large measure unnecessary expenses which could have been avoided had appropriate planning been undertaken earlier. The adoption of the Land Use Policy and Planning Assistance Act of 1973 and a good faith effort by the States to exercise responsibility for the planning and management of land use activities which are of more than local concern will greatly reduce needless conflicts, will avoid misallocations of scarce resources, will save public and private funds, will insure that public facilities and utilities—powerplants, highways, airports, and recreational areas—are available when needed, and will improve State-Federal relations in all areas of mutual concern.

The Land Use Policy and Planning Assistance Act of 1973 contains the best features of my previous land use policy measures, the administration's proposal, and the many recommendations received during the 3 years of committee deliberations. It contains as well significant amendments adopted on the floor of the Senate prior to its passage.

The central purpose of the proposal is to provide Federal technical and financial assistance to the States to encourage them to exercise States' rights and improve their knowledge, institutions, procedures and methods for land use planning and management. The measure also provides important new authority designed to improve coordination between the planning efforts of the Federal Government and State governments.

The grant-in-aid program to the States, was reduced by amendment on the floor from $800 million over 8 years to $170 million over 5 years. The grant funds cover up to 66⅔ percent of the cost of developing the State land use programs for the first 2 years and 50 percent of the cost thereafter—reduced from 90 percent for 5 years and 66⅔ percent thereafter by amendment.

The State is required to develop a statewide planning process within 3 years. The process must include a data and information base, adequate funding, competent staff, and an appropriate agency to coordinate planning at the State level.

The State is then required to develop, within 5 years of enactment, a land-use program which focuses on four categories of critical areas and uses of more than local concern. These areas and uses are considered to be of State interest because decisions concerning them have impacts on citizens, the environment, and the economy totally out of proportion to the jurisdiction and the interests of the local zoning body or land-use regulatory entity. These four categories of areas and uses of more than local concern are: First, areas of critical environmental concern—for example, beaches, flood plains, wetlands, historic areas; second, key facilities—for example, major airports, highway interchanges and frontage access highways, recreational lands and facilities, and facilities for the development, generation and transmission of energy; third, development and land use of regional benefit; and fourth, large-scale development—for example, major subdivisions or industrial parks.

I wish to make clear that the act does not contemplate sweeping changes in the traditional responsibilty of local government for land-use management. Decisions of local concern will continue to be made by local government. However, for land-use decisions which would have significant impacts beyond the jurisdiction of the local public or private decisionmakers, the act provides for wider public participation and review by the State, as representative of the large constituency affected by those decisions.

The procedure for, and the nature of, State involvement in land-use decisions are left largely to the determination of the individual States. Two alternative but not mutually exclusive techniques of implementation of State land-use programs are given: Local implementation pursuant to State guidelines and direct State planning. However, the act contains language endorsed by the League of Cities-Conference of Mayors which expresses a preference for the former alternative.

The more innovative State land-use laws of recent years support this local governments-State Government partnership. The authority of local governments—the level of Government closest to the people—to conduct land-use planning and management is in fact bolstered in the great majority of laws of some 40 States concerning areas and uses of more than local concern—wetlands, coastal zone, flood plain, powerplant siting, open space, and strip mining laws. The localities are encouraged to employ fully their land use controls. State administrative review is provided only in accordance with flexible State guidelines relating only to those decisions on areas and uses that are of clearly more than local concern. And even should disapproval of a local government action result from such a review, State preemption of the decisionmaking authority would not necessarily occur; rather, in most cases, the local government would be provided full opportunity to take any of numerous actions which would comply with the State's guidelines.

The proposal would not preclude direct State implementation through State land-use planning and regulation. Hawaii and Vermont have already enacted legislation which in part calls for such direct State implementation. Other States are directly engaged in land-use planning for unincorporated areas. However, embodied in the measure is the expectation that direct State implementation, preempting local land-use planning controls, will continue to be the exception rather than become the rule and that that joint local-State government land use decisionmaking and implementation will prevail.

Another point which should be emphasized is that the Federal review of State land-use programs is to focus not on the substance of each program, but on whether each State has authority to develop and implement its program and whether it is making good faith efforts to do so. This is in keeping with the proposal's purpose to encourage better and effective land use decisionmaking at the State and local levels, and not to provide substantial new land use decisionmaking authority on the Federal level.

Guidelines for the act are to be promulgated through an interagency process with the principal responsibility of formulating those guidelines residing in the Executive Office of the President. As the proposal provides for a grant-in-aid program of major dimensions which requires administration by line agency personnel, daily administrative responsibility is given to the Department of the Interior. To insure the absence of the mission-oriented bias of any existing office or bureau in the administration of the proposal, the proposal creates a new Office of Land Use Policy Administration within the Department, separate from any such office or bureau.

Certainly, the land use impacts of Federal and federally assisted programs exert the most profound influences upon local, State, and National land use patterns. Yet these programs either have conflicting land use implications or the Federal officials administering them are not full cognizant of their land-use impact. My proposal requires the Federal Government to "put its own house in order" at the same time that it asks the States to do likewise. The Secretary of the Interior is directed to consult with heads of other agencies and to form a national advisory board on land-use policy to provide interagency communication concerning the land use impacts of and policies embodied in Federal and federally assisted programs.

The act also encourages coordinated planning and management of Federal lands and adjacent non-Federal lands. Both the Federal Government and the State and local governments are required to provide for compatible land uses on

adjoining lands under their respective jurisdictions. In addition, short-term ad hoc joint Federal-State committees, composed of representatives of affected Federal agencies, State agencies, local governments, and user groups, may be established by the Secretary of the Interior to study general or specific conflicts between uses of Federal lands and uses of adjacent non-Federal lands. The Secretary is directed to resolve such conflicts or, where he lacks the requisite authority, to recommend legislative solutions to Congress.

Finally, what is this measure's relationship to other land use legislation which may be introduced this Congress? Approximately 200 land-use policy bills were referred to 13 committees in the 92d Congress. The most important of these measures were: the public lands, the surface mining, the powerplant siting, and the coastal zone management proposals. Virtually all of these bills focused on individual uses or areas of critical concern and more than local significance, and encouraged the States to assume a degree of control over them. In addition, the Congress is giving increasing attention to national growth policy, in general, and various aspects of growth policy such as rural revitalization. In relation to the myriad of land use and growth policy considerations and legislative proposals which Congress may consider, the Land Use Policy and Planning Assistance Act is expected to serve as an umbrella measure or an "enabling act" which would encourage the States to develop the financial, institutional, and human resources, and require of the States legislation to establish the necessary machinery and procedures, to insure that, first, the States will be receptive to any of those considerations or proposals which become law, and second, the many planning tasks which such laws will require will be conducted effectively and not in isolation one from another.

Mr. President, the chaotic land use decisionmaking of today will insure an unsightly, unproductive, and unrewarding land resource for future generations of Americans. To avoid this unfortunate tomorrow, we must improve our land use policy, procedures, and institutions. I commend the Land Use Policy and Planning Assistance Act of 1973 to the Senate as the best vehicle to achieve this improvement.

Mr. President, I ask unanimous consent to place in the RECORD an updated review of the purpose and background of the Land Use Policy and Planning Assistance Act which I submitted for the RECORD last year prior to Senate passage of the act and the full text of the proposal.

There being no objective, the review and bill ordered to be printed in the RECORD, as follows:

REVIEW OF PURPOSE AND BACKGROUND OF THE LAND USE POLICY AND PLANNING ASSISTANCE ACT

This review is divided into two sections:

1. A brief review of the history of government involvement in land use planning and an outline of the basic legal authority involved; and

2. A discussion of what the bill does not do and a discussion of what the bill does do.

HISTORY

1. The police power of the respective States is an inherent power of government to take such actions as are necessary and Constitutionally permissible to protect public health, safety and welfare.

2. The power to plan for and to regulate land use derives from the police powers of the individual States.

3. The Federal government has no police power to regulate lands within a State which are privately owned or owned by the State. Only the State has Constitutional authority to control and regulate these lands.

4. The Federal government does have police power authority as well as express Constitutional authority to regulate the use of the public lands.

5. The States have exercised land use controls for hundreds of years in one form or another. It was only in the early part of the 20th Century, however, that the States began to do so in a broad and general way. This came with the adoption of model State laws which generally delegated zoning authority—a part of the State's inherent police powers—to units of local government. The purpose of these delegations of police power authority to counties, cities and other units of local government was to enable them to develop master plans, to zone for permissible uses, and to establish local planning bodies.

6. The development of land use planning and local zoning was in response to very real land use problems and conflicts which had costly, wasteful, and undesirable impacts upon the public;

Dirty industrial activities would develop in the middle of residential communities;

Unsightly and aesthetically offensive developments—slaughterhouses, tanneries, etc., would drive down the value of adjacent business and residential property;

Business activities thought by many to be undesirable if not closely regulated—taverns, movie theatres, dance halls, nightclubs—would be located near schools, churches or in quiet residential areas.

Land use planning and the exercise of zoning authority were designed to deal with these and other problems of a purely local nature.

7. Prior to the development of a statutory framework for land use planning and controls the remedies available to injured parties were litigation in the courts based upon the inadequate common law doctrines of "nuisance" and "trespass."

8. Today, the growing litigation over land use questions at all levels of government—power plant siting, location of heavy industry, projects such as the trans-Alaska pipeline, etc.—indicate land use problems are no longer entirely local in scope and that the planning concepts of the 1920's are no longer adequate to the changing public values and increasingly complex problems of the 1970's.

9. Today, after a half of a century of experience, many public officials and citizens feel that traditional zoning concepts and practices leave a great deal of room for improvement. The Act recognizes this, but "does not require . . . radical or sweeping changes in the traditional relationship and responsibility of local government for land use management." (Committee Report No. 92–869) The Act does not propose Federal zoning as it is both unconstitutional and unwise. Nor does it propose "statewide zoning" or "comprehensive master planning" which would only produce costly, dilatory, duplicative and often inflexible regulation of the vast majority of land use problems that are of concern, interest and knowledge only to the local units of government.

10. Instead, the Act encourages a continual "process of planning" wherein the right of local government to exercise land use powers is reasserted on all land use decisions and the State government is asked to join in partnership with local government on land use decisions of more than local concern, both governments acting in response to the decisions of state and local legislative bodies on substantive issues and with full citizen participation.

11. In the Act, the State governments are encouraged to assist localities with guidelines for local planning or through cooperative planning only on those land use questions which are of *more than local concern* which go beyond the boundaries of only one locality and have an impact upon a number of local units of government and which determine the shape of the future environment—decisions concerning highways, airports, and mass transit systems; major power plants and transmission corridors, areas to be preserved or closely regulated (environmental areas, flood plains) and areas for intense development (housing complexes or industrial parks).

12. The trend in most States today is to reverse the process begun in the 1920's of delegating all land use planning authority to units of local government. Increasingly States are selectively assuming an important role with respect to land use problems which are of more than local concern such as power plant siting, location of industrial parks, and the protection of park, beach, coastal or estuarine areas. Over 40 States now have laws regulating one or more critical areas or uses of more than local concern. The Act encourages this trend toward active State responsibility and the elevation of land use decisions of more than local concern to the level of government—county, regional or State—most appropriately suited to decide the question in view of all legitimate values and interests.

B. WHAT THE ACT DOES AND DOES NOT DO

The act does not do any of the following:

1. *Does not mandate, require, or allow "Federal planning" or "Federal zoning."*

The zoning power is based on the State's police power and the Federal government does not have authority to zone State or privately owned lands (with the exception of the District of Columbia which is a special and unique case).

2. *Does not substitute Federal authority or review of State and local decisions on the use of State and local lands.* The Act is an "enabling act" which encourages the State to exercise "States' rights" and develop land use programs. Consistent with the enabling act concept, the Federal government is granted very little authority to review the substance of State land use programs.

3. *Does not provide inflexible Federal standards which require strict State compliance.* Specific Federal substantive requirements are ill-advised because they do not reflect the rich diversity of the States; they are invariably the lowest common denominator; States and local governments know best their own land use problems and their possible solutions; and the Federal zoning which such standards would create is plainly undesirable.

4. *Does not require comprehensive State planning over all its land.* The State land use program is definitely not to be a comprehensive statewide program which preempts the myriad of local decisions, but rather one focused on four categories of critical areas and uses of clearly more than local concern.

5. *Does not mandate State zoning, rather reasserts local zoning powers.* The States are encouraged to develop their programs not by zoning or by producing a master plan, but by reasserting the whole range of local governments' land use authority, and providing guidelines for the exercise of that authority. For example, a State would not, could not, make a basic zoning decision such as on which corner shall the gas station be, but it would have a duty to provide guidelines for local decisionmaking to insure, for example, that one community does not site a massive

industrial park directly adjacent to another community's recreational park or wildlife refuge.

6. Not only does not impinge upon or alter the traditional land use responsibilities of urban government, but also does not focus on urban lands. Unlike traditional urban and housing planning legislation, this Act does not focus on only one category of land: the intensely developed land. The act encourages a balanced and rational planning process for all categories of land, including the so-called "opportunity areas"—those areas where mistakes have not already been made or irreversible actions already taken—i.e., the rural areas and areas on the urban periphery.

7. Does not tell a State how much or what specific land must be included in the State land use program. The extent of and type of land use to be included in the four critical areas and uses is dependent upon on how the State defines those four areas or uses. e.g., is a shoreline 100 feet wide or a mile? does large scale development include a subdivision of 20 units or 200?

8. Does not alter any landowner's rights to seek judicial redress for what he regards as a "taking." The provisions of the Act do not change the body of law—Federal and State constitutions, statutes and judicial decisions—regarding the police powers and eminent domain. Any State or local restriction of property rights sufficient enough to constitute a "taking" still would require fair compensation.

The act does do the following:

1. Does require States to exercise "State's rights" and State responsibility over those land use planning and policy decisons which are of "more than local concern" and which provide the framework upon which the shape of the future is determined.

2. Does require State governments to develop a process of planning and a State land use program which is "balanced"; that is, a program which protects the environment and assures recreational opportunity, but at the same time provides for necessary social services and essential economic activities—for transportation facilities, reliable energy systems, housing, and residential development.

3. Does contain provisions which insure its compatibility with the HUD 701 planning program, with the Clean Air and Water Pollution Control Acts, with other Federal legislation, and with the Coastal Zone Management law enacted last year.

4. Does provide State government with funds—$170 million over five years—to develop State land use data inventories, to improve the size and competence of professional staff, and to establish an appropriate State planning agency.

5. Does provide the States with wide latitude in determining the method of implementing the Act—reassertion of all local land use powers with State administrative review under State guidelines such as in most State coastal zone, wetlands, flood plain and power plant siting laws, or the rare instance of direct State planning, as in Hawaii or Vermont, or the unincorporated areas of Alaska. An amendment added to the measure last year and endorsed by the League of Cities clearly established an intent that "selection of methods of implementation shall be made so as to encourage the employment of land use controls by local governments."

6. Does endorse the concept that local land use decisions should be made by local government: "The Act does not require or contemplate radical or sweeping changes in the traditional relationship and responsibility of local government for land use management. Decisions of local concern will continue to be made by local government." (page 22, Comm. Rept. No. 92-869).

7. Does provide new authority to State government and encourages coordinated State-Federal planning for Federal lands within a State's boundaries.

S. 268

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Land Use Policy and Planning Assistance Act of 1973".

## TITLE I—FINDINGS, POLICY, AND PURPOSE

### FINDINGS

SEC. 101. (a) The Congress hereby finds that there is a national interest in a more efficient system of land use planning and decisionmaking and that the rapid and continued growth of the Nation's population, expanding urban development, proliferating transportation systems, large-scale industrial and economic growth, conflicts in patterns of land use, fragmentation of governmental entities exercising land use planning powers, and the increased size, scale, and impact of private actions, have created a situation in which land use management decisions of wide public concern often are being made on the basis of expediency, tradition, short-term economic considerations, and other factors which too frequently are unrelated or contradictory to sound environmental, economic, and social land use considerations.

(b) The Congress finds that the task of land use planning and management is made more difficult by the lack of understanding of, and the failure to assess, the land use impact of Federal, regional, State, and local programs and private endeavors which do not possess or are not subject to readily discernible land management goals or guidelines; and that a national land use policy is needed to develop a national awareness of, and ability to measure, the land use impacts inherent in most public and private programs and activities.

(c) The Congress finds that adequate data and information on land use and systematic methods of collection, classification, and utilization thereof are either lacking or not readily available to public and private land use decisionmakers; and that a national land use policy must place a high priority on the procurement and dissemination of land use data.

(d) The Congress finds that a failure to conduct competent land use planning has, on occasion, resulted in delay, litigation, and cancellation of proposed significant development, including, but not limited to, facilities for the development, generation, and transmission of energy, thereby too often wasting human and economic resources, creating a threat to public services, and invoking decisions to locate activities in areas of least public and political resistance, but without regard to sound environmental, economic, and social land use considerations.

(e) The Congress finds that many Federal agencies conduct or assist activities which have a substantial impact on the use of land, location of population and economic growth, and the quality of the environment, and which, because of the lack of a consistent land use policy, often result in needless, undesirable, and costly conflicts between the Federal agencies and among Federal, State, and local governments, thereby subsidizing undesirable and costly patterns of development; and that a concerted effort is necessary to coordinate existing and future Federal policies and programs and public and private decisionmaking in accordance with a national land use policy.

(f) The Congress finds that, while the primary responsibility and constitutional authority for land use planning and management of non-Federal lands rests with State and local government, the manner in which this responsibility is exercised has a tremendous influence upon the utility, the value, and the future of the public domain, the national parks, forests, seashores, lakeshores, recreation and wilderness areas, wildlife refuges, and other Federal lands; and that the failure to plan or, in some cases, the existence of poor or ineffective planning at the State and local levels poses serious problems of broad national or regional concern and often results in irreparable damage to commonly owned assets of great national importance.

(g) The Congress finds that, because the land use decisions of the Federal Government, including those concerning the Federal lands, often have significant impacts upon statewide and local environments and patterns of development, a national land use policy ought to take into consideration the needs and interests, and invite the participation of, State and local governments and members of the public.

(h) The Congress finds that Federal, regional, State and local decisions and programs which establish or influence the location of land uses often determine whether people of all income levels and races have or are denied access to decent shelter, to adequate employment, and to quality schools, health facilities, police and fire protection, mass transportation, and other public services; and that such decisions and programs should seek to provide the maximum freedom and opportunity, consistent with sound and equitable land use planning and management standards, for all citizens to live and conduct their activities in locations of convenience and personal choice.

### DECLARATION OF POLICY

SEC. 102. (a) To promote the general welfare and to provide full and wise application of the resources of the Federal Government in strengthening the environmental, recreational, economic, and social well-being of the people of the United States, the Congress declares that it is a continuing responsibility of the Federal Government, consistent with the responsibility of State and local governments for land use planning and management, to undertake the development and implementation of a national land use policy which shall incorporate environmental, esthetic, economic, social, and other appropriate factors. Such policy shall serve as a guide for national decisionmaking in Federal and federally assisted programs which have land use impacts and in programs which affect the pattern of uses on the Federal lands, and shall provide a framework for the development of State and local land use policies.

(b) The Congress further declares that it is the national policy to—

(1) favor patterns of land use planning, management, and development which are in accord with sound environmental, economic, and social values and which encourage the wise and balanced use of the Nation's land resources;

(2) assist State governments to develop and implement land use programs for non-Federal lands which will incorporate environmental, esthetic, economic, social, and other appropriate factors, and to develop a framework for the formulation, coordination, and implementation of State and local land use policies;

(3) assist the State and local governments to improve upon their present land use planning and management efforts with respect to areas of critical environmental concern, key facilities, development and land use of regional benefit, and large scale development;

(4) facilitate increased coordination in the administration of Federal programs and in the planning and management of Federal lands and adjacent non-Federal lands so as to encourage sound land use planning and management; and

(5) promote the development of systematic methods for the exchange of land use, environmental, economic, and social data and information among all levels of government.

(c) The Congress further declares that intelligent land use planning and management

can and should be a singularly important process for preserving and enhancing the environment, encouraging beneficial economic development, and maintaining conditions capable of improving the quality of life.

PURPOSE

SEC. 103. It is the purpose of this Act—

(a) to establish a national policy to encourage and assist the several States to more effectively exercise their constitutional responsibilities for the planning and management of their land base through the development and implementation of State land use programs designed to achieve economically and environmentally sound uses of the Nation's land resources;

(b) establish a grant-in-aid program to assist State and local governments and agencies to hire and train the personnel, and establish the procedures, necessary to develop and implement State land use programs;

(c) establish reasonable and flexible Federal requirements to give individual States guidance in, and to condition the distribution of certain Federal funds on, the establishment and implementation of adequate State land use programs;

(d) establish the authority and responsibility of the Secretary of the Interior to administer the grant-in-aid program, to review, with the heads of other Federal agencies, statewide land use planning processes and State land use programs for conformity to the provisions of this Act, and to assist in the coordination of activities of Federal agencies with State land use programs;

(e) develop and maintain a national policy with respect to federally conducted and federally assisted projects having land use implications; and

(f) coordinate planning and management of Federal lands and planning and management of adjacent non-Federal lands.

## TITLE II—ADMINISTRATION OF LAND USE POLICY

OFFICE OF LAND USE POLICY ADMINISTRATION

SEC. 201. (a) There is hereby established in the Department of the Interior the Office of Land Use Policy Administration (hereinafter referred to as the "Office").

(b) The Office shall have a Director who shall be appointed by the President by and with the advice and consent of the Senate and shall be compensated at the rate provided for level V of the Executive Schedule Pay Rates (5 U.S.C. 5315), and such other officers and employees as may be required. The Director shall have such duties and responsibilities as the Secretary of the Interior (hereinafter referred to as the "Secretary") may assign.

SEC. 202. The Secretary, acting through the Office, shall—

(a) maintain a continuing study of the land resources of the United States and their use;

(b) cooperate with the States in the development of standard methods and classifications for the collection of land use data and in the establishment of effective procedures for the exchange and dissemination of land use data;

(c) develop and maintain a Federal Land Use Information and Data Center, with such regional branches as the Secretary may deem appropriate, which shall have on file—

(1) plans for federally initiated and federally assisted activities which directly and significantly affect or have an impact upon land use patterns;

(2) to the extent practicable and appropriate, the plans and programs of State and local governments and private enterprises which have more than local significance for land use planning and management;

(3) statistical data and information on past, present, and projected land use patterns which are of more than local significance;

(4) studies pertaining to techniques and methods for the procurement, analysis, and evaluation of data and information relating to land use planning and management; and

(5) such other information pertaining to land use planning and management as the Director deems appropriate;

(d) make the information maintained at the Data Center available to Federal, regional, State, and local agencies conducting or concerned with land use planning and management and to the public;

(e) consult with other officials of the Federal Government responsible for the administration of Federal land use planning assistance programs to States, local governments, and other eligible public entities in order to coordinate such programs;

(f) administer the grant-in-aid program established under the provisions of this Act; and

(g) provide administrative support for the National Advisory Board on Land Use Policy established under section 203 of this Act.

NATIONAL ADVISORY BOARD ON LAND USE POLICY

SEC. 203. (a) The Secretary is authorized and directed to establish a National Advisory Board on Land Use Policy (hereinafter referred to as the "Board").

(b) The Board shall be composed of:

(1) the Director of the Office of Land Use Policy Administration, who shall serve as Chairman;

(2) representatives of the Departments of Agriculture; Commerce; Defense; Health, Education, and Welfare; Housing and Urban Development; and Transportation; the Atomic Energy Commission; and the Environmental Protection Agency, appointed by the respective heads thereof;

(3) observers from the Council on Environmental Quality, the Federal Power Commission, and the Office of Management and Budget, appointed by the respective heads thereof; and

(4) representatives of such other Federal agencies, appointed by the respective heads thereof, as the Secretary may request to participate when matters affecting their responsibilities are under consideration.

(c) The Board shall meet regularly at such times as the Chairman may direct and shall—

(1) provide the Secretary with information and advice concerning the relationship of policies, programs, and activities established or performed pursuant to this Act to the programs of the agencies represented on the Board;

(2) render advice, pursuant to section 502, to the Executive Office of the President and the Secretary concerning proposed guidelines, rules, and regulations for the implementation of the provisions of this Act;

(3) assist the Secretary and the agencies represented on the Board in the coordination of the review of statewide land use planning processes and State land use programs;

(4) provide advice on such land use policy matters as the Secretary may refer to the Board for its consideration; and

(5) provide reports to the Secretary on land use policy matters which may be referred to the Board by the heads of Federal agencies through their respective representatives on the Board.

(d) Each agency representative on the Board shall have a career position within his agency of not lower than GS–15 and shall not be assigned any duties which are unrelated to the administration of land use planning and policy, except temporary housekeeping or training duties. Each representative shall—

(1) represent his agency on the Board;

(2) assist in the coordination and preparation within his agency of comments on (i) guidelines, rules, and regulations proposed for promulgation pursuant to section 502, and (ii) statewide land use planning processes and State land use programs reviewed pursuant to title III of this Act;

(3) assist in the dissemination of land use planning and policy information and in the implementation within his agency of policies and procedures developed pursuant to this Act; and

(4) perform such other duties regarding the administration of land use planning and policy as the head of his agency may direct.

(e) The Board shall have as advisory members two representatives each from State governments and local governments and one representative each from regional interstate and intrastate public entities which have land use planning and management responsibilities. Such advisory members shall be selected by a majority vote of the Board and shall each serve for a two-year period.

INTERSTATE COORDINATION

SEC. 204. (a) The States are authorized to coordinate land use planning, policies, and programs with appropriate interstate entities, and a reasonable portion of the funds made available to such States under the provisions of this Act may be used therefor: *Provided*, That an opportunity for participation in the coordination process by Federal and local governments and agencies as well as members of the public engaged in activities which affect or are affected by State land use planning, policies, and programs is assured: *And provided further*, That nothing in this subsection shall be construed to affect the allotment of funds as provided in section 507 of this Act.

(b) Subject to the approval of Congress by the adoption of an appropriate Act, Congress hereby authorizes States possessing coherent geographic, environmental, demographic, or economic characteristics which would serve as reasonable bases upon which to coordinate land use planning, policies, and programs in interstate areas to negotiate interstate compacts for the purpose of such coordination, with such terms and conditions as to them seem reasonable and appropriate: *Provided*, That such compacts shall provide for an opportunity for participation in the coordination process by Federal and local governments and agencies as well as members of the public engaged in activities which affect or are affected by land use planning, policies, and programs: *And provided further*, That nothing in this subsection shall be construed to affect the allotment of funds as provided in section 507 of this Act.

(c) The Advisory Commission on Intergovernmental Relations shall conduct a review of federally established or authorized interstate agencies, including, but not limited to, river basin commissions, regional development agencies, and interstate compact commissions, for the purpose of coordinating land use planning, policies, and programs in interstate areas. The Advisory Commission on Intergovernmental Relations shall report to the Congress the results of its review conducted under this subsection not later than two fiscal years after the date of enactment of this Act.

## TITLE III—PROGRAM OF ASSISTANCE TO THE STATES

SEC. 301. (a) The Secretary is authorized to make annual grants to each State to assist each State in developing and administering a State land use program meeting the requirements set forth in this Act.

(b) Prior to making the first grant to each State during the three complete fiscal year period following the enactment of this Act, the Secretary shall be satisfied that such grant will be used in a manner to meet satisfactorily the requirements for a statewide land use planning process set forth in section 302. Prior to making any further grants during such period, the Secretary shall be satisfied that the State is adequately and expeditiously proceeding to meet the requirements of section 302.

(c) Prior to making any further grants after the three complete fiscal year period following the enactment of this Act and before the end of the five complete fiscal year

period following the enactment of this Act, the Secretary shall be satisfied that the State has met and continues to meet the requirements of section 302 and is adequately and expeditiously proceeding to develop a State land use program to meet the requirements of sections 303, 304, and 402.

(d) Prior to making any further grants after the five complete fiscal year period following the enactment of this Act, the Secretary shall be satisfied that the State has met and continues to meet the requirements of sections 303, 304, and 402.

(e) Each State receiving grants pursuant to this Act during the five complete fiscal year period following enactment of this Act shall submit, not later than one year after the date of award of each grant, a report on work completed and scheduled toward the development of a State land use program to the Secretary for determination of State eligibility or ineligibility for grants pursuant to this Act in acordance with the procedures provided in section 305. For grants made after such period, the State shall submit its State land use program not later than one year after the date of award of each grant to the Secretary for determination of State eligibility or ineligibility for grants pursuant to this Act in accordance with the procedures provided in section 305: *Provided,* That if no grant is requested by or active in any State after fiscal years from the date of enactment of this Act, such State shall submit its State land use program within ninety days thereafter to the Secretary for determination of State eligibility or ineligibility for grants pursuant to this Act in accordance with the procedures provided in section 305: *And provided further,* That, should no grant be requested by or active in any State during any two complete fiscal year period after five fiscal years from the date of enactment of this Act, such State shall submit its State land use program within ninety days from completion of such period to the Secretary for determination of State eligibility or ineligibility for grants pursuant of this Act in accordance with the procedures provided in section 305.

STATEWIDE LAND USE PLANNING PROCESSES

SEC. 302. (a) As a condition of continued eligibility of any State for grants pursuant to this Act after the three complete fiscal year period following the enactment of this Act, the Secretary shall have determined that the State has developed an adequate statewide land use planning process, which process shall include—

(1) the preparation and continuing revision of a statewide inventory of the land and natural resources of the State,

(2) the compilation and continuing revision of data, on a statewide basis, related to population densities and trends, economic characteristics and projections, environmental conditions and trends, and directions and extent of urban and rural growth;

(3) projections of the nature and quantity of land needed and suitable for recreation and esthetic appreciation; conservation and preservation of natural resources; agriculture, mineral development, and forestry; industry and commerce, including the development, generation, and transmission of energy; transportation; urban development, including the revitalization of existing communities, the development of new towns, and the economic diversification of existing communities which posses a narrow economic base; rural development, taking into consideration future demands for and limitations upon products of the land; and health, educational, and other State and local governmental services;

(4) the preparation and continuing revision of an inventory of environmental, geological, and physical conditions (including soil types) which influence the desirability of various uses of land;

(5) the preparation and continuing revision of an inventory of State, local government, and private needs and priorities concerning the use of Federal lands within the State;

(6) the preparation and continuing revision of an inventory of public and private institutional and financial resources available for land use planning and management within the State and of State and local programs and activities which have a land use impact of more than local concern;

(7) the establishment of a method for identifying large-scale development and development and land use of regional benefit;

(8) the establishment of a method for inventorying and designating areas of critical environmental concern and areas which are, or may be, impacted by key facilities;

(9) the provision, where appropriate, of technical assistance for, and training programs for State and local agency personnel concerned with, the development and implementation of State and local land use programs;

(10) the establishment of arrangements for the exchange of land use planning information and data among State agencies and local governments, with the Federal Government, among the several States and interstate agencies, and with members of the public;

(11) the establishment of a method for coordinating all State and local agency programs and services which significantly affect land use;

(12) the conducting of public hearings, preparation of reports, and soliciting of comments on reports concerning the statewide land use planning process or aspects thereof;

(13) the provision of opportunities for participation by the public and the appropriate officials or representatives of local governments in the statewide planning process and in the formulation of guidelines, rules, and regulations for the administration of the statewide planning process; and

(14) the consideration of, and consultation with the relevant States on, the interstate aspects of land use issues of more than local concern.

(b) In the determination of an adequate statewide land use process of any state, the Secretary shall confirm that the State has an eligible State land use planning agency established by the Governor of such State or by law, which agency shall—

(1) have primary authority and responsibility for the development and administration of a State land use program provided for in sections 303, 304, and 402;

(2) have a competent and adequate interdisciplinary professional and technical staff and, whenever appropriate, the services of special consultants;

(3) give priority to the development of an adequate data base for a statewide land use planning process using data available from existing sources wherever feasible;

(4) coordinate its activities with the planning activities of all State agencies undertaking federally financed or assisted planning programs insofar as such programs relate to land use: the regulatory activities of all State agencies enforcing air, water, noise, or other pollution standards; all other relevant planning activities of State agenices; flood plain zoning plans approved by the Secretary of the Army pursuant to the Flood Control Act of 1960 (74 Stat. 488), as amended; the planning activities of areawide agencies designed pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1255, 1262-3), as amended; the planning activities of local governments; and the planning activities of Federal agencies;

(5) have authority to conduct public hearings, with adequate public notice, allowing full public participation in the development of the State land use program;

(6) have authority to make available to the public promptly upon request land use data and information, studies, reports, and records of hearings; and

(7) be advised by an advisory council which shall be composed of a representative number of chief elected officials of local governments in urban and nonurban areas. The Governor shall appoint a chairman from among the members. The term of service of each member shall be two years. The advisory council shall, among other things, comment on all State guidelines, rules, and regulations to be promulgated pursuant to this Act, participate in the development of the statewide land use planning process and State land use program, and make formal comments on annual reports which the agency shall prepare and submit to it, which reports shall detail all activities within the State conducted by the State government and local governments pursuant to or in conformity with this Act.

STATE LAND USE PROGRAMS

SEC. 303. (a) As a condition of continued eligibility of any State for grants pursuant to this Act after the five complete fiscal year period following the enactment of this Act, the Secretary shall have determined that the State has developed an adequate State land use program, which shall include—

(1) an adequate statewide land use planing process as provided for in section 302 of this Act;

(2) methods of implementation for—

(A) assuring that the use and development of land in areas of critical environmental concern within the State is not inconsistent with the State land use program:

(B) assuring that the use of land in areas within the State which are or may be impacted by key facilities, including the site location and the location of major improvement and major access features of key facilities, is not inconsistent with the State land use program;

(C) assuring that any large-scale subdivisions and other proposed large-scale development within the State of more than local significance in its impact upon the environment is not inconsistent with the State land use program;

(D) assuring that any source of air, water, noise, or other pollution in the areas or from the uses or activities listed in this clause (1) shall not be located where it would result in a violation of any applicable air, water, noise, or other pollution standard or implementation plan;

(E) periodically revising and updating the State land use program to meet changing conditions;

(F) assuring dissemination of information to appropriate officials or representatives of local governments and members of the public and their participation in the development of and subsequent revisions in the State land use program and in the formulation of State guidelines, rules, and regulations for the development and administration of the State land use program; and

(G) conducting a coordinated management program for the land and water resources of any coastal zone within the State in accordance with existing or then applicable Federal or State law.

(b) Wherever possible, selection of methods of implementation of clause (2) of subsection (a) shall be made so as to encourage the employment of land use controls by local governments.

(c) The methods of implementation of clause (2) of subsection (a) shall include either one or a combination of the two following general techniques—

(1) implementation by local governments pursuant to criteria and standards established by the State, such implementation to

be subject to State administrative review with State authority to disapprove such implementation wherever it fails to meet such criteria and guidelines; and

(2) direct State land use planning and regulation.

(d) Any method of implementation employed by the State shall include the authority of the State to prohibit, under State police powers, the use of land within areas which, under the State land use program, have been designated as areas of critical environmental concerns which are or may be impacted by key facilities, or which have been identified as presently or potentially subject to development and land use of regional benefit, large-scale development, or large-scale subdivisions, which use is inconsistent with the requirements of the State land use program as they pertain to areas of critical environmental concern, key facilities, development and land use of regional benefit, large-scale development, and large-scale subdivisions.

(e) Any method of implementation employed by the State shall include an administrative appeals procedure for the resolution of, among other matters, conflicts over any decision or action of a local government for any area or use under the State land use program and over any decision or action by the Governor or State land use planning agency in the development of, or pursuant to, the State land use program. Such procedure shall include representation before the appeals body of, among others, the aggrieved party of interest and the local government or the State government responsible for the decision or action which is the subject of the appeal.

(f) Any person having a legal interest in land, of which a State has prohibited or restricted the full use and enjoyment thereof, may petition a court of competent jurisdiction to determine whether the prohibition diminishes the use of the property so as to require compensation for the loss and the amount of compensation to be awarded therefor.

SEC. 304. As a further condition of continued eligibility of a State for grants pursuant to this Act after the five complete fiscal year period following the enactment of this Act, the Secretary shall review the State land use program of such State and determine that—

(a) in designating areas of critical environmental concern, the State has not excluded any substantial areas of critical environmental concern which are of major planning and management: *Provided*, That, at the request of the Governor of any State, the Secretary shall submit to any such State a description of all areas of critical environmental concern within such State which he considers to be of national significance pursuant to this subsection (a) no later than three fiscal years from date of enactment of this Act. If a request is made by a Governor to the Secretary for a description of such areas after such three fiscal year period, the Secretary shall have sixty days to comply with such request.

(b) the State is demonstrating good faith efforts to implement, and, in the case of successive grants, the State is continuing to demonstrate good faith efforts to implement, the purposes, policies, and requirements of its State land use program. For the purposes of this subsection, the inability of a State to take any State action the purpose of which is to implement its State land use program, or any portion thereof, because such action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not be construed as failure by the State to demonstrate good faith efforts to implement the purposes, policies, and requirements of its State land use program;

(c) State laws, regulations, and criteria affecting the State land use program and the areas, uses, and activities over which the State exercises authority as required in section 303 are in accordance with the requirements of this title;

(d) the State land use program has been reviewed and approved by the Governor;

(e) the State has coordinated its State land use program with the planning activities and programs of its State agencies, the Federal Government, and local governments as provided for in this title, and with the planning processes and land use programs of other States and local governments within such States with respect to lands and waters in interstate areas; and provided for the participation of, and dissemination of information to, appropriate officials or representatives of local governments and members of the public as provided for in this title; and

(f) the State utilizes, for the purpose of furnishing advice to the Federal Government as to whether Federal and federally assisted projects are consistent with the State land use program, procedure established pursuant to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1255, 1262), as amended, and title IV of the Intergovernmental Cooperation Act of 1968 (82 Stat. 1098, 1103), and is participating on its own behalf in the programs provided for pursuant to section 701 of the Housing Act of 1954 (68 Stat. 590, 640), as amended.

FEDERAL REVIEW AND DETERMINATION OF GRANT ELIGIBILITY

SEC. 305. (a) During the five complete fiscal year period following the enactment of this Act, the Secretary, before making a grant to any State pursuant to this Act, shall consult with the heads of all Federal agencies listed in subsection (d) of the section and of all other Federal agencies which conduct or participate in construction, development, assistance, or regulatory programs significantly affecting land use in such State, and with the National Advisory Board on Land Use Policy pursuant to subsection (c) of section 203 of this Act, and shall consider their views and recommendations.

(b) After the five complete fiscal year period following the enactment of this Act—

(1) the Secretary, before making a grant to any State pursuant to this Act, shall submit the State land use program of such State to the heads of all Federal agencies listed in subsection (d) of this section and of all other Federal agencies which conduct or participate in construction, development, assistance, or regulatory programs significantly affecting land use in such State, and to the National Advisory Board on Land Use Policy pursuant to subsection (c) of section 203 of this Act. The Secretary shall take into consideration the views of each agency head which are submitted to him by such agency head no later than thirty days after submission of the State land use program to such agency head by the Secretary; and

(2) the Secretary shall not make a grant to any State pursuant to this Act until he has ascertained that the Administrator of the Environmental Protection Agency is satisfied that the State land use program of such State is in compliance with the goals of the Federal Water Pollution Control Act, the Clean Air Act, and other Federal laws controlling pollution which fall within the jurisdiction of the Administrator, and that those portions of the State land use program which will effect any change in land use within the next annual review period are in compliance with the standards, criteria, emission or effluent limitations, monitoring requirements, or implementation plans required by such laws. The Administrator shall be deemed to be satisfied if he does not communicate his views to the Secretary within sixty days of submission of the State land use program to him by the Secretary.

(c) The Secretary may not make any grant to any State pursuant to this Act unless he has been informed by the Secretary of Housing and Urban Development that he is satisfied that the statewide land use planning process or State land use program of such State with respect to which the grant is to be made (1) conforms to the objectives of section 701 of the Housing Act of 1954, as amended, and to the relevant planning assisted under that section, including the provisions related to functional plans, and housing, public facilities, and other growth and development objectives, and (2) meets the requirements of this Act insofar as they pertain to large-scale development, development of regional benefit, large-scale subdivisions, and the urban development of lands impacted by key facilities. The Secretary of Housing and Urban Development shall be deemed to be satisfied if he does not communicate his views to the Secretary within sixty days after the statewide land use planning process or State land use program has been submitted to him by the Secretary.

(d) The Secretary shall determine a State eligible or ineligible for a grant pursuant to this Act not later than six months following receipt for review of the application of the State for its first grant, a report of the State on its previous grant, or the State land use program of the State as provided in section 301.

(e) Pursuant to subsections (a) and (b) of this section the Secretary shall consider the views of the heads of the Departments of Agriculture; Commerce; Defense; Health, Education, and Welfare; Housing and Urban Development; and Transportation; the Atomic Energy Commission; the Federal Power Commission; and the Environmental Protection Agency.

(f) A State may revise at any time its State land use program: *Provided*, That such revision does not render the State land use program inconsistent with the requirements of this Act: *And provided further*, That any significant revision is reported to the Secretary. The Secretary shall make a temporary determination, prior to the full review of the State land use program pursuant to section 305, of whether such revision would render the State land use program inadequate for purposes of complying with the requirements of this Act, and shall inform the State of his determination.

(g)(1) In the event the Secretary determines that a State is ineligible for grants pursuant to this Act or, having found a State eligible for such grants, subsequently determines that grounds exist for withdrawal of such eligibility, he shall notify the President, who shall order the establishment of an ad hoc hearing board (hereinafter referred to as "hearing board"), the membership of which shall consist of:

(A) the Governor of a State which is not the State for which grant eligibility is in question and which does not have a particular interest in whether grant eligibility or ineligibility is determined, selected by the President within thirty days after notification by the Secretary, or, within ten days thereafter, such alternate person as the Governor selected by the President may designate;

(B) one knowledgeable, impartial Federal official who is not an official of an agency listed in clauses (1) through (3) of subsection (b) of section 203, selected by the President within thirty days after notification by the Secretary; and

(C) one knowledgeable, impartial private citizen, selected by the other two members; *Provided*, That if the other two members cannot agree upon a third member within twenty days after the appointment of the second member to be appointed, the third member shall be selected by the President within twenty days thereafter.

(2) The Secretary shall specify in detail, in writing, to the hearing board his reasons for considering a State ineligible, or for withdrawing the eligibility of a State, for

grants pursuant to this Act. The hearing board shall hold such hearings and receive such evidence as it deems necessary. The hearing board shall then determine whether a finding of ineligibility would be reasonable, and set forth in detail, in writing, the reasons for its determination. If the hearing board determines that ineligibility would be unreasonable, the Secretary shall find the State eligible for grants pursuant to this Act. If the hearing board concurs in the finding of ineligibility or withdrawal of eligibility, the Secretary shall find the State ineligible for grants pursuant to this Act. Ineligibility shall be deemed to have been determined by the hearing board if no determination in writing is made by it within ninety days of its appointment.

(3) Members of hearing boards who are not regular full-time officers or employees of the United States shall, while carrying out their duties as members, be entitled to receive compensation at a rate fixed by the President, but not exceeding $150 per diem, including traveltime, and, while away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law for persons intermittently employed in Government service. Expenses shall be charged to the account of the Executive Office of the President.

(4) Administrative support for hearing boards shall be provided by the Executive Office of the President.

(5) The President may issue such regulations as may be necessary to carry out the provisions of this subsection.

CONSISTENCY OF FEDERAL ACTIONS WITH STATE LAND USE PROGRAMS

SEC. 306. (a) Federal projects and activities significantly affecting land use, including but not limited to grant, loan, or guarantee programs, such as mortgage and rent subsidy programs and water and sewer facility construction programs, shall be consistent with State land use programs which conform to the provisions of sections 303, 304, and 402 of this Act, except in cases of overriding national interest, as determined by the President. Procedures provided for in regulations issued by the Office of Management and Budget pursuant to the criteria specified in section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1255, 1262–3), as amended, and title IV of the Intergovernmental Cooperation Act of 1968 (82 Stat. 1098, 1103–4), together with such additional procedures as the Office of Management and Budget may determine are necessary and appropriate to carry out the purpose of this Act, shall be utilized in the determination of whether Federal projects and activities are consistent with the State land use programs.

(b) (1) Any State or local government submitting an application for Federal assistance for any program, project, or activity having significant land use implications in an area or for a use subject to a State land use program in a State found eligible for grants pursuant to this Act shall transmit to the relevant Federal agency the views of the State land use planning agency and/or the Governor and, in the case of an application of a local government, the views of such local government and the relevant areawide planning agency designated pursuant to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and/or title IV of the Intergovernmental Cooperation Act of 1968, as to the consistency of such activity with the State land use program: *Provided*, That, if a local government certifies that a plan or description of an activity for which application is made by the local government has lain before the State land use planning agency and/or the Governor for a period of sixty days without indication of the views of the State land use planning agency and/or the Governor, the application need not be accompanied by such views.

(2) The relevant Federal agency shall, pursuant to subsections (a) and (b) (1) of this section, determine, in writing, whether the proposed activity is consistent or inconsistent with the State land use program.

(3) No Federal agency shall approve any proposed activity which it determines to be inconsistent with a State land use program in a State found eligible for grants pursuant to this Act.

(c) Federal agencies conducting or assisting public works activities in areas not subject to a State land use program in a State found eligible for grants pursuant to this Act shall, to the extent practicable, conduct such activities in such a manner as to minimize any adverse impact on the environment resulting from decisions concerning land use.

FEDERAL ACTIONS IN THE ABSENCE OF STATE ELIGIBILITY

SEC. 307. (a) The Secretary shall have authority to terminate any financial assistance extended to a State under this Act and withdraw his determination of grant eligibility whenever, in accordance with section 305, the statewide land use planning process or the State land use program of such State is determined not to meet the requirements of this Act.

(b) Where any major Federal action significantly affecting the use of non-Federal lands is proposed after five fiscal years from the date of enactment of this Act in a State which has not been found eligible for grants pursuant to this Act, the responsible Federal agency shall hold a public hearing in such State at least one hundred eighty days in advance of the proposed action concerning the effect of the action on land use, taking into account the relevant considerations set out in sections 302, 303, 304, and 402 of this Act, and shall make findings which shall be submitted for review and comment by the Secretary, and where appropriate, by the Secretary of Housing and Urban Development. Such findings of the responsible Federal agency and comments of the Secretary and, where appropriate, the Secretary of Housing and Urban Development shall be made part of the detailed statement required by section 102(2)(C) of the National Environmental Policy Act of 1969 (83 Stat. 852, 853). This subsection shall be subject to exception where the President determines that the interests of the United States so require.

## TITLE IV

FEDERAL-STATE COORDINATION AND COOPERATION IN THE PLANNING AND MANAGEMENT OF FEDERAL AND ADJACENT NON-FEDERAL LANDS

SEC. 401. (a) All agencies of the Federal Government charged with responsibility for the management of Federal lands shall consider State land use programs prepared pursuant to this Act and State, local government, and private needs and requirements as related to the Federal lands, and shall coordinate the land use inventory, planning and management activities on or for Federal lands with State and local land use inventory, planning, and management activities on or for adjacent non-Federal lands to the extent such coordination is practicable and not inconsistent with paramount national policies, programs, and interests.

(b) For the purposes of this section, any agency proposing any new program, policy, rule, or regulation relating to Federal lands shall publish a draft statement and a final statement concerning the consistency of the program, policy, rule, or regulation with State and local land use planning and management, and, where inconsistent, the reasons for such inconsistency, forty-five days and fifteen days, respectively, prior to the establishment of such program or policy or the promulgation of such rule or regulation, and, except where otherwise provided by law, shall conduct a public hearing, with adequate public notice, on such program, policy, rule, or regulation prior to the publication of the final statement.

SEC. 402. (a) As a condition of continued eligibility of any State for grants pursuant to this Act, after the five complete fiscal year period following the enactment of this Act, the Secretary shall have determined that—

(1) the State land use program developed pursuant to sections 303 and 304 of this Act includes methods for insuring that Federal lands within the State, including but not limited to units of the national park system, wilderness areas, and game and wildlife refuges, are not damaged or degraded as a result of inconsistent land use patterns in the same immediate geographical region; and

(2) the State has demonstrated good faith efforts to implement such methods in accordance with subsection (b) of section 304.

(b) The procedures for determination of grant eligibility provided for in section 305 shall apply to this section.

AD HOC FEDERAL-STATE JOINT COMMITTEES

SEC. 403. (a) The Secretary, at his discretion or upon the request of the Governor of any State involved, shall establish an Ad Hoc Federal-State Joint Committee or Committees (hereinafter referred to as "joint committee" or "committees") to review and make recommendations concerning general and specific problems relating to jurisdictional conflicts and inconsistencies resulting from the various policies and legal requirements governing the planning and management of Federal lands and of adjacent non-Federal lands. Each joint committee shall include representatives of the Federal agencies having jurisdiction over the Federal lands involved, representatives of affected user groups, including recreation and conservation interests, and officials of affected State agencies and units of local government. Prior to appointing representatives of user groups and officials of local governments, the Secretary shall consult with the Governor or Governors of the affected State or States and local governments. The Governor of each State shall appoint the officials of the affected agencies of his State who shall serve on the joint committee.

(b) Each joint committee shall terminate at the end of two years from the date of its establishment.

(c) Each member of a joint committee may be compensated at the rate of $100 for each day he is engaged in the actual performance of duties vested in his joint committee. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently: *Provided, however*, That no compensation except travel and expenses in addition to regular salary shall be paid to any full-time Federal or State official.

(d) Each joint committee shall have available to it the services of an executive secretary, professional staff, and such clerical assistance as the Secretary determines is necessary. The executive secretary shall serve as staff to the joint committee or committees and shall be responsible for carrying out the administrative work of the joint committee or committees.

(e) The specific duties of any joint committee shall be assigned by the Secretary and may include—

(1) conducting a study of, and making recommendations to the Secretary concerning methods for resolving, general problems with and conflicts between land use inven-

tory, planning, and management activities on or for Federal lands and State and local land use inventory, planning, and management activities on or for adjacent non-Federal lands, including, where relevant, the State land use programs developed pursuant to sections 303, 304, and 402 of this Act;

(2) investigating specific conflicts between the planning and management of Federal lands and of adjacent non-Federal lands and making recommendations to the Secretary concerning their resolution;

(3) assisting the States and the Office of Land Use Policy Administration in the development of systematic and uniform methods among the States and between the States and the Federal Government for collecting, compiling, exchanging, and utilizing land use data and information; and

(4) advising the Secretary, during his review of State land use programs, of opportunities for reducing potential conflicts and improving coordination in the planning and management of Federal lands and of adjacent non-Federal lands.

(f) Upon receipt of the recommendations of a joint committee upon a problem or conflict pursuant to subsection (e) of this section the Secretary shall—

(1) where he has legal authority, take any appropriate and necessary action to resolve such problem or conflict;

(2) where he does not have jurisdiction over or authority concerning the Federal lands which are involved in the problem or conflict, work with the appropriate Federal agency or agencies to develop a proposal designed to resolve the problem or conflict and to enhance cooperation and coordination between the planning and management of Federal lands and of adjacent non-Federal lands; and

(3) if he determines that the legal authority to resolve such problems or conflicts is lacking in the executive branch, recommend enactment of appropriate legislation to the Congress.

(g) In taking or recommending action pursuant to the recommendations of a joint committee, the Secretary shall give careful consideration to the purposes of this Act and not resolve any problem with or conflict between the planning and management of Federal lands and of adjacent non-Federal lands in a manner which would impair the national purposes or objectives to which the Federal lands involved are dedicated and for which they are being managed.

BIENNIAL REPORT ON FEDERAL-STATE COORDINATION

SEC. 404. The Secretary shall report biennially to the President and the Congress concerning—

(a) problems in and methods for coordination of planning and management of Federal lands and planning and management of adjacent non-Federal lands, together with recommendations to improve such coordination;

(b) the resolution of specific conflicts between the planning and management of Federal lands and of adjacent non-Federal lands; and

(c) at the request of the Governor of any State involved, any unresolved problem with or conflict between the planning and management of Federal lands and of adjacent non-Federal lands, together with any recommendations the Secretary and the Governor or Governors may have for resolution of such problem or conflict.

SEC. 405. (a) Prior to the making of recommendations on any problem or conflict pursuant to subsection (e) of section 403, each joint committee shall conduct a public hearing or provide an opportunity for such a hearing in the State on such problem or conflict, with adequate public notice, allowing fully participation of representatives of Federal, State, and local governments and members of the public. Should no hearing be held, the joint committee shall solicit the views of all affected parties and submit a summary of such views, together with its recommendations, to the Secretary.

(b) Prior to the making of recommendations or the taking of actions pursuant to subsection (f) of section 403, the Secretary shall review in full the relevant hearing record or, where none exists, the summary of views of affected parties prepared pursuant to subsection (a) of this section, and may, in his discretion, hold further public hearings.

SEC. 406. Upon request of a joint committee, the head of any Federal department or agency or federally established or authorized interstate agency is authorized: (i) to furnish to the joint committee, to the extent permitted by law and within the limits of available funds, such information as may be necessary for carrying out the functions of the joint committee and as may be available to or procurable by such department, agency, or interstate agency; and (ii) to detail to temporary duty with the joint committee, on a reimbursable basis, such personnel within his administrative jurisdiction as the joint committee may need or believe to be useful for carrying out its functions, each such detail to be without loss of seniority, pay, or other employee status.

## TITLE V—GENERAL

DEFINITIONS

SEC. 501. For the purposes of this Act—

(a) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(b) The term "local government" means any general purpose county or municipal government, or any regional combination thereof, or, where appropriate, any other public agency which has land use planning authority.

(c) The term "Federal lands" means any land owned by the United States without regard to how the United States acquired ownership of the land and without regard to the agency having responsibility for management thereof, except lands held in trust for the benefit of Indians, Aleuts, and Eskimos.

(d) The term "non-Federal lands" means all lands which are not "Federal lands" as defined in subsection (c) of this section and are not held by the Federal Government in trust for the benefit of Indians, Aleuts and Eskimos.

(e) The term "areas of critical environmental concern" means areas as designated by the State on non-Federal lands where uncontrolled development could result in irreversible damage to important historic, cultural, or esthetic values, or natural systems or processes which are of more than local significance, or could unreasonably endanger life and property as a result of natural hazards of more than local significance. Such areas, subject to State definition of their extent, shall include—

(1) coastal wetlands, marshes, and other lands inundated by the tides;

(2) beaches and dunes;

(3) significant estuaries, shorelands, and flood plains of rivers, lakes, and streams;

(4) areas of unstable soils and with high seismicity;

(5) rare or valuable ecosystems;

(6) significant undeveloped agricultural, grazing, and watershed lands;

(7) forests and related land which require long stability for continuing renewal;

(8) scenic or historic areas; and

(9) such additional areas as the State determines to be of critical environmental concern.

(f) The term "key facilities" means public facilities on non-Federal lands which tend to induce development and urbanization of more than local impact and major facilities on non-Federal lands for the development, generation, and transmission of energy.

(g) The term "development and land use of regional benefit" means land use and private development on non-Federal lands for which there is demonstrable need affecting the interests of constituents of more than one local government which outweighs the benefits of any applicable restrictive or exclusionary local regulations.

(h) The term "large scale development" means private development of non-Federal lands which, because of its magnitude or the magnitude of its effect on the surrounding environment, is likely to present issues of more than local significance in the judgment of the State. In determining what constitutes "large scale development" the State should consider, among other things, the amount of pedestrian or vehicular traffic likely to be generated; the number of persons likely to be present; the potential for creating environmental problems such as air, water, or noise pollution; the size of the site to be occupied; and the likelihood that additional or subsidiary development will be generated.

GUIDELINES, RULES AND REGULATIONS

SEC. 502. (a) The Executive Office of the President shall issue guidelines to the Federal agencies and the States to assist them in carrying out the requirements of this Act. The Executive Office shall submit proposed guidelines to the Secretary, the Board, the heads of agencies represented on the Board, and representatives of State and local governments, and shall consider their comments prior to formal issuance of such guidelines.

(b) The Secretary, after appropriate consultation with representatives of the States and, where appropriate, representatives of local governments, and upon the advice of the Board and the heads of Federal agencies represented on the Board, shall promulgate rules and regulations to implement the guidelines formulated pursuant to subsection (a) of this section and to administer this Act, except with respect to subsection (g) of section 305 of this Act.

BIENNIAL REPORT

SEC. 503. The Secretary, with the assistance of the Office and the Board, shall report biennially to the President and the Congress on land resources, uses of land, and current and emerging problems of land use.

UTILIZATION OF PERSONNEL

SEC. 504. Upon the request of the Secretary, the head of any Federal agency is authorized: (i) to furnish to the Office such information as may be necessary for carrying out the functions of the Office and as may be available to or procurable by such agency, and (ii) to detail to temporary duty with the Office, on a reimbursable basis, such personnel within his administrative jurisdiction as the Office may need or believe to be useful for carrying out its functions, each such detail to be without loss of seniority, pay, or other employee status.

TECHNICAL ASSISTANCE

SEC. 505. The Office may provide, directly or through contracts, grants, or other arrangements, technical assistance to any State found eligible for grants pursuant to this Act to assist such State in the performance of its functions under this Act.

HEARINGS AND RECORDS

SEC. 506. (a) For the purpose of carrying out the provisions of this Act, the Director, with the concurrence of the Secretary, may hold such hearings, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of the proceedings and reports thereon as he deems advisable.

(b) The Director is authorized to administer oaths when he determines that testimony shall be taken or evidence received under oath.

(c) To the extent permitted by law, all

appropriate records and papers of the Office shall be made available for public inspection during ordinary office hours.

ALLOTMENTS

SEC. 507. (a) Annual grants authorized by section 301 to States found eligible for financial assistance pursuant to this Act shall be made in amounts not to exceed 66⅔ per centum of the estimated cost of developing the State land use programs for the two complete fiscal year period following the enactment of this Act and amounts not to exceed one-half of such cost for the next three fiscal years.

(b) Grants pursuant to this Act shall be allocated to the States on the basis of regulations of the Secretary, which regulations shall take into account the amount and nature of each State's land resource base, population, pressures resulting from growth, financial need, and other relevant factors.

(c) Any grant pursuant to this Act shall increase, and not replace, State funds presently available for State land use planning and management activities. Any grant made pursuant to this Act shall be in addition to, and may be used jointly with, grants or other funds available for land use planning, programs, surveys, data collection, or management under other federally assisted programs.

(d) No funds granted pursuant to this Act may be expended for the acquisition of any interest in real property.

PAYMENTS

SEC. 508. The method of computing and paying amounts pursuant to this Act shall be as follows:

(a) The Secretary shall, prior to the beginning of each calendar quarter or other period prescribed by him, estimate the amounts to be paid to each State under the provisions of this Act for such period, such estimate to be based on such records of the States and information furnished by them, and such other investigation as the Secretary may deem necessary.

(b) The Secretary shall pay to a State, from the allotments available therefor, the amounts so estimated by him for any period, reduced or increased, as the case may be, by any sum (not previously adjusted under this paragraph) by which he finds that his estimate of the amount to be paid such State for any prior period under this Act was greater or less than the amount which should have been paid to such State for such prior period under this Act. Such payments shall be made through the disbursing facilities of the Department of the Treasury, at such times and in such installments as the Secretary may determine.

FINANCIAL RECORDS

SEC. 509. (a) Each recipient of a grant pursuant to this Act shall make reports and evaluations in such form, at such times, and containing such information concerning the status, disposition, and application of Federal funds and the operation of the statewide land use planning process or State land use program as the Secretary may require by regulations published in the Federal Register, and shall keep and make available such records as may be required by the Secretary for the verification of such reports and evaluation.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of a recipient of a grant pursuant to this Act which are pertinent to the determination that funds granted pursuant to this Act are used in accordance with this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 510. To carry out the purposes of this Act, there are authorized to be appropriated to the Secretary for grants to the States not more than $40,000,000 for each of the first two fiscal years following the enactment of this Act and $30,000,000 for each of the next three fiscal years.

SEC. 511. For each of the five full fiscal years following the enactment of this Act, there are authorized to be appropriated $10,000,000 to the Secretary to be used exclusively for the administration of this Act. After the end of the fourth fiscal year after the enactment of this Act, the Secretary shall review the programs established by this Act and shall submit to Congress his assessment thereof and such recommendations for amendments to the Act as he deems proper and appropriate.

EFFECT ON EXISTING LAWS

SEC. 512. Nothing in this Act shall be construed—

(a) to expand or diminish Federal, interstate or State jurisdiction, responsibility, or rights in the field of land and water resources planning, development or control; to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States, or of two or more States, a State, or a region and the Federal Government; to limit the authority of Congress to authorize and fund projects;

(b) to change or otherwise affect the authority or responsibility of any Federal official in the discharge of the duties of his office except as new authority or responsibilities have been added by the provisions of this Act;

(c) as superseding, modifying or repealing existing laws applicable to the various Federal agencies which are authorized to develop or participate in the development of land and water resources or to exercise licensing or regulatory functions in relation thereto; or to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board and the United States operating entity or entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico;

(d) as granting to the Federal Government any of the constitutional or statutory authority now possessed by State and local governments to zone non-Federal lands;

(e) to delay or otherwise limit the adoption and vigorous enforcement by any State of standards, criteria, emission or effluent limitations, monitoring requirements, or implementation plans which are no less stringent than the standards, criteria, emission or effluent limitations, monitoring requirements, or implementation plans required by the Federal Water Pollution Control Act, the Clean Air Act, or other Federal laws controlling pollution, and

(f) to adopt any Federal policy or requirement which would prohibit or delay States or local governments from adopting or enforcing any law or regulation which results in prohibition or control to a degree greater than required by this Act of land use development in any area over which the State or local government exercises jurisdiction.

---

By Mr. WILLIAMS:

S. 269. A bill to amend the National Flood Insurance Act of 1968 to increase flood insurance coverage, to authorize the acquisition of certain properties, to require known flood-prone communities to participate in the program, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

NATIONAL FLOOD INSURANCE ACT AMENDMENTS

Mr. WILLIAMS. Mr. President, one of the major legislative proposals left over from the 92d Congress is comprehensive amendments to the National Flood Insurance Act. Just last year large areas of our Nation were devastated by floods left in the wake of tropical storm Agnes. From this storm alone damage estimates exceeded $3 billion. Of this amount only $5 million was covered by the national flood insurance program.

Hundreds of thousands of our citizens residing in New Jersey, Pennsylvania, New York and Virginia were left destitute. Homes were washed away and property damage reached astronomical proportions. The Congress reacted swiftly to this crisis and enacted emergency disaster relief legislation. But we all know that permanent solutions are necessary. Small business disaster relief loans still must be repaid. And no matter how low the interest rate is set, the monthly payments place undue burdens on people who have already paid immeasurably in terms of human suffering.

One of the most shocking facts uncovered by last years floods was that despite the availability of Government subsidized flood insurance, many homeowners and small businessmen had not purchased policies. To date there are only 90,000 flood insurance policies in effect throughout the United States.

This is not the time for recriminations or attempts to affix the blame for such a woeful lack of coverage. It would be all too easy to point the finger at the administration or at local officials for not adequately publicizing the program. Private insurance companies could also be called to task for not urging their salesmen to sell flood insurance policies at the grassroots level. Perhaps the act itself is at fault for limiting coverage to structures containing a maximum of four dwelling units and to $17,500 on a one family house and to $5,000 on its contents. But this is all in the past. Constructive, remedial action is now necessary.

Therefore, I am today introducing comprehensive amendments to the National Flood Insurance Act which will in my opinion go a long way toward correcting these deficiencies.

Under my bill the maximum amount of insurance coverage available on single dwelling units, multiple dwelling units, and small businesses would be increased. The legislation would also extend coverage to all residential properties.

Our experience with Hurricane Agnes have proven that even in the limited instances where flood insurance was in effect, it did not cover actual damage. Homeowners and small businessmen after paying premiums found they were only covered for a portion of the loss which was incurred. This, in my opinion, is an unrealistic approach to insurance coverage which should not be tolerated. I am, therefore, proposing that for a one-family residence Federal subsidized flood insurance coverage be increased from $17,500 to $25,000, that for a single structure containing two dwelling units aggregate coverage be increased from $30,000 to $42,500 and that for each unit in excess of two an additional $15,000 in coverage be made available.

Currently the contents of a dwelling unit may only be insured at the federally

subsidized rate for $5,000. This figure is totally inadequate to meet replacement costs at today's prices. My bill would double this amount to $10,000. For small businesses, which were particularly hard hit by flood damage, my bill would increase coverage from $30,000 to $42,500 on the structure and from $5,000 to $10,000 on its contents.

My bill also creates greater incentives for individuals to purchase flood insurance. Coverage would upon enactment become a prerequisite for receiving Federal mortgage insurance guarantees or for receiving loans from federally insured or federally regulated financial institutions. In addition beginning on July 1, 1975, Federal mortgage insurance or guarantees, lending by federally insured or regulated financial institutions and other forms of Federal assistance for financing the capital costs of construction and equipment would not be available to individuals or businesses in designated flood prone areas unless the community has taken the steps necessary to qualify for participation in the program, and has been accepted.

Finally, the bill corrects a deficiency in existing law and encourages orderly planning and improved land use. It allows the flood insurance program in the case of disasters or catastrophic flood which destroy more than 50 percent of a facility to make total damage payments and to acquire the facility and land for other uses which are more appropriate in flood-prone areas. In addition, where it can be shown that the unsubsidized actuarial charges exceed the value of a given property over a period of 4 years, such property may be purchased through a flood plain clearance program as part of the national flood insurance program.

Mr. President, the Federal flood insurance program was intended to insure our Nation's citizens against property damage caused by floods. Unfortunately, our experiences over the past several years, which culminated with Hurricane Agnes, show without a shadow of doubt that there are serious inadequacies in the program. My bill will go a long way toward curing these inadequacies and toward making flood insurance coverage available in realistic amounts to all of our Nation's citizens.

Mr. President, I now ask unanimous consent for the full text of the National Flood Insurance Act Amendments to be printed at this point in the RECORD.

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

S. 269

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

COVERAGE OF ALL RESIDENTIAL PROPERTIES; INSURANCE LIMITS

SECTION 1. (a) Section 1305(a) of the National Flood Insurance Act of 1968 is amended by striking out "which are designed for the occupancy of from one to four families".

(b) Section 1305(b) of such Act is amended by striking out clause (A), and by redesignating clauses (B) through (E) as clauses (A) through (D), respectively.

(c) Section 1306(b)(1)(A) of such Act is amended to read as follows:

"(A) in the case of residential properties—

"(i)(I) for a one-family residence or other dwelling structure containing one dwelling unit, an aggregate liability of $25,000,

"(II) for a single dwelling structure containing two dwelling units, an aggregate liability of $42,500, or

"(III) for a single dwelling structure containing more than two dwelling units, an aggregate liability equal to the sum of $42,500 plus $15,000 for each such unit in excess of two; and

"(ii) an aggregate liability of $10,000 per dwelling unit for any contents related to such unit;".

(d) Section 1306(b)(1)(B) is amended—

(1) by striking out "$30,000" each place it appears therein and inserting in lieu thereof "$42,500"; and

(2) by striking out "$5,000" and inserting in lieu thereof "$10,000".

PURCHASING OF FLOOD INSURANCE

SEC. 2. (a) No Federal officer or agency shall approve any financial assistance for acquisition or construction purposes on and after July 1, 1974, for use in an area that has been identified by the Secretary as an area having special flood hazards and in which the sale of flood insurance is authorized under the Act, unless the building or mobile home and any personal property to which such financial assistance relates is, during the anticipated economic or useful life of the project, covered by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage authorized for the particular type of property under the Act, whichever is less: *Provided*, That if the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan.

(b) Each Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions shall by regulation direct such institutions on and after July 1, 1974, not to make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Secretary as an area having special flood hazards and in which the sale of flood insurance is authorized under the Act, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in an amount at least equal to the outstanding principal balance of the loan or to the maximum limit of coverage authorized for the particular type of property under the Act, whichever is less.

NOTIFICATION TO FLOOD-PRONE AREAS

SEC. 3. (a) Not later than six months following the enactment of this title, the Secretary shall publish information in accordance with subsection 1360(1) of the Act, and shall notify the chief executive officer of each known flood-prone community not already participating in the national flood insurance program of its tentative identification as a community containing one or more areas having special flood hazards.

(b) After such notification, each tentatively identified community shall either (1) promptly make proper application to participate in the National Flood Insurance Program or (2) within six months submit technical data sufficient to establish to the satisfaction of the Secretary that the community either is not seriously flood-prone or that such flood hazards as may have existed have been corrected by floodworks or other flood control methods. The Secretary may, in his discretion, grant a public hearing to any community with respect to which conflicting data exist as to the nature and extent of a flood hazard. Whether or not such hearing is granted, the Secretary's final determination as to the existence or extent of a flood hazard area in a particular community shall be deemed conclusive for the purposes of this Act and shall not be subject to judicial review unless arbitrary and capricious.

(c) As information becomes available to the Secretary concerning the existence of flood hazards in communities not known to be flood-prone at the time of the initial notification provided for by subsection (a) of this section, he shall provide similar notifications to the chief executive officers of such additional communities, which shall then be subject to the requirements of subsection (b) of this section.

(d) Formally identified flood-prone communities that do not qualify for the national flood insurance program within one year after such notification or by the date specified in section 4, whichever is later, shall thereafter be subject to the provisions of that section relating to flood-prone communities which are not participating in the program.

EFFECT OF NON-PARTICIPATION

SEC. 4. (a) No Federal officer or agency shall approve any financial assistance for acquisition for construction purposes on and after July 1, 1975, for use in any area that has been identified by the Secretary as an area having special flood hazards unless the community in which such area is situated is then participating in the national flood insurance program.

(b) Each Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions shall by regulation prohibit such institutions on and after July 1, 1975, from making, increasing, extending or renewing any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Secretary as an area having special flood hazards, unless the community in which such area is situated is then participating in the national flood insurance program.

PURCHASE OF CERTAIN PROPERTIES

SEC. 5. (a) Section 1362 of the National Flood Insurance Act of 1968 is amended—

(1) by inserting the subsection designation "(a)" after "SEC. 1362."; and

(2) by adding at the end thereof the following new subsections:

"(b) The Secretary shall, under such regulations as he may prescribe, pay the full amount of the loss in the case of any property substantially destroyed by catastrophic flood. For the purposes of this subsection—

"(1) a property is 'substantially destroyed' if the damage thereto by flood exceeds 50 per centum of the value of the property prior to the occurrence of the flood; and

"(2) the term 'catastrophic flood' means a flood constituting a natural disaster occurring in an area in which a disaster of that magnitude could reasonably be expected to occur at least once in a period of one hundred years.

The Secretary shall enter into negotiations with the owner of real property or any interest therein which was substantially destroyed by catastrophic flood and was covered by flood insurance under this title, and may purchase such property or interests for subsequent transfer in the manner and subject to the limitations prescribed in subsection (a).

"(c) The Secretary may, in order to reduce estimated premium rates established under section 1307(a)(1) enter into negotiations with any owner of real property or interest

therein for which the premiums under such section over a period of four years would exceed the value of that property or interest, and may purchase such property or interest for retention or for subsequent transfer in the manner and subject to the limitations prescribed in subsection (a)."

(b) The caption of such section is amended by striking out "INSURED".

DEFINITIONS

SEC. 6. Section 1370 of the National Flood Insurance Act of 1968 is amended to read as follows:

(7) "community" means a State or any other political subdivision containing a unit of general local government or other authority having zoning and building code jurisdiction over a particular area having special flood hazards;

(8) "Federal agency" means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, and shall include the following federally sponsored agencies: Federal National Mortgage Association and Federal Home Loan Mortgage Corporation;

(9) "financial assistance" means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal financial assistance, other than general or special revenue sharing or formula grants made to States;

(10) "financial assistance for acquisition or construction purposes" means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein, and shall include the purchase or subsidization of mortgages or mortgage loans but shall exclude assistance for emergency work essential for the protection and preservation of life and property performed pursuant to the Disaster Relief Act of 1970.

(11) "Federal instrumentality responsible for the supervision, approval, or regulation of banks, savings and loan associations, or similar institutions" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration; and

AUTHORITY TO ISSUE REGULATIONS

SEC. 7. (a) The Secretary is authorized to issue such regulations as may be necessary to carry out the purpose of this Act.

(b) The head of each Federal agency that administers a program of financial assistance relating to the acquisition, construction, reconstruction repair, or improvement of publicly or privately owned land or facilities, and each Federal instrumentality responsible for the supervision, approval, or regulation of banks, savings and loan associations, or similar institutions, shall, in cooperation with the Secretary, issue appropriate rules and regulations to govern the carrying out of the agency's responsibilities under this Act.

---

By Mr. BURDICK:

S. 271. A bill to improve judicial machinery by amending the requirement for a three-judge court in certain cases and for other purposes. Referred to the Committee on the Judiciary.

THREE-JUDGE COURTS

Mr. BURDICK. Mr. President, one of the most burdensome areas of Federal jurisdiction is the requirement for special three-judge district courts in cases seeking injunctions against the enforcement of State or Federal laws on the grounds of their unconstitutionality.

THE BURDEN OF THREE-JUDGE COURTS

In the years from 1955 to 1959, the average number of three-judge court cases heard was 48.8 per year. In the years from 1960 to 1964, the average per year was 95.6 such cases. Since fiscal year 1968, the number of three-judge court cases has continued to grow at an explosive rate. The burden of these cases can be further seen from the following table.

TABLE 1.—3-JUDGE COURT HEARINGS BY NATURE OF SUIT, FISCAL YEARS 1963-72

| Fiscal year | Total | Review of ICC orders | Civil rights | Suits involving State or local laws or regulations | |
|---|---|---|---|---|---|
| | | | | Reapportionment | Other actions |
| 1963 | 120 | 67 | 19 | 16 | 27 |
| 1964 | 119 | 50 | 21 | 18 | 30 |
| 1955 | 147 | 60 | 35 | 17 | 35 |
| 1966 | 162 | 72 | 40 | 28 | 22 |
| 1967 | 171 | 64 | 55 | 10 | 42 |
| 1968 | 179 | 51 | 55 | 6 | 67 |
| 1969 | 215 | 64 | 81 | 1 | 69 |
| 1970 | 291 | 42 | 162 | 8 | 79 |
| 1971 | 318 | 41 | 176 | 2 | 99 |
| 1972 | 310 | 52 | 166 | 32 | 60 |

Source: Data from the Annual Report of the Director of the Administrative Office of the U.S. Courts, (1972).

Thus, the number of three-judge court cases has increased 73 percent in the 5 years since 1968.

The three-judge court provisions impose a considerable burden on the Federal courts because whenever such a court is required, a second district judge, as well as a judge of a circuit court of appeals, must be brought in to hear and determine the case along with the district judge in whose court the case was filed. In most parts of the country, the two additional judges must come from another city or State, leaving the work that they would ordinarily be doing in their own courts, to serve on a three-judge court.

JURISDICTIONAL UNCERTAINTIES

In addition to the burden of these cases on the Federal judiciary, there is also a great deal of difficulty in determining when a three-judge court is required under the present statute. Basically, for section 2281 of title 28 to be applicable, a State statute or administrative order must be challenged, a State officer must be a party defendant, injunctive relief must be sought, and it must be claimed that the statute or order is contrary to the Constitution of the United States. The same rules are, in general, applicable to challenges to Federal statutes under section 2282.

The application of the apparently simple criteria listed above has been, in fact, the nemesis of three-judge courts; for, if a threshold determination on any of the criteria is incorrectly made, a three-judge court is unnecessary, and complex appellate review problems arise.

For example, while a three-judge court is required if a State statute is challenged, such a court is not required where the act of the State legislature has only local application. For a recent case involving the question of the "local application" doctrine, see *Board of Regents of University of Texas System* v. *New Left Education Project*, 404 U.S. 981 (1972).

Another difficulty arises because the Supreme Court has held that a three-judge court is unnecessary in an action for declaratory judgment, yet often a complaint is ambiguous as to whether injunctive or declaratory relief is sought. Furthermore, a three-judge court is to be convened only where a complaint seeks injunctive relief. It is not necessary if the constitutionality of a statute is drawn into question without any prayer to enjoin enforcement. *Fleming* v. *Nester*, 362 U.S. 603 (1960). Thus many cases raising constitutional questions are now heard and decided by a single judge since no injunctive relief is requested.

As if the difficulties in determining when a three-judge court is required are not enough, the rules on appellate review of whether such a court is needed are so complex as to be virtually beyond belief.

In summary, the three-judge court generates rather than lessens litigation, and the elimination of the requirement of three-judge courts as proposed in this bill would increase the efficiency of our judicial system to the benefit of litigants, lawyers, and judges alike. It would free them from debating obtuse statutory clauses and allow them to focus on the merits of the litigation they have brought.

STATUTORY AND RULES CHANGES HAVE ELIMINATED THE ORIGINAL REASONS FOR THE ESTABLISHMENT OF THREE-JUDGE COURTS

The original rationale for the three-judge court has long been obsolete and, as one commentator pointed out, began to disappear soon after the original legislation was enacted in 1910. The Three-Judge Court Act was responsive to a situation in which many railroads and utilities attacked State rate fixing and tax laws. This created a deluge of applications for injunctive relief, ex parte, on the basis of affidavits alone, with no limits on the judge's discretion to continue interlocutory injunctions and temporary restraining orders indefinitely. The Three-Judge Court Act was intended to end this arbitrary exercise of authority. However, the original problems were largely obviated 2 years after the passage of that act when the Federal Equity Rules were revised, extending to all injunctive cases much of the same protective procedures which the 1910 act had provided for by three-judge court proceedings. The equity rules were changed to prohibit Federal courts from

granting ex parte temporary restraining orders for extended periods of time and to make Federal judges take some evidence before even preliminary injunctions were issued against the enforcement of State statutes. So, to a considerable extent, the reason for the original legislation was obviated, very soon after it was passed.

Later two other important statutes further restraining the power of the Federal courts to enjoin State action were enacted. In the Johnson Act of 1934, now 28 U.S.C. section 1342, Congress took away certain injunctive power with respect to State public utility rate orders. In the Tax Injunction Act of 1937, now 28 U.S.C. section 1341, Congress restricted Federal injunctions with respect to State taxes. The effect of these statutes was to limit the ability of a Federal court to interfere precipitously with the operation of State tax and public utility programs whenever there was a "plain, speedy, and efficient remedy" available in a State court.

DECISIONAL LAW HAS PROVIDED ITS OWN SAFEGUARDS AGAINST PRECIPITOUS INJUNCTIVE ACTION BY FEDERAL JUDGES

In its recent opinions, the Supreme Court has provided restrictions on Federal injunctions that further obviate the need for three-judge courts. In *Younger* v. *Harris*, 401 U.S. 37 (1971), the Supreme Court held that injunctive relief against a pending State criminal prosecution is not available except in exceptional circumstances, as when the prosecution is in the nature of a bad faith harassment of the defendant in the exercise of his Federal rights. Furthermore, the Supreme Court has recently clarified the application of the abstention doctrine. Under the abstention doctrine, a Federal court will stay the exercise of its jurisdiction where a case involves an unsettled issue of State law which, if decided, could avoid the necessity of deciding any constitutional claims asserted. *Askew* v. *Hargrave*, 401 U.S. 476 (1971).

In *Reetz* v. *Bozanich*, 397 U.S. 82 (1970), abstention was ordered in a case involving fishing rights where the Alaska Constitution contained a unique, uninterpreted provision specifically related to conservation of the State's marine resources. This pattern of decisions clearly precludes the sort of precipitous intrusion in the State legal processes by a single Federal judge that the original Three-Judge Court Act sought to control.

Thus, the rationale that gave life to the three-judge court in 1910 has all but disappeared.

WITNESSES URGE LEGISLATIVE ACTION

In hearings before the Subcommittee on Improvements in Judicial Machinery, the chief judges of the Second, Third, Fourth, and Fifth Circuit Courts of Appeal urged the repeal of three-judge court statutes. Judge Skelly Wright from the U.S. Court of Appeals for the District of Columbia, testifying on behalf of the Judicial Conference, also advocated the general abolition of three-judge courts. Prof. Charles Alan Wright of the University of Texas Law School strongly urged that legislation to eliminate the requirement for three-judge courts in most cases be given prompt attention because of the great burden that these cases are now placing upon the Federal court system. In accordance with the recommendations of these witnesses, S. 3653 (92d Cong.) was introduced on May 30, 1972. The bill I am introducing today is, except for technical corrections, identical to that bill. It eliminates the requirement for three-judge courts in cases seeking injunctions against the enforcement of State or Federal laws on the basis of their unconstitutionality, except where such courts are required by an act of Congress or in cases involving the apportionment of congressional districts or the apportionment of any statewide legislative body. It was felt as to these reapportionment cases that they are of such importance that a three-judge court should continue to be required.

S. 3653 was favorably reported by the Subcommittee on Improvements in Judicial Machinery to the full Judiciary Committee on October 9, 1972. It was also approved by the Judicial Conference during its October 1972 meeting. Additionally, the proposals in this bill were endorsed in the "Report of the Study Group on the Caseload of the Supreme Court," Federal Judicial Center (1972).

I am reintroducing the bill at this time so that it may be given early consideration in this session of the 93d Congress.

Mr. President, without objection, I would like the text of the bill inserted in the RECORD at this point.

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

S. 271

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 2281 of title 28, United States Code, is repealed.

SEC. 2. That section 2282 of title 28, United States Code, is repealed.

SEC. 3. That section 2284 of title 28, United States Code, is amended to read as follows:

"§ 2284. THREE-JUDGE COURT; WHEN REQUIRED; COMPOSITION; PROCEDURE

"(a) A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.

"(b) In any action required to be heard and determined by a district court of three judges under subsection (a) of this section, the composition and procedure of the court shall be as follows:

"(1) Upon the filing of a request for three judges, the judge to whom the request is presented shall, unless he determines that three judges are not required, immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. The judges so designated, and the judge to whom the request was presented, shall serve as members of the court to hear and determine the action or proceeding.

"(2) If the action is against a State, or officer or agency thereof, at least five days' notice of hearing of the action shall be given by registered or certified mail to the Governor and attorney general of the State. The hearing shall be given precedence and held at the earliest practicable day.

"(3) A single judge may conduct all proceedings except the trial, and enter all orders permitted by the rules of civil procedure except as provided in this subsection. He may grant a temporary restraining order on a specific finding, based on evidence submitted, that specified irreparable damage will result if the order is not granted, which order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the district court of three judges of an application for a preliminary injunction. A single judge shall not appoint a master, or order a reference, or hear and determine any application for a preliminary or permanent injunction or motion to vacate such an injunction, or enter judgment on the merits. Any action of a single judge may be reviewed by the full court at any time before final judgment."

SEC. 4. The analysis of chapter 155 of title 28, United States Code, is amended to read as follows:

"Sec.
"2281. Repealed.
"2282. Repealed.
"2283. Stay of State court proceedings.
"2284. Three judge district court; when required; composition; procedure."

SEC. 5. (a) Section 2403 of title 28, United States Code, is amended—

(1) by inserting the subsection "(a)" immediately before "In" and

(2) by adding at the end thereof the following new subsection:

"(b) In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality."

(b) The catchline to section 2403 of title 28, United States Code, is amended to read as follows:

"§ 2403. Intervention by United States or a State; constitutional question"

SEC. 6. Item 2403 of the analysis of chapter 161, of title 28, United States Code, is amended to read as follows:

"2403. Intervention by United States or a State; constitutional question."

SEC. 7. This Act shall not apply to any action commenced on or before the date of enactment.

---

By Mr. CANNON:

S. 272. A bill to amend the Communications Act of 1934 with respect to the consideration of applications for renewal of station licenses. Referred to the Committee on Commerce.

CONSIDERATION OF APPLICATIONS FOR RENEWAL OF RADIO AND TV STATION LICENSES

Mr. CANNON. Mr. President, the Communications Act of 1934, as amended, requires that every broadcast license be renewed at least once every 3 years. At renewal time, anyone whom the Federal Communications Commission finds legally, technically, and financially qualified may file a competing application for the frequency or channel on which the incumbent licensee operates.

When this occurs the Communications Act also requires the FCC to hold a comparative hearing to determine which applicant would better serve the public in-

terest. Since these applications are mutually exclusive, grant to one party necessarily means denial to the other.

Until a few years ago, a broadcast licensee who had conscientiously and effectively served the needs and interests of his community, and who promised to continue to do so at renewal time could reasonably expect to prevail against a competing applicant. In other words, his proven track record counted for something. This was the Commission policy enunciated in the WBAL case many years ago.

In 1969, however, the Commission rendered its decision in WHDH. In that case the incumbent licensee's renewal application was denied, and a competing application was granted. As a consequence of that decision grave doubt and uncertainty were cast on the continued efficacy of the Commission's WBAL policy.

These fears materialized in the post-WHDH days as a rash of competing applications were filed against incumbents seeking license renewal.

Mr. President, it was not accidental that the framers of the Communications Act provided a mechanism for competing applications at license renewal time. After all, the airwaves belong to the public, and no one is entitled to a license in perpetuity to use them.

It was felt that as long as a licensee knew that failure to serve his community of license fully and effectively would make him vulnerable to someone who would undertake to do so, he would be spurred to greater effort in the public interest.

Conversely, if a licensee conscientiously undertook to discharge his obligation, and in fact did perform as he promised, it was only sound public interest policy to give him a reasonable expectation that his efforts counted for something at renewal time. Otherwise, chances were the commitment and investment necessary to give the public the service to which it is entitled would be marginal at best.

This is why, Mr. President, the legislation I am introducing today has one purpose, and one purpose only—to assure the American people who own the public airwaves that they are receiving the best service possible from the radio and television licensees privileged to use their property. It will promote the public interest by providing stability for those broadcasters who are conscientiously and effectively serving their communities of license.

As I have mentioned, Mr. President, that stability has been undermined as a consequence of the WHDH decision.

Under this proposal when a broadcast licensee files an application for renewal of his license and a competing application is filed, the following would take place:

First. The FCC would treat the renewal application as if it were uncontested for purposes of finding:

(a) That during the immediately preceding license period the applicant's performance reasonably fulfilled the promises he made in order to receive that license, including a finding that the licensee's operation during that period was not otherwise characterized by serious deficiencies; and

(b) That the application for renewal demonstrates a positive and continuing effort by the applicant to ascertain and meet the community needs and interests.

Second. If the Commission is able to make these findings then a rebuttable presumption would arise that grant of the renewal application would best serve the public interest vis-a-vis the competing application.

The competing applicant would then have to defeat the rebuttable presumption by overcoming either of the Commission's findings. Failure to do so would result in the renewal application being granted.

If, on the other hand, the challenger did succeed in overcoming the presumption, or if the Commission was unable to make the requisite findings in the first instance, a comparative hearing would ensue. Obviously, the licensee seeking renewal in either of these circumstances would be under a severe handicap, as he should be.

Mr. President, this legislation does not "lockin" the marginal or substandard licensee. The Commission has outlined in considerable detail what it expects from licensees in terms of ascertaining and meeting community needs and interests.

Nothing in my proposal would protect a license who has failed to meet these standards from a challenger at renewal time. In fact even if the Commission finds a licensee's operation has and will continue to serve the public interest, a competing applicant would have a full opportunity to overcome the Commission's findings.

Mr. President, the result this legislation seeks to achieve is neither proincumbent, nor prochallenger. Likewise, it it neither anti-incumbent, nor anti-challenger.

Rather it is an attempt to maintain a climate of competition tempered by stability where that stability is proven to benefit the public. Where the status quo does not benefit the public, of course, it should be changed.

I would hope, therefore, Mr. President, that hearings on this legislation will be scheduled as soon as possible.

---

By Mr. HARTKE (for himself, Mr. THURMOND, Mr. RANDOLPH, Mr. CRANSTON, Mr. HUGHES, Mr. HANSEN, Mr. MONDALE, Mr. PELL, Mr. WILLIAMS, and Mr. EASTLAND):

S. 275. A bill to amend title 38 of the United States Code increasing income limitations relating to payment of disability and death pension, and dependency and indemnity compensation. Referred to the Committee on Veterans' Affairs.

VETERANS' PENSIONS

Mr. HARTKE. Mr. President, today I introduce a bill to protect and increase non-service-connected pensions received by veterans and their survivors. This bill is identical to S. 4006 that was reported from the Committee on Veterans' Affairs, which I am privileged to chair, and which unanimously passed the Senate on October 11, 1972. Unfortunately, the House in the press of business at the closing of the 92d Congress did not act upon this measure.

Members of the Senate will recall that this bill was prompted by the 20-percent increase in social security passed by Congress this past July. Under the law, as a veteran or survivor's outside income increases his or her pension is accordingly decreased. This has the effect of partially or completely canceling the effect of any social security increase for veterans or their widows. A veteran's income for purposes of determining the amount of pension he receives is calculated at the beginning of each year. As such this means that the pension decreases occasioned by 1972 social security legislation will be reflected in their January 1973 pension check which is scheduled to be delivered around February 1 of this year. Faced with these prospective decreases, the Subcommittee on Compensation and Pensions, of the Committee on Veterans' Affairs, conducted hearings on September 12, 1972, concerning non-service-connected pensions and the effect thereon of the 20-percent increase in social security benefits as provided for in Public Law 92-336. At that time, the subcommittee received testimony from spokesmen from the Veterans' Administration and various veterans' organizations. By agreement of the Subcommittee on Compensation and Pensions, S. 4006 was referred without recommendation to the full committee for consideration. The full committee met in executive session on September 26, 1972, to consider that bill and other pension legislation before it. The committee unanimously approved and ordered favorably reported S. 4006 with an amendment in the nature of a substitute.

Briefly that bill, as reported, would as does the bill introduced today provide:

First, an increase in the annual income limitations for eligible veterans and their survivors receiving pension and provide increases in the rates of pension averaging about 8 percent;

Second, an increase in the annual income limitation of old law pensioners by $400, and

Third, an increase in the annual income limitation by $400 for parents receiving Dependency and Indemnity Compensation—DIC—and increase the rates of DIC for an average program benefit increase of 8 percent.

Subsequently, the bill was passed unanimously by the Senate on October 12, and referred to the House Committee on Veterans' Affairs. The House did not act on this measure in the closing days of the session. Instead on October 16 the distinguished chairman of the House Committee on Veterans' Affairs in a statement made on the floor of the House of Representatives noted that H.R. 1 was pending at that time, and would provide for further increases in social security benefits which might affect veterans' pensions. Because of this, he expressed the belief that it would be more appropriate to "await the final outcome of the pending H.R. 1." At the same time, he assured his colleagues that he would give consideration to non-service-connected pensions following the convening of the 93d Congress.

Given the fact that nearly 1.2 million veterans and survivors will receive reduced veteran's pension checks at the end of this month, and another 20,000 will drop from the rolls altogether, I do not believe we can act too quickly on this legislation. On the Senate side, I believe we can proceed to rapid and prompt consideration of the bill.

Mr. President, adoption of this bill will assure that almost all pensioners will receive the full measure of social security benefits without a reduction in this pension. Almost 1.2 million veterans or survivors will also receive an increase averaging about $5.15 per month. The cost of this bill is estimated to be $197.9 million for the first full fiscal year.

The following tables illustrate the current rates payable to veterans and their survivors with typical examples of pensions payable under the bill introduced today which incorporates increases both in the rates and the maximum annual income limitations:

VETERAN ALONE

| Income not over— | Current rate | Proposed rate |
|---|---|---|
| $300 | $130 | $140 |
| $400 | 127 | 137 |
| $500 | 124 | 134 |
| $600 | 121 | 131 |
| $700 | 118 | 128 |
| $800 | 115 | 125 |
| $900 | 112 | 122 |
| $1,000 | 109 | 119 |
| $1,100 | 105 | 115 |
| $1,200 | 101 | 111 |
| $1,300 | 97 | 107 |
| $1,400 | 93 | 103 |
| $1,500 | 89 | 99 |
| $1,600 | 84 | 94 |
| $1,700 | 79 | 89 |
| $1,800 | 74 | 84 |
| $1,900 | 68 | 78 |
| $2,000 | 62 | 72 |
| $2,100 | 56 | 66 |
| $2,200 | 50 | 60 |
| $2,300 | 43 | 53 |
| $2,400 | 36 | 46 |
| $2,500 | 29 | 39 |
| $2,600 | 22 | 32 |
| $2,700 | | 25 |
| $2,800 | | 18 |
| $2,900 | | 11 |
| $3,000 | | 10 |
| $3,100 | | |
| $3,200 | | |
| $3,300 | | |
| $3,400 | | |
| $3,500 | | |
| $3,600 | | |
| $3,700 | | |
| $3,800 | | |
| $3,900 | | |
| $4,000 | | |
| $4,100 | | |
| $4,200 | | |

VETERAN WITH DEPENDENTS

| Income not over— | Current rate | Proposed rate |
|---|---|---|
| $300 | $140 | $150 |
| $400 | 140 | 150 |
| $500 | 140 | 150 |
| $600 | 138 | 148 |
| $700 | 136 | 146 |
| $800 | 134 | 144 |
| $900 | 132 | 142 |
| $1,000 | 129 | 139 |
| $1,100 | 126 | 136 |
| $1,200 | 123 | 133 |
| $1,300 | 120 | 130 |
| $1,400 | 117 | 127 |
| $1,500 | 114 | 124 |
| $1,600 | 111 | 121 |
| $1,700 | 108 | 118 |
| $1,800 | 105 | 115 |
| $1,900 | 102 | 112 |
| $2,000 | 99 | 109 |
| $2,100 | 96 | 106 |
| $2,200 | 93 | 103 |
| $2,300 | 90 | 100 |
| $2,400 | $87 | $97 |
| $2,500 | 84 | 94 |
| $2,600 | 81 | 91 |
| $2,700 | 78 | 88 |
| $2,800 | 75 | 85 |
| $2,900 | 72 | 82 |
| $3,000 | 69 | 79 |
| $3,100 | 66 | 76 |
| $3,200 | 63 | 73 |
| $3,300 | 58 | 68 |
| $3,400 | 53 | 63 |
| $3,500 | 48 | 58 |
| $3,600 | 43 | 53 |
| $3,700 | 38 | 48 |
| $3,800 | 33 | 43 |
| $3,900 | | 38 |
| $4,000 | | 33 |
| $4,100 | | 38 |
| $4,200 | | 23 |

WIDOW ALONE

| Income not over— | Current rate | Proposed rate |
|---|---|---|
| $300 | $87 | $94 |
| $400 | 86 | 93 |
| $500 | 85 | 92 |
| $600 | 84 | 91 |
| $700 | 81 | 88 |
| $800 | 78 | 85 |
| $900 | 75 | 82 |
| $1,000 | 72 | 79 |
| $1,100 | 69 | 76 |
| $1,200 | 66 | 73 |
| $1,300 | 63 | 70 |
| $1,400 | 60 | 67 |
| $1,500 | 57 | 64 |
| $1,600 | 54 | 61 |
| $1,700 | 51 | 58 |
| $1,800 | 48 | 55 |
| $1,900 | 45 | 52 |
| $2,000 | 41 | 48 |
| $2,100 | 37 | 44 |
| $2,200 | 33 | 40 |
| $2,300 | 29 | 36 |
| $2,400 | 25 | 32 |
| $2,500 | 21 | 28 |
| $2,600 | 17 | 24 |
| $2,700 | | 20 |
| $2,800 | | 16 |
| $2,900 | | 12 |
| $3,000 | | |
| $3,100 | | |
| $3,200 | | |
| $3,300 | | |
| $3,400 | | |
| $3,500 | | |
| $3,600 | | |
| $3,700 | | |
| $3,800 | | |
| $3,900 | | |
| $4,000 | | |
| $4,100 | | |
| $4,200 | | |

WIDOW WITH DEPENDENTS

| Income not over— | Current rate | Proposed rate |
|---|---|---|
| $300 | $104 | $111 |
| $400 | 104 | 111 |
| $500 | 104 | 111 |
| $600 | 104 | 111 |
| $700 | 103 | 110 |
| $800 | 102 | 109 |
| $900 | 101 | 108 |
| $1,000 | 100 | 107 |
| $1,100 | 99 | 106 |
| $1,200 | 98 | 105 |
| $1,300 | 97 | 104 |
| $1,400 | 96 | 103 |
| $1,500 | 94 | 101 |
| $1,600 | 92 | 99 |
| $1,700 | 90 | 97 |
| $1,800 | 88 | 95 |
| $1,900 | 86 | 93 |
| $2,000 | 84 | 91 |
| $2,100 | 82 | 89 |
| $2,200 | 80 | 87 |
| $2,300 | 78 | 85 |
| $2,400 | 76 | 83 |
| $2,500 | 74 | 81 |
| $2,600 | 72 | 79 |
| $2,700 | 70 | 77 |
| $2,800 | 67 | 74 |
| $2,900 | 64 | 71 |
| $3,000 | 61 | 68 |
| $3,100 | 58 | 65 |
| $3,200 | 55 | 62 |
| $3,300 | 52 | 59 |
| $3,400 | 49 | 56 |
| $3,500 | 46 | 53 |
| $3,600 | $43 | $50 |
| $3,700 | 42 | 47 |
| $3,800 | 42 | 44 |
| $3,900 | | 42 |
| $4,000 | | 42 |
| $4,100 | | 42 |
| $4,200 | | |

Mr. President, I ask unanimous consent that the text of the bill, as introduced, together with a section-by-section analysis be printed in the RECORD at this point.

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

S. 275

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) subsection (b) of section 521 of title 38, United States Code, is amended to read as follows:

"(b) If the veteran is unmarried (or married but not living with and not reasonably contributing to the support of his spouse) and has no child, pension shall be paid according to the following formula: If annual income is $300 or less, the monthly rate of pension shall be $140. For each $1 of annual income in excess of $300 up to and including $1,000, the monthly rate shall be reduced 3 cents; for each $1 of annual income in excess of $1,000 up to and including $1,500, the monthly rate shall be reduced 4 cents; for each $1 of annual income in excess of $1,500 up to and including $1,800, the monthly rate shall be reduced 5 cents; for each $1 of annual income in excess of $1,800 up to and including $2,200, the monthly rate shall be reduced 6 cents; and for each $1 of annual income in excess of $2,200 up to and including $2,900, the monthly rate shall be reduced 7 cents; for the annual income of $2,900 up to and including $3,000, the rate shall be $10.00. No pension shall be paid if annual income exceeds $3,000."

(b) Subsection (c) of such section 521 is amended to read as follows:

"(c) If the veteran is married and living with or reasonably contributing to the support of his spouse, or has a child or children, pension shall be paid according to the following formula: If annual income is $500 or less, the monthly rate of pension shall be $150 for a veteran and one dependent, $155 for a veteran and two dependents, and $160 for three or more dependents. For each $1 of annual income in excess of $500 up to and including $900, the particular monthly rate shall be reduced 2 cents; for each $1 of annual income in excess of $900 up to and including $3,200, the monthly rate shall be reduced 3 cents; and for each $1 of annual income in excess of $3,200 up to and including $4,200, the monthly rate shall be reduced 5 cents. No pension shall be paid if annual income exceeds $4,200."

(c) Subsection (b) of section 541 of title 38, United States Code, is amended to read as follows:

"(b) If there is no child, pension shall be paid according to the following formula: If annual income is $300 or less, the monthly rate of pension shall be $94. For each $1 of annual income in excess of $300 up to and including $600, the monthly rate shall be reduced 1 cent; for each $1 of annual income in excess of $600 up to and including $1,900, the monthly rate shall be reduced 3 cents; and for each $1 of annual income in excess of $1,900 up to and including $3,000, the monthly rate shall be reduced 4 cents. No pension shall be paid if annual income exceeds $3,000."

(d) Subsection (c) of such section 541 is amended to read as follows:

"(c) If there is a widow and one child, pension shall be paid according to the following formula. If annual income is $600 or less, the monthly rate of pension shall be $111. For each $1 of annual income in excess of $600 up to and including $1,400, the monthly rate shall be reduced 1 cent; for each $1 of annual income in excess of $1,400 up to and including $2,700, the monthly rate shall be reduced 2 cents; and for each $1 of annual income in excess of $2,700 up to and including $4,200, the monthly rate shall be reduced 3 cents. Whenever the monthly rate payable to the widow under the foregoing formula is less than the amount which would be payable to the child under section 542 of this title if the widow were not entitled, the widow will be paid at the child's rate. No pension shall be paid if the annual income exceeds $4,200."

SEC. 2. Section 4 of Public Law 90–275 (82 Stat. 68) is amended to read as follows:

"SEC. 4. The annual income limitations governing payment of pension under the first sentence of section 9(b) of the Veterans' Pension Act of 1959 hereafter shall be $2,600 and $3,900, instead of $2,200 and $3,500, respectively."

SEC. 3. (a) Subsection (b) of section 415 of title 38, United States Code, is amended to read as follows:

"(b)(1) Except as provided in paragraph (2) of this subsection, if there is only one parent, dependency and indemnity compensation shall be paid to him according to the following formula: If annual income is $800 or less, the monthly rate of dependency and indemnity compensation shall be $108. For each $1 of annual income in excess of $800 up to and including $1,200, the monthly rate shall be reduced 3 cents; for each $1 of annual income in excess of $1,200 up to and including $1,600, the monthly rate shall be reduced 4 cents; for each $1 of annual income in excess of $1,600 up to and including $1,900, the monthly rate shall be reduced 5 cents; for each $1 of annual income in excess of $1,900 up to and including $2,100, the monthly rate shall be reduced 6 cents; and for each $1 of annual income in excess of $2,100 up to and including $2,800, the monthly rate shall be reduced 7 cents. For annual income of $2,800 through $3,000, the rate will be $4.00. No dependency and indemnity compensation shall be paid if annual income exceeds $3,000.

"(2) If there is only one parent and he has remarried and is living with his spouse, dependency and indemnity compensation shall be paid to him under either the formula of paragraph (1) of this subsection or under the formula in subsection (d), whichever is the greater. In such a case of remarriage the total combined annual income of the parent and his spouse shall be counted in determining the monthly rate of dependency and indemnity compensation under the appropriate formula."

(b) Subsection (c) of such section 415 is amended to read as follows:

"(c) Except as provided in subsection (d), if there are two parents, but they are not living together, dependency and indemnity compensation shall be paid to each according to the following formula: If the annual income of each parent is $800 or less, the monthly rate of dependency and indemnity payable to each shall be $76. For each $1 of annual income in excess of $800 up to and including $1,100, the monthly rate shall be reduced 2 cents; for each $1 of annual income in excess of $1,100 up to and including $1,700, the monthly rate shall be reduced 3 cents; and for each $1 of annual income in excess of $1,700 up to and including $2,800, the monthly rate shall be reduced 4 cents. For annual income of $2,800 through $3,000, the rate will be $4.00. No dependency and indemnity compensation shall be paid to a parent whose annual income exceeds $3,000.

(c) Subsection (d) of such section 415 is amended to read as follows:

"(d) If there are two parents who are living together, or if a parent has remarried and is living with his spouse, dependency and indemnity compensation shall be paid to each such parent according to the following formula: If the total combined annual income is $1,000 or less, the monthly rate of dependency and indemnity compensation payable to each parent shall be $72. For each $1 of annual income in excess of $1,000 up to and including $1,300, the monthly rate shall be reduced 1 cent; for each $1 of annual income in excess of $1,300 up to and including $3,400, the monthly rate shall be reduced 2 cents; and for each $1 of annual income in excess of $3,400 up to and including $4,000, the monthly rate shall be reduced 3 cents. For annual income of $4,000 through $4,200, the rate will be $6.00. No dependency and indemnity compensation shall be paid to either parent if the total combined annual income exceeds $4,200".

SEC. 4. This Act shall take effect on the first day of the second calendar month which begins after the date of enactment.

---

SECTION-BY-SECTION ANALYSIS OF BILL AS INTRODUCED

SECTION 1

Subsection (a) would increase the rates of pension and annual income limitation for unmarried veterans under subsection 521(b). Currently, a veteran with no dependents receives a maximum monthly pension of $130 if his annual income is $300 or less, decreasing on a graduated basis to $22 with an annual income of $2,600. As amended, this subsection would provide a maximum monthly rate of $140 with an annual income of $300 or less, down to $10 for an annual income of $3,000.

Subsection (b) would increase the rates of pension and the annual income limitation for a married veteran under subsection 521(c). Currently, the maximum monthly pension payable to a veteran with one dependent is $140, with two dependents $145, and with three or more dependents $150, based on an annual income of $500 or less. This decreases on a graduated basis down to $33, $38, or $43, respectively, with an annual income of $3,800. As amended, this subsection would provide a veteran with one dependent $150, with two dependents $155, and with three or more dependents $160, based on an annual income of $500 or less, ranging down to $23, $38, or $33, respectively, with an annual income of $4,200.

Subsection (c) would increase the rates of pension and the annual income limitation for the widow without child under subsection 541(b). Currently, a widow without child receives a maximum monthly pension of $87 if her annual income is $300 or less, decreasing on a graduated basis to $17 with an annual income of $2,600. As amended, this subsection would provide a maximum monthly rate of $94 with an annual income of $300 or less, down to $12 with annual income of $3,000.

Subsection (d) would increase the rates of pension and the annual income limitations for a widow with one child under subsection 541(c). Currently, a widow with one child receives a maximum monthly pension of $104 if her annual income is $600 or less, decreasing on a graduated basis to $42 with an annual income of $3,800. As amended, this subsection would provide a maximum monthly rate of $111 with an annual income of $600 or less down to $42 with an annual income of $4,200.

SECTION 2

This section would amend section 4 of Public Law 90–275 (82 Stat. 68) to increase by $400 the maximum annual income limitations applicable under the prior pension program in effect on June 30, 1960: From $2,200 to $2,600 for a veteran without a dependent, or widow without a dependent, or a child alone; and from $3,500 to $3,900 for a veteran with a dependent, and for a widow with a child.

SECTION 3

Subsection (a) would increase the rates of dependency and indemnity compensation (DIC) and annual income limitations for a sole surviving parent under subsection 415(b). Currently, a sole surviving parent receives a maximum monthly DIC payment of $100 if his annual income is $800 or less, decreasing on a graduated basis to $10 with an annual income of $2,600. As amended, this subsection would provide for a maximum monthly rate of $108 with an annual income of $800 or less, down to $4 for an annual income of $3,000.

Subsection (b) would increase the rates of dependency and indemnity compensation and annual income limitations for two parents not living together under subsection 415(c). Currently, each of two parents who are not living together receives a maximum monthly DIC payment of $70 if annual income is $800 or less, decreasing on a graduated basis to $10 with an annual income of $2,600. As amended, this subsection would provide a maximum monthly rate of $76 with an annual income of $800 or less, down to $4 for an annual income of $3,000.

Subsection (c) would increase the rates of dependency and indemnity compensation and annual income limitations payable under subsection 415(d). Currently, if there are two parents who are living together, or if a parent is remarried and is living with his spouse, each parent receives a maximum monthly DIC payment of $67 if annual income is $1,000 or less, decreasing on a graduated basis to $10 with an annual income of $3,800. This subsection would provided a maximum monthly rate of $72 with an annual income of $1,000 or less, down to $6 for an annual income of $4,200.

SECTION 4

This section provides that the provisions of the bill shall be effective on the first day of the second calendar month which begins after the date of enactment.

---

By Mr. CRANSTON:

S. 277. A bill to amend the Immigration and Nationality Act with respect to the waiver of certain grounds for exclusion and deportation. Referred to the Committee on the Judiciary.

Mr. CRANSTON. Mr. President, I introduce for apppropriate reference a measure which would give the U.S. Attorney General the discretion to determine whether aliens who have been convicted for illegal possession of marihuana should be admitted to the United States or whether those already living here as permanent residents should be deported after a conviction for possession of marihuana.

As the law stands today, no such discretion is vested in the Attorney General. Under section 212(a)(23) of the Immigration and Naturalization Act, he must deny admission to an alien who has been convicted of a violation of, or a conspiracy to violate, any law or regulation relating to the illicit possession of or traffic in marihuana. Under section 214(a)(11), he must deport an alien who at any time has been convicted of a violation of, or a conspiracy to violate, any law or regulation relating to the illicit possession of or traffic in marihuana.

The present law is cruelly insensitive and inflexible. The failure to give the Attorney General discretion in determin-

ing the admissibility or deportability of aliens convicted for illegal possession of marihuana can at times result in the unjust treatment of certain aliens and can work hardships on their families.

Recently, I was contacted by two California residents, one a friend, the other a relative of a 22-year-old Canadian national who was deported from the United States following a conviction for illegally possessing marihuana. At the time of his arrest in Nevada, he was 18 years old. At that time, he had lived in this country with his parents for more than 6 years and was attending a college in California.

After his conviction and sentence, he was deported to Canada where he married an American citizen and took a job.

He sought to return to the United States to continue his education and reunite with his family. However, he was barred by the Immigration and Naturalization Act from returning as an immigrant. He was eventually admitted for the sole purpose of continuing his education, but he must return to Canada upon finishing his studies.

The young man in question had been sentenced to 4 months in jail. It was his first offense and one which he says he deeply regrets. In ordering his deportation, the Attorney General had no choice. He was precluded by law from considering any mitigating factors, such as the young man's prior criminal record—if any—his family connections in the United States, the relative leniency of his sentence, the nature of the offense he committed, or even the changing public attitudes toward the illegal possession of marihuana. And in denying him admission, the Attorney General was likewise precluded by law from taking into consideration the young man's postconviction record, his reasons for seeking admission, or even the fact that under our Federal laws illegal possession of marihuana has been reduced from a felony to a misdemeanor for first offenders.

Mr. President, I do not know whether or not this young man should be entitled to renew his immigrant status. But I do believe that he and others similiarly situated should be entitled to an opportunity to demonstrate their admissibility or nondeportability.

My amendment would cure the insensitivity and inflexibility embodied in the Immigration and Naturalization Act by giving the Attorney General the discretion to determine, after hearing and under such terms and procedures as he prescribes, whether an alien, otherwise admissible, should be admitted after conviction for illegal possession of marihuana. It would also give him the discretion to determine, after a similar hearing, whether an alien who has been admitted should be deported on account of a conviction for the illegal possession of marihuana.

The amendment would leave untouched those sanctions imposed for trafficking in marihuana or for engaging in activities which violate laws or regulations governing other more dangerous substances, such as opium or heroin. But with respect to an admittedly lesser offense—the illicit possession of marihuana—giving the Attorney General some discretion in the matter would vindicate the cherished principle of affording a penitent offender an opportunity to prove that he should be given another chance.

Our religious and moral beliefs call for tempering punishment with mercy, with a chance for a transgressor to change his ways and to seek forgiveness. Arbitrary laws that provide no leeway for compassion and forgiveness run counter to all our democratic traditions.

Mr. President, I ask unanimous consent that the text of my bill be printed at this point in the RECORD.

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

S. 277

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) section 212(a)(23) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(23)) is amended by inserting before the semicolon at the end thereof a comma and the following: "except that in the case of any alien (A) to whom the provisions of this paragraph apply by reason of his conviction for the possession of marihuana, and (B) who is otherwise admissible into the United States, the Attorney General, after a hearing and under such terms, conditions, and procedures as he prescribes, may receive such alien's application for a visa and consent to his admission into the United States".

(b) Section 241(b) of such Act (8 U.S.C. 1251(b)) is amended to read as follows:

"(b)(1) The provisions of subsection (a)(4) of this section, relating to the deportation of an alien convicted of a crime or crimes, shall not apply (A) in the case of any alien who has, subsequent to such conviction, been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States, or (B) if the court sentencing such alien for such crimes shall make, at the time of first imposing judgment or passing sentence or within thirty days thereafter, a recommendation to the Attorney General that such alien not be deported, due notice having been given prior to making such recommendation to representatives of the interested State, the Service, and prosecution authorities, who shall be granted an opportunity to make representations in the matter.

"(2) The Attorney General, after a hearing and under such terms, conditions, and procedures as he may prescribe, may waive deportation of any alien under the provisions of subsection (a)(11) of this section in the case of any such alien to whom such provisions apply by reason of his conviction for the possession of marihuana."

---

By Mr. CRANSTON (for himself and Mr. TUNNEY):

S. 283. A bill to declare that the United States holds in trust for the Bridgeport Indian Colony certain lands in Mono County, Calif. Referred to the Committee on Interior and Insular Affairs.

Mr. CRANSTON. Mr. President, I am pleased to introduce today a bill that will declare that the United States holds in trust approximately 40 acres of land in Mono County, Calif., for members of the Bridgeport Indian Colony.

I am delighted to be joined in sponsoring this bill by my friend and distinguished colleague from California, Senator JOHN V. TUNNEY.

The land described in the bill is an unoccupied 40-acre tract of federally owned property adjacent to the town of Bridgeport in Mono County, Calif. It is being set aside for the Bridgeport Indian Colony as a substitute for a tract of land wrongfully taken from them in 1914.

This bill is similar to a measure, S. 3113, which I introduced in the Senate in the 2d session of the 92d Congress. In the Senate, my bill was favorably reported by the executive session of the Interior and Insular Affairs Committee on October 15 of last year. Four days later, on October 19, it passed the Senate.

The basic difference in the bill I am now introducing is that the present measure increases the grant of land to the Indians from 20 acres to 40 acres. I believe this change was necessary since the originally proposed tract did not provide an adequate amount of useable acreage. At least 6 acres of that tract is unfeasible for development because a gully runs through the land. The inclusion of the adjacent 20-acres will insure an adequate amount of land will be provided to the Indians to develop as their home and reservation.

I believe that we are in all conscience obligated to set aside this land for the Bridgeport Indians. The land on which the Indians presently reside, and which has been their home since, at least, before the coming of the white man, was wrongfully patented to a non-Indian. This patent was issued in 1914 under the Desert Land Act. This land is now owned by several non-Indian heirs to the original patentee. The Indians continued to occupy the site.

But early in 1968 one of the owners demanded that they vacate. Eviction proceedings were instituted against them.

Legal intervention kept the eviction proceedings in abeyance for some time. Later when the owner learned that an attempt to solve the difficulty was pending in the Congress, he agreed to cease the eviction proceedings so long as Congress works toward a solution for the Indian Colony. I commend the owner's understanding and patience.

It thus is clear that a permanent solution must be found very soon. In my opinion the best solution for all concerned is my proposal to provide the Indians with a new land base. Since their land base was wrongfully taken from them, it seems only fair to provide them with a new one. Furthermore, with a secure trust land base, the Bridgeport Indian Colony will be in a better position to improve their living conditions.

Presently, 12 of the 19 Indian families in the Bridgeport area live in totally substandard housing. Eleven of the families, including all of the families that now reside on the disputed land, have no sanitation facilities and no inside running water. Five of the homes are heated solely by wood-burning stoves, and three have no refrigerator. Only three of the 19 families can claim a member with full-time employment. All the rest are unemployed. A secure trust land base will enable these Indian people to overcome the severe obstacles of unemployment and chronic poverty and to utilize Federal resources to improve their standard of living.

Further, it is my understanding that the townspeople of nearby Bridgeport are in full support of this legislative proposal. Last year I received a unanimously

approved resolution from the Mono County Board of Supervisors that stated its full support of the Bridgeport Indian Colony's efforts to obtain the grant of the federally owned land. I have recently been in contact with the chairman of the Mono County Board of Supervisors, Waltr Cain, and he expressed his support for the Indian Colony's attempts to obtain the 40 acres of land for a reservation. He also stated that at the board's next meeting he expects that they will issue a resolution supporting the Bridgeport Indian Colony's efforts, including the new proposal for a grant of 40 acres. I am hopeful that Congress will support this measure to correct this one of so many injustices that have been inflicted upon the Indian people of California.

Mr. President, I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

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

S. 283

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all of the right, title, and interest of the United States in the following described public domain land located in Mono County, California, are hereby declared to be held by the United States in trust for the Bridgeport Indian Colony:

The Southeast quarter of the northeast quarter of section 28, township 5 north, range 25 east, Mount Diablo base and meridian, Mono County, California, containing forty acres more or less.

*Provided further,* That said parcel shall be subject to the easement to the Bridgeport Public Utility District for a sewer main.

---

By Mr. HARRY F. BYRD, JR. (for himself, Mr. ALLEN, Mr. THURMOND, and Mr. NUNN):

S.J. Res. 13. A joint resolution proposing an amendment to the Constitution of the United States with respect to the reconfirmation of judges after a term of 8 years. Referred to the Committee on the Judiciary.

Mr. HARRY F. BYRD, JR. Mr. President, I send to the desk a joint resolution for myself, the Senator from Alabama (Mr. ALLEN), the Senator from South Carolina (Mr. THURMOND), and the Senator from Georgia (Mr. NUNN).

Mr. President, the joint resolution I am introducing today requires that Federal judges be subject to reconfirmation by the Senate every 8 years.

This resolution is identical to Senate Joint Resolution 106 of the 92d Congress, which was the subject of a hearing on May 19, 1972, before the Subcommittee on Constitutional Amendments of the Committee on the Judiciary. My proposal is cosponsored by Senators ALLEN, THURMOND, and NUNN.

As more and more power is centralized in the Federal Government, we need to appraise more critically the justification for life appointment of Federal judges.

There is widespread dissatisfaction with the existing system, under which some judges are exercising dictatorial powers. I believe that a full and open discussion of the questions involved will be healthy and valuable.

Let me begin this discussion by outlining what my proposed amendment would do, and what it would not do.

I want to emphasize at the outset that I fully support the concept of an independent judiciary. The amendment I have introduced simply provides a method by which the courts might be made more accountable.

The philosophy of this proposal I am making was perhaps best expressed by Thomas Jefferson when he said, in a statement which is one of my favorities:

In questions of power, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.

My amendment provides that Federal judges serve in office for a term of 8 years, at the end of which term they would be automatically nominated for reconfirmation by the Senate, unless they requested otherwise. If reconfirmed by the Senate, the judges would serve for an additional 8 years.

During the period of consideration by the Senate as to whether or not to give its advice and consent to the reconfirmation of any judge, that judge would continue in office. Moreover his new, 8-year term of office would commence from the day after the date that the Senate approved the reconfirmation—or from the day after the expiration of his earlier term, whichever date is later.

The amendment would not affect any judge sitting prior to its ratification.

This, then is the basic mechanism which I am suggesting.

The question arises at once: Is this a radical proposal, out of keeping with American tradition, or is it rather a reasonable means of achieving accountability of judges without destroying their basic independence? I submit that it is the latter.

In the first place, 47 of the 50 States now have fixed terms for their own judiciary. Of the three States that have no such provision, only Rhode Island has life tenure for judges. Massachusetts and New Hampshire provide for mandatory retirement at age 70.

The experience of Virginia may be of significance. Originally the State constitution provided for life tenure. In 1850, a revised constitution established the practice of popular election of judges. Twenty years later, Virginia converted to the present method of election by the General Assembly for specific terms of years.

The present Virginia system, which is directly parallel to the method which I have proposed for the Federal judiciary, has worked well. Even though elected by the General Assembly, the Virginia judiciary never has hesitated to assert its independence. The Virginia Supreme Court has exercised its long-established power to strike down legislative enactments.

The experience of Virginia indicates that any fears of lack of independence on the part of judges who are subject to legislative reconfirmation are without foundation.

Indeed, I know of no documented assertion that the independence or integrity of the judiciary has been compromised in any State as a result of fixed tenure.

When we stop to think about it, why should any official in a democracy have lifetime tenure? In the modern world, only kings, queens, emperors, maharajahs—and U.S. Federal judges—hold office for life.

I say again—why shouldn't any public official in a democracy have lifetime tenure?

I do not conceive this to be a liberal against conservative issue. Senator Robert M. LaFollette, Sr., of Wisconsin, one of the leading progressives of this century, in 1920, denounced "the alarming usurpation of power by the Federal courts." He called for constitutional and statutory changes to end lifetime tenure for Federal judges.

Certainly I see no reason why the question of lifetime appointment for judges, as opposed to a reasonable system of reconfirmation, should not be submitted to the people of this Nation.

For well over a century after the creation of this Nation, the unwritten canon of judicial restraint, as expressed by such eminent justices as Holmes, Brandeis, Stone, Hughes, and Frankfurter, was one of our most hallowed legal principles.

But in this century, and particularly since the 1950's, first the Supreme Court and later the lower Federal courts have cast aside much of the doctrine of restraint. In all too many instances the Federal courts have gone well beyond the sphere of interpreting the law, and into the domain of making the law.

Under these circumstances, we are faced with a dilemma. Judges who are accountable to no one are invading the sphere of the elected representatives of the people, handing down decisions which have great impact on the lives of the citizenry. This situation is basically inequitable and contrary to the spirit of democracy.

Under existing law, no real solution is available for the present dilemma. It is not possible to legislate resurrection of the doctrine of judicial restraint.

The Constitution established a subtle system of checks and balances; the question is whether the checks upon the mid-20th century judiciary are not entirely too subtle.

Impeachment has not provided a very useful means of policing the judges. Thomas Jefferson referred to the impeachment process as "a bungling way of removing judges—an impractical thing—a mere scarecrow."

Lord Bryce, in his observations of our government, said:

Impeachment is the heaviest piece of artillery in the Congressional arsenal, but because it is so heavy it is unfit for ordinary use.

Characterizing congressional lethargy in this area, Woodrow Wilson said of impeachment:

It requires something like passion to set them a-going; and nothing short of the grossest offenses against the plain law of the land will suffice to give them speed and effectiveness.

For lasting reform, aimed at setting the judiciary within the same restrictions on power and authority that are appli-

cable to the legislative and executive branches, some change in the law will be necessary.

Really basic reform could best be achieved through a system automatically applicable to all members of the Federal judiciary, such as the proposal I have just sent to the desk. It is nondiscriminatory in its approach and would serve to guard the interests of the people, through their representatives in the Senate, without compromising the fundamental independence of the judges who would be subject to reconfirmation.

In connection with the issue of independence, we already have seen that the experience of the states indicates no jeopardy of the judiciary's independence need be feared from a fixed-tenure system. But we need to look further into this question of independence. We need to consider what is the real purpose of judiciary independence.

I think the true purpose of independence never was better stated than by Prof. Philip Kurland of the University of Chicago Law School. In a discussion of the proposal by former Senator Tydings of Maryland to create a commission of judges to police the judiciary, Professor Kurland stated:

It should be kept in mind that the provisions for securing the independence of the judiciary were not created for the benefit of the judges, but for the benefit of the judged.

I believe this to be a cardinal principle. Judicial independence should not be regarded as a fortress for the members of the judiciary, whether or not one believes that some judges are actual or potential oligarchs; on the contrary, it is supposed to be a shelter for the true rights of the people.

It is my contention that a uniform, reasonable system of fixed tenure and reconfirmation, such as I am proposing, would enhance the rights of the people. Therefore it is, in its main thrust and the real purpose of judicial independence.

There is no need to provide any official in a democracy with the prerogatives of a medieval baron in order to safeguard his independence of judgment. Indeed, to insulate a judge—or any other public official—from all accountability for his actions is to invite arbitrary action contrary to the will and welfare of the people of the United States.

Life tenure, devoid of restraint and accountability, is not consistent with democratic government. It is time we abolished it.

I submit that basic questions about the nature of our democracy are involved in the issue of judicial tenure. Such basic questions are best decided at the level closest to the people themselves. This is true through the constitutional amendment process.

Therefore, I hope that Congress will conduct a full debate and give final approval to this proposal. Then, the question will be taken to the people through their elective representatives in the several State legislatures.

Mr. President, the time to act is now.

## ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 4

At the request of Mr. WILLIAMS, the Senator from Colorado (Mr. DOMINICK) was added as a cosponsor of S. 4, the Retirement Income Security for Employees Act.

S. 6

At the request of Mr. WILLIAMS, the Senator from South Dakota (Mr. McGOVERN) was added as a cosponsor of S. 6, the Education for All Handicapped Children Act.

S. 180

At the request of Mr. WILLIAMS, the Senator from Florida (Mr. CHILES) was added as a cosponsor of S. 180, the Coastal Environment Protection Act.

SENATE JOINT RESOLUTION 10

At the request of Mr. SCHWEIKER, the Senator from Rhode Island (Mr. PASTORE) was added as a cosponsor of Senate Joint Resolution 10, the school prayer amendment.

## NOTICE OF HEARINGS CONCERNING THE FUTURE DIRECTIONS IN SOCIAL SECURITY

Mr. CHURCH. Mr. President, the U.S. Senate Special Committee on Aging will soon begin a study called Future Directions in Social Security.

Our initial hearings will take place on January 15, room 1224, New Senate Office Building; and on January 22 and 23 in room 1224, New Senate Office Building. Testimony will begin on each day at 10 a.m.

It is clear, I believe, that social security has performed very well indeed on behalf of several generations of Americans. Through these hearings, the Senate Committee on Aging can evaluate the significance of historic social security enactments made in 1972. We will also examine suggestions for future improvement while preserving the essential features of the present arrangements.

## NOTICE OF HEARINGS ON OIL AND GAS IMPORTS, JANUARY 10, 11, AND 17, 1973

Mr. JACKSON. Mr. President, on January 10, 11, and 17, 1973, the Committee on Interior and Insular Affairs will convene hearings to examine current trends toward increased reliance on oil and gas imports. These hearings are being held as part of the Senate's national fuels and energy policy study, being conducted by the Interior Committee under Senate Resolution 45—92d Congress—with participation from the Commerce, Public Works, and Joint Atomic Energy Committees. Originally scheduled for December 1972 the hearings were postponed, until now, at the administration's request.

The hearings will convene in room 3110 of the Dirksen Senate Office Building to receive testimony from administration representatives. The anticipated witnesses will include—

On Wednesday, January 10, at 10 a.m.: The Honorable Rogers C. B. Morton, Secretary, Department of the Interior; and at 2 p.m.: Gen. George A. Lincoln, Director, Office of Emergency Preparedness;

On Thursday, January 11, at 10 a.m.: The Honorable Julius T. Katz, Deputy Assistant Secretary for Economic Development, Department of State, and Mr. William Letson, General Counsel, Department of Commerce; and at 2 p.m.: Chairman Nassikas and the other Commissioners from the Federal Power Commission; and

On Wednesday, January 17, at 10 a.m.: The Honorable Barry Shilleto, Assistant Secretary for Logistics, Department of Defense, accompanied by Adm. Elmo R. Zumwalt, Jr.

Unfortunately, time will not permit the appearance of all parties who might wish to testify; however, the committee will accept statements for the record, in response to the following general questions and policy issues, until January 30, 1973:

GENERAL QUESTIONS AND POLICY ISSUES HEARINGS ON THE SECURITY OF OIL AND GAS IMPORTS, U.S. SENATE, COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

1. What is the range of probable U.S. energy imports between now and 1985? How much uncertainty is there in forecasts of future energy imports flowing from factors beyond the reach of feasible regulatory constraints by the Federal government?

DISCUSSION

The National Petroleum Council has published preliminary projections of United States requirements for oil and gas imports in 1975, 1980 and 1985, as follows:

| | 1970 (actual) | 1975 | 1980 | 1985 |
|---|---|---|---|---|
| Oil: | | | | |
| Million barrels per day | 3.4 | 7.3 | 10.7 | 14.8 |
| (Percentage of total U.S. oil consumption) | (22) | (41) | (49) | (57) |
| Gas: | | | | |
| Trillion cubic feet | .9 | 1.6 | 3.8 | 6.8 |
| (Percentage of total U.S. gas consumption) | (4) | (7) | (17) | (28) |
| Oil and gas: | | | | |
| Quadrillion B.t.u. | 8.4 | 17.2 | 26.9 | 37.2 |
| (Percentage of total U.S. energy consumption) | (12) | (21) | (26) | (30) |

Some critics have viewed these import projections as highly conservative, alleging that the assumptions upon which they were based were too optimistic, and that there was error on the positive side regarding the availability of domestic natural gas, low sulfur coal, crude oil from Alaska, and nuclear power. Responses to question 1 should indicated what projections are currently being used by the various agencies in the formulation and administration of energy import policies and energy policy generally, and what are the assumptions upon which such projections are based. What consideration is given to the impact on domestic energy development of environmental constraints, limitation of economically available resources, technological lags, or policies, such as price controls, adopted for reasons not necessarily intended to influence domestic energy development? How likely are such factors to cause substantial departure from the projections currently regarded as most probable?

2. In light of the factors considered in

question 1, what is the range of feasible policy choices which can be made by the Federal government to control the level of energy imports between now and 1985?

DISCUSSION

One purpose of question 2 is to assess the maximum realistic degree of self-sufficiency in energy, or in specific fuels, that could be attained, were the American people willing to pay its costs. In general terms, what would be the amount and nature of such costs? On the other hand, how high might the levels of import dependency realistically reach if policies were adopted which would be *least* encouraging to development of domestic energy supplies. In either event what feasible opportunities exist to limit domestic energy consumption? Responses should indicate what general policies regarding fuels pricing, taxation, subsidies, trade, federal support of research and development, etc., would necessarily correspond to each of the four above mentioned cases—minimum and maximum import dependency with and without Federal constraints on consumer demands.

3. What is the probable future course of landed imported crude oil costs and U.S. domestic energy costs? What influence can the United States assert over competition, stability and prices in world petroleum markets?

DISCUSSION

There are serious differences among oil analysts regarding the future of world petroleum markets and in the policy recommendations flowing from their prognoses. Some experts emphasize the development of a "seller's market" based upon rapid growth of world energy demand and the group interests of the exporting nations in limiting production. Others emphasize the vastness and low costs of developing Middle Eastern petroleum resources, and the actual and potential rivalries among oil producers; they foresee a world "surplus" of oil persisting for at least two decades. There may be some differences between the two groups over their assessments of basic resource availability, but the crux of the debate is whether the producing countries can collectively control production and prices without the active cooperation of the international oil companies and of consuming country governments. There is a corresponding lack of consensus whether the growth of United States imports would inexorably tend to increase the exporting countries' bargaining power, or would on the contrary help to restrain price increases by stimulating exporter competition for the U.S. market.

A closely related controversy is whether the national interest is best served by high or low fuels prices in world markets. In the past, the economic and balance of payments impact of world oil and gas production reflected principally the earnings of U.S. companies abroad, so that the national interest appeared to be consistent with high oil prices. Moreover, it is sometimes argued that higher prices for imported oil are desirable because they encourage greater domestic production, together with research and development efforts resulting in the early production of synthetic fuels. On the other hand, as a large net importer of fuels, the United States increasingly has a stake in lowest feasible import costs to consumers and to the economy; in limiting balance of payments deficits; and in ensuring supply reliability.

Responses to question 3 should indicate the underlying assumptions regarding world resource availability and costs, and regarding the ability of the producer nations to maintain a common bargaining position. It should also include an assessment of the interests of the United States in taking positive action regarding competition and the world price of crude oil. Consideration should be given to the question of whether there are governmental means available to encourage seller competition and to restrain future price increases. Specific attention is requested to the potential impact on world oil prices from feasible changes in U.S. import control mechanisms, tax law, policies toward the international oil companies (for example, antitrust waivers), and diplomatic initiatives.

4. What is the maximum proportion of U.S. petroleum imports (including crude oil, petroleum products, natural gas and LNG) that is likely to come from each region or bloc of countries, and from each country within each region or bloc, between now and 1985? To what extent will the United States be able to diversify its imports among regions, blocs and countries?

5. What are the specific security concerns regarding oil and gas imports that are or ought to be a major influence upon U.S. energy policy?

DISCUSSION

Responses to this question should distinguish among (a) quantifiable economic concerns (for example, escalating prices, or the net foreign exchange burden of imports), (b) strategic and foreign policy constraints, and (c) risks of supply interruptions or limitations on production. With respect to the last category, consideration should be given to (but need not be limited to) the contingencies treated in the 1970 Report of the Cabinet Task Force on Oil Import Control. An assessment should be made of the relative likelihood, and the probable costs, of preparing for and dealing with each kind of interruption. How would the concentration of imports from specific countries, concentration to deliveries to specific areas of the United States, and the form in which fuels are imported (crude oil, residual fuel oil, naphtha, refined products, LNG, etc.) affect the seriousness of the various contingencies related to U.S. economic and military security and to consumer comforts?

6. Of the concerns and risks identified in responses to question 5, which are now adequately protected by the system of oil import controls, which by specific other policies, and which concerns or risks will require new supplementary executive or legislative action?

7. Describe in summary form the system of oil import controls as it now exists. To what extent has the system or its functioning in fact changed since 1969?

DISCUSSION

In 1970, the Cabinet Task Force on Oil Import Control concluded the following:

The present import control program is not adequately responsive to present and future security considerations. The fixed quota limprotection either of the national economy or of essential oil consumption. The level of restriction is arbitrary and the treatment of secure foreign sources internally inconsistent. The present system has spawned a host of special arrangements and exceptions for purposes essentially unrelated to the national itations that have been in effect for the past ten years, and the system of implementation that has grown up around them, bear no reasonable relation to current requirements for security, has imposed high costs and inefficiencies on consumers and the economy, and has led to undue government intervention in the market and consequent competitive distortions. In addition, the existing quota system has left a significant degree of control over this national program to state regulatory authorities.

Since the foregoing statement was written, the attempt to maintain a strict limit on petroleum imports has apparently been relaxed. Moreover, the reserve producing capacity then maintained by State regulation has almost disappeared. Although there has been no official declaration of such a policy, the country generally seems to be subjected to a "District V formula" for crude oil; i.e., imports are allowed to fill the gap between domestic supplies and market demand, at some acceptable price level. Moreover, residual fuel oil has been imported freely since 1966; gas and LNG imports are apparently outside the control system, multi-billion dollar gas import projects are being actively encouraged by some executive agencies; and consideration is being given to exempting feedstock imports for gas manufacture.

One purpose of question 7 is to determine what are the policies, criteria and mechanisms presently being implemented by the Administration for controlling energy imports. Responses should also indicate whether the quotation from the Task Force Report is now regarded as a fair and valid assessment of the import control program. In what way and to what extent can the present system of import controls affect either the probability or the impact of supply interruptions? To what extent can the present program contribute to (a) lowering the cost, (b) increasing the reliability of imports allowed, (c) providing geographic diversity of import sources, (d) the encouragement of storage capacity or reserve producing capacity, or (e) a balanced distribution of import reliance among regions of the United States? What, if any, rationale is there for stricter controls upon imports of crude oil than upon residual fuel oil or naphtha for SNG manufacture?

8. (a) What policy alternatives regarding the control of energy imports are currently under active consideration by the Administration?

(b) What plans, policies and provisions exist and are ready for implementation, for dealing with emergencies flowing from interruptions in energy imports? What additional plans, policies or provisions are currently under active consideration?

(c) What are the present arrangements and timetables within the Executive Branch for review and formulation of import policy and contingency planning?

9. In the light of anticipated U.S. import dependency, what are the grounds for continued quota restrictions upon importation of Canadian oil? What discussions or negotiations have taken place within the last two years between the U.S. and the Canadian government regarding U.S. trade and investment in Canadian oil and gas, and regarding transport of Alaska gas and/or oil across Canada?

DISCUSSION

Canada's oil and gas resources may be of a magnitude comparable with those of the United States. With domestic energy consumption currently only 11 percent of the U.S. figure, Canada might reasonably be expected to become a major exporter to U.S. markets. In addition to the probable resources of conventional oil and gas there exist large heavy oil resources and the tar sands of Alberta, whose proved reserves exceed those of the whole world in conventional hydrocarbons. The possibility that production of synthetic crude oil from these deposits might become economic at a price not much greater than the current prices of crude oil in U.S. markets would have a profound impact on the energy economies of both the United States and Canada.

Although Canadian imports would seem to be comparatively secure, and although oil import regulations allow Canadian crude oil to be imported without restriction, administration of the import control program has in fact limited shipments from Canada. This limitation has dampened petroleum exploration incentives and has retarded leasing and research and development efforts in the tar sands. The official rationale for restricting Canadian imports has been Eastern Canada's own dependence upon overseas oil. Accordingly, an interruption of these supplies might

require diversion to Eastern Canada of North American production upon which the United States ordinarily depended. One purpose of question 9 is to ascertain whether, in the light of the great absolute reliance of the United States upon overseas sources, this or any other rationale for restricting Canadian imports is now valid.

Transportation of crude oil or natural gas from Alaska to U.S. markets, except oil to the West Coast, will require pipelines across Canada. These lines will transit areas of important Canadian energy resources that could be developed mainly for U.S. markets. There are arguable engineering, economic, environmental and political grounds for considering plans for pipelines from Alaska jointly with those for Canadian Arctic fuels. Debate and testimony regarding the Trans-Alaska pipeline proposal has suggested a lack of sustained attempt on the part of U.S. government agencies to reach understandings with Canada on U.S.-Canadian trade, investment, transportation and regulatory policies for Arctic oil and gas. Responses to question 9 should indicate the objectives and policies of the respective executive agencies concerning U.S.-Canadian energy relations.

Authorization to build the Trans-Alaska (Alyeska) pipeline continues to be delayed and its ultimate fate is still in doubt. It is conceivable that a Canadian overland route may yet be the only feasible way to bring Alaska crude oil to U.S. markets. Moreover, there is general agreement that an overland oil pipeline may be required as a second route for Alaska oil, in addition to the Alyeska pipeline and gas line across Canada. In light of these considerations, question 9 seeks to ascertain what would be the actual sequence of events required to result in the construction of a crude oil pipeline from Alaska across Canada. What initiatives would be required and what legal or organizational constraints exist upon either the companies or an agency of the U.S. government regarding the Trans-Canadian pipeline option? What matters would have to be resolved between the U.S. and Canadian governments? What, if any, legislation would be required on either side of the border?

10. What are the relative (a) costs, (b) capital requirements per unit of capacity, and (c) security implications of various measures to meet the shortfall in domestic natural gas supply?

DISCUSSION

Measures for meeting the growing gulf between gas demand and domestic natural gas supply include increasing domestic exploration and development by some combination of higher field prices and an accelerated Outer Continental Shelf leasing program; substitution of oil or coal for gas as an industrial boiler fuel, either by means of a change of gas pricing policies or by direct end-use controls; manufacture of gas from domestic coal, imported oil or imported naphtha; import of Canadian Arctic gas by pipeline; and import of Liquefied Natural Gas.

While imported crude oil is cheaper than the domestic product, the LNG import proposals seem questionable in that the landed cost of imported gas is expected to be much higher than that of domestic natural gas. Some members of the Committee are concerned that LNG imports are among the most costly alternatives, both to the consumers and to the national economy, are the least secure and are perhaps the most dangerous in terms of product safety. Imports of Liquefied Natural Gas from Algeria, the U.S.S.R. or other Eastern Hemisphere sources would be several times more costly than the regulated prices pipelines and utilities pay for domestic natural gas. The cost of LNG to pipelines and gas utilities would also be greater than the prices they would continue to charge for gas to many of their industrial customers.

Pipeline gas manufactured from domestic coal or from imported petroleum feedstocks will probably have costs in the same range as those of imported LNG ($1.00 or more per million BTU). Unlike the LNG projects, however, coal gasification uses a secure domestic resource; the petroleum feedstocks for SNG plants can be obtained from diverse sources, so that they would be less vulnerable to supply interruptions. In addition, the capital costs per unit of throughput capacity are far less for oil conversion than they are for LNG, so that gas from oil is a considerably cheaper source for "peak-shaving" service than imported LNG. The pending LNG projects may require both shipbuilding subsidies and subsidized loans from the Export-Import Bank.

Except for peak-shaving purposes, the market for any of these natural gas substitutes in the near future is an artificial one, created by a combination of field price control, "rolled-in" pricing by pipelines and utilities, and promotional rates to industrial customers. Some analysts contend that this market and the current gas shortage would both disappear if industrial gas consumers were charged "incremental" prices, that is, the cost of replacing the gas that they burn.

11. What are the current policies and control mechanisms regarding the imports of Liquefied Natural Gas and Synthetic Natural Gas feedstock? To what extent are the cost and security aspects identified in the responses to question 10 reflected in the regulatory policies of the Federal Power Commission, leasing and other policies of the Interior Department, trade promotion activities of the Commerce Department, and in trade and energy policies of other agencies?

12. What are the realistic dangers and the opportunities for the United States in the exporting countries demand for "participation" in production; investment by these nations in transportation, refining and marketing in the U. S.; and in the trend toward nationalization of oil concessions?

DISCUSSION

Petroleum analysts differ as to whether "participation" is mainly a cover for additional tax increases by the exporting countries, an effective move toward control of the rate of development and production as a foundation for future price increases, or a long step toward nationalization. Spokesmen for some of the exporting countries interpret participation as leading to a stable partnership between producers and consumers, and propose investments by the exporting nations in the international oil companies' "downstream" (transportation, refining and marketing) operations.

One school of analysis expects the increased activity of exporter governments producing and marketing their own oil to intensify competition in crude oil markets, to the advantage of consumers. Some observers regard nationalization of the concessions as inevitable, and would welcome an acceleration of the trend, in which the oil companies became purchasers of oil, and exploration and development contractors. Others see the companies' role in production as an invaluable "buffer" between the producer and consumer governments.

Responses to question 12 should include a prognosis regarding the trends toward nationalization and toward participation of the exporting country governments in production, or in "downstream" activities, and an assessment of their respective implications for the costs and security of U.S. energy supplies.

13. What are the implications for the United States of the dependence of Western Europe, Japan and other countries upon imported energy? What opportunities exist for cooperation between the United States and other consumer countries to restrain the costs or enhance the security of their energy supplies?

DISCUSSION

Western Europe, Japan and many other countries are proportionally more dependent upon oil and gas imports, and particularly upon crude oil imports from the Middle East and North Africa, than is the U.S. Rising prices of oil from OPEC countries, and the possibility of supply interruptions, are relatively more serious for these nations than for the U.S. One purpose of question 13 is to compare the policies and measures taken by other countries individually and collectively to reduce the cost, or enhance the security, of their energy supplies.

What are the current policies of these countries individually regarding stable development of domestic energy supplies; diversification of import sources; emergency storage and rationing, promotion of competition in domestic energy markets; encouragement of diversity of energy sources, relations with exporter countries and with the international oil companies? What collective action have consumer countries, including the U.S., taken, or may be expected to take, through international organizations, bilateral or multilateral arrangements in order to enhance their security of energy supplies and to protect against growing OPEC strength? For example, what progress has been made within the OECD and the EED, or within the Zurich Group with regard to these issues? Is such action sufficient? If not, in what areas is it deficient? Are there actions the U.S. should encourage regarding development of consumer country cooperation as related to energy import policy?

## NOTICE OF HEARING ON CERTAIN NOMINATIONS

Mr. EASTLAND. Mr. President, on behalf of the Committee on the Judiciary, I desire to give notice that a public hearing has been schedule for Wednesday, January 17, 1973, at 10:30 a.m., in room 2228, Dirksen Senate Office Building, on the following nominations.

Joseph T. Sneed, of North Carolina, to be Deputy Attorney General, vice Ralph E. Erickson.

Robert H. Bork, of Connecticut, to be Solicitor General of the United States, vice Erwin N. Griswold.

At the indicated time and place persons interested in the hearing may make such representations as may be pertinent.

## ADDITIONAL STATEMENTS

## ORDER OF THE PRESIDENT PRO TEMPORE IMPLEMENTING THE PROVISIONS OF THE FEDERAL PAY COMPARABILITY ACT

Mr. EASTLAND. Mr. President, pursuant to authority contained in the Federal Pay Comparability Act of 1970, the President of the United States, by Executive Order 11691 of December 15, 1972, authorized a 5.14-percent salary increase for the Federal pay systems under his jurisdiction.

In discharging my responsibility as President pro tempore of the Senate

under authority vested in me by section 4 of the Federal Pay Comparability Act of 1970, I issued an order on December 16, 1972, implementing the action of the President for officers and employees of the U.S. Senate. I ask unanimous consent that this order be printed in the RECORD.

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

ORDER, U.S. SENATE, OFFICE OF THE PRESIDENT PRO TEMPORE

By virtue of the authority vested in me by section 4 of the Federal Pay Comparability Act of 1970, it is hereby—

*Ordered,*

CONVERSION TO NEW MULTIPLE

SECTION 1. (a) Except as otherwise specified in this Order or unless an annual rate of compensation of an employee whose compensation is disbursed by the Secretary of the Senate is adjusted in accordance with the provisions of this Order, the annual rate of compensation of each employee whose compensation is disbursed by the Secretary of the Senate is adjusted to the lowest multiple of $272 which is not lower than the rate such employee was receiving immediately prior to January 1, 1973.

(b) For purposes of this Order—

(1) "employee" includes an officer other than a Senator; and

(2) "annual rate of compensation" shall not include longevity compensation authorized by section 106 of the Legislative Branch Appropriation Act, 1963, as amended.

RATE INCREASES FOR SPECIFIED POSITIONS

SEC. 2. (a) The annual rates of compensation of the Secretary of the Senate, the Sergeant at Arms, the Legislative Counsel, the Comptroller of the Senate, the Secretary for the Majority (other than the present incumbent), the Secretary for the Minority, and the four Senior Counsel in the Office of the Legislative Counsel (as such rates were increased by prior orders of the President pro tempore) are further increased by 5.14 percent, and as so increased, adjusted to the nearest multiple of $272. Notwithstanding the provisions of this subsection, an individual occupying a position whose annual rate of compensation is determined under this subsection shall not be paid, by reason of the promulgation of this Order, an annual rate of compensation in excess of the annual rate of basic pay, which is now or may hereafter be in effect. for positions in level V of the Executive Schedule under section 5316 of title 5, United States Code.

(b) The maximum annual rates of compensation of the Secretary for the Majority (as long as that position is occupied by the present incumbent), the Assistant Secretary of the Senate, the Parliamentarian, the Financial Clerk, and the Chief Reporter of Debates (as such rates were increased by prior orders of the President pro tempore) are further increased by 5.14 percent, and as so increased, adjusted to the nearest multiple of $272. Notwithstanding the provisions of this subsection, an individual occupying a position whose annual rate of compensation is determined under this subsection shall not have his compensation fixed, by reason of the promulgation of this Order, at an annual rate in excess of the annual rate of basic pay, which is now or may hereafter be in effect, for positions at such level V.

(c) The maximum annual rates of compensation of the Administrative Assistant in the Office of the Majority Leader, the Administrative Assistant in the Office of the Majority Whip, the Administrative Assistant in the Office of the Minority Leader, the Administrative Assistant in the Office of the Minority Whip, the seven Reporters of Debates in the Office of the Secretary, the Assistant Secretary for the Majority, the Assistant Secretary for the Minority, the Assistant to the Majority and the Assistant to the Minority in the Office of the Secretary, the Legislative Assistant in the Office of the Majority Leader, and the Legislative Assistant in the Office of the Minority Leader (as such rates were increased by prior orders of the President pro tempore) are further increased by 5.14 percent, and as so increased, adjusted to the nearest multiple of $272. Notwithstanding the provisions of this subsection, an individual occupying a position whose annual rate of compensation is determined under this subsection shall not have his compensation fixed, by reason of the promulgation of this Order, at an annual rate in excess of $35,904, until the annual rate of basic pay for positions at such level V is increased to $39,000 or more, except that (1) any individual occupying the position of Administrative Assistant in the Office of the Majority Whip or Minority Whip shall not have his compensation fixed, by reason of the promulgation of this Order, at an annual rate in excess of $34,544 until such rate for level V is increased to $39,000 or more, and (2) any individual occupying the position of Assistant to the Majority or Assistant to the Minority in the Office of the Secretary, Legislative Assistant in the Office of the Majority Leader, or Legislative Assistant in the Office of the Minority Leader shall not have his compensation fixed, by reason of the promulgation of this Order, at an annual rate in excess of $34,272 until such rate for level V is increased to $39,000 or more.

CHAPLAIN'S OFFICE

SEC. 3. The annual rate of compensation of the Chaplain is adjusted to that multiple of $272 which is nearest to the annual rate of compensation he was receiving immediately prior to January 1, 1973. The maximum annual rate of compensation for the position of secretary to the Chaplain is that multiple of $272 which is nearest to, but not less than, the maximum annual rate of compensation in effect for such position immediately priod to January 1, 1973.

OFFICES OF THE SENATE

SEC. 4. (a) Any specific rate of compensation established by law, as such rate has been increased by or pursuant to law, for any position under the jurisdiction of the Sergeant at Arms shall be considered as the maximum annual rate of compensation for that position. Each such maximum annual rate is increased by 5.14 percent, and as so increased, adjusted to the nearest multiple of $272.

(b) The maximum annual rates of compensation for positions or classes of positions (other than those positions referred to in section 2 (b) and (c) of this Order) under the jurisdiction of the Majority and Minority Leaders, the Majority and Minority Whips, the Secretary of the Senate, the Secretary for the Majority, the Secretary for the Minority, and the Comptroller of the Senate are increased by 5.14 percent, and as so increased, adjusted to the nearest multiple of $272.

(c) The following individuals are authorized to increase the annual rates of compensation of the employees specified by 5.14 percent, and as so increased, adjusted to the nearest multiple of $272:

(1) the Vice President, for any employee under his jurisdiction;

(2) the President pro tempore, for any employee under his jurisdiction (other than the Comptroller of the Senate);

(3) the Majority Leader, the Minority Leader, the Majority Whip, and the Minority Whip, for any employee under the jurisdiction of that Leader or Whip (subject to the provisions of section 2(c) of this Order);

(4) the Majority Leader, for the Secretary for the Majority so long as the position is occupied by the present incumbent (subject to the provisions of section 2(b) of this Order);

(5) the Secretary of the Senate, for any employee under his jurisdiction (subject to the provisions of section 2(b) and (c) of this Order);

(6) the Sergeant at Arms, for any employee under his jurisdiction;

(7) the Comptroller of the Senate, for his auditor;

(8) the Legislative Counsel, subject to the approval of the President pro tempore, for any employee in that Office (other than the four Senior Counsel);

(9) the Secretary for the Majority and the Secretary for the Minority, for any employee under the jurisdiction of that Secretary (subject to the provisions of section 2 (c) of this Order); and

(10) the Capitol Guide Board, for the Chief Guide, the Assistant Chief Guide, and the Guides of the Capitol Guide Service.

(d) The figure "$777", appearing in the first sentence of section 106(b) of the Legislative Branch Appropriation Act, 1963, as amended (as provided in section 4(d) of the Order of the President pro tempore of December 23, 1971), shall be deemed to refer to the figure "$816".

(e) The limitation on the rate per hour per person provided by applicable law immediately prior to January 1, 1973, with respect to the folding of speeches and pamphlets for the Senate, is increased by 5.14 percent. The amount of such increase shall be computed to the nearest cent, counting one-half cent and over as a whole cent.

COMMITTEE STAFFS

SEC. 5. (a) Subject to the provisions of section 105 of the Legislative Branch Appropriation Act, 1968, as amended (as modified by this Order), and the other provisions of this Order, the chairman of any standing, special, or select committee of the Senate (including the majority and minority policy committees and the conference majority and conference minority of the Senate), and the chairman of any joint committee of the Congress whose funds are disbursed by the Secretary of the Senate are each authorized to increase the annual rate of compensation of any employee of the committee, or subcommittee thereof, of which he is chairman, by 5.14 percent, and as so increased, adjusted to the nearest multiple of $272.

(b)(1) The figures "$8,288", "$15,281", "$14,245", "$18,648" "$22,533", and "$20,461" appearing in section 105 (e) of the Legislative Branch Appropriation Act, 1968, as amended (as provided in section 5 (b) (1) of the Order of the President pro tempore of December 23, 1971), shall be deemed to refer to the figures "$8,160", "$16,048", "$14,144", "$18,496", "$23,664", and "$20,400", respectively.

(2) The maximum annual rates of $36,519, $38,073, and $39,627 appearing in such section 105 (e) (as provided in section 5(b)(2) of such Order of December 23, 1971) are each further increased by 5.14 percent, and as so increased, adjusted to the nearest multiple of $272, and shall be deemed to refer to the figures "$38,352", "$39,984", and "$41,616", respectively. Notwithstanding the provisions of this paragraph, any individual occupying a position to which any such rate applies (A) shall not have his compensation fixed at a rate exceeding $32,912, $34,544, or $35,904 per annum, respectively, as long as

the annual rate of basic pay for positions at level V of the Executive Schedule under section 5316 of title 5, United States Code, is less than $39,000, and (B) shall not have his compensation fixed at a rate exceeding $35,632, $37,264, or $38,896 per annum, respectively, as long as such annual rate for positions at that level V is $39,000 or more but less than $42,000.

SENATORS' OFFICES

SEC. 6. (a) Subject to the provisions of section 105 of the Legislative Branch Appropriation Act, 1968, as amended (as modified by this Order), and the other provisions of this Order, each Senator is authorized to increase the annual rate of compensation of any employee in his office by 5.14 percent, and as so increased, adjusted to the nearest multiple of $272.

(b) The table contained in section 105 (d) (1) of such Act (as provided in section 6(b) of the Order of the President pro tempore of December 23, 1971) shall be deemed to read as follows:

"$327,216 if the population of his State is less than 3,000,000;

"$355,776 if such population is 3,000,000 but less than 4,000,000;

"$381,616 of such population is 4,000,000 but less than 5,000,000;

"$401,200 if such population is 5,000,000 but less than 7,00,000;

"$422,416 if such population is 7,000,000 but less than 9,000,000;

"$446,080 if such population is 9,000,000 but less than 10,000,000;

"$469,744 if such population is 10,000,000 but less than 11,000,000;

"$493,408 if such population is 11,000,000 but less than 12,000,000;

"$517,072 if such population is 12,000,000 but less than 13,000,000;

"$540,192 if such population is 13,000,000 but less than 15,000,000;

"563,312 if such population is 15,000,000 but less than 17,000,000;

"$586,160 if such population is 17,000,000 or more.".

(c) (1) The figures "$1,295", "$20,720", and "$27,972", appearing in the second sentence of section 105(d) (2) of such Act (as provided in section 6(c) (1) of such Order of December 23, 1971) shall be deemed to refer to the figures "$1,088", "$21,760", and "$29,376", respectively.

(2) The maximum annual rates of $33,-929, $35,483, and $37,037 appearing in such second sentence (as provided in section 6(c) (2) of such Order of December 23, 1971) are each further increased by 5.14 percent, and as so increased, adjusted to the nearest multiple of $272, and shall be deemed to refer to the figures "$35,632", "$37,264", and "$38,896", respectively. Notwithstanding the provisions of this paragraph, any individual occupying a position to which such rate applies shall not have his compensation fixed at a rate exceeding $32,912, $34,544, or $35,904 per annum, respectively, until the annual rate of basic pay for positions at level V of the Executive Schedule under section 5316 of title 5, United States Code, is increased to $39,000 or more.

GENERAL LIMITATION

SEC. 7. (a) The figure "$1,295" appearing in section 105(f) of the Legislative Branch Appropriation Act, 1968, as amended (as provided in section 7(a) of the Order of the President pro tempore of December 23, 1971) shall be deemed to refer to the figure "$1,088".

(b) The maximum annual rate of compensation of $39,627 appearing in such section (as provided in section 7(b) of such Order of December 23, 1971) is further increased by 5.14 percent, and as so increased, adjusted to the nearest multiple of $272, and shall be deemed to refer to the figure "$41,616". Notwithstanding the provisions of this subsection, any individual occupying a position to which such rate applies (1) shall not have his compensation fixed at a rate exceeding $35,904 per annum as long as the annual rate of basic pay for positions at level V of the Executive Schedule under section 5316 of title 5, United States Code, is less than $39,000, and (2) shall not have his compensation fixed at a rate exceeding $38,896 per annum as long as such annual rate for positions at level V is $39,000 or more but less than $42,000.

NOTIFYING DISBURSING OFFICE OF INCREASES

SEC. 8. In order for an employee to be paid an increase in the annual rate of his compensation authorized under section 4, 5, or 6 of this Order, the individual designated by such section to authorize an increased rate shall notify the disbursing office of the Senate in writing that he authorizes an increase in such rate for that employee and the date such increase is to be effective.

DUAL COMPENSATION

SEC. 9. The figure "$7,724" contained in section 5533(c) (1) of title 5, United States Code, insofar as such section relates to individuals whose pay is disbursed by the Secretary of the Senate, shall be deemed, insofar as such section relates to such individuals, to refer to the figure "$9,080".

EFFECTIVE DATE

SEC. 10. Sections 1–9 of this Order are effective January 1, 1973. This section shall not be construed as prohibiting the filing with the disbursing office of the Senate, on any day earlier than such date, a notice authorizing an increase under this Order in the rate of compensation of an individual if such increase is not effective prior to such date.

JAMES O. EASTLAND,
*President pro tempore.*

DECEMBER 16, 1972.

---

## SKYJACKINGS

Mr. SCOTT of Pennsylvania. Mr. President, during the adjournment period we unfortunately witnessed another series of skyjackings and attempted skyjackings. One of them, which covered nearly the entire North American Continent, involved the shooting of a pilot. The time has come to put a stop to this, and it can be done, with the full support of the administration.

Although skyjacking is really an international problem, we must make every effort to eliminate the United States as the origination point. Much has been done already. Approximately $3.5 million has been allocated for the purchase of magnetometers and other metal detecting devices. The Federal Aviation Administration has ordered nearly 2,300 of them. The airlines themselves have already procured over 1,300 at their own expense. The central problem, however, is to have the personnel available both to monitor this equipment and the passengers too. To date, this effort has been less than successful.

During the 92d Congress, the Senate unanimously adopted an amendment to the Anti-Hijacking Act of 1972 which required screening by weapon detection devices of all air passengers and their carry-on possessions. The amendment also proposed to create an air transportation security force "to provide a law enforcement presence and capability at airports in the United States adequate to insure the safety from criminal violence and air piracy of persons traveling in air transportation or intrastate air transportation." The security force would be trained and responsible to the FAA and would have the authority to detain, search and arrest any person believed to have violated existing antihijack laws and regulations. Unfortunately, the administration opposed this amendment and the bill died.

The administration's earlier position on the law enforcement issue was a commitment to replacing Federal personnel with local law enforcement personnel not later than mid-1974. I could not support this view because I do not regard skyjacking as a "local" crime. Nor do I feel that local law enforcement officials have either the manpower or the expertise necessary to handle such a difficult and delicate operation. Certainly, there are no major cities which could effectively shoulder the cost of maintaining such a local security force. I appreciate the administration's concern over the cost and the wisdom of establishing a Federal security force at our airports. Yet, on balance, I feel that it is in the interests of all Americans that it be done.

The administration's current plan is quite similar to the one adopted by the Senate last year. However, the fatal flaw still seems to be the reliance on local law enforcement officials. As for financing, the administration suggested that the traveling public should bear the cost. In attempting to comply with the spirit of the administration's proposal, the Air Transport Association, representing the Nation's scheduled airlines, sought to impose a $1 surcharge on all airline tickets to cover the new antihijacking costs. However, the request has been tentatively rejected by the Civil Aeronautics Board, thus unfairly burdening the airlines. This alone should indicate that the administration's proposals need to be reviewed.

On the international front, the administration has done an outstanding job. Secretary of State Rogers is leading an effort to develop a multilateral convention to effectively deny safe havens to the hijacker. President Nixon recently signed the Montreal Sabotage Convention, an international agreement requiring the extradition or prosecution of anyone who commits sabotage or violence against international civil aviation. In addition, President Nixon strongly supports three measures now being considered in the United Nations and in the International Civil Aviation Organization. First, a draft convention providing for the prosecution or extradition of persons who attack or kidnap foreign officials. Second, a convention providing for the suspension of air service to countries which fail to punish or extradite hijackers or saboteurs of civil aircraft. And third, a new conven-

tion proposed by the United States which would require the prosecution or extradition of any person who seriously injures, kidnaps, or kills innocent civilians in a foreign state for the purpose of blackmailing any state or international organization.

Before it is too late, before we lose several hundred people in one massive air tragedy, let us resolve to end air piracy and international homicide. The administration should support the establishment of a Federal security force at our airports. The international community should promptly ratify those conventions dealing with terrorism. We simply cannot allow a situation in which the German Government, for example, must give up Arab murderers of Israeli athletes to a demented military ruling clique in Libya. Public opinion marked the German decision as wrong, but with the efforts of all nations, it might never have gotten that far. Even the Cuban Government has indicated that it wants no part of these international fugitives from justice.

I certainly hope that one of the first pieces of legislation to come before the Senate this year will be the Antihijacking Act of 1973. And I further hope that, if cleared by both Houses of Congress, it will be signed by the President.

## MILITARY TAKING OVER OFFICE OF EMERGENCY PREPAREDNESS

Mr. PROXMIRE. Mr. President, the Office of Emergency Preparedness has been turned into a gold-plated home for retired military personnel. Today there are 46 retired colonels or captains alone at work in the Office of Emergency Preparedness. In 1968 there were 11.

The percentage of retired military personnel on the professional staff of OEP has increased from 6 percent 4 years ago to over 21 percent now. This is five times as high as the average number of retired military personnel at work throughout the executive branch.

### HIGH SALARIES FOR MILITARY

These retired officers have been brought into OEP at very high grades, most of them in the $20,000 to $36,000 range.

The militarization of OEP raises some critical questions. Does this now mean that OEP will be another spokesman for the Pentagon in the National Security Council? Since the Director of OEP traditionally has served on certain national resource panels, is it possible that in a showdown between domestic and military resource allocation, the new Director of OEP will favor the military regardless of the merits of the particular case?

The Office of Emergency Preparedness has several responsibilities. It makes plans for emergency economic controls during wartime. At present, the unit in OEP with this power is staffed with retired military personnel at a 38 percent level.

OEP also has jurisdiction over Federal disaster relief. The specific OEP unit with this responsibility is more than half filled with retired colonels.

### MORALE AFFECTED

The morale of the career civilians working at OEP has been badly disrupted by this dramatic influx of retired military. In many cases, division chiefs have actively recruited former friends, neighbors, and associates to join them at the expense of the civilians remaining in their posts.

It is strange that the activities of the Office of Emergency Preparedness cannot be handled by civilians but require the "special qualifications" of retired military personnel. An explanation is due the public and the civilians at OEP and in other Government posts.

## THE BILL OF RIGHTS

Mr. HANSEN. Mr. President, it has been my privilege to receive from the Francis E. Warren Post 1881 of the Veterans of Foreign Wars of the United States, Cheyenne, Wyo., the first, second, and third place winning entries in the Post's "1972 Bill of Rights Essay Contest."

The winning essays were submitted by grade school children in Laramie County, Wyo., and they indicate that these children and their contemporaries have a sound appreciation of the values of America's freedoms to individual citizens and to society.

The entries selected by Post 1881 were submitted by the following youngsters: first place, Georgeann Darden of Pine Bluffs; second place, Laurie Weiruch of Miller School, Cheyenne; and, third place, Lisa Bates of Fairview School, Cheyenne.

Mr. President, I ask unanimous consent that these essays be printed in the RECORD.

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

### WHAT THE BILL OF RIGHTS MEANS TO ME

(By Georgeann Darden, first place winner)

The Bill of Rights can be expressed with one word—Freedom.

Too many of us take the Bill of Rights for granted without really stopping to realize what it means.

The individual freedoms guaranteed to us by our American Bill of Rights permit me to attend the church of my own choice without fear of persecution, allow me to read other person's thoughts and ideas in a free press, and the right to assemble enables me to attend clubs and organizations of my choice. After discussion with my parents I realize more the privilege it is to keep and bear arms should a situation arise where we had to defend ourselves.

Because of the Bill of Rights my family doesn't have to board soldiers. The Bill of Rights also protects my family from search and seizure without a warrant.

I cannot be incriminated without reason. That means much to me because it permits me to have my own thoughts and ideas.

The right to have a speedy and fair trial insures that we will not be delayed from work, school, or homes for an unnecessary length of time.

The last article provides that the citizens of America may enact new laws and allows me to contribute to the human rights of my government.

Who can take advantage of the Bill of Rights? Any American can. I like to remember the last four letters of American are I CAN!

### WHAT THE BILL OF RIGHTS MEANS TO ME

(By Laurie Weiruch, second place winner)

I think that without the Bill of Rights we would be without freedom. We might be pushed to accept one certain religion. We might not have protection in our homes. We could be searched or seized against our will or pushed out of our homes during war, so troops could use them. At trials don't you want the right not to be forced to say things which might incriminate you, or get to have your trial as soon after you're accused as possible? Without the Bill of Rights courts could give you your trial without a jury or hold you for excessive bail. All of our rights are protected by the constitution. Our last right is that the federal governmental power is limited to only what the constitutions says.

We the people made our government for the good of the people. And we the people run it. Many of our ancestors left the old world because it was unfair. We couldn't have the type of religion we wanted nor any other rights. When we came to America little was changed. We had no organization and no government, just the idea we were free.

So we made the constitution and added ten amendments, calling them the Bill of Rights to protect this freedom. The Bill of Rights seems that we as Americans have protected rights and as Americans we have a responsibility to protect them.

### WHAT THE BILL OF RIGHTS MEANS TO ME

(By Lisa Bates, third place winner)

The Bill of Rights is our guarantee of freedom and every so often we should stop and think what our life would be like without these rights.

Can anybody in modern days even imagine that, without the fourth Amendment, our homes could be searched, our property taken and people could be arrested without good reason or legal authority?

How difficult is it for us to understand that there are still countries in this world where people are not allowed to disagree with the government or practice any religion they choose. Without the 1ST Amendment the same conditions could exist in our country also.

If I could picture that I myself, or someone I know were accused of a crime, how grateful would I be for the protection of the 5th and 6th and 8th Amendments. I know that it is my right to be told what I am accused of, to be tried as soon as possible, and to be judged by an impartial jury. I know that I will not be punished cruelly as by torture. If I am found not guilty, how good it is to know that I can never be tried for the same crime again.

There are many more safeguards of freedom in the Bill of Rights which we take for granted in everyday life. But looking back at the days before these rights were guaranteed by law, I am happy and proud to live in a country where freedom and liberty are protected for everyone.

## THE RIGHTS OF THE NONSMOKER

Mr. MOSS. Mr. President, every day the civil rights of nonsmokers across this country are being infringed upon by discourteous smokers.

Whether or not an individual will

smoke is his own decision. We can try to persuade, cajole, coerce individuals into not smoking, but the right to smoke is a personal right.

But along with the right to smoke, there is not a right to infringe upon the air breathed by the nonsmoker. Pollution given off by the smokers' cigarettes is discomforting and it may, in fact, be a health hazard.

I would think that the courteous smoker would ask whether his habit bothers those surrounding him when he is in a public place. If so, he should refrain from smoking.

Lynn R. Smith, publisher of the Monticello Minnesota Times recently wrote a full page editorial on the rights of the nonsmoker. I call it to my colleagues' attention and urge that they read it and heed it.

Mr. President, I ask unanimous consent that the editorial referred to above be printed at this point in the RECORD.

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

THE TYRANNY OF SMOKING

(By Lynn R. Smith)

Non-smokers of the world, unite. You have nothing to lose but your oppression.

Heard increasingly across the land is this clarion call to arms of non-smokers who have long suffered in silence the stings of outrageousness by smokers.

Decades ago public revulsion against a once popular habit saw the demise of the spittoon. Today's enlightenment cries out for opposition to a not-unlike form of pollution and inconsiderateness: Smoking. In the forefront of the crusade must be the heretofore silent majority of non-smokers.

"The time is ripe for the government and voluntary groups to mount a more vigorous program on all fronts to portray smoking for what it really is—a dirty, smelly, foul, chronic form of suicide." The words are those of the U.S. Surgeon General Jesse L. Steinfeld.

Cigarette disease has been flatly branded by a U.S. health agency as "one of the foremost preventable causes of death and disability in the U.S.." In Great Britain, smoking has been officially designated as "the chief avoidable menace to health."

There's little doubt that smoking constitutes a formidable foe. The war against it won't be easy. Some of your best friends may even be smokers.

At issue is the non-smoker's basic right to breathe clean air, as against the smoker's right to pollute it. Skirmishes are being waged across a broad front. And there is increasing evidence that minor—yet significant—victories are being won by non-smokers in fighting the good fight of faith against this socially unacceptable habit.

Most recently Chief Justice Burger achieved a singular victory for non-smokers on Amtrak's Metroliner between Washington, D.C., and New York who were perforce subjected to befouled air in the train's club car.

Here are more f'rinstances: More airlines are providing segregated seating for smokers and non-smokers. Hospitals around the country have begun to restrict areas where smoking is permitted. Doctors have banished smoking from their waiting rooms. Legislation to restrict smoking in public places has been introduced in several states and in Congress. And to lend an appropriate official note to it all, the U.S. Department of Health, Education and Welfare prohibits smoking in its conference rooms and auditoriums, and even designates no-smoking areas in its cafeterias and dining rooms.

Still more examples: A California motel offers a 10 percent discount to non-smoking guests. A Texas apartment house reduces the rent $10 a month for non-smoking tenants. A Florida metropolitan county bans the sale of cigarettes and cigars in all its hospitals, sanitariums, convalescent homes and nursing homes. And a Maryland bakeshop owner prohibits smokers "breathing smoke over all my fresh doughnuts."

For years and years, of course, there has been statistical proof positive that smoking is injurious to the health of the smoker himself. Now with the 1972 report of the U.S. Surgeon General, "The Health Consequences of Smoking," there's ample evidence that even the health of the non-smoker can be damaged by breathing someone else's tobacco smoke. And that's bad news for the millions and millions of nonsmoking Americans.

As a non-smoker we recognize, of course, the right of an individual to smoke if he so desires. We have never questioned the right of consenting adults to pollute the air in the privacy of their home. Nor have we objected to one smoking outdoors (providing he is situated a sufficient distance downwind).

But smoking in confined public areas is a different matter. Why should the one-third American adults who smoke have the right to foul up the breathing space of the two-thirds who do not? In the words of one adamant abstainer: "Why should I be abused by someone else's hang-up?"

Our interest in the entire thing is one of selfishness. The more smokers that swear off, the better off we ourselves will be.

Not just from the angle of personal discomfiture or perilous health, either. Smokers cost the nonsmokers in many other ways. Because of smokers we pay higher fire insurance rates. We pay higher life insurance rates. As taxpayers, we're assessed costs of hospitalization and care for countless patients confined to public institutions for health reasons that have arisen from or been aggravated by their nicotine addiction. And through direct government subsidies to tobacco growers, we're being taxed further.

So there's good reason for the non-smoker to enlist in the anti-smoking brigade.

It would be comforting to think that the health scare alone would be sufficient for the smoker to kick the habit. It should be. For if you are a smoker, you've got a much better chance of dying earlier of cancer, coronary heart disease, chronic bronchitis, emphysema, gastric ulcers and other ailments than the non-smoker. How much your life is shortened depends on how much you smoke.

If you're a mother-to-be that smokes, you should think hard and long on the unfair danger you are subjecting your unborn son or daughter to. Smoking mothers have babies weighing less on the average than those of mothers who don't smoke. And smoking mothers have more still-born children than mothers who don't smoke.

If both the father and the mother in the family smoke, there's a likelihood that acute illnesses—mostly respiratory—will be twice as prevalent among the children in that home than if the parents didn't smoke. Parents set good (or bad, as the case may be) examples. Youngsters whose parents smoke will more likely be smokers than those who grow up in non-smoking homes.

If doctors, educators, and other leaders involved with youth are smokers, their effectiveness in providing the leadership their position calls for in safeguarding children from the health hazards of smoking is virtually nullified.

Here's yet another consideration along yet another line: "If you smoke, you're more likely to have wrinkles," reports a California physician in a comprehensive study of smokers and nons. "The more you smoke, the more you wrinkle if you're over 30."

These are all indeed serious indictments against smoking.

Yet possibly the most telling point of all is the disclosure that smoking itself has a debilitating effect on one's sexual vigor. Said one noted psychologist: "Cigarettes destroy sexual desire. Men who are heavy smokers can suffer from impotence."

When you question a man's virility, you cut to the very core of his manliness.

Cigarette advertising has long portrayed the smoker as a man of singular vigor. You know, the tattoo . . . or the western mien. But the truth lies otherwise.

The smoker may ride tall in the saddle in the ads, but he's short on performance in the boudoir.

Advertising-wise, the smoker is often depicted hand-and-hand with his lover, cavorting through fields green or alongside waterfalls blue. But that purported "springtime freshness" of cigarettes provides in actuality an autumnal chill to the lovers' ardor.

One sales pitch for these new little cigarette-like cigars is blatantly suggestive that smoking them will make one an alluring lothario. In his fantasy, this smoker is an over-believer; in reality, he is sexually an under-achiever.

If both the husband and the wife are on the weed, one can only conclude that in such households, conjugal activity is quite congealed.

Smokers may find some solace in the fact that one physician did report that some impotent men who had quit smoking "had their normal sexual function restored."

But the jaded and ill-fated life of the smoker isn't without hope. It can change. And change can come so simply. All it takes is the firm resolve to say, "I quit."

Those who do renounce cigarettes will find—apart from ridding themselves of the abhorrent messiness of the habit, and the incendiary threat to life and property from wayward reefers—that they will experience one of life's most rewarding joys and personal triumphs: The gone-forever slavish dependence on a bunch of dried up vegetation in a little tube that you light a smudge fire to underneath your nose.

Besides, you'll save a bundle!

Such a resolve, too, will put you on the side of the environmental angels. For in booting the smoking habit, you will have made individually a contribution in the fight against air pollution.

Your saying nix to nicotine may be only one small step for mankind, but it will be one giant step for yourself. In so doing, you will feel better . . . smell better . . . taste better . . . look better . . . and breathe better.

And breathing is really what life is, isn't it?

---

IF YOU'RE RESOLVED TO QUIT, HERE ARE TIPS THAT CAN HELP

Psychologists say that half of all cigarette smokers can stop smoking without inordinate difficulty, provided they make up their minds that they really want to get off the weed permanently. If you're afraid you can't quit the "cold turkey" way, here are some recent tips on quitting gradually, courtesy of the American Cancer Society:

Set a date to quit. Immediately switch from your current brand to low tar and nicotine cigarettes.

Chart your smoking habits for two weeks—how much you smoke and when. Decide which cigarettes you enjoy most (for instance, those you smoke after a meal) and which you like least. Then make a commitment to cut them out at those times.

Load up on substitutes—mints, gum, an inhaler, ginger root. Some ex-smokers report that lobeline sulfate tablets, available without prescription, help satisfy the craving for nicotine.

Really quit on the day you plan to. Reward yourself with a good dinner, the theater, etc. Avoid your customary cocktail, however. Breaking the smoking-while-drinking habit can be the toughest of all.

If you want to raise your consciousness level of just how dangerous cigarettes are, write for the Health, Education & Welfare Dept.'s smoker's self-testing kit, available through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (10c).

## RESOLUTION OF APPRECIATION FOR SENATOR MARGARET CHASE SMITH

Mr. BENNETT. Mr. President, I ask unanimous consent to have printed in the RECORD a resolution adopted by the Senate Republican Conference.

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

RESOLUTION OF APPRECIATION FOR SENATOR MARGARET CHASE SMITH

Whereas the Senate Republican Conference has been privileged to have Margaret Chase Smith as a Member for 24 years and its Chairman for six years; and

Whereas Senator Margaret Chase Smith is known as a quiet woman whose deeds and speeches touched the heart and conscience of the Senate and the Nation; and

Whereas she believed that if her life was to have meaning, she must live by a creed, which we quote: "My creed is that public service must be more than doing a job efficiently and honestly. It must be a complete dedication to the people and to the Nation with full recognition that every human being is entitled to courtesy and consideration, that constructive criticism is not only to be expected but sought, that smears are not only to be expected but fought, that honor is to be earned but not bought;" and

Whereas Margaret Chase Smith served in the House of Representatives from 1940 to 1949, and in the United States Senate from 1949 until now, for a total service of 33 years, being the only woman ever to have been elected to four full terms in the United States Senate, and the first woman ever to have been placed in nomination for the Office of President of the United States at a national convention of a major political party. She holds the all-time consecutive rollcall voting record in the entire history of the Senate with 2,941 votes without a miss, which, even then, was occasioned by enforced hospitalization; and

Whereas Margaret Chase Smith has received innumerable honors and awards, has made extensive trips throughout the world, conferring with many leaders of nations, and has been rated as one of America's best and most effective ambassadors of goodwill, and for several years has been proposed by many for the Vice Presidency of the United States but has repeatedly stated that she preferred to remain in the Senate; and

Whereas recognizing that talks of reform represented mostly talk with little improvement, Senator Smith constantly reminded her colleagues that discipline in observing the present rules of the Senate would be a big improvement in itself. Along these lines she thus called for Senators to be expelled for absenteeism, for which she received some 40,000 letters of support during the past 12 months from all over the country; and

Whereas Margaret Chase Smith has always believed in speaking quietly but meaning what she said, and throughout her life has been an example and champion to all women everywhere, whereby our exposure to her has enhanced and enriched all of our lives; now, therefore be it

*Resolved*, That Members of the Republican Conference sincerely thank her for her selfless devotion to her State, her Country, and the Senate, knowing that this will inspire us to hold to the fine tradition she has established. Her sincerity, diligence, intelligence, and strength of character will not soon be seen again, for the mold which made her has been used but seldom. The traditions of the United States Senate are the richer for her presence here.

## THE GENOCIDE CONVENTION: A STAND FOR HUMAN RIGHTS

Mr. PROXMIRE. Mr. President, I again rise in support of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide.

I hope that these daily reminders that the convention has yet to be ratified by the Senate of the United States after a quarter of a century in existence may serve one purpose: To allay any fears that this treaty might be inimical to our constitutional guarantees. It is my firm conviction that the Genocide Convention is not a threat to our constitutional liberties; indeed, I submit that it serves as an outstanding symbol of international agreement with the most fundamental principle upon which our Nation was founded, the right of every individual and group to life, liberty, and the pursuit of happiness.

We may sometimes fail to appreciate just what a privilege this is. Perhaps we have heard the phrase too many times to appreciate the fundamental hope which it embraces and which is not realized by the majority of our brothers in humanity. Some of us have lived with these protections so long that we forget that there are others who do not have this hope. Others, even within these United States and in our own generation, have tragically never known themselves what it is to experience the free spirit of hope which can arise from the gift of a life which does not face discrimination, social oppression, or the vicissitudes of poverty and poor health.

The Genocide Convention is an international agreement which addresses itself to the very substance of this hope: The right to live. Without life there is not even the potential for happiness or freedom. And yet in our century there have been countless instances of the extermination of human potential through the deliberate and calculated murder of entire groups of people—who are guilty of no crime save their ethnic, religious or national heritage. The death of 6 million Jews in Nazi Germany is only the most outstanding example.

Mr. President, the United States should not continue to see another Congress to its end without considering the Genocide Treaty. We must go on record as a nation in firm and unequivocal opposition to the heinous crime of genocide. As this convention approaches its 25th anniversary this year the U.S. Senate has yet to consider this document in executive session. Mr. President, I urge that this body delay no longer on the Genocide Convention.

## TRAGEDY IN NEW ORLEANS

Mr. TAFT. Mr. President, we are all shocked at the bloody spectacle we have witnessed in New Orleans where a sniper has killed six persons including three police officers and wounded 15 others. As we all recall, this violent outburst began when the sniper set fire to a hotel and began shooting at the firemen who came to put it out. This is a grim reminder of the dangers which our Nation's policemen and firemen face in discharging their duties. How long must it be before we recognize that our firemen and policemen are confronted with a combat-like situation?

In Cleveland, Chicago, New Orleans, and other cities, our safety forces have been fought by demented snipers, maniacs, and deranged criminals. This fact makes a strong case for favorably considering S. 203 which I introduced on January 4 of this year. This bill would recognize the Federal interest in providing recognition of dangers to our Nation's policemen and firemen. Like those who risk their lives for America in wars overseas, policemen and firemen under this bill could exclude from their federally taxable income the first $200 earned each month in police and fire pay.

The Federal Government does have an interest in this area and the time has come when we should recognize the obligation which we all have to our Nation's safety forces.

We can never bring back the lives of the policemen and firemen who died in the line of duty. But we can take this modest step to recognize their sacrifice and give them this additional income as a symbol of the concern which we have for their safety.

Those who saw the New Orleans fireman shot when he was nearing the top of a tall ladder and those who have seen the bodies of policemen who were killed in the line of duty know how important this bill is. If we are ready to do more than give speeches and wring our hands about law and order, this is the time to cosponsor this bill and enact it into law.

## ROUNDTABLE DISCUSSION AT UTAH BROADCASTERS ASSOCIATION MEETING

Mr. MOSS. Mr. President, yesterday I was scheduled to participate in a roundtable discussion at the Utah Broadcasters Association meeting. Due to the press of business in Washington, I could not attend. However, I would like to share my views with the Senate on several critical issues which confront broadcasting.

ADVERTISING

Truthful advertising, informative, imaginative, tastefully appealing, is a cornerstone of a healthy, free market economy.

But advertising which deceives and misleads, advertising which manipulates the vulnerable psyches of young children, advertising which absorbs enormous human and material resources in wasteful, spurious product differentiation, and advertising which becomes a weapon for the preservation of concentrated economic power and inefficiency—such advertising cheats the consumer, saps the perfecting fires of competition and subjects our children to an onslaught of distorted, shallow values.

This is a time in which the American people are demanding truth and forthrightness in all aspects of government and corporate activity. This is a time of increasing public concern with deceit and manipulation.

The ad substantiation program undertaken by the revitalized Federal Trade Commission has been but a first step into what seems to be an endless maze in the marketplace of fraudulent product claims and exhortations. But like all attempts to unscramble any maze, it was a beginning and coupled with the FTC's hearings on the impact of advertising there was a glimmer of hope.

In conjunction with the FTC project I proposed legislation which would require an advertiser to provide documentation on the safety, performance, and efficacy of any advertised product or service. The rationale of such legislation was simple: if advertisers are effectively restricted to claims that are backed by solid documentation, then advertising will serve a truly informative function. The FTC program is still going through various forms of experimentation.

I will again introduce legislation to require advertisers to make available to the consumer documentation that the advertiser believes substantiates his claim. The key material that should be made available to consumers is a summary, nontechnical, in lay language, which constitutes the basis on which the advertiser makes his claim.

How does this affect broadcasting? As I see it, in only one way. Say a consumer wants to know where to obtain documentation for the advertised claims. The media in which that advertisement was displayed should provide the identity of the sponsor. That's it. No bulky files for broadcasters to send out. Just a response to citizen requests for the identification of the mailing address of sponsors. A service which I am sure most broadcasters provide now.

Every television commercial sells a life style as well as a product. To social scientists, many current social problems are related to life styles legitimized by television commercials. As it stands now, access to the airwaves is limited, for all practical purposes, to those who have something to sell. To a disturbing extent, the advertisers' values and deeds become the norm in the Nation's most powerful communication medium.

Clearly, every American who is concerned about concepts and values projected into his home from television commercials has a stake in the current discussion about advertising. The ultimate issue is access—access to mass communications media for those with more long-range concerns in mind other than peddling a product. It is a problem whose goal is to open up the airwaves so that the advertisers self-serving message is not our sole source of guidance in matters involving information about health and nutrition, the protection of our environment, the values of our society.

Counteradvertising is one way of providing balanced access. The precise role of counter advertising remains a proper subject for debate.

I am sure the broadcast industry anxiously awaited my joining in with those calling for the total elimination of all broadcast advertising of over-the-counter drug products. Over-the-counter drug products are a problem. Many of these products should not be on the market. Some of the advertising, perhaps should not be permitted; but to ban the advertising of safe and effective home remedies without any research, would be a travesty. I have proposed an alternative. Social scientists have charged broadcasting with creating a violent society. They have asked whether broadcasting has cultivated a "drug culture." They have inferred that we have a national preoccupation with sex—due to our marketing practices. They have alluded to the prevalent materialism in our society as being a result of the advertising.

I propose the creation of a National Institute of Advertising, Marketing, and Society. Perhaps it might better be called an Institute of Marketing and Health. This research organization would review various questions and techniques of marketing and provide, for the first time, public access to information—information which the marketer could use to tailor his advertising to more constructive social goals; information which regulatory agencies could use to determine whether or not certain advertising practices are truly unfair; information which the Congress could use to determine whether or not and to what extent limitations should be placed on the advertising of certain products, over-the-counter drugs included; information which the FCC could use to determine whether or not to limit advertising directed toward children.

That is it, pure and simple. A research organization devoted to uncovering the facts necessary for ad marketers and Government to make intelligent decisions.

Although the broadcasting industry is required to serve the public interest, convenience, and necessity, the industry has left much to be desired in its provision of programing for children. Young children are still subject to an assault upon their sensibilities by advertisers. While parents would not allow a door-to-door salesman to peddle to their children, there are no restrictions upon the manipulation of the child's mind by advertisers. During a sample week in 1969, CBS for example, broadcast 72 minutes of commercials on a single Saturday morning. There were 130 individual sales pitches and 63 of these, amounting to about 35 half-minutes, consisted of toy commercials. This has improved, but more remains to be done.

I recommend that the highest priority be given to the establishment of rules and regulations regarding broadcast programing and advertising directed toward children, including where necessary, restrictions upon the type, quantity, products, methods, times, and messages used in such advertising.

The National Institute of Marketing would be an excellent clearinghouse for developing the research to support whatever rules are necessary.

During the last Congress, I sponsored legislation which would specify congressional intent in the issuance of broadcast licenses. On Saturday I reintroduced that legislation. There is no question in my mind that the broadcaster needs some sort of clarification as to what he can and cannot do and expect to retain the license.

But after reading Clay Whitehead's speech a few weeks ago, I wonder whether or not we are on the right track. His bill provides that a broadcaster be reissued his license upon demonstrating that he has made a "good-faith effort" or in OTP's words is "substantially attuned" to the needs of his community. Furthermore, the bill preempts the FCC from issuing rules or criteria which would describe what is meant by a "good faith effort."

Perhaps OTP's proposal is well-intentioned, but is it wise? After all, without guidelines the decision will be purely a subjective judgment of the FCC whether or not a station has made a "good faith effort." Considering Mr. Whitehead's and Mr. AGNEW's remarks about the Washington Post, the New York Times, and the networks, is not it conceivable that the FCC might rule those newspaper owned broadcast stations or network owned and operated stations might not have made a "good faith effort"? There is no guideline for telling the FCC what is meant by a good faith effort.

The courts would have no yardstick to measure whether WTOP or WQXR or a network owned and operated made a good faith effort and the FCC complied with its own rules, for under the proposal there would be no rules. It is purely a subjective judgment by the FCC which may be politicized one way or another by any incumbent President. And under the current President, it is my belief that the FCC has been virtually undermined by the creation of the Office of Telecommunications Policy—an office which has no statutory authority and answers to no one save the President. If I were a broadcaster, I would not want the decision as to whether or not I put forth a "good

faith effort" to rest with the Director of the Office of Telecommunications Policy, unless there were some indicia by which my performance could be measured.

The broadcaster needs protection from harassment. But he also needs protection from harassment by elected and self-appointed public figures who would undermine the structure of the industry. What is needed is not a foggy phrase such as "good faith effort." What is needed is a broadcaster's bill of rights, spelled out by FCC, with Congress retaining the right to accept, reject, or modify this bill of rights.

I suggest we develop a broadcaster's Bill of Rights to be included as a substantial portion of the license renewal legislation. Perhaps minimum standards should be prescribed in this Bill of Rights? Perhaps certain specific guidelines can be proposed? But in many cases it is incumbent upon us to formulate a definitive policy by which each broadcaster can measure his performance and say "Yes; I have fulfilled my obligations and put forth a good-faith effort."

I ask unanimous consent that a recent editorial from Advertising Age be printed in the RECORD.

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

A WORD OF CAUTION

Broadcasters are looking for a new law which protects them from capricious harassment at renewal time. In our view, they should think twice before embracing the renewal formula offered by Clay T. Whitehead, director of the Office of Telecommunications Policy.

Superficially, it is an attractive package. Licenses would run five years instead of three, and incumbents would be entitled to renewal if they have been "substantially attuned to the needs and interests of the public." Best of all, the threat from outside intervenors would be greatly reduced.

It is evident, however, from Mr. Whitehead's own remarks, that the bill leaves so much to FCC that it could become a devil's brew. What does that phrase "substantially attuned to the needs and interests of the public" mean? Consider Mr. Whitehead's comments: "Since broadcasters' success in meeting their responsibility will be measured at license renewal time, they must demonstrate it across the board. They can no longer accept network standards of taste, violence and decency in programming. If the programs or commercials glorify the use of drugs; if the programs are violent or sadistic; if the commercials are false and misleading, or simply intrusive and obnoxious, the stations must jump on the networks rather than wince as Congress and the FCC are forced to do so."

We quote this to illustrate the vast opportunity for mischief which the Whitehead formula leaves to the regulators. It is possible that in practice, FCC will be a benevolent regulator, accepting any reasonable showing by incumbents at renewal time. It is also evident from Mr. Whitehead's comments that a commission dominated by militants could make things rough for any licensee who happens to be in political disfavor.

There is little security for broadcasters in a law so vague that licensees in political disfavor risk the possibility that their news, entertainment and commercials will be tested against undisclosed criteria any time the regulators are so inclined. If there is to be a new law, it should include a "bill of rights" defining responsible performance. Under such a law, the broadcaster would have at least a chance of defending himself if he is bushwhacked by political opportunists.

## RESOLUTION OF APPRECIATION FOR SENATOR GORDON L. ALLOTT

Mr. BENNETT. Mr. President, I ask unanimous consent to have printed in the RECORD a resolution adopted by the Senate Republican Conference.

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

RESOLUTION OF APPRECIATION FOR SENATOR GORDON L. ALLOTT

Whereas the Senate Republican Conference was privileged to number Gordon L. Allott among its membership for 18 years, and as Chairman of its Policy Committee for four years; and

Whereas from the very start of his senatorial career Gordon Allott demonstrated his willingness to work hard and long, showing an ability—without compromising principles—to work with representatives of all shades of opinion to get things done, as a result of which his colleagues picked him to serve on two key Senate Committees: Appropriations and Interior and Insular Affairs; and

Whereas these same qualities—hard work and an ability to get along with others—in 1962 led the late President John F. Kennedy to depart from tradition to appoint Senator Allott as U.S. Representative to the United Nations General Asesmbly, the first time in the history of that organization that a Senator who was not a member of the Foreign Relations Committee has been chosen for the task; and

Whereas Senator Allott's driving energy has marked his character from his youth on. In high school he was not only an above-average student but also an outstanding athlete at the same time as he held down afterhours and summer jobs. He entered Colorado University at age 16 and, while preparing himself for a career as an attorney, became a member of the track team and, in 1927, captain of that team, later becoming both junior and senior national Amateur Athletic Union champion in the 440-yard hurdles and a member of the All-American track team; and

Whereas he began his legal practice just in time to meet, first, the great depression of 1929, and then the dust bowl, surmounting both to become county attorney of Prowers County and subsequently District Attorney for the 15th Judicial District in Colorado, and in 1935, the first chairman of the Young Republican League of Colorado, going from this to National Committeeman, and then National Chairman of the Young Republican National Federation; and

Whereas Senator Allott served nearly four years in the Army Air Corps during World War II, receiving seven battle stars and a unit citation, and is now a colonel in the USAF Reserve (Ret.); and

Whereas he was elected Lieutenant Governor of Colorado in 1950 and two years later re-elected, and in 1954 he was elected to the United States Senate and re-elected in 1960 and 1966, serving his State and his Country in the Senate for a total of 18 years; and

Whereas Senator Gordon L. Allott has made a most impressive record throughout his Senate service, having sponsored and worked successfully for recodification and improvement in the Nation's farm credit laws, and for research on industrial uses of agricultural products. He played a key role in passage of the National Defense Education Act which is designed to stimulate greater achievements in science, mathematics, and languages. He worked tirelessly in the successful effort to bring Hawaii and Alaska into the Union as our 49th and 50th States, and in protecting the interests of labor's rank-and-file in connection with their retirement trust funds. It is in the area of public works—flood control, recreation, power and irrigation—that Senator Allott played his most important role. He not only served on the Public Works Subcommittee of the Appropriations Committee but was also second-ranking Republican on the Interior Committee, thus wielding considerable authority in the fight for resource development; and

Whereas throughout Gordon Allott's life one fundamental dominant theme has always underlain all his work: "We must balance the need for each Federal program with the other national needs; we must act as responsible stewards of the taxpayer's money if this Nation is to grow;" now therefore be it

*Resolved*, That the Members of the Senate Republican Conference, individually and as a Body, extend their highest regards and very personal, sincere esteem to our honored colleague, Gordon L. Allott. We thank him for his service among us, and we wish him to know that the United States Senate is the better for his having served in it.

## NIXON ADMINISTRATION BLACKMAIL

Mr. WILLIAMS. Mr. President, Secretary Romney announced with great fanfare yesterday afternoon that the Nixon administration "will not curtail subsidized housing starts." Buried in the final pages of the press release heralding this enlightened about-face is the fact that funds are being cut off for water and sewer grants, open space grants, and public facility loans "until these activities are folded into the special revenue-sharing program."

The hypocrisy of this newly announced policy is astonishing. Presumably we are to have new houses, but we are to have them without adequate resources for the disposal of sewage or for the provision of potable water. We are also supposed to get this new housing without streets and sidewalks to provide access to it and without parks and open spaces around it to make it liveable.

The real import of the statement that subsidized housing starts will not be curtailed immediately is the fact that only currently pending applications for Federal subsidies will be approved. No new applications will be accepted. What we really see in yesterday's pronouncement is the fact that our housing programs are being slowly strangled to death rather than summarily executed.

I guess we are supposed to sigh with relief at the news that while the water and sewer, open space, and public facilities programs are being discontinued, the subsidized housing programs have a year or so in which to perish quietly. Mr. Nixon's reluctance to support the

water and sewer program has been evident for quite some time. In 1972, he impounded $1.073 billion of the $1.65 billion he was directed to allocate for the construction of sewage treatment facilities. Rather than terminating the program entirely, Mr. Nixon should release the impounded funds.

The administration has implicitly conceded in yesterday's revelation that the three programs which are being terminated are in fact quite important. Presumably, they are worthy of continuation, but only when Congress enacts Mr. Nixon's legislation. This is blackmail. Apparently, it is irrelevant to the President that individual human beings will suffer, and that our environment and our urban areas will continue to deteriorate. His only concern is that Congress and the people they represent will knuckle under to his will.

Mr. President, I ask unanimous consent that a copy of the HUD press release be printed in the RECORD.

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

THE 18-MONTH OUTLOOK: ADMINISTRATION REVIEW OF HOUSING PROGRAMS WILL NOT CURTAIL SUBSIDIZED HOUSING STARTS

HUD Secretary George Romney, speaking for the Administration, today declared that subsidized housing starts would continue at an annual rate of 250,000 for the next 18 months, despite a temporary halt in approving new commitments.

Addressing the annual convention of the National Association of Home Builders in Houston, Texas, the Secretary made his annual prediction of housing starts, declaring that starts in 1973 "will exceed 2 million units for the third year in a row."

"Recent weeks have been filled with many rumors and stories as to the future level of Federal support for housing and community development programs," he said. "Until now it has not been wise to comment specifically on the rumors because final fiscal decisions had not been made. On last Friday afternoon, final decisions were made . . ."

Mr. Romney declared that in the decisions on the housing programs "the time has come to pause, to re-evaluate and to seek out better ways."

"But you can count on this: where HUD has made commitments to builders, sponsors, and local governments, we're going to keep those commitments. We, of course, will honor recent public housing operating subsidy commitments, as well.

"In the HUD subsidized housing programs, the size of our current pipeline of approved applications means we are already assured of a substantial level of production well into the future.

"In this calendar year of 1973, we expect at least a quarter of a million subsidized housing starts and that equals HUD subsidized housing starts in calendar year 1972.

"Based on the present pipeline of approved applications and other program commitments that will need to be carried out, HUD also expects to approve and finance in Fiscal Year 1973 approximately 250,000 housing units.

"HUD subsidized housing starts in FY 1974 are projected at about that level as well. That means the HUD subsidized housing starts pace of the last 12 months will continue for the next 18 months. What happens after that depends on the timing of results from the study and evaluation of present programs."

The Secretary said there will be available in FY 1974, "sufficient funding for a substantial level of activity in subsidized and public housing programs. Such funding will be available in the form of carryover funds from prior authorizations."

Secretary Romney said HUD field offices were directed today to place a temporary hold on all applications which had not reached the feasibility approval stage as of the close of business January 5. "All applications which have received feasibility approval, or in the case of public housing, a preliminary loan contract approval, will proceed to completion," he said.

"In addition, those projects which are necessary to meet statutory or other specific program commitments will be approved in coming months."

Mr. Romney said that recent rumors also involved community development programs and pointed out that President Nixon for the past two years has urged that present categorical programs be folded into a Community Development Revenue Sharing package.

"The President remains firm in his commitment to this approach at a significant level of funding, and will so indicate in his forthcoming budget message," the Secretary declared.

"However, we have ordered a temporary holding action on new commitments for water and sewer grants, open space grants, and public facility loans until these activities are folded into the Special Revenue Sharing program."

He explained that "continued substantial levels of program activity" for community development programs as a whole "are assured as a result of already-approved community development projects and the refunding of ongoing programs, such as urban renewal and Model Cities during the balance of this fiscal year."

Mr. Romney pointed out that as of January 5, $5.5 billion had been obligated—but not yet spent—in community development programs, and this total would reach $7.3 billion by June 30. "These activities, of course, will be carried out to completion." he promised.

The Secretary said that by 1970 it had become crystal clear "that the patchwork, year-by-year piecemeal addition of programs" over a 30-year period had created "a statutory and administrative monstrosity that could not possibly yield effective results with the wisest and most professional management systems.

It also became clear, he went on, that billions of tax dollars were being wasted and that hundreds of thousands of needy and disadvantaged citizens "not only would not benefit, but would be victimized and disillusioned."

The Secretary said that during "this coming period of searching evaluation, and hopefully new program enactment, it is not considered prudent to continue business-as-usual with respect to new commitments—because business-as-usual is not the road to fundamental reform."

"I am delighted that the Administration is willing to face this urgent need for a broad and extensive evaluation of the entire Rube Goldberg structure of our housing and community development statutes and regulations," Mr. Romney said. "I am confident that Congress will join in this thorough evaluation and study of present programs that have now been volume tested to determine whether they should be improved, replaced or terminated."

Mr. Romney went on to say that in the decade ahead, "our society must make some hard, tough decisions. Some of the hardest of these will be in the area of housing and community development."

"The President's 1974 budget is designed to avoid another cosmetic face lift and summon the courage and strength to face underlying critical issues we have postponed for too long."

---

## COMPILATION OF NARCOTIC AND DANGEROUS DRUG LAWS OF FOREIGN NATIONS

Mr. JAVITS. Mr. President, following the adjournment of the 92d Congress, the National Commission on Marihuana and Drug Abuse—of which the distinguished Senator from Iowa (Mr. HUGHES) and I are members—issued an interim report to the Congress consisting of a compilation of the drug laws of over 120 nations, demonstrating the wide disparity in penalties for drug violations.

The report points out, for example, that the death penalty is prescribed for the possession of narcotics in Iran while the Federal Republic of Germany automatically issues suspended sentences for the private use of narcotics.

Mr. President, in view of the intense concern of the American people regarding international drug control measures, the Commission recommended that a handbook summarizing the drug laws and penalties of each country be prepared and furnished to the United Nations for distribution. The Commission also recommended that a similar handbook be prepared and distributed to Americans traveling and living abroad. In order to insure their currency and accuracy, it was further recommended that they be updated on a continuing basis.

Mr. President, I believe that these recommendations ought to be implemented as soon as possible. The Commission has performed an important service to the people of the United States as well as to the international community. The Commission has repeatedly confronted the tragedy of American youths languishing in foreign jails as a result of their ignorance of foreign drug laws. Although a beginning has been made through public service advertising and and by our own Department of State to make this kind of information available, a great deal more remains to be done.

Mr. President, although the Commission's report is somewhat lengthy, I nonetheless believe that it is important that this information be printed in the CONGRESSIONAL RECORD. I therefore ask that the text of the report be inserted at this point in the RECORD.

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

COMPILATION OF NARCOTIC AND DANGEROUS DRUG LAWS OF FOREIGN NATIONS

INTRODUCTION

The following information concerning the narcotic and dangerous drug laws of the nations of the world are as complete and up-to-date as possible. Many nations are currently revising their narcotic laws and some will alter their penalty structure. Some of these changes are expected in the very near future.

Some countries, like our own, have State

and territorial laws as well as national laws, which frequently impose more severe penalties. The majority of the drug laws include related offenses such as maintaining an illegal establishment and possession of illegal equipment. Many nations provide for confiscation of illegal drugs and equipment, and seizure of vehicles or property used in the commission of a crime. In addition, most countries provide for expulsion of aliens convicted of drug crimes subsequent to the service of any sentence imposed. Almost all of the nations provide penalties for attempting or being an accessory to a crime and many include conspiracy and related offenses.

The terminology used in this analysis was chosen to be as uniform as possible. The term "trafficking" includes sale, delivery, distribution, transporting, and in most countries, receiving, accepting and giving away. The term "narcotics" includes cocaine and the term "marihuana" includes all cannabis products.

COUNTRIES INCLUDED IN COMPILATION

Afghanistan
Albania
Algeria
Argentina
Australia
Austria
Belgium
Bolivia
Botswana
Brazil
British Honduras
Bulgaria
Burma
Cameroon
Canada
Ceylon
Chad
Central African Republic
Chile
Peoples Republic of China
Republic of China (Taiwan)
Columbia
Republic of the Congo
Costa Rica
Cuba
Cyprus
Czechoslovakia
Dahomey
Denmark
Dominican Republic
Ecuador
El Salvador
Egypt
Ethiopia
Finland
France
Gabon
Gambia
Germany, Federal Republic of (West)
German Democratic Republic (East)
Ghana
Greece
Guatemala
Guinea
Guyana
Haiti
Honduras
Hong Kong
Hungary
Iceland
Iran
Iraq
Ireland
Israel
Italy
Ivory Coast
Jamaica
Japan
Jordan
Kenya
Khmer Republic (formerly Cambodia)
Korea, Republic of (South)
Laos
Lebanon
Lesotho, Kingdom of
Liberia
Libya
Luxembourg
Macao (Colony of Portugal)
Madagascar
Mali
Malawi
Malaysia
Malta
Mauritania
Mexico
Monoco
Morroco
Nepal
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Norway
Pakistan
Panama
Paraguay
Peru
Philippines
Poland
Portugal
Rhodesia
Romania
San Marino
Saudi Arabia
Senegal
Sierre Leone
Singapore
Somalia
South Africa
Spain
Sudan
Swaziland
Sweden
Switzerland
Syria
Tanzania
Thailand
Togo
Trinidad and Tobago
Tunisia
Turkey
Uganda
United Kingdom
United States
Upper Volta
Uruguay
U.S.S.R.
Venezuela
Viet Nam, South
Western Samoa
Yugoslavia
Zambia

NATIONS KNOWN TO PROVIDE PENALTIES FOR SALE OF DRUGS TO MINORS

*Country, drug category, and penalty:*

Argentina: All drugs; 3 to 8 years.

Bolivia: All drugs; not less than 3 to 10 years.

Cameroon: Marihuana, narcotics; fine and/or 6 months to 10 years.

Chad: Marihuana, narcotics; fine and/or 6 months to 10 years.

Dahomey: Marihuana, naroctics; fine and/or 6 months to 10 years.

Ecuador: All drugs; 8 to 12 years.

El Salvador: Narcotics; 10 years and 8 months.

Ethiopia: Narcotics; fine and up to 5 years.

France: All drugs; 5 to 10 years.

Germany, Federal Republic of (West): Narcotics; fine and 1 to 10 years.

Guinea: Marihuana, Narcotics; fine and/or 6 months to 10 years.

Ivory Coast: Marihuana, narcotics; fine and/or 6 months to 10 years.

Libya: Marihuana, narcotics; up to 6 years.

Mali: Marihuana, narcotics; fine and/or 6 months to 10 years.

Morroco: Marihuana, narcotics; fine and/or 6 months to 10 years.

Rhodesia: Marihuana, narcotics; fine and/or up to 10 years.

| Country | Drug category | Penalties | | | | Others |
|---|---|---|---|---|---|---|
| | | Possession | Trafficking | Import/export | Production/cultivation | |
| Afghanistan | Doesn't distinguish | Penalty at judge's discretion | | | | Use—penalty at judge's discretion. |
| Albania | Doesn't distinguish | Up to 3 years correctional labor or imprisonment | | | | Use—up to 3 years correctional labor or imprisonment. |
| Algeria | Marihuana, narcotics | Not less than 2 years at judge's discretion | | | | |
| Argentina | Doesn't distinguish | 3 months to 1 year | 1 to 6 years | 1 to 6 years | 1 to 6 years | Use—3 months to 1 year. Death or sickness as a result of abuse offense—3-15 years. |
| Australia | Doesn't distinguish | Up to $4,000 or 3 times the value of the illegal drugs and/or imprisonment up to 10 years—minimum pecuniary penalty one-twentieth of maximum penalty specified for the offense. | | | | Use—same penalty. |
| Austria | Marihuana | Less than 1 week's supply—prosecution suspended in lieu of medical treatment, up to 1 year. | 1 to 5 years imprisonment and up to $1,000 | | | "Aggravated" circumstances up to 10 years and $1,000. |
| | | More than 1 week's supply—6 months and fine. | | | | |
| | Narcotics, dangerous drugs. | Same as marihuana except "in the course of business," 1 week to 6 months "rigorous detention." | 1 to 5 years and up to $1,000 | | | Use—same as marihuana except "in the course of business," 1 week to 6 months "rigorous detention." "Aggravated circumstances" up to 10 years and fine can be double the profit made by the illicit activity. |
| Belgium | Doesn't distinguish | 3 months to 2 years and/or 1,000 to 10,000 francs | | | | Use—3 months to 2 years and/or 1,000 to 10,000 francs. |
| Bolivia | Doesn't distinguish | 3 to 5 years | 3 to 10 years and fine from 10 to 100 million Bolivianos | | | Severe and permanent illness as result of offense—6 to 10 years. |
| Botswana | Marihuana, narcotics | Fine and/or up to 2 years | | | | Use—Same. |
| Brazil | Marihuana, narcotics | Fine and/or 1 to 6 yrs | Fine and/or 1 to 5 years | | | Consipiracy or inducing others to use penalty increased by ⅓. |
| British Honduras | Marihuana, naroctics | Fine and/or up to 10 years | | | | |
| Bulgaria | Marihuana, narcotics | 2 years imprisonment and/or 300 leva | | Up to 6 years and 2,000 leva or the customs tax, whichever is greater. | 2 years and/or 300 leva | Use—2 years and/or 300 leva. Crime committed in a "systematic manner"—mandatory 3 years and/or 3,000 leva. |
| Burma | Marihuana | Up to 2 years and/or a fine | | | | Use—up to 2 years, and/or a fine. |
| | Opium | Small amounts—NMT 2 years and/or a fine | | | | Laws provide for limited opium use by addicts. |
| | | "Rigorous punishment" for at least 3 months to 5 years and/or a fine of NLT 500 Kyats. | | Up to 3 years and/or a fine | | |
| Cameroon | Marihuana, narcotics | Fine and/or 3 months to 5 years | | | Fine and/or 6 months to 10 years. | Use—fine and/or 3 months to 5 years. |

| Country | Drug category | Penalties | | | | Others |
|---|---|---|---|---|---|---|
| | | Possession | Trafficking | Import/export | Production/cultivation | |
| Canada | Marihuana | At judge's discretion, direct discharge of the charges or conditional probation (only to those with no previous criminal record and not considered a conviction). | Same as narcotics (see below) | | | Use—same as possession. |
| | Narcotics, dangerous drugs. | On summary conviction, NMT 6 months or fine. | Up to 7 years | Up to 7 years | Up to 7 years | |
| | | 2d offense—up to 1 year and/or fine. Convicted on an indictment—up to 7 years. | 2d offense—"preventive detention" in penitentiary for indeterminate time—mandatory 7 years to life. | | | Addicts sentenced to custody for treatment for indeterminate period. |
| Ceylon | Marihuana, narcotics | Fine and/or up to 10 years. | | | | Use—fine and/or up to 10 years. |
| Chad | Marihuana, narcotics | Fine and/or 3 months to 5 years | | | Fine and/or 6 months to 10 years. | Use—fine and/or 3 months to 5 years. |
| Central African Republic | Marihuana, narcotics | Fine and/or 1 month and 1 day to 2 years | | | | |
| Chile | Marihuana, narcotics | For distribution—NLT 541 days to 3 years and fine of from 1 to 5 times the Santiago minimum salary. | | | From 10 to 15 years and fine from 10 to 100 times the minimum salary. | Currently in process of adopting new law creating heavier penalties. |
| | Dangerous drugs | Fine or closure of the business establishment | | 5 to 20 years and a fine | Fine or closure of the business establishment. | |
| Peoples Republic of China. | Doesn't distinguish | Severe punishment given—set according to severity of offense—from 3 years to death | | | | |
| Republic of China (Taiwan). | Marihuana, narcotics | 2 to 5 years | Life imprisonment or death. | | Life imprisonment or death. | Use—addiction or injection—1 3 to 7 years. |
| | | | Intent to traffic—7 years to life. | | | Nonaddicting substances— 1 to 3 years. |
| Colombia | Marihuana, narcotics | 2 to 5 years at hard labor and a fine | | | | Habitual users may be interned until cured. |
| Congo, Republic of the | Marihuana, narcotics | Fine and/or 3 months to 2 years at hard labor | | | | Use—fine and/or 3 months to 2 years at hard labor. |
| Costa Rica | Marihuana, narcotics | 6 months to 1 year | 6 months to 3 years | | | |
| Cuba | Doesn't distinguish | 6 months to 2 years and a fine. | 1 to 4 years and a fine | | | |
| Cyprus | Doesn't distinguish | Up to 10 years and a substantial fine | | | | Use—up to 10 years and a fine. |
| Czechoslovakia | Marihuana, narcotics | Fine, detention or imprisonment NMT 2 years | | | | |
| Dahomey | Marihuana, narcotics | Fine and/or 3 months to 5 years | | | Fine and/or 6 months to 10 years. | Use—fine and/or 3 months to 5 years. |
| Denmark | Marihuana, narcotics | Fine, detention or imprisonment NMT 2 years | | | | Foreigners found in possession—expelled as undesirable aliens. |
| | | Intent to distribute to a large number of persons—up to 6 years. | | | | |
| Dominican Republic | Marihuana, narcotics | 10 days to 1 year and/or fine. | 3 to 10 years and/or large fine | | 1 to 5 years and/or fine | Addicts committed to health institutions but penalized for offenses they commit. |
| Ecuador | Doesn't distinguish | 8 to 12 years and large fine | | | | Improper users detoxified and rehabilitated for as long as needed. |
| El Salvador | Marihuana, narcotics | 8 years | | | | Use—8 years. Offenses by public officials or professionals with authority to prescribe drugs—penalty increased by ¼. |
| Egypt | Marihuana, narcotics | Imprisonment and a large fine for all offenses | | | | |
| Ethiopia | Marihuana, narcotics | "Simple imprisonment" not less than 3 months and a substantial fine | | | | Offense committed by a group or professional or furnished to a mental defective or addict—"rigorous imprisonment" NMT 5 years and a fine. |
| Finland | Marihuana, narcotics | NMT 2 years—Offense committed as a trade or involves particularly dangerous drugs; sentenced to hard labor NLT 1 year and NMT 10 years. | | | | Use—NMT 2 years. |
| France | Marihuana, narcotics | 2 months to 1 year and/or $90 to $900 | | Local pusher (distribution directly to users) 2 to 10 years and $900 to $9,000,000. | | Foreign offenders banned from France—from 2 years to forever. |
| | | | | International—10 to 20 years and fine | | Use—2 months to 1 year and/or $90 to $900. |
| | | All penalties double for 2d offenses | | | | |
| Gabon | Doesn't distinguish | 6 months to 2 years and a fine | | | | Use—6 months to 2 years and a fine. |
| Gambia | Marihuana, narcotics | NMT 7 years (with or without hard labor) and/or a fine | | | | |
| Germany, Federal Republic of (West). | Marihuana, narcotics | Private use—suspension of sentence available for minor violations. | | | | If violator is part of a gang, acts as a professional, distributes large amounts, smuggles or endangers someone's life through trafficking—1–10 years and a large fine. |
| | | Felony possession—up to 3 years and fine | | | | |
| German Democratic Republic (East). | Marihuana, narcotics | Up to 3 years and/or a fine | | | | |
| Ghana | Doesn't distinguish | Summary conviction up to 1 year and/or fine. | Summary conviction—up to 1 year and/or a fine; indictment, up to 10 years and/or a fine; 3d conviction, up to life imprisonment. | | | Illegal use—hospitalization in a mental institution. |
| | | Indictment—up to 10 years and/or fine. | | | | |
| | | Cannabis related offenses—NLT 5 years unless offense was "trivial or circumstances render penalty unjust. | | | | |
| | | 3d offense—cannabis, opium smoking—up to 20 years. | | | | |
| Greece | Marihuana, narcotics | Up to 10 years and a large fine. | | | | Habitual use—NLT 6 months and mandatory treatment. |
| | | | Habitual or professional trafficking, enhanced penalty. | | | Retail trading in small quantities among addicts—NLT 2 years. |
| Guatemala | Marihuana, narcotics | Up to 3 years in prison | | | | Users hospitalized "until cured." |
| Guinea | Marihuana, narcotics | Fine and/or 3 months to 5 years | | | Fine and/or 6 months to 10 years. | Use—fine and/or 3 months to 5 years. |

| Country | Drug category | Penalties | | | | Others |
|---|---|---|---|---|---|---|
| | | Possession | Trafficking | Import/export | Production/cultivation | |
| Guyana | Marihuana, narcotics | Summary conviction—fine and/or NMT 12 months (with or without hard labor). Indictment—NMT 10 years and/or fine. | | | | Use—same penalties. |
| Haiti | Marihuana, narcotics | Fine or NLT 8 days to NMT 6 months. 2d conviction—both penalties are imposed. | | | | Use—same penalties. |
| Honduras | Marihuana, narcotics | 61 days to 1 year | 2–3 years | 2–3 years | NLT 1 year and 1 day to 2 years. | |
| Hong Kong | Marihuana, narcotics | Summary conviction—fine and 3 years. | Summary conviction—fine and 3 years. | Same as trafficking | Marihuana or poppy on indictment—fine and 15 years. | Use—summary conviction, fine and 3 years. |
| | | Opium poppy or marihuana—fine and 15 years. | Indictment—fine and life in prison. | | Illicit manufacture—fine and life in prison. | |
| Hungary | Marihuana, narcotics | Up to 1 year in prison and a fine | | | | Crime committed "professionally" by a recidivist, or in association with felons or criminals—up to 3 years. |
| Iceland | Doesn't distinguish | Imprisonment and a fine | | | | |
| Iran | Marihuana | 6 months to 3 years | 3 to 15 years of hard labor and a fine. 2d conviction—fine and up to life at hard labor. | | | |
| | Narcotics | Less than 50 grams of opium—1 gram of heroin, morphine, or cocaine—1 to 3 years and a fine. 50 grams to 2 kilograms of opium or 1 to 10 grams of other narcotics—3 to 15 years and a fine. More than 2 kilograms of opium or 10 grams of other narcotics—death. | | | | |
| Iraq | Doesn't distinguish | Fine and/or a mandatory 6 months to 5 years | | | | |
| Ireland | Doesn't distinguish | Fine and/or up to 5 years | | | | |
| Israel | Doesn't distinguish | Fine and/or up to 10 years | | | | Inducing a minor to use a drug—fine and/or up to 10 years. |
| Italy | Doesn't distinguish | Fine and/or 3 to 8 years | | | | |
| Ivory Coast | Marihuana, narcotics | Fine and/or 3 months to 5 years | | | Fine and/or 6 months to 10 years. | Use—fine and/or 3 months to 5 years. |
| Jamaica | Marihuana | 18 months–3 years at hard labor; 2d offense—3–5 years at hard labor. | | 5–7 years at hard labor; 2d offense—7–10 years at hard labor. | | |
| | Narcotics, dangerous drugs. | Fine and/or up to 1 year at hard labor; 2d offense—fine and/or up to 2 years at hard labor | | | | |
| Japan | Marihuana | Fine and/or up to 5 years | Fine and up to 7 years | | | |
| | Heroin | Up to 10 years | Not for gain—up to 10 years. For gain—fine and/or 1 year to life. | Not for gain—up to 1 year. For gain—fine and/or 3 years to life | | |
| | Other narcotics, dangerous drugs. | Up to 7 years | Not for gain—up to 7 years. For gain—fine and/or 1–10 years. | Not for gain—1–10 years. For gain—1 year to life | | |
| Jordan | Doesn't distinguish | Fine and up to 3 years | | | | |
| Kenya | Doesn't distinguish | Fine and/or up to 10 years | | | | |
| Khmer Republic | Marihuana, narcotics | Fine and 3 months to 2 years | | | | Use of marihuana or opium—fine and 1 month to 1 year. Operating opium den—fine and 1–5 years. |
| Korea | Marihuana, narcotics | Up to 10 years | Not for gain—"limited term" of not less than 1 year. For gain—2 years to life | | | Use—up to 5 years—Treatment is mandatory—refusal nets 6 months to 5 years. |
| | Dangerous drugs | Fine and/or up to 5 years at hard labor | | Fine and/or up to 10 years at hard labor | | Use—fine and/or up to 5 years at hard labor. |
| Laos | Marihuana and narcotic drugs other than heroin or morphine. | Fine and/or 3 months to 2 years | | | | Use—fine and/or 3 months to 2 years. |
| | Heroin or morphine | Fine and/or 5 to 25 years at hard labor | | | | Use—fine and/or 5 to 25 years at hard labor. |
| Lebanon | Marihuana, narcotics | 1 to 3 years | A term of hard labor—penalty at judge's discretion | | | Use—1 to 3 years. Release after 6 months if addiction is cured. |
| Lesotho | Marihuana, narcotics | Fine and/or up to 3 years | | | | Use—fine and up to 3 years. |
| Liberia | Marihuana, narcotics | Fine and/or 6 months to 2 years | | | | |
| Libya | Marihuana, narcotics | For use—24 hours to 3 years. For sale—up to 5 years. | Up to 5 years | | | Sale to addict—up to 6 years. |
| Luxembourg | Marihuana, narcotics | Fine and/or 8 days to 3 months | | | | Use—8 days to 3 months. |
| Macao | Marihuana, narcotics | For use—fine and/or 6 months to 1 year. Not for gain—fine and/or 6 months to 2 years. For gain—fine and/or 2 to 8 years at hard labor. | | Fine and/or 8 to 12 years at hard labor | | Use—fine and/or 6 months to 1 year. |
| Madagascar | Marihuana | Fine and/or 6 months to 5 years | | | | |
| Mali | Marihuana, narcotics | Fine and/or 3 months to 5 years | | | Fine—and/or 6 months to 10 years. | Use—fine and/or 3 months to 5 years. |
| Malawi | Marihuana, narcotics | Fine and/or up to 10 years | | | | |
| Malaysia | Marihuana, narcotics | Fine and up to 5 years | | | | Use—fine and/or up to 2 years. |
| Malta | Marihuana, narcotics | Fine and up to 10 years | | | | |
| Mauritania | Marihuana, narcotics | Fine and/or 3 months to 5 years | | | Fine and/or 6 months to 10 years. | Use—fine and/or 3 months to 5 years. |
| Mexico | Doesn't distinguish | By addict—fine and/or 2 to 9 years. | Fine and/or 3 to 12 years. | Fine and/or 6 to 15 years. | Fine and/or 2 to 9 years. | Inducing minor to use—fine and/or 4 to 12 years. |
| Monaco | Marihuana, narcotics | Fine and/or 3 months to 2 years | | | | Use—3 months to 2 years. |
| Morocco | Marihuana, narcotics | Fine and/or 3 months to 5 years | | | Fine and/or 6 months to 10 years. | Use—fine and/or 3 months to 5 years. |
| Nepal | Marihuana, narcotics | Without a license—fine and/or up to 2 years | | | | Use is legal if drug obtained through licensed dealers. |
| Netherlands | Marihuana, narcotics | Without intent—fine and/or up to 6 months. With intent—fine and/or up to 4 years | | | | Use—same penalties. |
| New Zealand | Marihuana, narcotics | For use—fine and/or 3 months. For distribution—fine and/or up to 14 years. | Fine and/or up to 14 years | | | |
| Nicaragua | Marihuana, narcotics | Up to 3 years | Up to 5 years | | | Use or addiction—mandatory 60 to 180 days confinement for treatment. |
| Niger | Marihuana, narcotics | Fine and/or 3 months to 5 years | | | Fine and/or 6 months to 10 years. | Use—fine and/or 3 months to 5 years. |
| Nigeria | Marihuana | Not less than 10 years | Not less than 15 years to death. | Not less than 15 years to death. | Not less than 21 years to death. | Any offense committed by males under 19 to 49 strokes by cane or whip. |
| | Narcotics | Fine and/or up to 10 years | | | | |
| Norway | Marihuana, narcotics | Fine and/or up to 2 years—If offense is committed with intent to make a substantial profit or to sell to a large number of persons—fine and/or up to 6 years. | | | | Use—fine and/or up to 2 years. |
| Pakistan | Marihuana, narcotics | Fine and/or up to 2 years | | | | |

| Country | Drug category | Penalties: Possession | Trafficking | Import/export | Production/cultivation | Others |
|---|---|---|---|---|---|---|
| Panama | Marihuana, narcotics | 5 to 8 years | | 5 to 8 years | 5 to 10 years | Use—internment for as long as it is necessary to recuperate. |
| Paraguay | Doesn't distinguish | 4 to 8 years | 1 to 10 years and a fine 4 times the value of the drug | | | Recently enacted new law creating heavier penalties. |
| Peru | Marihuana, narcotics, hallucinogens. | Fine and 2 to 15 years | | | | Use—fine and 2 to 15 years. |
| Philippines | Marihuana, narcotics | Fine and/or 6 to 12 years | Fine and/or 12 to 20 years. | Fine and/or 14 years to life | | Illicit manufacturing or trafficking causing death—life to death and a fine. Use—fine and/or 12 to 20 years. |
| | Dangerous drugs | Fine and/or 6 months to 4 years. | Fine and/or 6 to 12 years | | | Use—fine and/or 6 months to 4 years. |
| Poland | Marihuana, narcotics | Fine and/or up to 3 months. | Fine and/or up to 5 years | | | Use alone—fine and/or up to 3 months. Use in presence of another—fine and/or up to 1 year. |
| Portugal | Marihuana, narcotics | Fine and/or 6 months to 2 years. | Fine and/or 2 to 8 years | | | Use—fine and/or 6 months to 2 years. |
| Rhodesia | Marihuana, narcotics | Fine and/or up to 10 years. | Fine and/or up to 10 years | | | Use—fine and/or up to 10 years. |
| Rumania | Marihuana, narcotics | Fine and/or 6 months to 5 years | | | | |
| San Marino | Marihuana, narcotics | Fine and/or 3 to 8 years | | | | Use—fine and/or 3 to 8 years. |
| Saudi Arabia | Marihuana, narcotics | Fine and 5 years | | Fine and 15 years | Fine and 5 years | Use—2 years. |
| Senegal | Marihuana, narcotics | Fine and/or 3 months to 5 years | | | | Use—fine and/or 1 month to 1 year. |
| Sierre Leone | Marihuana, narcotics | Fine and/or up to 10 years | | | | |
| Singapore | Opium, coca, marihuana | Fine and/or up to 5 years | | | | Smoking opium or marihuana—fine and/or up tp 1 year. |
| | Other narcotics | Fine and/or up to 4 years | | Fine and/or up to 3 years | | Use of other drugs—fine and/or up to 3 years. |
| Somalia | Marihuana, narcotics | Fine and/or 1 to 3 years | | Fine and/or up to 7 years | | |
| South Africa | Marihuana, narcotics | Not less than 2 years to 10 years | | 5 to 15 years | | |
| | Dangerous drugs | Up to 5 years | | Up to 10 years | | |
| Spain | Marihuana, narcotics | Confinement for treatment—4 months to 3 years | | Fine and/or 6 months to 6 years | | Use—confinement for treatment 4 months to 3 years. |
| Sudan | Doesn't distinguish | Fine and/or up to 7 years | | | | Use—fine and/or up to 7 years. |
| Swaziland | Doesn't distinguish | Fine and/or up to 3 years | | | | Use—fine and/or up to 3 years. |
| Sweden | Doesn't distinguish | Fine and/or up to 6 years | | 6 months to 4 years | Fine and/or up to 6 years | |
| Switzerland | Marihuana, narcotics | Not for gain—fine and/or up to 2 years, for gain—up to 5 years | | | | Use—confinement for treatment up to 2 years. |
| Syria | Marihuana, narcotics | Marihuana for use—fine and/or 10 days to 3 years. Marihuana for distribution and other drugs—fine and/or 3 years to life at hard labor. | Fine and/or 3 years to life at hard labor. | Fine and life at hard labor. | Fine and/or 3 years to life at hard labor. | |
| Tanzania | Marihuana, narcotics | Fine and/or up to 10 years | | | | |
| Thailand | Marihuana, LSD, methamphetamine, synthetic narcotics. | Fine and 3 months to 5 years. | Fine and 6 months to 10 years | | | |
| | Morphine, cocaine | Fine and 6 months to 10 years. | Fine and 1 to 20 years | | | Use—fine and 1–10 years. |
| | Heroin | Fine and 1–10 years | Fine and 5 years to life (for purpose of resale—death) | | | Use—fine and 2–10 years. |
| | Opium | Fine and 6 months to 20 years | | | | Use—fine and 6 months to 10 years. |
| | Dangerous drugs | Fine and up to 5 years | | | | |
| Togo | Marihuana, narcotics | Fine and/or 3 months to 2 years | | | | Use in public fine and/or 3 months to 2 years. |
| Trinidad & Tobago | Marihuana, narcotics | 6 months to 7 years. For distribution—14 years. | 14 years | 14 years | 18 months to 7 years | |
| Tunisia | Marihuana, narcotics | Fine and 1 to 5 years | | | | Use—fine and 1–5 years. |
| Turkey | Marihuana, narcotics | Not less than 10 years plus up to 5 years banishment to remote part of country, plus fine (except for hashish, heroin, cocaine, or morphine—death). | | | | Use—fine and 3–5 years. Conspiracy for any offense—death. |
| Uganda | Marihuana, narcotics | Fine and/or up to 10 years | | | | Use—fine and/or up to 10 years. |
| United Kingdom | Narcotics, LSD | Fine and/or up to 7 years | Fine and/or up to 14 years | | | |
| | Marihuana, amphetamine. | Fine and up to 5 years | Fine and/or up to 14 years | | | |
| | Depressants, tranquilizer | Fine and/or up to 2 years | Fine and/or up to 5 years | | | |
| United States | | Distribution of small amounts of marihuana for no remuneration treated as simple possession-fine and/or up to 1 year. The U.S. law categorizes substances in 5 schedules. Schedule I includes drugs which have no accepted medical use in the United States including heroin, other opium derivatives, opiates, and hallucinogenics such as LSD, mescaline, peyote, and marihuana. Schedule II includes medically useful derivatives of opium and coca, synthetic narcotic drugs, and the amphetamines. Schedule III lists short active barbiturates and certain narcotic drugs. Schedule IV contains long-acting barbiturates and tranquilizers, and Schedule V lists medical preparations such as certain cough syrups. | | | |
| | Schedules I and II | Simple possession of any controlled substance—fine and/or up to 1 year. | Narcotics—fine and/or up to 15 years. Nonnarcotics—fine and/or up to 5 years | | | Second conviction doubles all sentences. |
| | Schedule III | For all schedules—Possession with intent to distribute carries same penalty as trafficking. | Fine and/or up to 5 years | | | |
| | Schedule IV | | Fine and/or up to 3 years | Fine and/or up to 5 years | Fine and/or up to 3 years | |
| | Schedule V | | Fine and/or up to 1 year | Fine and/or up to 5 years | Fine and/or up to 1 year | |
| Upper Volta | Marihuana, narcotics | Fine and/or 3 months to 5 years | | | Fine and/or 6 months to 10 years. | Use—fine and/or 3 months to 5 years. |
| Uruguay | Marihuana, narcotics | 6 months to 5 years | | | | Use—6 months to 5 years Currently considering new law increasing penalties. |
| U.S.S.R | Marihuana, narcotics | Up to 10 years | | | Up to 2 years | Addicts—confinement for treatment. |
| Venezuela | Marihuana, narcotics | 4 to 8 years | | | | If offense causes death—8–16 years. |
| Vietnam, South | Marihuana | Solitary confinement for a period within judge's discretion | | | | Use—fine and 1–5 years. |
| | Narcotics | Life | | | | |
| | Dangerous drugs | Fine and 1 to 5 years | | | | Use—fine and 3 months to 3 years. |
| | Hallucinogens | Penalty within judge's discretion | | | | Use—fine and 1–5 years. |
| Western Samoa | Marihuana, narcotics | Up to 7 years | Up to 14 years | Up to 9 years | Up to 14 years | |
| Yugoslavia | Marihuana, narcotics | Up to 30 days | 3 months to 3 years | Up to 3 years | 3 months to 3 years | |
| Zambia | Marihuana, narcotics | Fine and/or up to 10 years | | | | Use—fine and/or up to 10 years. |

### TRIBUTE TO AN OUTSTANDING AMERICAN: CHARLES T. MANATT

Mr. CRANSTON. Mr. President, on January 12 the California Demorcatic Party will host a dinner honoring Charles T. Manatt, chairman of the party for the past 2 years. I would like to share with my colleagues a few words about the unique contribution Chuck has made not only to the political life of California but to the Nation as well.

Chuck has worked long and hard—and I should add, effectively—to promote the interests of the Democratic Party and the two-party system as well. He organized a registration drive which added 2.2 million Democrats to the registration roles. He instituted several new and innovative programs to increase the level of citizen participation in our political process. His tremendous effort in California has been recognized in other States as well, as evidenced by his election as chairman of the Western States Democratic Conference in 1972.

Chuck has an extensive background in the political life of the Nation since he earned the post of national college chairman for the Young Democratic Clubs of America in 1959. He is a distinguished lawyer and a man deeply concerned with the welfare of his community. For these and many other reasons, he was named one of the five outstanding men of California for 1972 by the California Chamber of Commerce. Chuck is a good friend and I am pleased that I will be able to join with his many other friends and admirers to honor him Friday evening in Los Angeles.

### PROPOSAL FOR A JUNIOR SUPREME COURT

Mr. BURDICK. Mr. President, late in December the Federal Judicial Center released a report by a select study group which recommended the creation of a "National Court of Appeals" to serve in an auxiliary fashion in the screening of "all petitions for review now filed in the Supreme Court" and in hearing and deciding many cases of conflicts between the circuits. I am informed that all Members of the Senate have received a copy of this report.

This is a comprehensive report analyzing the nature and dimensions of the problems which arise from the burgeoning caseload of the Supreme Court. Recognizing the many reports which we receive, I would suggest that each of us take the time to read this one. The distinguished study group headed by Prof. Paul Freund should be complimented for the thoroughness of its efforts.

The Subcommittee on Improvements in Judicial Machinery, which I am privileged to chair, has been greatly interested in the growing caseload in our Federal courts, including the Supreme Court. The subcommittee plans to hold hearings during the 93d Congress on various proposals to assist the Supreme Court in meeting the demands created by a caseload which has risen from 1,460 cases to 4,515 in the past 25 years. However, based upon the early comments which have appeared in the press since release of this report, it is apparent that congressional consideration of the creation of a new appellate court would be greatly enhanced if hearings were delayed until the bench, bar, and legal scholars of this country have had the opportunity to study, analyze, and comment upon the report and the various alternative solutions which were considered by the study group.

### FRANK FISHKIN, AN OUTSTANDING EXAMPLE OF PUBLIC SPIRIT

Mr. CRANSTON. Mr. President, on January 18 a testimonial dinner will be held in Los Angeles to honor Frank Fishkin for his community service and professional activity.

I have known Frank Fishkin for many, many years. He is a well-educated and extremely perceptive attorney. Both in private practice and in his work for the State of California and the Federal Government he has demonstrated insight, sincerity, and compassion.

Since his admission to the bar in 1945, he has played an active and major role in his professional organizations and pro bono work.

In public affairs, he has demonstrated similar public spirit, working to help the Community Chest, Red Cross, United Jewish Appeal, and Optimist Club. He is also well known for his contribution to the religious life of his community. He is a charter member and past president of the Burbank B'nai B'rith Lodge.

I think Frank Fishkin stands as a symbol for his neighbors in the San Fernando Valley of the kind of contributions we all should make for the betterment of our community, our brothers and our Nation.

### PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for Thursday next is as follows:

The Senate will convene at 12 o'clock meridian. After the recognition of the two leaders or their designees under the standing order, the following Senators will be recognized, each for not to exceed 15 minutes, and in the order stated:

Senators Moss, ABOUREZK, and HARRY F. BYRD, JR.

At the conclusion of the remarks by the three aforementioned Senators, there will be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes.

### ADJOURNMENT UNTIL THURSDAY, JANUARY 11, 1973

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until Thursday next at 12 o'clock meridian.

The motion was agreed to; and at 2:02 p.m. the Senate adjourned until Thursday, January 11, 1973, at 12 o'clock meridian.

# EXTENSIONS OF REMARKS

### THE FOSTER GRANDPARENT PROGRAM

## HON. LEE METCALF

OF MONTANA

IN THE SENATE OF THE UNITED STATES

*Tuesday, January 9, 1973*

Mr. METCALF. Mr. President, I, like many of my distinguished colleagues in this body, wait eagerly yet with a sense of impending disappointment, for the President's budget message. My concern is the fate of programs designed to help people—the young, the elderly, the poor, the disabled, the hungry. Lest this administration or any Member of this body forget how significant in human terms Government programs can be, I ask unanimous consent to insert in the RECORD at this point two letters to the editors of Montana newspapers concerning the Rocky Mountain Development Council's foster grandparent program. These letters provide eloquent testimony of the benefits of such programs. Not only does this program provide much needed financial assistance to our elderly poor, it provides large measures of love and feelings of usefulness to both the foster grandparents and the retarded children they help.

Surely this Nation must never allow this kind of truly "creative federalism" to slip from the top rank of national priorities.

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

SENIOR CITIZENS ARE GREAT PEOPLE

*Editor, Helena Independent Record:*

With my eyes I see love, and beauty and goodness. I see a crippled child finally able to walk. I see a deaf mute struggle to talk with her hands. Who will respond?

With my eyes I see movement in a child's deformed body where there was none before. Who will care? I see a little tot twist her drooling mouth to speak. But who will listen?

With my eyes I see the frustrations of a blind infant groping for sight—for light in the darkness. Who is that light?

With my eyes I see a lonely child with out-stretched arms seeking love and comfort—security in a lonely frightening place. Who will notice?

I see an old man shuffle to her. I see the