our blessed land, but our example will keep alive the hopes which burn in the hearts of all who strive to be free.

NEWSMAN'S PRIVILEGE

HON. WILLIAM L. HUNGATE

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 28, 1973

Mr. HUNGATE. Mr. Speaker, the editorial in Judicature for January 1973, deals with recent developments in the department of newsman's privilege and merits consideration at this time when the measure is before Congress.

The article follows:

EDITORIAL—QUIS CUSTODIET CUSTODES?

The press has recently come into conflict with the courts as a result of demands that newsmen reveal confidential information or sources of information. A Los Angeles reporter went to jail on November 27 for refusing to identify the source of information he had published regarding the Manson trial. More recently, a reporter was jailed in Washington for refusing to produce tape recordings sought by a defendant in a criminal action arising out of the Watergate incident.

Last June the United States Supreme Court ruled that a newsman has no First Amendment right to refuse to testify when called before a grand jury (*Branzburg v. Hayes*, 408 U.S. 665 (1972)). The 5–4 majority dwelt heavily on the well-established obligation of all citizens to appear before a grand jury and answer questions relevant to a criminal investigation, and it declined to make an exception for newsmen. Justices Douglas and Stewart, in vigorous dissents, argued that this would endanger the public's right to know, and would hamper the administration of justice. Justice Douglas held out for an absolute right of a journalist not to appear before a grand jury at all, and if he does appear voluntarily, to decline to answer specific questions on First Amendment grounds.

In a concurring opinion, Justice Powell tempered the firm stand of the majority by observing that the holding does not deprive newsmen of all constitutional rights, and that if the newsman "is called upon to give information bearing only a remote and tenuous relationship to the subject to the investigation, or if he has some other reason to believe that his testimony implicates confidential source relationships without a legitimate need of law enforcement, he will have access to the court on a motion to quash, and an appropriate protective order may be entered." Justice Powell maintained that the asserted claim to privilege should be judged on its facts by striking a balance between freedom of the press and the obligation of all citizens to give relevant testimony with respect to criminal conduct, and that this should be done on a case-by-case basis in accord with "the tried and traditional way of adjudicating such questions." Justice White, speaking for the majority, considered this possibility and dismissed it as presenting practical and conceptual difficulties of a high order, and said the Court was unwilling to "embark the judiciary on a long and difficult journey to such an uncertain destination."

A reading of the 87 pages of the four *Branzburg* opinions along with the current news dispatches makes clear that there is no easy answer to this newest problem in bar-press relations. The Court's majority has reason to question the wisdom of Justice Douglas' broad-brush application of this newly-claimed privilege, especially when the need for it is to be left entirely to the subjective determination of the newsman himself. At the same time, there are sound reasons for sharing the concern of the media and others that freedom of the press not be eroded away by governmental restrictions, including judicial restrictions.

Justice Stewart suggested that the *Branzburg* ruling would harm the administration of justice by depriving law enforcement agencies not only of the specific information being sought but broad general information relating to controversial social problems. On the other hand Justice White observed that if it is indeed true that law enforcement cannot hope to gain, and may suffer, from subpoenaing newsmen before grand juries, "prosecutors with the loath to risk so much for so little." He cited "Guidelines for Subpoenas to the News Media" issued in a recent U.S. Department of Justice memo:

"The Department of Justice recognizes that compulsory process in some circumstances may have a limiting effect on the exercise of First Amendment rights. In determining whether to request issuance of a subpoena to the press, the approach in every case must be to weigh that limiting effect against the public interest to be served in the fair administration of justice." The Guidelines go on to say: "The Department of Justice does not consider the press 'an investigative arm of the government.' Therefore, all reasonable attempts should be made to obtain information from non-press sources before there is any consideration of subpoenaing the press." The Guidelines provide for negotiations with the press as a part of this process.

The *Branzburg* decision makes no change in the law. For centuries all citizens, with only a few narrow, closely-guarded exceptions, have had an obligation to appear before a grand jury and answer questions. The Supreme Court declined to make another exception for newsmen, although it acknowledged the existence of a trend in that direction. The opinion lists 17 states which now provide some type of statutory protection of a newsman's confidential sources, and similar legislation has been introduced many times in Congress.

The courts and the press are partners in combating crime and in making democracy work. When the newsmen's leads uncover information important to the administration of justice, they should not want to withhold it; but if disclosing it would dry up the source of important additional information, law enforcement officers should not want it disclosed. Here is an area tailor-made for high-minded cooperation between the two. If trust and cooperation exist, there should be no problem. The problem arises when mutual trust and cooperation are less than perfect and someone has to have the final word.

The net effect of the *Branzburg* decision is that the courts will continue to have the final word. The dissenting justices, and the newsmen who have gone to jail rather than tell, are saying that the newsman himself should have the last word. Ultimately it comes down to the question of whom we trust the most. A free press is a watchdog over all institutions, including those of government itself, and those who insist upon the newsman's exemption are really saying that they feel safer trusting the press than trusting the government, or, more specifically, the courts. But—*quis custodiet ipsos custodes*—who will watch the watchdog?

YONKERS VIETNAM SERVICE MEDAL

HON. PETER A. PEYSER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 28, 1973

Mr. PEYSER. Mr. Speaker, recently, the Yonkers City Council passed a resolution offered by Councilman Andrew O'Rourke to establish a city of Yonkers Vietnam Service Medal. The bronze medal would be awarded to all Yonkers residents who served in Vietnam. A silver medal would be awarded to all those who were wounded in battle in Vietnam.

I want to take this opportunity to praise Councilman O'Rourke for his efforts in recognizing our servicemen who have fought so bravely for this Nation.

HOUSE OF REPRESENTATIVES—*Thursday, March 1, 1973*

The House met at 12 o'clock noon.

Very Rev. Robert H. Andrews, rector, St. Andrews Episcopal Church, Arlington, Va., offered the following prayer:

And now, O Israel, what does the Lord your God require of you, but to fear the Lord your God, to walk in all His ways, to love Him, to serve the Lord your God with all your heart and with all your soul.

God of Creation, Lord of all time and history, in your wisdom you have given us this land and this day as a part of the priceless gift of life. You have manifested your love for us in countless ways, seeking only a free commitment to the right as you have revealed that right down through the ages. Grant to us, we pray You, a fresh portion of those wondrous gifts of grace, hope, and love, that we may share them unstintingly with a world wounded by war, disease, and inhumanity. Bless especially these Members of the House of Representatives that they may judge wisely, decide charitably, and act prudently that we may find peace and justice at home and encourage all nations everywhere to follow the path of good will among men, to Thy everlasting glory. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was commu-

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nicated to the House by Mr. Marks, one of his secretaries.

COTTER SUPPORTS MEAT BOYCOTT EFFORT

(Mr. COTTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COTTER. Mr. Speaker, just yesterday the Agriculture Department revealed that a typical American family's annual food bill jumped by 2.7 percent in January, the steepest increase since the Department started to keep records in 1947.

The American consumer is justifiably outraged by these endless increases. Connecticut homemakers are no exception.

The 4,000 members of the Connecticut Junior Women's Clubs are forming the nucleus of what I hope will be a nationwide homemakers' rebellion. They have chosen April Fool's Day for the start of a 1-week meat fast because they want to demonstrate that they will no longer be fooled by a price control program that simply does not work.

I urge all homemakers to join in this week-long boycott. As part of this protest, I urge people to write their name and address on the backs of grocery checkout slips and send them to the White House with a demand that the President act to lower food prices immediately.

It is very easy to promise price stability next summer, as the President has, but by that time, the price of beef could be at $2 a pound. The rallying cry of this protest should not be price stability, but a price rollback.

I am urging American homemakers to send to the White House "a message" that cannot be ignored.

I am convinced that if food prices continue to increase, any attempt to slow inflation will be a dismal failure. The fight against inflation cannot be sacrificed at the altar of high food prices.

I urge those of my colleagues who feel the same as I do to talk up the 1-week boycott or the checkout slip mail-in back home.

PERMISSION FOR COMMITTEE ON EDUCATION AND LABOR TO FILE A REPORT ON H.R. 17 UNTIL MIDNIGHT FRIDAY

Mr. PERKINS. Mr. Speaker, I ask unanimous consent that the Committee on Education and Labor have until midnight Friday, March 2, 1973, to file the committee report on H.R. 17 as amended, to amend the Vocational Rehabilitation Act to extend and revise the authorization of grants to States for vocational rehabilitation services, to authorize grants for rehabilitation services to those with severe disabilities, and for other purposes.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

PERMISSION FOR COMMITTEE ON EDUCATION AND LABOR TO FILE A REPORT ON H.R. 71 UNTIL MIDNIGHT FRIDAY

Mr. PERKINS. Mr. Speaker, I ask unanimous consent that the Committee on Education and Labor have until midnight, Friday, March 2, 1973, to file the committee report on H.R. 71 as amended, to strengthen and improve the Older Americans Act of 1965, and for other purposes.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

INFORMATION OF THE STATE OF THE UNION—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 93–52)

The SPEAKER laid before the House the following message from the President of the United States; which was read and referred to the Committee of the Whole House on the State of the Union and ordered to be printed:

To the Congress of the United States:

"Information of the State of the Union," which our Constitution directs shall be communicated from time to time to the Congress by the President, must consist above all of information about the well-being of the American people.

As the opening words of the Constitution proclaim, America began with "We the People." The people *are* the Union, and its condition depends wholly on theirs.

While the Nation's land and resources, its communities, its economy, and its political institutions are also vital concerns to be addressed in my reports to the Congress this year, all of these in the final analysis are no more than means to a greater end. For each of them must ultimately be measured according to a single standard: what will serve the millions of individual Americans for whom all public officials serve as trustees.

Too often in the past that standard has not prevailed. Too often public policy decisions have been founded not on the long-run interests of all the people, but on the short-run interests of special groups of people. Programs once set in motion tend to stay in motion—sometimes long after their useful life has ended. They acquire a constituency of their own, even within the Government, and they cannot easily be reformed or stopped. Means come to be regarded as ends in themselves. And no one suffers more than the people they were designed to serve.

Despite all of the factors which conspire to hinder both the executive and the legislative branches in being as objective and analytical as we should be about the soundness of activities that continue from year to year supposedly in the public interest, we can and must discipline ourselves to take a larger view.

As we consider the subject of human resources in this fourth section of my 1973 State of the Union Message, we must not confine ourselves solely to a discussion of the year past and the year ahead. Nor can we be content to frame the choices we face in strictly governmental and programmatic terms—as though Federal money and programs were the only variables that mattered in meeting human needs.

FULFILLING THE AMERICAN DREAM

I am irrevocably committed, as Presidents before me have been and as I know each Member of the Congress is, to fulfilling the American dream for all Americans.

But I also believe deeply that in seeking progress and reform we must neither underestimate our society's present greatness, nor mistake the sources of that greatness. To do so would be to run a serious risk of damaging, with unproven panaceas applied in excessive haste and zeal, the very institutions we seek to improve.

Let us begin then, by recognizing that by almost any measure, life is better for Americans in 1973 than ever before in our history, and better than in any other society of the world in this or any earlier age.

No previous generation of our people has ever enjoyed higher incomes, better health and nutrition, longer life-expectancy, or greater mobility and convenience in their lives than we enjoy today. None before us has had a better chance for fulfillment and advancement in their work, more leisure time and recreational opportunities, more widespread access to culture and the arts, or a higher level of education and awareness of the world around them. None has had greater access to and control over the natural and human forces that shape their lives, or better protection against suffering, inhumanity, injustice, and discrimination. And none has enjoyed greater freedom.

Secondly, let us recognize that the American system which has brought us so far so fast is not simply a system of Government helping people. *Rather it is a system under which Government helps people to help themselves and one another.*

The real miracles in raising millions out of poverty, for example, have been performed by the free-enterprise economy, not by Government anti-poverty programs. The integration of one disadvantaged minority after another into the American mainstream has been accomplished by the inherent responsiveness of our political and social system, not by quotas and coercion. The dramatic gains in health and medical care have come primarily through private medicine; not from federally operated systems.

Even where the public sector has played a major role, as in education, the great strength of the system has derived from State and local governments' primacy and from the diverse mixture of private and public institutions in the educational process—both factors which have facilitated grassroots influence and popular participation.

We should not tamper lightly, then, with the delicately balanced social, economic, and political system which has been responsible for making this country the best place on earth to live—and which has tremendous potential to rectify whatever shortcomings may still persist.

But we Americans—to our great credit—are a restless and impatient people, a nation of idealists. We dream not simply of alleviating poverty, hunger, discrimination, ignorance, disease, and fear, but of eradicating them altogether—and we would like to do it all today.

During the middle and late 1960's, under the pressure of this impatient idealism, Federal intervention to help meet human needs increased sharply. Provision of services from Federal programs directly to individuals began to be regarded as the rule in human resources policy, rather than the rare exception it had been in the past.

The Government in those years undertook sweeping, sometimes almost utopian, commitments in one area of social concern after another. The State and local governments and the private sector were elbowed aside with little regard for the dislocations that might result. Literally hundreds of new programs were established on the assumption that even the most complex problems could be quickly solved by throwing enough Federal dollars at them.

Well-intentioned as this effort may have been, the results in case after case amounted to dismal failure. It was a classic case of elevating means to the status of ends in themselves. Hard evidence of actual betterment in people's lives was seldom demanded. Ever-larger amounts of funds, new agencies, and increased staff were treated as proof enough of success, simply because the motive was compassionate.

The American people deserve better than this. They deserve compassion that works—not simply compassion that means well. They deserve programs that say yes to human needs by saying no to paternalism, social exploitation and waste.

Protecting and enhancing the greatness of our society is a great goal. It is doubly important, therefore, that we not permit the worthiness of our objective to render us uncritical or careless in the means we select for attaining that objective.

It will increase our greatness as a society, for example, to establish the principle that no American family should be denied good health care because of inability to pay. But it will diminish our greatness if we deprive families of the freedom to make their own health care arrangements without bureaucratic meddling.

It will increase our greatness to ensure that no boy or girl is denied a quality education. But it will diminish our greatness if we force hundreds of thousands of children to ride buses miles away from their neighborhood schools in order to achieve an arbitrary racial balance.

It will increase our greatness to establish an income security system under which no American family will have to suffer for lack of income or break up because welfare regulations encourage it. But it would erode the very foundations of our stability and our prosperity if we ever made it more comfortable or more profitable to live on a welfare check than on a paycheck.

PRINCIPLES FOR THE 1970'S

Consistently since 1969, this Administration has worked to establish a new human resources policy, based on a healthy skepticism about Federal Government omniscience and omnicompetence, and on a strong reaffirmation of the right and the capacity of individuals to chart their own lives and solve their own problems through State and local government and private endeavor. We have achieved a wide variety of significant reforms.

Now the progress made and the experience gained over the past four years, together with the results of careful program reviews which were conducted over this period, have prepared us to seek broader reforms in 1973 than any we have requested before.

In the time since the outlines of these proposals emerged in the new budget, intense controversy and considerable misunderstanding about both their purposes and their effects have understandably arise among persons of good will on all sides.

To provide a more rational, less emotional basis for the national debate which will—and properly should—surround my recommendations, I would invite the Congress to consider four basic principles which I believe should govern our human resources policy in the 1970's:

—Government at all levels should seek to support and nurture, rather than limit, the diversity and freedom of choice which are hallmarks of the American system. The Federal Government in particular must work to guarantee an equal chance at the starting line by removing barriers which might impede an individual's opportunity to realize his or her full potential.

—The Federal Government should concentrate more on providing incentives and opening opportunities, and less on delivering direct services. Such programs of direct assistance to individuals as the Federal Government does conduct must provide evenhanded treatment for all, and must be carefully designed to ensure that the benefits are actually received by those who are intended to receive them.

—Rather than stifling initiative by trying to direct everything from Washington, Federal efforts should encourage State and local governments to make those decisions and supply those services for which their closesness to the people best qualifies them. In addition, the Federal Government should seek means of encouraging the private sector to address social problems, thereby utilizing the market mechanism to marshal resources behind clearly stated national objectives.

—Finally, all Federal policy must adhere to a strict standard of fiscal responsibility. Ballooning deficits which spent our economy into a new inflationary spiral or a recessionary tailspin in the name of social welfare would punish most cruelly the very people whom they seek to help. On the other hand, continued additions to a personal tax burden which has already doubled since 1950 would reduce incentives for excellence and would conflict directly with the goal of allowing each individual to keep as much as possible of what he or she earns to permit maximum personal freedom of choice.

The new post of Counsellor to the President for Human Resources, which I have recently created within the Executive Office of the President, will provide a much-needed focal point for our efforts to see that these principles are carried out in all Federal activities aimed at meeting human needs, as well as in the Federal Government's complex relationships with State and local governments in this field. The coordinating function to be performed by this Counsellor should materially increase the unity, coherence, and effectiveness of our policies.

The following sections present a review of the progress we have made over the past four years in bringing each of the various human resources activities into line with these principles, and they outline our agenda for the years ahead.

HEALTH

I am committed to removing financial barriers that would limit access to quality medical care for all American families. To that end, we have nearly doubled Federal outlays for health since the beginning of this Administration. Next year, they will exceed $30 billion.

Nearly 60 percent of these funds will go to finance health care for older Americans, the disabled, and the poor, through Medicare and Medicaid.

But we have taken significant steps to meet other priority needs as well. In the last four years, funding for cancer and heart and lung disease research has more than doubled; it will amount to more than three-quarters of a billion dollars in 1974.

We have supported reform of the health care delivery system and have proposed legislation to assist in the development of health maintenance organizations on a demonstration basis. We have increased funds for programs which help prevent illness, such as those which help carry out our pure food and drug laws and those which promote consumer safety.

We have declared total war on the epidemic problem of drug abuse—and we are winning that war. We have come a long way toward our goal of creating sufficient treatment services so that any addict desiring treatment can obtain it. We are also making substantial investments in research to develop innovative treatment approaches to drug abuse. I will report in greater detail on our anti-drug effort in a later section of this year's State of the Union message.

Strong measures have been taken to ensure that health care costs do not

contribute to inflation and price people out of the care they need. The rate of increase in physicians' fees was cut by two-thirds last year alone, and hospital price rises have also been slowed. To build on these gains, controls on the health services industry have been retained and will be strengthened under Phase III of the Economic Stabilization Program.

A major goal of this Administration has been to develop an insurance system which can guarantee adequate financing of health care for every American family. The 92nd Congress failed to act upon my 1971 proposal to accomplish this goal, and now the need for legislation has grown still more pressing. *I shall once again submit to the Congress legislation to help meet the Nation's health insurance needs.*

Federal health policy should seek to safeguard this country's pluralistic health care system and to build on its strengths, minimizing reliance on Government-run arrangements. We must recognize appropriate limits to the Federal role, and we must see that every health care dollar is spent as effectively as possible.

This means discontinuing federally funded health programs which have served their purpose, or which have proved ineffective, or which involve functions more suitably performed by State and local government or the private sector.

The Hill-Burton hospital grants program, for example, can no longer be justified on the basis of the shortage of hospital facilities which prompted its creation in 1946. That shortage has given way to a surplus—so that to continue this program would only add to the Nation's excess of hospital beds and lead to higher charges to patients. It should be terminated.

We are also proposing to phase out the community mental health center demonstration program while providing funding for commitments to existing arrangements extending up to eight years. This program has helped to build and establish some 500 such centers, which have demonstrated new ways to deliver mental health services at the community level.

Regional Medical Programs likewise can now be discontinued. The planning function they have performed can better be conducted by comprehensive State planning efforts. A second function of these programs, the continuing education of physicians who are already licensed, is an inappropriate burden for Federal taxpayers to bear.

EDUCATION

1973 must be a year of decisive action to restructure Federal aid programs for education. Our goal is to provide continued Federal financial support for our schools while expanding State and local control over basic educational decisions.

I shall again ask the Congress to establish a new program of Education Revenue Sharing. This program would replace the complex and inefficient tangle of approximately 30 separate programs for elementary and secondary education with a single flexible authority for use in a few broad areas such as compensatory education for the disadvanged, education for the handicapped, vocational education, needed assistance in federally affected areas, and supporting services.

Education Revenue Sharing would enlarge the opportunities for State and local decision-makers to tailor programs and resources to meet the specific educational needs of their own localities. It would mean less red tape, less paper work, and greater freedom for those at the local level to do what they think is best for their schools—not what someone in Washington tells them is best.

It would help to strengthen the principle of diversity and freedom in education that is as old as America itself, and would give educators a chance to create fresher, more individual aproaches to the educational challenges of the Seventies. At the same time, it would affirm and further the national interest in promoting equal educational opportunities for economically disadvantaged children.

If there is any one area of human activity where decisions are best made at the local level by the people who know local conditions and local needs, it is in the field of primary and secondary education. I urge the Congress to join me in making this year, the third in which Education Revenue Sharing has been on the legislative agenda, the year when this much-needed reform becomes law.

The time has also come to redefine the Federal role in higher education, by replacing categorical support programs for institutions with substantially increased funds for student assistance. *My budget proposals have already outlined a plan to channel much more of our higher education support through students themselves, including a new grant program which would increase funds provided to $948 million and the number assisted to over 1,500,000 people—almost a five-fold increase over the current academic year.*

These proposals would help to ensure for the first time that no qualified student seeking postsecondary education would be barred from attaining it by a lack of funds—and they would at the same time reinforce the spirit of competition among institutions that has made American higher education strong. I urge their prompt enactment.

As we work to eliminate the unnecessary bureaucratic constraints currently hampering Federal education aid, we will also be devoting more attention to educational research and development through the new National Institute of Education.

Funding for NIE will increase by almost 50 percent in fiscal year 1974, reaching $162 million.

Finally, in order to enhance the diversity provided by our mixed educational system of public and private schools, I will propose to the Congress legislation to provide a tax credit for tuition payments made by parents of children who attend non-public elementary and secondary schools.

MANPOWER

The Federal manpower program is a vital part of our total effort to conserve and develop our human resources.

Up to the present time, however, the "manpower program" has been not a unified effort, but a collection of separate categorical activities, many of them overlapping. These activities now include such programs as Manpower Development and Training Act Institutional Training programs, on-the-job training, Neighborhood Youth Corps, Public Service Careers, Operation Mainstream, and the Concentrated Employment Program. The net effect of several such programs operating in a single city seldom amounts to a coherent strategy for meeting the needs of people in that community.

While many well-run local programs are more than worth what they cost, many other individual projects are largely ineffective—and their failure wastes money which could be used to bolster the solid accomplishments of the rest.

Manpower programs ought to offer golden "second chances" for the less fortunate to acquire the skills and work habits which will help them become self-supporting, fully productive citizens. But as presently organized and managed, these second chance opportunities too often become just another dead-end exercise in frustration, rather than a genuine entree into a good job.

I believe that the answer to much of this problem lies in our program of Manpower Revenue Sharing—uniting several previously fragmented manpower activities under a single umbrella and then giving most of the responsibility for running this effort to those governments which are closest to the working men and women who need assistance. *In the next 16 months, administrative measures will be taken to institute this needed reform of the manpower system within the present legal framework.*

Manpower Revenue Sharing assistance will be freed from unnecessary Federal constraints, and aimed at developing jobs, equipped unemployed workers with useful work skills, and moving trainees into regular employment.

WELFARE

With the failure of the past two Congresses to enact my proposals for fundamental reform of the Nation's public assistance system, that system remains as I described it in a message last year—"a crazy quilt of injustice and contradiction that has developed in bits and pieces over the years."

The major existing program, Aid to Families with Dependent Children (AFDC), is as inequitable, inefficient, and inadequate as ever.

—The administration of this program is unacceptably loose. The latest national data indicate that in round numbers, one of every 20 persons on the AFDC rolls is totally ineligible for welfare; 3 more are paid more benefits than they are entitled to; and another is underpaid. About one-quarter of AFDC recipients, in other words, are receiving improper payments.

—Complex program requirements and administrative red tape at the Federal and State levels have created bureaucracies that are difficult to manage.

—Inconsistent and unclear definitions of need have diluted resources that

should be targeted on those who need help most.

—Misguided incentives have discouraged employable persons from work and induced fathers to leave home so that their families can qualify for welfare.

After several years of skyrocketing increases, however, outlays for this program have begun to level off. This results from the strong resurgence of our economy and expansion of the job market, along with some management improvements in the AFDC program and strengthened work requirements which were introduced into the program last year.

Since the legislative outlook seems to preclude passage of an overall structural reform bill in the immediate future, I have directed that vigorous steps be taken to strengthen the management of AFDC through administrative measures and legislative proposals.

Under these reforms, Federal impediments to efficient State administration of the current AFDC system will be removed wherever possible. Changes will be proposed to reduce the complexities of current eligibility and payment processes. Work will continue to be required of all those who can reasonably be considered available for employment, while Federal funds to help welfare recipients acquire needed job skills will increase.

One thing is certain: the welfare mess cannot be permitted to continue. A system which penalizes a person for going to work and rewards a person for going on welfare is totally alien to the American tradition of self-reliance and self-respect. That is why welfare reform has been and will continue to be one of our major goals; and we will work diligently with the Congress in developing ways to achieve it.

NUTRITION

During the past four years, Federal outlays for food assistance have increased more than three-fold. Food stamp and food distribution programs for needy families have been extended to virtually every community in the country. More than 15 million persons are now receiving food stamps or distributed foods, more than double the 1969 total. More than 8 million schoolchildren are now being provided with free or reduced-price lunches—up from only 3 million in 1969.

We have made great strides toward banishing hunger and malnutrition from American life—and we shall continue building on that progress until the job is done.

OLDER AMERICANS

One measure of the Nation's devotion to our older citizens is the fact that programs benefitting them—including Social Security and a wide range of other activities—now account for nearly one-fourth of the entire Federal budget.

Social Security benefits levels have been increased 51 percent in the last four years—the most rapid increase in history. Under new legislation which I initially proposed, benefits have also become inflation-proof, increasing automatically as the cost of living increases.

Over 1½ million older Americans or their dependents can now receive higher Social Security benefits while continuing to work. Nearly 4 million widows and widowers are also starting to receive larger benefits—$1 billion in additional income in the next fiscal year. And millions of older Americans will be helped by the new Supplemental Security Income program which establishes a Federal income floor for the aging, blind, and disabled poor.

Nevertheless, we are confronted with a major item of unfinished business. Approximately two-thirds of the twenty million persons who are 65 and over own their own homes. A disproportionate amount of their fixed income must now be used for property taxes. *I will submit to the Congress recommendations for alleviating the often crushing burdens which property taxes place upon many older Americans.*

I also ask the cooperation of the Congress in passing my 1974 budget request for $200 million to fund the programs of the Administration on Aging—a funding level more than four times that appropriated for AoA programs in fiscal year 1972. Half of this amount will be devoted to nutrition projects for the elderly, with the remainder going to assist States and localities in developing comprehensive service programs for older Americans.

In 1973, we shall continue to carry out the commitment I made in 1971 at the White House Conference on Aging: to help make the last days of our older Americans their best days.

ECONOMIC OPPORTUNITY

No one who started life in a family at the bottom of the income scale, as I did and as many Members of the Congress did, can ever forget how that condition felt, or ever turn his back on an opportunity to help alleviate it in the lives of others.

We in the Federal Government have such an opportunity to help combat poverty. Our commitment to this fight has grown steadily during the past decade, without regard to which party happened to be in power, from under $8 billion in total Federal antipoverty expenditures in 1964 to more than $30 billion in my proposed budget for 1974.

And we have moved steadily closer to the goal of a society in which all our citizens, regardless of economic status, will have both the resources and the opportunity to fully control their own destinies.

At the beginning of this period, when Government found itself unprepared to respond to the sharp new national awareness of the plight of the disadvantaged, creation of an institutional structure separate from the regular machinery of Government and specifically charged with helping the poor seemed a wise first step to take. Thus the Office of Economic Opportunity was brought into being in 1964.

A wide range of useful anti-poverty programs has been conceived and put into operation over the years by the Office of Economic Opportunity. Some programs which got their start within OEO have been moved out into the operating departments and agencies of the Government when they matured, and they are thriving there. VISTA, for example, became part of ACTION in 1971, and Head Start was integrated with other activities focused on the first five years of life under HEW's Office of Child Development. OEO's other programs have now developed to a point where they can be similarly integrated.

Accordingly, in keeping with my determination to make every dollar devoted to human resources programs return 100 cents worth of real benefits to the people who most need those benefits, I have decided that most of the anti-poverty activities now conducted by the Office of Economic Opportunity should be delegated or transferred into the Cabinet departments relating to their respective fields of activity. Adhering strictly to statutory procedures, and requesting Congressional approval whenever necessary, I shall take action to effect this change.

This reorganization will increase the efficiency of the various programs by grouping them with other functionally related Federal efforts and by minimizing the overhead costs which in the past have diverted too much money from human needs into staff payrolls and administrative expenses. Funding for the transferred activities will stay level, or in many cases will even increase.

The only major OEO program for which termination of Federal funding is recommended in my budget is Community Action. New funding for Community Action activities in fiscal year 1974 will be at the discretion of local communities.

After more than 7 years of existence, Community Action has had an adequate opportunity to demonstrate its value within the communities it serves, and to build locally based agencies. OEO has taken steps to help Community Action agencies put down local roots through a program of incentives and training, and has incorporated the basic community action concept—participation in programs by the people whom the programs seek to serve—into all Federal anti-poverty activities. Further Federal spending on behalf of this concept, beyond the $2.8 billion which has been spent on it since 1965, no longer seems necessary or desirable.

LEGAL SERVICES

One other economic opportunity effort deserving special mention is the Legal Services Program. Notwithstanding some abuses, legal services has done much in its seven-year history to breathe new life into the cherished concept of equal justice for all by providing access to quality legal representation for millions of Americans who would otherwise have been denied it for want of funds.

The time has now come to institutionalize legal services as a permanent, responsible, and responsive component of the American system of justice.

I shall soon propose legislation to the Congress to form a legal services corporation so constituted as to permit its attorneys to practice according to the highest professional standards, provided with safeguards against politicization of its

activities, and held accountable to the people through appropriate monitoring and evaluation procedures.

CIVIL RIGHTS

Protecting the civil rights of every American is one of my firmest commitments as President. No citizen should be denied equal justice and equal opportunity in our society because of race, color, sex, religion, or national origin.

This Administration has steadily increased the Federal financial commitment in this field. Outlays for civil rights and equal opportunity in 1974 will pass $3 billion—3½ times what they were when we took office.

We have worked hard—and with good results—to end *de jure* school segregation, to promote equal job opportunity, to combat housing discrimination, to foster minority business enterprise, to uphold voting rights, to assist minority higher education, to meet minority health problems like sickle cell anemia, and to make progress on many other fronts.

Now that equal opportunity is clearly written into the statute books, the next and in many ways more difficult step involves moving from abstract legal rights to concrete economic opportunities. We must ensure real social mobility—the freedom of all Americans to make their own choices and to go as far and as high as their abilities will take them. Legislation and court decisions play a major part in establishing that freedom. But community attitudes, government programs, and the vigor of the economic system all play large parts as well.

I believe that we have made progress, and we shall continue building on that progress *in the coming year:*

—The Department of Justice will expand its efforts to guarantee equal access to, and equal benefit from, Federal financial assistance programs.

—The Equal Employment Opportunity Commission will receive additional resources to carry out its expanded responsibilities.

—The Civil Service Commission will expand its monitoring of equal employment opportunities within the Federal Government.

—Efforts to assure that Federal contractors provide equal access to job opportunities will be expanded.

—The Small Business Administration will expand its loan program for minority business by nearly one-third.

—The Commission on Civil Rights will receive additional resources to carry out its newly granted responsibilities.

Additionally, in the year ahead, we will continue to support ratification of the Equal Rights Amendment to the Constitution so that American women—not a minority group but a majority of the whole population—need never again be denied equal opportunity.

THE AMERICAN INDIAN

For Indian people the policy of this Administration will continue to be one of advancing their opportunities for self-determination, without termination of the special Federal relationship with recognized Indian tribes.

Just as it is essential to put more decision-making in the hands of State and local governments, I continue to believe that Indian tribal governments should assume greater responsibility for programs of the Bureau of Indian Affairs and the Department of Health, Education, and Welfare which operate on their reservations. *As I first proposed in 1970, I recommend that the Congress enact the necessary legislation to facilitate this take-over of responsibility. Also, I recommend that the 1953 termination resolution be repealed.* Meanwhile the new statutory provisions for Indian tribal governments under General Revenue Sharing will assist responsible tribal governments in allocating extra resources with greater flexibility.

I shall also propose new legislation to foster local Indian self-determination by developing an Interior Department program of bloc grants to Federally recognized tribes as a replacement for a number of existing economic and resource development programs. The primary purpose of these grants would be to provide tribal governments with funds which they could use at their own discretion to promote development of their reservations.

Indian tribal organizations and Indians seeking to enter business need easier access to loan and credit opportunities; I proposed in 1970 and will again propose legislation to accomplish this objective.

Because Indian rights to natural resources need better protection, I am again urging the Congress to create an Indian Trust Counsel Authority to guarantee that protection.

In the two and one-half years that Indians have been waiting for the Congress to enact the major legislation I have proposed, we have moved ahead administratively whenever possible. We have restored 21,000 acres of wrongfully acquired Government land to the Yakima Tribe. We have filed a precedent-setting suit in the Supreme Court to protect Indian water rights in Pyramid Lake. My fiscal year 1974 budget proposes total Federal outlays of $1.45 billion for Indian affairs, an increase of more than 15 percent over 1973.

To accelerate organizational reform, I have directed the Secretary of the Interior to transfer day to day operational activities of the Bureau of Indian Affairs out of Washington to its field offices. *And I am again asking the Congress to create a new Assistant Secretary position within the Interior Department to deal with Indian matters.*

VETERANS

With the coming of peace, the Nation's inestimable debt to our veterans and their dependents will continue to command a high priority among the human resource efforts of this Administration.

During the past four years, I have twice signed legislation increasing the allowances for educational assistance to veterans. Nearly 2 million veterans are now in some form of training under the GI Bill for Vietnam-era veterans. Pension payments to veterans or their survivors who need income support have also been raised twice and the test of need has been greatly improved, including a more equitable formula for adjusting the VA pension rate when other sources of income, such as Social Security, are increased. The VA pension program now directly benefits over 2 million individuals.

Compensation payments for service-related disabilities have been raised on two occasions, and more than 2 million veterans of all wars now receive this benefit. The service-disabled veteran deserves special concern. In addition to top-priority consideration in medical care, my budget calls for VA outlays to provide disabled Vietnam-era veterans with vocational rehabilitation, housing grants, and specially equipped automobiles to be nearly doubled in 1974 compared to their 1971 level. Disability compensation is also being intensively reviewed to ensure that disabled veterans will receive compensation payments which fully recognize their earnings impairment.

VA guaranteed home loans for veterans have risen by almost two-thirds since we took office. And high-priority job programs have decreased the unemployment rate among Vietnam-era veterans by almost one-third during the past year alone.

Dramatic progress has been made in the veterans medical care program. A high level of construction and modernization of VA medical facilities has been carried on. The total number of medical care personnel staffing VA facilities has increased by one-sixth since 1969. The total number of veterans treated—both in VA facilities and as outpatients—has risen to new highs. Beneficiaries treated as hospital inpatients will go over the million mark in fiscal 1974 for the first time. Outpatient visits will climb to almost 14 million—about twice the level of 1969.

Since 1969, there has also been a steady shortening of the average length of stay in VA hospitals, a highly desirable objective from every viewpoint. This means that VA hospitals have fewer patients in bed on an average day, with shorter waiting lists, even though the total number of patients treated has gone up.

Misunderstanding these statistics, some have sought to establish by law a numerical minimum average daily patient census in VA hospitals. But such a fixed daily census would represent a backward step: it would force a sharply increased length-of-stay—an effect that is medically, economically, and socially undesirable. It is far better that our veterans be restored to their families and jobs as rapidly as feasible, consistent with good medical care. A fixed patient census would tie the hands of those seeking to serve veterans' health needs; I urge the Congress not to enact such a requirement.

The Congress is now studying several bills involving the VA pension program and cemetery and burial benefits for veterans. I hope that the Congress will work to see that the veterans pension program is realistically structured and compatible with other major income maintenance programs. On the burial benefits question, I urge that legislative action be deferred until completion of a study currently being conducted by the

Administrator of Veterans Affairs to determine the most equitable approach to improving burial and cemetery benefits for veterans. The Administrator's recommendations will be made available to the Congress in the near future.

CONSUMER AFFAIRS

The self-reliance and resourcefulness of our people when they enter the marketplace as consumers, the generally high standard of ethics and social responsibility upheld by business and industry, and the restrained intervention of government at various levels as a vigorous but not heavy-handed referee of commerce—that combination of factors, in that order, has been largely responsible for confounding predictions that American capitalism would breed its own downfall in the 20th century. We must build on each of these strengths in our efforts to protect the rights of the consumer as well as the vigor of the free enterprise economy in the 1970's.

Early in 1971, after the Congress had failed to act on my "Buyer's Bill of Rights" proposal for a new Office of Consumer Affairs directly under the President, I established such an office by executive order. Under the direction of my Special Assistant for Consumer Affairs, OCA has helped to create a stronger consumer consciousness throughout the executive branch.

This office is now ready to integrate its operations more fully with the line departments of the Government, and has accordingly been transferred into the Department of Health, Education and Welfare—the logical base for an agency concerned with human well-being.

From this new base the Office of Consumer Affairs will continue its policy formation role and educational efforts, and will also take on additional responsibilities, including representing consumer interests in testimony before the Congress and acting as a general ombudsman for the individual consumer.

VOLUNTARY ACTION

Many thousands of Americans already are volunteering their time to meet human needs in their communities—fighting disease, teaching children to read, working to solve local social problems. But now we must do more to tap the enormous reservoir of energy represented by millions of other potential citizen volunteers.

That is why three years ago I encouraged a number of our leading citizens to create the National Center for Voluntary Action to support private volunteer efforts; that is why two years ago I established the new ACTION agency to strengthen Federal volunteer programs.

We must now continue seeking new avenues of citizen service. As we turn from the concerns of war, may all Americans accept the challenge of peace by volunteering to help meet the needs of their communities—so that we can mobilize a new army of concerned, dedicated, able volunteers across the Nation.

ARTS AND HUMANITIES

I know that many in the Congress share the concern I have often expressed that some Americans, particularly younger people, lost faith in their country during the 1960's. I believe this faith is now being reborn out of the knowledge that our country is moving toward an era of lasting peace in the world, toward a healthier environment, and toward a new era of progress and equality of opportunity for all our people.

But renewed faith in ourselves also arises from a deeper understanding of who we are, where we have come from, and where we are going—an understanding to which the arts and the humanities can make a great contribution.

Government has a limited but important function in encouraging the arts and the humanities—that of reinforcing local initiatives and helping key institutions to help themselves. With the approach of our Bicentennial, we have a special opportunity to draw on the enrichment and renewal which cultural activity can provide in our national life. With this in mind, my 1974 budget requests further expansion of the funds for the National Foundation on the Arts and the Humanities, to a new high of $168 million. I ask continued full support from the Congress for this funding.

SAYING YES

Carl Sandburg spoke volumes about this country's past and future in three simple words that became the title for one of his greatest poems: "The People, Yes."

America has risen to greatness because again and again when the chips were down, the American people have said yes—yes to the challenge of freedom, yes to the dare of progress, and yes to the hope of peace—even when defending the peace has meant paying the price of war.

America's greatness will endure in the future only if our institutions continually rededicate themselves to saying yes to the people—yes to human needs and aspirations, yes to democracy and the consent of the governed, yes to equal opportunity and unlimited horizons of achievement for every American.

1973 is a year full of opportunity for great advances on this front. After more than a decade of war, we have successfully completed one of the most unselfish missions ever undertaken by one nation in the defense of another. Now the coming of peace permits us to turn our attention more fully to the works of compassion, concern, and social betterment here at home.

The seriousness of my commitment to make the most of this opportunity is demonstrated by the record level of funding for human resource programs proposed in our new budget—$125 billion in all—nearly twice the amount that was being spent on such programs when I took office in 1969.

This is both a generous budget and a reform budget. The reforms it proposes will put muscle behind the generosity it intends. The overall effect of these reforms will be the elimination of programs that are wasteful so that we can concentrate on programs that work. They will make possible the continued growth of Federal efforts to meet human needs—while at the same time helping to prevent a runaway deficit that could lead to higher taxes, higher prices, and higher interest rates for all Americans.

The opportunity is ours, executive and legislative branches together, to lead America to a new standard of fairness, of freedom, and of vitality within our federal system. We can forge a new approach to human services in this country—an approach which will treat people as more than mere statistics—an approach which recognizes that problems like poverty and unemployment, health care and the costs of education are more than cold abstractions in a government file drawer.

We know how tough these problems are, because many of us grew up with them ourselves. But we also know that with the right kind of help and the right kind of spirit they can be overcome.

Let us give all our citizens the help they need. But let us remember that each of us also bears a basic obligation to help himself and to help our fellowman, and that no one else can assume that obligation for us—least of all the Federal Government.

If we shirk our individual responsibility, the American dream will never be more than a dream.

But if the people say yes to this challenge, if government says yes to the people—and if all of us in Washington say no to petty quarrels and partisanship and yes to our public trust—then we can truly bring that dream to life for all Americans in the new day of peace that is dawning.

RICHARD NIXON.

THE WHITE HOUSE, *March 1, 1973.*

COUNTERQUESTIONNAIRE

(Mr. HUNGATE asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. HUNGATE. Mr. Speaker, I came across a counterquestionnaire drafted by Adam Yarmolinsky for the February 1973 Harvard Bulletin in response to one he received for his 30th class reunion.

Since I would assume that Congress as a class is one of the most questionnaire prone groups, perhaps this counterquestionnaire will suggest itself for congressional use:

COUNTERQUESTIONNAIRE

How often are you astonished these days? By yourself? By others?

Do you laugh much? About what?

Do you cry ever? About what?

What do you think about when you wake up at 3 in the morning?

When did you last forget yourself? Under what circumstances?

What is the most interesting thing about your life? The most boring?

If you had it to do over again, would you be a different person? In what ways?

If you had to be someone else, who would you be?

Are you more likely to be the victim or the perpetrator?

Do your children understand you?

What do you hope for your children? What do you fear? What do you expect?

Does God love you? Do you care?

Where are you likely to spend eternity?

What's most wrong with this world? Is it anybody's fault? Whose? Can it be fixed? Is it likely to be? What, if anything, are you likely to do about it?

Why do you drink so much? Why doesn't this question apply to you?

As between polygamy and polyandry, which would you prefer?

Does space exploration excite you? Bore you?

How do you feel about your dreams? How do the people in your dreams feel about you?

What has been your greatest disappointment?

Whom are you trying to impress? Whom are you trying to show up?

What are you really curious about?

Which of these questions was the hardest to answer? Which was the easiest? Are there any questions you'd like to ask? Or answer?

WATER AND WASTE DISPOSAL GRANT PROGRAM

Mr. MATSUNAGA. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 255 and ask for its immediate consideration.

CALL OF THE HOUSE

Mr. MINSHALL of Ohio. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Mr. MATSUNAGA. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 29]

Armstrong	Gunter	Parris
Badillo	Harrington	Passman
Bafalis	Harsha	Patman
Biaggi	Harvey	Pepper
Bingham	Hébert	Price, Tex.
Blatnik	Heckler, Mass.	Rees
Bray	Holifield	Reid
Breckinridge	Holt	Rinaldo
Brown, Calif.	Hosmer	Roberts
Burgener	Johnson, Pa.	Roncallo, N.Y.
Chisholm	Jones, Okla.	Rooney, N.Y.
Clawson, Del	Keating	Rose
Collier	Ketchum	Rosenthal
Conlan	King	Rousselot
Corman	Koch	Ruppe
Cronin	Leggett	Ryan
Daniel,	Litton	Sisk
Robert W., Jr.	Lott	Smith, N.Y.
Davis, Wis.	McCloskey	St Germain
de la Garza	McFall	Steiger, Ariz.
Diggs	Macdonald	Stephens
Downing	Mailliard	Teague, Tex.
Erlenborn	Mathias, Calif.	Thornton
Esch	Metcalfe	Treen
Ford, Gerald R.	Milford	Ullman
Gilman	Mills, Ark.	Veysey
Goldwater	Mollohan	Wiggins
Grasso	Murphy, N.Y.	Wilson, Bob
Gray	O'Neill	Young, S.C.
Gubser	Owens	

The SPEAKER. On this rollcall 342 Members have recorded their presence by electronic device, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed without amendment a bill of the House of the following title:

H.R. 3694. An act to amend the joint resolution establishing the American Revolution Bicentennial Commission, as amended.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 7. An act to amend the Vocational Rehabilitation Act to extend and revise the authorization of grants to States for vocational rehabilitation services, to authorize grants for rehabilitation services to those with severe disabilities, and for other purposes.

PAR VALUE MODIFICATION ACT HEARINGS

(Mr. GONZALEZ asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. GONZALEZ. Mr. Speaker, the Subcommittee on International Finance, of which I am chairman, will begin consideration of H.R. 4546, a bill to reset the valuation of the dollar, next week.

I propose to begin on Monday, with an informal briefing for members of the subcommittee and all other interested members of the Committee on Banking and Currency. Since this matter also impinges on other committee jurisdictions and is of interest to them, I am inviting the chairmen and ranking members of those committees to participate in this informal session. Under Secretary of the Treasury Volcker will make the presentation.

Against this background, I hope that hearings can be held with a better understanding of the situation we are confronted with in bringing our monetary house into order.

Actual hearings will commence Tuesday, March 6, with Mr. Volcker.

Federal Reserve Board Chairman Burns will appear on Wednesday, followed by Fred Bergsten, a senior economist at the Brookings Institution.

I anticipate additional witness to be heard on Thursday.

This year, a number of new issues will arise, so I believe that the hearings may be extended beyond next week, so that we can have a full and complete record. We need a thorough review, and ample information on this matter, and I propose to have hearings as long as necessary to fully explore the issues which were not successfully resolved last year.

I invite interested Members to attend. The meeting will be open.

REQUEST FOR CORRECTION OF ROLLCALL

Mr. SIKES. Mr. Speaker, I note that in the CONGRESSIONAL RECORD that on rollcall No. 28 on yesterday I was reported as not voting. I was present and I voted "nay." I ask unanimous consent that the permanent RECORD and Journal be corrected accordingly.

The SPEAKER. The Chair would ask the gentleman from Florida whether his request pertains to a vote taken by electronic device?

Mr. SIKES. On yesterday; that is correct, Mr. Speaker.

The SPEAKER. The Chair will state to the gentleman from Florida that under the announcement which was made at the time of the institution of voting by electronic device it is the duty of the Member to note and verify his own presence and his own vote.

The Chair would like the gentleman from Florida to withhold his request on this.

Mr. SIKES. Very well, Mr. Speaker.

WATER AND WASTE DISPOSAL PLANT PROGRAM

The SPEAKER. The Clerk will report the resolution.

The Clerk read the resolution as follows:

H. RES. 255

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3298) to restore the rural water and sewer grant program under the Consolidated Farm and Rural Development Act. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Agriculture, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER. The gentleman from Hawaii is recognized for 1 hour.

Mr. MATSUNAGA. Mr. Speaker, I yield 30 minutes to the gentleman from Ohio (Mr. LATTA), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 255 provides for consideration of the bill, H.R. 3298, which, as reported by our Committee on Agriculture, would restore the original congressional intent with respect to the water and sewer grant program under the Consolidated Farm and Rural Development Act. The program was established by Congress in 1965 as the Poage-Aiken Act. On January 10, 1973, the Department of Agriculture announced that it was "terminating" planning and development grants in the water and waste disposal programs of small towns on the grounds that termination would contribute to the success of the administration's plan to reduce Federal spending.

Today, after the expenditure of only 20 percent of the appropriated sum of $150 million for fiscal year 1973, the program has in fact been terminated.

Despite the arbitrary action of the administration, the enormous need for the continued life of the program is evidenced by the fact that on January 10, when termination of the program was announced, 1,685 small rural communities across the country had applications pending. Most of these communities are unable to undertake a water or waste disposal program without Federal matching grants.

H.R. 3298 would remove alleged ambiguous language in existing law, and substitute therefor a clear mandate that rural water and waste grant funds as authorized and appropriated by the Congress are to be expended by the administration as directed by the Congress.

Mr. Speaker, House Resolution 255

provides an open rule with 1 hour of general debate, the time to be equally divided and controlled by the chairman and ranking minority member of the Committee on Agriculture, after which the bill would be read for amendment under the 5-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee of the Whole House shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

Mr. Speaker, I urge the adoption of House Resolution 255 in order that H.R. 3298 may be considered.

Mr. LATTA. Mr. Speaker, I support this rule, and I support the passage of this legislation.

I also support the intent of the administration to hold down spending because it is something that has to be held down, but I question some of the priorities on spending and the terminating of some programs, and certainly the program that we wish to continue today is high on the list of priorities, as far as I am concerned.

Let us see what this program would actually do if it is terminated. It would cause continued pollution of our streams. We have been trying to clean up these streams. We have mandated through Federal legislation passed by Congress that we clean up these streams. We have had Federal authorities on local communities; we have had State authorities on local communities; we have had special health departments on local communities, telling them that they have to clean up their streams.

They have condemned water systems in a good many villages throughout the country, and especially in my district.

Now we come along and say, "We are not going to help you out of the mess that we put you in. We are not going to give you any assistance from the Federal level through the Farmers Home Administration. You are going to have to go to an Environmental Protection Agency"—which itself does not have sufficient funds to do the job.

As indicated by the previous speaker, we have almost 1,600 or 1,700 communities' applications now on file with the Farmers Home Administration for assistance under this program.

I supported this program from its start because in our district alone in northwestern Ohio we have dozens and dozens of small communities that need help, and our district is not unlike other districts throughout the United States. To say to these small communities that they have got to put in a sewage treatment plant when they do not have the bonding capacity to do so is whistling in the dark. They cannot by any stretch of the imagination do it on their own, or do it without some help from the Federal Government. They cannot turn to the States. The States do not have the funds. They look to Washington.

Under this program the last time, through an amendment that I proposed to the House and the House accepted, we increased the authorization to $300 million to help out these communities. The Committee on Appropriations then came along and said $150 million should be spent. Well, a half loaf is better than no loaf at all at any time, so we passed it at $150 million. How much was actually spent? $30 million. And community after community in my district and other districts in this country are going without, and they continue to contaminate the streams and the rivers of our country. But the pressure still exists on these communities from the State and Federal levels to clean them up. Their answer is, "How?" How, without the continuation of this type of legislation?

Mr. TEAGUE of California. Mr. Speaker, will the gentleman yield?

Mr. LATTA. I will be pleased to yield to my friend, the gentleman from California.

Mr. TEAGUE of California. I thank the gentleman from Ohio for yielding.

I am sure that the gentleman from Ohio does not wish to give the impression that the Federal Government is abandoning all interest in pollution abatement.

Mr. LATTA. I might say they have the interest, if they are willing to put their money where the interest is.

Mr. TEAGUE of California. All right. Then will the gentleman please be aware of the fact that the new budget provides for $1.6 billion to be spent on sewage plant construction alone as compared with only $727 million spent in this last fiscal year. That is a doubling of the amount. What the administration is proposing is 75 percent grants under the EPA rather than 50 percent grants under the Farmers Home Administration, on the theory that the Environmental Protection Agency is better qualified in the field of sewage treatment and sewage plants, and has more expertise in that area than do the people at the Department of Agriculture.

Mr. LATTA. I might say what the gentleman states is absolutely true but the money is not there. We have the applications in my district, I follow them, and to the best of my knowledge there has not been a single application approved by the Environmental Protection Agency in my district in the last 6 months. I say the proof of the pudding is in the eating.

Mr. TEAGUE of California. It seems to me unlikely if the President has requested $1.6 billion that he does not intend to spend it.

Mr. LATTA. Let me also say to my friend that in this overall picture we are talking about an amount over $1 billion but we are talking about the cities of over 10,000 in population.

Mr. TEAGUE of California. Oh no, these can go to any cities of any size.

Mr. LATTA. That is right and that includes the ones over 10,000 in population as well as those under 10,000 population, and the gentleman knows and I know that HUD has put out these funds in the millions to the cities over the years and they have put them out in the thousands to the communities in the farm areas. I say where it is fair for the cities to get aid from the Federal Government it is likewise fair for the communities under 10,000.

Mr. TEAGUE of California. I have many communities under 10,000 and I have confidence they will receive their fair share of Federal funds for sewage facilities.

Mr. LATTA. I appreciate the confidence of my friend, the gentleman from California.

Mr. RANDALL. Mr. Speaker, will the gentleman yield?

Mr. LATTA. I yield to the gentleman from Missouri.

Mr. RANDALL. Mr. Speaker, either the gentleman from California is misinformed or else this Member is wrong or misinformed. It seems to me we should ask what happens if we transfer these pending applications from FHA to EPA, we may be providing for a measure of waste disposal but there is nothing in these programs for a grant to provide for a water supply. We all know that in order to dispose of solid waste there must be some source of water supply. I know of no EPA grants, not a single one in communities of less than 10,000. As to any program the proof of the pudding is in the eating. The Farmers Home sewer and water grant program has worked well. Also let us never forget that we must have water districts in order to make the sewage disposal districts operative in our smaller communities.

Mr. TEAGUE of California. Mr. Speaker, if the gentleman will yield, certainly the point made by the gentleman from Missouri is valid but loans for water districts are available and will still be available through FHA, so a 75-percent grant from the Environmental Protection Agency plus a loan from FHA certainly should be applicable to build sewer systems.

Mr. LATTA. I thank my friend, the gentleman from California, again for discussing this. I wish I could be as optimistic as he is about this.

Mr. RANDALL. Mr. Speaker, will the gentleman yield further?

Mr. LATTA. I yield to the gentleman from Missouri.

Mr. RANDALL. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, as far as the approval of EPA applications is concerned we will find that the large cities and middle-sized communities will be adequately and even well represented. It will be the little places that have no lobbyist. They have no one to speak for them unless we speak for them here and now today as this body enacts H.R. 3298. This bill today is for our smaller communities and even unincorporated areas.

Perhaps right now is as good a time as any to mention an instance which occurred in our district. The leaders of a proposed water district received a letter from the Farmers Home Administration State headquarters at Columbia, Mo., back in the fall, either in September or October, that their rural water district had been approved. They proceeded to spend some of their own money. Funds were raised by passing the hat. Then on January 11, 1973, out of a clear sky they were told, by the central office here in Washington of the Farmers Home Ad-

ministration "we are sorry. All grants are off. Forget about our letter in 1972. The grant program has been canceled." This cancellation involved an unincorporated area that encompasses the southwest quadrant of Bates County, Mo. It is happenings or occurrences of this sort that we are trying to correct by the H.R. 3298.

Mr. LATTA. Mr. Speaker, I thank the gentleman.

Mr. Speaker, I reserve the balance of my time.

Mr. MATSUNAGA. Mr. Speaker, I have no further request for time.

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. POAGE. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3298) to restore the rural water and sewer grant program under the Consolidated Farm and Rural Development Act.

The SPEAKER. The question is on the motion offered by the gentleman from Texas.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 3298, with Mr. BEVILL in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from Texas (Mr. POAGE) will be recognized for 30 minutes, and the gentleman from California (Mr. TEAGUE) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Texas (Mr. POAGE).

Mr. POAGE. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, back on September 23, 1965, the House of Representatives by a vote of 325 to 10, passed my bill, H.R. 10232, which provided, among other things, grants for rural water and waste disposal systems. The Senate had earlier passed a bill which provided grant assistance to water systems only, but our committee, and the House of Representatives, thought it wise to include grant assistance for rural waste disposal systems as well. The Senate on the next day, September 24, 1965, concurred in the House amendments and for the first time, rural communities could look forward to water and waste disposal systems which they needed so badly. This new law, which became known as the Poage-Aiken Act, became one of our most popular rural programs and it worked well. In thousands of instances, the grant authority for water and waste disposal systems made it possible for rural residents to build a water or sewer system which could never have become a reality had there been only loan funds available. Poor rural communities simply did not then, and do not now, have an adequate tax base or ample customers to make a system feasible without grant assistance.

That is the weakness with the suggestion made by the gentleman from California, that there is authority to make some water system loans at the present time. That is true, but the President has tried to wipe out all authority to make grants for water systems.

As the years have passed, the Congress increasingly has recognized the value of the grant program. The bill as it originally passed in 1965, permitted only $50 million in grants per year for these systems, but at a later date during the 90th Congress, Congress doubled the authorization to $100 million per year. Finally, last year the Rural Development Act tripled the grant authority to $300 million per year. Actually, that bill, as it passed the House, contained an authorization of $500 million per year due to an amendment offered by the gentleman from Ohio (Mr. LATTA). The conference committee fixed the grant funds at $300,000,000 per year. Both Houses approved and President Nixon signed the bill with considerable publicity and praise.

Then on January 10 of this year, the Department of Agriculture issued a press release under the heading: "Terminate FHA Water/Waste Disposal Grants."

It did not say, "postpone" or "suspend." It said, "terminate."

The release was brief and to the point, but its effect was to smash the hopes of thousands of rural communities which are in desperate need of a water or waste disposal system. The irony of the matter is that the very poorest of our rural communities cannot possibly hope to have a water or sewer system without grant assistance. Only the more prosperous communities can construct one of these systems with loan fund only. In the past, some 2,650 rural water and waste disposal systems became a reality because they were able to secure some grant assistance under the Poage-Aiken Act. This obviously is an outstanding tribute to this program, but the very sad fact is that when this usurpation of congressional authority on the part of the administration occurred, some 1,685 communities across the United States had applications pending before the Farmers Home Administration for approximately $252.8 million in grant funds. These pending applications had just as well be destroyed if we allow the administration to get away with this intolerable action.

I must point out that since 1966 when the Poage-Aiken Act became effective, the Congress has appropriated some $498 million in grant funds only to have the administration spend less than one-half of this total—some $243.3 million. This is a feeble record, but the money that was spent has meant many times the investment because it has made so many parts of rural America a better place in which to live.

I know that many of my colleagues on the floor today have seen what a sound water or waste disposal system can do for a community. I was honored that the first waste disposal system under this program was built in a small town in my district, Chilton, Tex. I do not know how we can calculate the tremendous good this system has done for that little community.

In testimony before our committee the administration pointed out that the Environmental Protection Agency was making sewer grants to rural areas. While they have that authority, the truth of the matter is that the EPA is not making water system grants, and it does not take much intelligence to know that the type of sewer system used in this country does absolutely no good unless there is a water system to supply it.

The administration has indicated that it proposes to make this termination permanent indeed, because no funds for the Farmers Home Administration waste disposal loans have been requested in the fiscal year 1974 budget. So if the administration has its way; all that will be left for rural communities, it appears to me, is the Farmers Home Administration's water system loan program and the Environmental Protection Agency's sewer grant program. It is sheer folly to assume these programs will meet the needs of rural areas. In addition, I have a great deal of concern about the ability of rural areas to obtain a fair share of grant funds from the EPA.

The Environmental Protection Agency is snowed under with monumental problems and requests which far overshadow rural America's needs. I fear that rural America will get lost in the shuffle when the EPA must consider projects such as cleaning up the Great Lakes, the Mississippi River or the city of Los Angeles. The Farmers Home Administration has administered the rural water and waste disposal system program well because the Farmers Home Administration has a network of offices all across rural America, and its personnel know the needs of rural America. I think it is a tragic mistake for the administration to destroy this program.

Now what does H.R. 3298 propose to do? After the administration announced the destruction of this program, I asked the Department of Agriculture to cite their authority to completely wipe the law off the books.

The CHAIRMAN. The gentleman from Texas has consumed 5 minutes.

Mr. POAGE. Mr. Chairman, I yield myself 1 additional minute.

A memorandum was supplied me by the General Counsel of the Department which in essence said that the program was terminated on the grounds that the language of the law did not force the expenditure of grant funds. Therefore, this bill clearly and simply deletes the words "is authorized" and inserts the word "shall". Thus, we require that a sum equal to congressional appropriations be spent under this program. Heretofore, I have felt that it was wise to allow some discretion to the administration but after the shocking series of program terminations, I do not want to take any chances in the future. Quite frankly, I think the administration's action in this program and in a number of other programs is a blatant infringement of congressional authority. I feel that we must act promptly to put the administration on notice that we will not sit idly

by and watch the power of the Congress drift away.

I will not attempt to take any more of my colleagues' time because I believe our committee's report is quite detailed. I would encourage my colleagues to vote for this legislation today, and when the Senate passes similar legislation I urge that we vote to override a veto in a resounding fashion—should the President again strike out against this vital program and against the Congress.

Mr. LATTA. Mr. Chairman, will the gentleman yield?

Mr. POAGE. I yield to the gentleman from Ohio.

The CHAIRMAN. The time of the gentleman from Texas has again expired.

Mr. POAGE. Mr. Chairman, I yield myself 1 additional minute.

Mr. LATTA. I thank the gentleman for yielding.

I believe the gentleman should point out something which needs to be pointed out; that the administration did have power, the way the law was written, to terminate this program.

Mr. POAGE. We recognize that.

Mr. LATTA. I believe the language being put in here is needed so that we can spell out in no uncertain terms that the program shall continue.

Mr. POAGE. That is exactly what this bill does.

The CHAIRMAN. The Chair recognizes the gentleman from California (Mr. TEAGUE).

Mr. TEAGUE of California. Mr. Chairman, I yield 5 minutes to the gentleman from Indiana (Mr. HUDNUT).

Mr. HUDNUT. Mr. Chairman, I rise in opposition to H.R. 3298, to restore the rural water and sewer grant program. This legislation is an assault not only on the President's efforts to control expenditures, but also on his attempts to provide better methods of delivering services to those who need them.

The issue here is not really whether there will be a smalltown sewer and waste abatement effort which I am sure we all favor. The issue is how that effort will be organized and how that assistance will be delivered.

Programs pertaining to waste treatment systems now are coordinated under the Environmental Protection Agency, as a result of the Clean Water Act which the Congress so strongly supported. Under the Clean Water Act a community may get a 75-percent grant whereas under the Farmers Home Administration grant program a community was limited to an amount not to exceed 50 percent of the cost of construction. The EPA is able to deliver grant funds to States in block fashion which enables State and local communities to appraise their problems and determine priorities for their use, so these funds may be spent more in keeping with local needs and subject to local decisionmaking. To continue the Farmers Home Administration grant program, as provided in H.R. 3298, would be a duplication of Federal funding for these purposes.

Grants for water systems may be made also from shared revenue funds if states and communities decide this is the most appropriate use of such funds.

Thus, in view of the restructuring and reorganization of the pollution abatement effort, I feel it is premature to try to force the administration to deliver this service through the U.S. Department of Agriculture as would be provided in H.R. 3298. Furthermore, I think it is a mistake for Congress to attempt to force the Administration to spend more money than it deems necessary. As I understand it, of the total $150 million appropriated for fiscal year 1973, $30 million has already been obligated, leaving a remainder of $120 million unspent for this program. The administration has announced its decision to terminate grants for water and sewage system projects in the remainder of the current fiscal year. Why make it mandatory that these duplicity grants be funded? Can we not for once vote for fiscal restraint and a more conservative stewardship of the taxpayers' dollars? Can we not vote to hold down Government spending and hopefully help bridle galloping inflation that has breadwinners and homemakers all over America crying for relief?

Mr. Chairman, I believe a vote against H.R. 3298 is a vote in favor of limiting rather than augmenting the amount of money we as a Federal Government are expending. I believe the American people want us to avoid a tax increase by putting a curb on our spending. Here is one chance—and there will be many more—to do just that. Consequently, I will vote against this measure and urge my colleagues to do likewise.

Mr. TEAGUE of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. GUYER. Mr. Chairman, will the gentleman yield?

Mr. TEAGUE of California. I yield to the gentleman from Ohio.

Mr. GUYER. Mr. Chairman, I rise in support of H.R. 3298. My home State of Ohio has sustained an unseasonable period of near flood and excessive rain conditions which have not only jeopardized the harvesting of fall crop but which have also created an emphasis on the critical need for overall water, sewer, and environmental programs.

My home district desires to take its place along with other communities and the people of other States to keep in step with modern treatment and water management programs. It was a serious blow to these plans when the Department of Agriculture issued a halt to the availability of funds which were being made possible by the Rural Development Act of 1972. Under this act, small communities such as in the Fourth District of Ohio were looking forward to participating in the grants and loans features which with matching funds not only would serve our people but also help to solve these critical problems in the nonmetropolitan areas.

We realize that all of the kindred agencies have an overabundance of applications. There are more than 1,700 applications now pending under this program which were cut down at dead center when the act was abridged in January.

In the interest of good water management, sound sanitation and conservation principles, of assisting our rural neighbors, of helping achieve the objectives of the Environmental Protection Agency, and above all, in serving our people, I am voting for the continuation of this program with the hope that my colleagues will also join with me in supporting this bill so that early enactment will assure and provide this important service to the people of our district and rural America.

Mr. TEAGUE of California. Mr. Chairman, I wish to inform my colleagues that I do not feel as strongly about this bill as I have concerning some of them that I have stood down here in the well and opposed. I do want to repeat some of the statements I made during the discussion on the rule. However, so there will be no misunderstanding, I think in fairness it must be pointed out that the administration is not trying to do away with pollution control or abatement, and there is no question about the fact that FHA has done a good job.

Mr. Chairman, the President's new budget requests $1.6 billion for sewage plant construction alone in fiscal year 1974, as compared to $727 million for fiscal year 1973. That doubles the amount.

Now, I can understand the concern that my friends and their colleagues from rural areas have, because I have a rural area of my own, with a lot of small towns. They are afraid that the Environmental Protection Agency is going to give all this money to the big cities and that the small communities will be left out. I do not have that fear myself.

Under this proposal determinations will be made on recommendations by the various States. This is a very important point, and I think all of us, whether we are from large or small areas or large or small cities, should realize this. The grants will be increased from 50 percent under the present FHA to 75 percent under the EPA. As far as water is concerned to operate sewage plants, which is, of course, a necessity, loans may still be obtained—not grants but loans may be obtained—from the FHA. So this is not doing away with pollution abatement but is a recommendation that this particular phase of pollution control should be transferred from the Department of Agriculture to the EPA. For that reason it seems to me the recommendation has merit.

Mr. POAGE. Will the gentleman yield?

Mr. TEAGUE of California. I yield to the chairman.

Mr. POAGE. Do I understand that they now suggest there will be no savings but it will merely transfer funds from one agency to another?

Mr. TEAGUE of California. I think that is probably correct, but I am not entirely sure. I must say frankly that was the impression Under Secretary Campbell gave us when he testified before our committee.

Mr. POAGE. If the gentleman will yield further, there is one other matter I would like to ask about.

Mr. TEAGUE of California. I yield to the chairman.

Mr. POAGE. How is a poor community which cannot get any assistance to build

a water system going to profit by this increased grant you referred to for a sewer system? Will it blow sand through the sewer system, or how will it work without water?

Mr. TEAGUE of California. No. Of course water is required. I stated that before. They borrow that money as you and I and others borrow money, but they borrow it from the Federal Government at a subsidized rate of 5 percent.

It seems to me that coupled with the fact that their grant for the construction of a sewer system itself will be increased from 50 to 75 percent will leave them better off than they are under the present circumstances.

Mr. POAGE. Will the gentleman yield further?

Mr. TEAGUE of California. Surely.

Mr. POAGE. But that gives us no assistance as far as getting a supply of water is concerned. The bonds to pay for both systems have to be sold separately, do they not? You cannot go out and issue combination bonds, can you? Especially, when your water loan is from FHA and your sewerage grant is from EPA.

Mr. TEAGUE of California. I would think that they could get their grant money for the construction of the sewer system and sell bonds for the construction of the water system.

Mr. POAGE. But if there is not enough income from the water system, they will not be able to sell bonds to build the water system, and the sewer system will not be of any value to the community without the water system. It seems to me to be poor judgment to separate these programs which have functioned so well together.

Mr. TEAGUE of California. Of course, nobody can argue with that, but I point out again they can get a 75 percent grant for the sewer system itself rather than 50 percent.

Mr. McCLORY. Will the gentleman yield for a clarification?

Mr. TEAGUE of California. Yes. I yield to the gentleman.

Mr. McCLORY. I can see some definite advantage to consolidating this water pollution control activity administered by FHA with the programs administered by the EPA. The question I have is this: Is the enabling legislation in effect at this time for transferring this activity, or does it depend on further legislative action in order for this to occur?

Mr. TEAGUE of California. I would have to consult counsel on that. I cannot answer that. Perhaps the chairman can.

Mr. McCLORY. The thing I am concerned about is that there may be a lapse or a period of time when we will have no program available for the rural areas until we take further legislative action and appropriate further money.

Mr. TEAGUE of California. My opinion is there will not be. The EPA can go ahead and do it and make the grants.

Mr. McCLORY. I thank the gentleman.

Mr. RANDALL. Will the gentleman yield?

Mr. TEAGUE of California. I yield to the gentleman.

Mr. RANDALL. There certainly will be a lapse. There is no way to avoid it. There are 1,600 applications now pending that have not been funded. All of these will have to be thrown out and new applications submitted. These little communities do not have the money to spend for new engineering services. When they have to file new applications, they will have to pass the hat around to pay again for these services. You can bet that the new agency will not accept the old applications. If we agree it may be desirable to consolidate these programs at some time in the future, let us process the pending applications instead of changing the rules in the middle of the game. Start now to refuse any new applications but let us at least dispose of those that are now pending.

Is there anything in the EPA that earmarks any funds for rural areas or places under 10,000? The chairman of the committee has quite rightly emphasized that little rural applicants will be engulfed and lost among such big projects as Los Angeles and the Mississippi River projects. There is nothing earmarked in the EPA funds for the little communities.

Mr. TEAGUE of California. I am sure the little communities in your congressional district will be well represented and will get their fair share of the money. I think all of you here have the duty to see that it does come about, but under this arrangement the primary decision is made on the decision of the States as to where the money will be spent.

Also the rural communities in most States are as well represented as are the big cities in the State legislatures, and in their access to the Governor's office.

Mr. RANDALL. Mr. Chairman, again I would appreciate once again the gentleman's yielding, although perhaps I should get my own time. However, let me ask the gentleman whether there will be any direct grants. Is that what we are talking about, or are we talking about some special revenue-sharing matter that will come down the road later on, should it be approved by the Congress?

Mr. TEAGUE of California. No: the arrangement is that the money is available in the EPA, and will be disbursed in accordance with the recommendations of the States as to the priority of the sewer plant applications.

But to return to the former point made by the gentleman from Missouri, I am not entirely sure that the gentleman is correct as to the pending applications, if they are anywhere near up to date for FHA, that they cannot be used by the Environmental Protection Agency because I see no necessity for an entirely new application procedure being instituted.

Mr. RANDALL. I would suggest to the gentleman from California—and I will try to get some time on my own to ask the staff——

Mr. TEAGUE of California. I will give the gentleman time. I will yield to the gentleman.

Mr. RANDALL. Then I would ask the staff on either side of the aisle whether it has been the practice in the past when we move from one agency to another agency that we accept those applications from the former agency because I do not believe that they do.

Mr. TEAGUE of California. If it is not true, then it should be.

Mr. RANDALL. That is what we are talking about; that is what this entire debate is all about.

Mr. TEAGUE of California. I would hope that that would not be the case.

Mr. POAGE. Mr. Chairman, I have no further requests for time.

Mr. TEAGUE of California. Mr. Chairman, I yield such time as he may consume to the gentleman from Virginia (Mr. WAMPLER).

Mr. WAMPLER. Mr. Chairman, we all recognize that sound fiscal management requires periodic reappraisal of policies and programs to ascertain where and how we might reduce expenditures in order to realize a financial saving. When the operation to be managed is the huge monstrosity that the Federal budget has become, commonsense indicates that a general reduction in expenditures, across the board, would effect the same result with far less hardship, than to pick and choose vital categorical programs, thus creating chaos among certain segments of our people in a discriminatory manner. It seems to me that those who have the most catching up to do, are the ones being asked to impede their progress. Whenever the country is asked to "tighten its belt," it seems they too often reach for the farm belt.

I have been telling my constituents in the Ninth Congressional District of Virginia that their Government was aware of their problems. I have been telling them for years that their contributions to the national economy were recognized and appreciated. I have been promising them help in meeting their basic needs, and I was proud of the good programs that the Committee on Agriculture has been able to steer through Congress in their behalf. Now many of them have been terminated, or cut to such an extent as to be ineffective. First it was the rural environmental assistance program, then the interest-subsidized housing program. The rural water and waste disposal grant program is even more important because few of our small rural communities could ever hope to raise the funds for such a project without Government assistance.

In my district, our annual allotment of loan to grant under the rural water and waste disposal grant program has been roughly 10 to 1. We were allotted $1 million in grants for fiscal year 1973, but were cut off at less than one-half of this when the program was terminated on January 8. I include, as part of my remarks, a list of the water, sewer, and solid waste projects funded by the Farmers Home Administration in the Ninth District of Virginia. The list includes projects in operation, projects under construction, projects approved but not closed, and applications on hand at the time the program was terminated. The small grants—$340,000—tied to applications on hand reflect the attitude of uncertainty under which the Farmers Home Administration had to implement this program, even prior to the cutoff of grant funds.

The thinking that the Environmental Protection Agency and revenue sharing will fill the gap of the Farmers Home Administration and other grant programs in good theory, but it fails to understand the problems of the small rural communities of which the Ninth District has many. An example is a small community requesting a $350,000 grant and a $350,000 loan to solve a water problem where most of the wells were condemned. Revenue sharing for this locality was less than $4,000. The Environmental Protection Agency has the authority to award grants for sewage disposal systems, but not for water systems. Now, I ask you, what good is a sewage disposal system without water?

I think it is evident that the program put together in the Ninth District—$32 million in loans and grants, serving more than 19,000 families—can only be done by an agency like the Farmers Home Administration that operates at the grassroots level. This agency is in a position to tie its housing program to the water-sewer projects and give the people some guarantee of success with fixed hookup fees.

Through fiscal year 1973 in Virginia, the Farmers Home Administration will have financed more than 20,000 homes at a cost of more than $300 million. Approximately 50 percent of these were interest credit loans which were also terminated January 8, 1973. It is fair to assume that 20 to 25 percent of these loans were made in the Ninth Congressional District. Undoubtedly the loss of interest credit housing loans eats at the heart of the major problem in rural Virginia and America. The President's "do for yourself" message has much merit; however, from a decent housing standpoint the hard-working man, doing menial tasks, earning less than $100 per week, cannot improve his living conditions unless his housing payments are interest-subsidized initially. Those who were able to do for themselves through educational or birth advantages have contributed to this problem by driving up incomes at the professional and unionized levels. Thus inflation affects everything the low-income man must have.

Of all the programs the Farmers Home Administration administers, the water-sewer grant program and the interest credit housing program are the most visible programs for success in rural America. So many other things fall into place after these problems are solved.

The farmer and the small town community of rural America has always been more than willing to shoulder its share of the responsibility for a strong and solvent nation. Too often they are taken for granted and the people who have sought their livelihood in the metropolitan areas seldom give a serious thought to their dependence on the men who till the soil. But they must live too, and their needs must be met.

Mr. Chairman, I urge my colleagues to vote for H.R. 3298 to restore the rural water and waste disposal grant program.

I include the following:

Ninth Congressional District projects (water, sewer, solid waste) funded by Farmers Home Administration (cooperatively with EDA, ARC, EPA)

Projects in operation: [1]	
FHA loan	$6,185,650
FHA grants	972,630
Other grant	3,537,683
Total	10,695,963
Projects under construction: [2]	
FHA loan	2,041,700
FHA grant	782,400
Other grant	2,781,100
Total	5,605,200
Projects approved but not closed: [3]	
FHA loan	6,360,410
FHA grant	879,200
Other grant	3,816,985
Total	11,056,595
Applications on hand: [4]	
FHA loan	2,753,200
FHA grant	340,000
Other grant	2,039,100
Total	5,132,300
Grant totals: [5]	
FHA loans	17,340,860
FHA grants	2,974,230
Other grants	12,174,768
Total	32,459,858

[1] Serving 8,733 families.
[2] Serving 2,917 families.
[3] Serving 5,910 families.
[4] Serving 1,955 families.
[5] 61 Projects—To serve 19,515 families.

Mr. O'NEILL. Mr. Chairman, I rise in strong support of H.R. 3298, to restore the rural water and waste disposal grant program, which is necessary for pollution control and health in rural America.

The President's indiscriminate action on January 10 terminating this program was just one of a series of sudden and arbitrary moves by the administration to cancel out programs which have long benefited rural America. Like his decision to eliminate the rural environment assistance program, this action demonstrates the President's benign neglect of rural problems.

And it is in keeping with his budget proposal to provide no effective environmental program.

If the President's action were allowed to stand, there would be no source of grant funds for rural water systems. The grants provided under this program, administered through the Farmers Home Administration are specifically oriented toward small towns in rural areas. Small communities and other rural areas in desperate need of water systems do not have a tax base large enough to support loans necessary to finance such a system. Without grant assistance, they could not establish a rural water system.

The administration claims that funds would be available for these programs under his special revenue sharing to plan for rural America.

Now I ask you, how are small rural towns going to acquire the political muscle or tax base to enable them to scramble adequately to come up with a fair share of the funds?

At the time of the President's hatchet action on the rural waste grant program, 1,685 communities across the United States had applications pending for $252,783,208 in grants under the program. Since 1965 more than 2,650 rural water and waste disposal systems have been assisted with the grant money. And this is in spite of the fact that President Nixon impounded $58 million of appropriated funds for water and waste disposal systems.

The arbitrary actions by the administration in terminating ongoing programs mandated by Congress indicate overt moves to thwart the will of Congress.

Clearly there is a separation of powers issue inherent in the necessity for enactment of this bill. The authority given to the Department of Agriculture to administer the program to carry out the intent of Congress did not give the Department the authority to terminate a mandate of the Congress.

Congress allowed discretion to the department in carrying out the water and sewer program. But this discretionary authority has been blatantly abused.

I wish to commend the House Agriculture Committee for its constructive remedial action in removing the discretionary features of the grant program, and in reinstating the programs as originally established.

I urge all my colleagues in this Chamber to vote for the rural water and waste disposal grant program because of its meritorious benefits, determined by Congress, to hundreds of rural citizens all over this Nation.

Mr. CULVER. Mr. Chairman, I urge the House to act favorably upon H.R. 3298, a bill to restore the water and waste disposal grant program which the administration has chosen to terminate.

Since 1965 the Farmers Home Administration has authorized approximately 2,650 rural water and sewer systems under this program. These grants were essential to those small communities which could not provide a water or waste disposal system with loan funds alone. The need for these facilities still exists, but the President has chosen to ignore rural and small town America in his restructuring of the Federal budget.

The Constitution clearly gives Congress, not the President, the authority to determine how the taxpayers' dollars are to be spent. By impounding funds for programs such as the water and waste disposal grants, the President is unconstitutionally trying to impose his false priorities on the Congress and the people. Unfortunately, his priorities do not include programs for rural America, the elderly or the poor, and other programs enacted by the representatives of the people.

Mr. Chairman, I cannot agree with the President's budget proposals wherein he calls for increased military spending and the continuation of unfair tax loopholes while at the same time he is withholding appropriated funds for useful programs. I believe that it is possible to reduce Federal spending even below the President's recommended ceiling and at the same time to strengthen our efforts to meet the priority human needs of the people.

At the time the administration announced that the water and sewer grants would be terminated, 1,685 communities across the country had grant applications pending. Such numbers sometimes make it difficult to focus on the genuine

human needs involved, but not when you know firsthand the communities in your own district which are being hurt by this action, such as Baldwin, Delaware, Dundee, Peosta, Prairieburg, St. Olaf, and Volga City, to name a few.

These are not large cities, and I doubt that the President or the Secretary of Agriculture is even aware of their existence. Real people live there, however, and they need good water systems and sewer systems as much as the residents of large urban areas. If we are serious about trying to maintain the values of rural living which have contributed so much to the building of our country, we cannot long ignore the needs of these people.

The President's impoundment of funds for water and sewer grants and other programs certainly runs counter to the constitutional separation of powers, but it would be a mistake to see the issue only in constitutional terms. It is also the administration's way of saying that its priorities for America do not include this important program for our small towns and rural areas. I for one cannot accept these priorities, and I welcome the opportunity to cast my vote today for the continuation of the water and waste disposal grant program.

Mr. ABDNOR. Mr. Chairman, I appreciate this opportunity today to express my wholehearted support for H.R. 3298, a bill to restore the rural water and sewer-grant program under the Consolidated Farm and Rural Development Act.

We desperately need to reinstate this grant program which the Department of Agriculture announced that it had terminated effective January 1, 1973, for several reasons.

First, rural water and waste disposal systems are essential for orderly growth and development and human health in rural communities. One of our country's major handicaps has been the problems associated with obtaining clean water and effective waste disposal. Thriving communities simply cannot exist where raw sewage flows untreated into its waterways.

Second, if our rural communities are to attract increased business, including expanded industrial development, it is necessary to install modern and efficient water and waste disposal systems.

Previous grants have eliminated the need for citizens to haul water or depend on springs, cisterns, ponds, and creeks for their water supplies. It would be extremely unfortunate if we had to resort to these mechanisms again for obtaining abundant supplies of clean water.

In the past, the grants program for water and sewer systems has played a leading role in developing and beautifying one of the great States in the United States, South Dakota. Two projects, the Lake Andes water supply project and the Platte Creek Irrigation Association project, have relied on FHA grants to help promote South Dakota's agricultural and industrial development and the tourism industry. There is nothing as important to South Dakota as water, and its continued development.

The most recent survey of water and sewer needs for towns with populations less than 5,500 was conducted in 1969, revealing that over $11 billion would be required to provide necessary water and sewer systems in these areas. Considering the impact of inflation in the construction industry, this figure is now well over $13 billion.

Many of the small rural communities in my State and others like it simply cannot afford to finance their water systems without a grant program. Congress realizes this and has taken great strides in the past few years to remedy this situation by passing a 1972 authorization for water and sewer programs under the Rural Development Act at $300 million. The intent of Congress in this matter is clear, and I urge my colleagues to join with me in supporting H.R. 3298.

Mr. JOHNSON of California. Mr. Chairman, I pledge my full support for the Agriculture Committee's efforts to reinstate the planning and development grants in the water and waste disposal programs of the Farmers Home Administration. It is clear that legislation such as H.R. 3298, which would require the Secretary of Agriculture to spend funds appropriated by Congress for this program, is necessary to meet the urgent needs of rural communities and to curb the Nixon administration's abuse of its discretionary powers.

The need for this program is as clear as the water it would clean up is polluted. The Council on Environmental Quality reported in 1970 that less than one-third of the Nation's population was served by adequate system of sewers and treatment plants. The importance of having an adequate water and sewer system was dramatically illustrated in my State in 1965 when an epidemic of water-borne diseases affected 18,000 people in Riverside.

The termination of this program left small rural communities without any feasible means of financing the systems they need. Small towns simply do not have the funds to pay for the costly, sophisticated equipment that is required. Local tax bases are too small, and property taxes are already as high as the people will tolerate. Even with the FHA grant program in effect, many of the small communities in my district were having an extremely difficult time trying to come up with the money for water and sewer systems.

Some of these towns are under orders from the State water quality control board to cease and desist discharging wastes into streams and rivers by certain dates. If they do not comply, these towns will be subject to fines of $6,000 per day until they do comply. But they just do not have the resources with which to build the plants.

With the passage of the Federal Water Pollution Control Act Amendments of 1972 these small, rural communities felt hope for the first time. Indeed the Nixon administration has suggested that the programs of the Environmental Protection Agency, as enlarged and revised in 1972, are an alternative to the FHA program. As an author of that legislation and a senior member of the committee that considered it in the House and in conference, I am well acquainted with the EPA programs and their viability as an alternative. They simply cannot meet the needs, especially since the Nixon administration has cut the water pollution program to about half of what it was intended to be under the law.

In testifying before the Agriculture Committee, I illustrated this fact with figures showing an estimated $931 million in project applications from California alone that could not be funded over a 3-year period. Those were the preliminary figures from a study by the California State Water Resources Control Board of anticipated needs and available funds. The survey has been completed now, and the final result shows $1.245 billion in project applications for treatment plants and interceptor sewers that cannot be funded in California over fiscal years 1973, 1974, and 1975. The table below summarizes the situation in California. All figures are in millions of dollars.

	Fiscal year—		
	1973	1974	1975
Needs	669	771	981
Funds available	261	392	523
Unmet needs	408	379	458

Not even one-half of the need will be met in California if these estimates prove to be accurate in the next few years.

As shocking as these figures are, Mr. Speaker, they do not tell the whole story. These figures were based on the EPA programs before they were enlarged by last year's water pollution bill. They do not include project applications for trunk sewers, collection system sewers, land or storm water facilities, which are all eligible for funds under the expanded program. A State official hazarded a guess that the amount of program funds applied for overall will double from this estimate in fiscal 1974 and 1975. Nevertheless, the funds that are already so hopelessly inadequate for the old program will be used to assume these new burdens as well.

With the tremendous needs in our State—San Francisco alone has one project application pending with a total cost of about $1 billion—small, rural communities are far down the list of priorities.

Furthermore, the cutback in the water pollution program means that, on a practical level, no EPA funds will be available for collections systems. It does no good in rural communities, where most people have septic tanks, to build a treatment plant without providing any way to get a collective system. This is the problem the Shasta Dam Public Utility District in my congressional district, for one example, faces.

Even if small, rural communities could afford to borrow funds, and they cannot because their bonding capacity is not high enough, the FHA loan program could not fill the gap. In California, we have a backlog of project applications for FHA funds totaling $6 million. In recent years, FHA has been spending about $8 million per year in California

with 80 percent of that going to financing sewer projects. After June 30 of this year, if the Nixon administration gets its way, there will not even be any loan funds available for sewer systems. The small towns of rural America will be left with no place to go for help in constructing the water and sewer systems they so desperately need.

The old saying is that "What they give with one hand, they take away with the other." The Nixon administration takes with both hands when it come to water and waste treatment systems.

In general, Mr. Chairman, I agree that there should be flexibility in Federal programs so that they can be administered more easily and respond to sudden changes. This administration, however, has abused the discretionary power given it by the Congress. The Executive was given discretionary power to allow for some flexibility in administering these programs, not to terminate them.

This administration came to office on a law and order platform 4 years ago, and likes to talk a great deal about acting in a responsible manner. Yet, in the case of water and waste treatment systems, it is the administration which is violating at least the spirit of the law and irresponsibly cutting off aid to communities that need it. Instead of embarking on a wide-based effort to clean up our waters, it is conducting a comprehensive campaign to hobble that effort.

Mr. VANIK. Mr. Chairman, I rise in opposition to H.R. 3298, which has as its stated purpose the restoration of the rural water and sewer grant program under the Consolidated Farm and Rural Development Act.

The supporters of this legislation claim that this program is desperately needed. They also point out that the passage of this bill involves questions of the power of the President to impound or even terminate for a period congressionally enacted programs.

My record in support of the environment is clear, and I grant that our Nation needs more advanced waste treatment facilities. These facilities are needed throughout the Nation. But most waste treatment grants are made through the Environmental Protection Agency. In fact, additional views included in the committee's report on this bill note that in the first 6 months of fiscal year 1973, EPA made $114.2 million in grants to communities with population under 10,000—the very communities which this Consolidated Farm and Rural Development Act program is designed to serve.

In reality, this program is a duplication of the regular EPA program. It seeks to provide a special advantage to rural areas, when the real priority for waste treatment still lies in our major cities. This rural development program is not primarily an environmental program, it is a program designed to move industries from the city to the farm, with tax revenues generated in the city.

I would like to add here that some of the loans and grants made under this program can be made to profitmaking organizations. When this bill passed the House last year, the only record vote in this Chamber was on an amendment to limit grants to public bodies only. Unfortunately, that amendment—which I supported—failed, leaving this legislation with a serious defect.

Finally, on the issue of Presidential impoundments, I disagree with many of the actions taken by the President on curtailing these social programs, but until the Congress develops some system of its own to control the level of Federal spending, I cannot vote to require the President to spend every dollar which we have authorized and appropriated. We will have to make decisions as to priority programs. I believe that the waste treatment grant program administered by the EPA should be our priority program in cleaning up the Nation's environment. This program which we are considering today is in reality a special interest program which I oppose.

Mr. STUCKEY. Mr. Chairman, I rise in support of H.R. 3298. Rural communities should not be denied a water or waste disposal system because of this arbitrary action on the part of the administration. The Farmers Home Administration has done an outstanding job through the years in providing loans and grants to small towns and communities for the planning and construction of these badly needed systems. There are thousands of little communities that must have grant money in order to have a rural water or waste disposal system. They simply do not have the tax base or an adequate number of customers to make a system feasible by using loan money only.

Unfortunately it has been no secret that the administration has never looked with much favor on the grant authority provided by the legislation Congress passed back in 1965. Since that time the Congress has appropriated $498 million in grant funds only to see the administration spend some $243.3 million. While this constitutes a very weak effort on the part of the administration, it is nevertheless true that these grant funds have been of great assistance to rural America. Statistics show that some 2,650 rural water and waste disposal systems have been assisted with grant funds. Had this money not been available, most of these systems would not be in existence today.

I cannot understand the administration's rationale when it announced on January 10 that the Farmers Home Administration water and waste disposal grant program had been terminated immediately. At the time of this announcement 1,685 communities across the Nation had pending applications for approximately $253 million in grant funds. If the administration's action is permitted to stand, these applications will not be worth the paper they are written on, and the thousands of people in those areas will have to do without what should be considered a basic necessity of life.

As it now stands, all that the administration can offer to rural communities will be water system loans through the Farmers Home Administration and sewer system grants through the Environmental Protection Agency. The administration has not even requested a continuation of the waste disposal loan program of the Farmers Home Administration in its 1974 budget. I feel that in view of EPA's tremendous workload, rural communities will be lost in the struggle for Environmental Protection Agency sewer grants. But more important, is the fact that, so far as water systems are concerned, the very poorest communities cannot have a water system without grant assistance and no grant assistance is now available to them. What good is a waste disposal system without a water system anyway? The administration's action defies logic, and I strongly support this bill and after the Senate passes it, should the President veto this measure, I expect to vote to override the veto.

Mr. ALEXANDER. Mr. Chairman, the program which is the subject of our deliberations today is one of tremendous concern to me. Since even before my election to the Congress, I have been involved in efforts to improve living standards and opportunities in the Nation's countryside. I believe that individuals and families should be able to choose to live in nonmetropolitan areas without forfeiting the conveniences of modern living.

Depopulation has been a serious problem for the Nation's counties such as the ones which compose Arkansas First Congressional District which I represent. For parents to be able to choose to stay in the countryside they must be sure that their children will have access to education, economic opportunities and housing.

An essential element in desirable housing is the availability of water systems and sewage disposal systems. The water and sewer systems programs which have been operated by the Farmers Home Administration were intended, by the Congress, to make these facilities available to countryside residents.

These systems not only help insure healthful living, their availability improves the small communities' chances of persuading new businesses and industries to select them as locations. Improved job opportunities assist in expanding resources available for such public activities as educational programs.

The Department of Agriculture's decision to terminate the planning and development grant program for water and sewer projects under the Farmers Home Administration is a death warrant for small communities of the countryside. It is particularly unacceptable in the absence of a firm financial commitment from other agencies as to the resources they will make available to these nonmetropolitan areas.

To give you a clear idea of the magnitude of this problem, let me quote some statistics on the State of Arkansas. According to the 1970 census, there were 672,697 all-year-round housing units in the State that year. Of these 230,377 units did not have access to public or private water distribution systems. And, the majority of these—225,300 units—were identified as being located in rural areas.

Of the housing units in the State 317,286 were identified as not being connected with a sewer system. And, 284,257 of these units were in rural areas.

I recognize the need for fiscal responsibility, and for striving to regain and

maintain control of Government spending. I support efforts to do so. But, I believe it is foolhardy to so drastically curtail health-related activities such as water and sewer system development. The burden of budget-cutting should not be laid so heavily on the shoulders of a segment of the Nation's population which has such slim resources. The effect is to further reduce their opportunities to become self-sufficient.

This problem is serious enough, alone, to warrant mandating continuing a countryside-oriented water and sewer planning and development grant program. But, there is the even more serious question of an attack on congressional authority to legislate.

When this program was enacted, Congress intended for it to operate until a future Congress—not the executive branch—determined that the need for it no longer existed, or for some other reason it should be terminated.

Whatever flexibility is built into the water and sewer program law was put there as an aid to efficient, and effective administration—not as authority for the executive branch to terminate the program.

The Congress must make clear to the executive branch that it will jealously guard, and responsibly exercise, its constitutional duty to legislate. Passage of the bill which we consider today would be another clear indication of this intention.

For that reason, and because this is a program for which there is a great need, I urge that the House act favorably on the proposal before us today.

Mr. RANDALL. Mr. Chairman, I enthusiastically support H.R. 3298, a bill to restore the water and waste disposal Grant program administered by the Department of Agriculture under the Farmers Home Administration.

The purpose of this bill is simply to reinstate or restore the program by removing the language relied upon by the administration as justification for its announcement of January 10, 1973, that it was terminating this water and sewer grant program.

For the rural areas of our congressional district and, for that matter for all rural America, January 10, 1973, will be remembered as a day filled with anguish because it was on that day that the Department of Agriculture's news service announced from Washington that the Farmers Home Administration's water and waste disposal grant program had been terminated retroactively to January 1. Throughout the entire announcement, such words as "terminating," "suspending," and "curtailing" were used. That press release, in its last paragraphs sought to lessen the shock by suggesting that the Federal Water Pollution Control Act and the new revenue sharing program would make funds available through the Environmental Protection Agency—EPA—for assistance directly to State and local communities, but that it would be up to these local officials to determine the highest priority projects.

Well, such alternatives offered in that release to those who understood the situation were not very encouraging because in truth they were not very helpful. Bear in mind that on January 10, 1973, this shocking announcement came like a bolt out of the blue from the banks of the Potomac. Bear in mind there were 1,685 small communities across the United States that had applied for grants totaling over $250 million under the program that were pending and unapproved.

Mr. Chairman, it is difficult to estimate the good that has been accomplished under the grant program authorized by the Poage-Aiken Act passed in 1965. Over 2,650 rural water and waste disposal systems have been made possible because of this grant money. These were grants to small rural communities which could not provide water and waste systems with loan funds alone.

Our Committee on Agriculture quite rightly questioned the January action of the Department of Agriculture and soon after the announcement requested the General Counsel of the Department to justify its action in terminating the grant program for water and sewers.

General Counsel responded in effect by saying that in consultation with the Department of Justice that when a Presidential authority to impound funds appropriated by the Congress to carry out a program is considered, it becomes necessary to consider the language of the substantive legislation involved. Accordingly, General Counsel John Knebel responded:

> Under the act, the Secretary of Agriculture is only "authorized" to make grants for such purposes and that furthermore under the appropriation for the Farmers Home Administration Act, the language passed by the Congress provided only that the appropriation should be available within the limits of the amounts authorized by law.

Thus the conclusion was that neither the substantive language nor the Appropriation Act compels the expenditure of the full amount authorized for the water and waste disposal grants.

The facts are that for fiscal year 1973, Congress has authorized $150 million for the program in communities with populations of 10,000 or less but, of this total, only 30 million was spent and the administration impounded $120 million.

In the face of the sudden and arbitrary move by the administration to cancel this program, the Congress is faced with no choice but to act to remove the discretionary features contained in the original language and to substitute the word "authorize" with such mandatory language as "shall." In essence, H.R. 3298 substitutes the word "shall" for the words "is authorized to" which means that the expenditures of funds appropriated by the Congress will be required.

We have listened with interest to those who in general debate today have argued that the rural people are better off under certain alternatives proposed by the administration. It was argued that to consolidate all programs now under the Farmers Home Administration over to the Environmental Protection Agency was really an avoidance of duplication. We also heard one opponent speak of this legislation as being inferior to the alternative because under Farmers Home, there were only grants of 50 percent and, under the Water Pollution Control Act, there would be grants of 75 percent. Then the stock or boilerplate argument was made that we should not force the administration to act because this bill today is premature in that some time should be allowed to see if the alternatives afforded by EPA would prove workable.

The truth, and the whole truth, is that those who argue for the alternative of EPA are either unconcerned, in that they have not taken the time to determine the plight of rural communities under EPA administration, or they are so shortsighted that they cannot see that the interests of urban America are one and the same and that the only way we can solve some of our urban problems is to revitalize rural America and make it a better place to live. Who can deny that the Farmers Home Administration programs are oriented toward small towns and rural areas, while the EPA programs are concerned with grants on a statewide basis, mostly large urban areas whose problems are entirely dissimilar to the desperate needs of small communities for the most basic water and sewage treatment systems?

There you have it in a nutshell. All of the talk about workable alternatives is so much hogwash for two reasons: First, EPA provided grants are for water disposal purposes only. There will be no grant funds and no grant programs for rural water systems. Surely, any thinking person would realize or recognize that a waste disposal system is of no value unless there is a source of water supply. Without a source of water supply, all you have when you finance such a system is some collector lines and a treatment plant that would be inoperative without water.

Second, it will become a cruel reality that those small communities in desperate need of water systems and without a tax base to support the loans necessary to finance such a system, will simply have to do without since they cannot possibly establish a rural water system without grant assistance.

Oh, it will be argued they can make application to EPA, but it is sheer folly to think that these small communities have the political muscle to equal the big urban centers in the States where they are located. It is a beautiful theory to talk about eliminating the duplicating bureaucracy and it sounds so good to talk about doing away with overlapping of Federal programs and deliver these grant funds back to the States en bloc, which enables the States and local communities to appraise their problems and determine priorities for their use.

I think I know what will happen in most of the States. I am certain what will happen in the State of Missouri if this decisionmaking is put on such a basis. It will mean that the two big metropolitan centers in the eastern part of the State, and the western part of the State, together with their populous suburbs, will make use of their big political muscle at the State capital to make sure that nearly all EPA grants go to urban-oriented sewage and water treatment projects and the rural areas will be left without.

What will very well happen in Missouri might or could be duplicated all across the country, because rural America will simply get lost in the shuffle with places like Los Angeles claiming great segments of the bloc grants for that State, and the demands in the Middle West that the Great Lakes be purified and in the East that the Hudson River be cleaned up, and also the Delaware River Valley, and back again in the Middle West that the Mississippi River be purified from the border to the gulf what chance will little communities under 10,000 population have in the face of such political muscle exercised in the State houses of our several States?

Without the political muscle, and without a tax base to enable them to get along without grants, and with revenue sharing used as a myth to justify dismantling existing programs, the little towns, and rural America are simply going to do without.

Mr. Chairman, I support H.R. 3298 not because I find any fault with the Environmental Protection Agency programs, but because I know that in the battle between the urban areas and the small towns, who will win out. I also know the rural water systems are necessary to waste disposal efforts and that rural water systems simply cannot be built on loan funds alone, and that is all there will be left under the Farmers Home Administration because the EPA provides sewer grants only and no grants for water systems.

Finally, we hear so much about the need to revitalize rural America. If we meant what we said when we reenacted the rural development act of 1972, which tripled the authorization for construction of water and waste disposal systems from 100 to 300 million, then this legislation is desperately needed. The passage of this legislation will again give hope to thousands of rural communities. It is for that reason that this bill should be passed without delay.

Mr. TEAGUE of California. Mr. Chairman, I have no further requests for time.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of section 306(a)(2) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(2)) is amended (1) by striking out the words "is authorized to" and inserting in lieu thereof the word "shall"; and (2) by inserting after the word "grants" the words "in the amounts specified in appropriations Acts".

SEC. 2. The first sentence of section 306(a)(6) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(6)) is amended by (1) striking out the word "may" and inserting in lieu thereof the word "shall"; and (2) by inserting after the word "grants" the words "in the amounts specified in appropriations Acts".

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. BEVILL, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 3298) to restore the rural water and sewer grant program under the Consolidated Farm and Rural Development Act, pursuant to House Resolution 255, he reported the bill back to the House.

The SPEAKER. Under the rule, the previous question is ordered.

The question is on the engrossment and third reading of the bill.

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

The SPEAKER. The question is on the passage of the bill.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. ALEXANDER. Mr. Speaker, I object to the vote on the ground that a quorum is not present, and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 297, nays 54, not voting 80, as follows:

[Roll No. 30]

YEAS—297

Abdnor	Dellums	Howard
Abzug	Denholm	Huber
Adams	Dennis	Hungate
Addabbo	Dent	Hunt
Alexander	Derwinski	Hutchinson
Anderson, Calif.	Dingell	Ichord
	Donohue	Johnson, Calif.
Andrews, N.C.	Dorn	Jones, Ala.
Andrews, N. Dak.	Downing	Jones, N.C.
	Drinan	Jones, Tenn.
Annunzio	Dulski	Jordan
Arends	Duncan	Karth
Ashley	Eckhardt	Kastenmeier
Aspin	Edwards, Ala.	Kazen
Barrett	Edwards, Calif.	Kluczynski
Beard	Eilberg	Kuykendall
Bergland	Eshleman	Kyros
Bevill	Evans, Colo.	Landrum
Biester	Evins, Tenn.	Latta
Bingham	Fascell	Lehman
Blackburn	Fish	Long, La.
Boland	Fisher	Long, Md.
Bowen	Flood	Lujan
Brasco	Flowers	McClory
Breaux	Flynt	McCollister
Brinkley	Foley	McCormack
Brooks	Ford, William D.	McDade
Broomfield		McEwen
Brown, Mich.	Fountain	McKay
Brown, Ohio	Fraser	McKinney
Broyhill, N.C.	Frey	McSpadden
Burke, Calif.	Froehlich	Madden
Burke, Mass.	Fulton	Madigan
Burleson, Tex.	Fuqua	Mahon
Burlison, Mo.	Gaydos	Mann
Burton	Gettys	Mathias, Calif.
Butler	Ginn	Mathis, Ga.
Byron	Gonzalez	Matsunaga
Camp	Gray	Mayne
Carey, N.Y.	Green, Pa.	Meeds
Carney, Ohio	Griffiths	Melcher
Carter	Gross	Mezvinsky
Casey, Tex.	Grover	Miller
Chamberlain	Gude	Mills, Md.
Chappell	Guyer	Minish
Chisholm	Haley	Mink
Clark	Hamilton	Minshall, Ohio
Clausen, Don H.	Hammer-schmidt	Mitchell, Md.
		Mitchell, N.Y.
Clay	Hanley	Mizell
Cleveland	Hanna	Moakley
Cochran	Hansen, Idaho	Montgomery
Cohen	Hansen, Wash.	Moorhead, Calif.
Conlan	Hastings	
Conte	Hawkins	Moorhead, Pa.
Cotter	Hays	Morgan
Coughlin	Hébert	Mosher
Culver	Hechler, W. Va.	Moss
Daniel, Dan	Helstoski	Murphy, Ill.
Daniels, Dominick V.	Henderson	Murphy, N.Y.
	Hicks	Myers
Danielson	Hillis	Natcher
Davis, Ga.	Hogan	Nedzi
Davis, S.C.	Holifield	Nelsen
Delaney	Holtzman	Nichols
Dellenback	Horton	Nix
Obey	Ruth	Thompson, N.J.
O'Brien	Sandman	Thomson, Wis.
O'Hara	Sarasin	Thone
O'Neill	Sarbanes	Tiernan
Patten	Saylor	Towell, Nev.
Perkins	Scherle	Udall
Pettis	Schroeder	Ullman
Pickle	Sebelius	Van Deerlin
Pike	Shipley	Vander Jagt
Poage	Shoup	Veysey
Podell	Shriver	Vigorito
Preyer	Shuster	Waggonner
Price, Ill.	Skubitz	Waldie
Pritchard	Slack	Walsh
Quie	Smith, Iowa	Wampler
Quillen	Spence	Ware
Railsback	Staggers	Whalen
Randall	Stanton, J. William	White
Rangel		Whitten
Rarick	Stanton, James V.	Widnall
Regula		Williams
Reuss	Stark	Wilson, Charles H., Calif.
Rhodes	Steed	
Riegle	Steele	
Roberts	Steiger, Wis.	Wilson, Charles, Tex.
Rodino	Stokes	
Roe	Stratton	Winn
Rogers	Stubblefield	Wright
Roncalio, Wyo.	Stuckey	Wyatt
Rooney, Pa.	Studds	Wylie
Rosenthal	Sullivan	Wyman
Rostenkowski	Symington	Yates
Roush	Symms	Yatron
Rousselot	Talcott	Young, Ga.
Roy	Taylor, Mo.	Young, Tex.
Roybal	Taylor, N.C.	Zablocki
Runnels	Teague, Tex.	Zwach

NAYS—54

Archer	Findley	Martin, Nebr.
Ashbrook	Forsythe	Martin, N.C.
Baker	Frelinghuysen	Mazzoli
Bell	Frenzel	Michel
Bennett	Goldwater	Peyser
Brotzman	Goodling	Powell, Ohio
Broyhill, Va.	Hanrahan	Satterfield
Buchanan	Harsha	Schneebeli
Burke, Fla.	Heinz	Snyder
Cederberg	Hinshaw	Steelman
Clancy	Hudnut	Teague, Calif.
Collins	Jarman	Vanik
Conable	Johnson, Colo.	Wiggins
Crane	Kemp	Wolff
Davis, Wis.	Landgrebe	Wydler
Devine	Lent	Young, Fla.
du Pont	Mallary	Young, Ill.
Esch	Maraziti	Zion

NOT VOTING—80

Anderson, Ill.	Grasso	Parris
Armstrong	Green, Oreg.	Passman
Badillo	Gubser	Patman
Bafalis	Gunter	Pepper
Biaggi	Harrington	Price, Tex.
Blatnik	Harvey	Rees
Bolling	Heckler, Mass.	Reid
Brademas	Holt	Rinaldo
Bray	Hosmer	Robinson, Va.
Breckinridge	Johnson, Pa.	Robison, N.Y.
Brown, Calif.	Jones, Okla.	Roncallo, N.Y.
Burgener	Keating	Rooney, N.Y.
Clawson, Del	Ketchum	Rose
Collier	King	Ruppe
Conyers	Koch	Ryan
Corman	Leggett	St Germain
Cronin	Litton	Seiberling
Daniel, Robert W., Jr.	Lott	Sikes
	McCloskey	Sisk
de la Garza	McFall	Smith, N.Y.
Dickinson	Macdonald	Steiger, Ariz.
Diggs	Mailliard	Stephens
Erlenborn	Metcalfe	Thornton
Ford, Gerald R.	Milford	Treen
Giaimo	Mills, Ark.	Whitehurst
Gibbons	Mollohan	Wilson, Bob
Gilman	Owens	Young, S.C.

So the bill was passed.

The Clerk announced the following pairs:

On this vote:

Mr. Thornton for, with Mr. Jones of Oklahoma against.

Mr. Gilman for, with Mr. Rinaldo against.

Until further notice:

Mr. Breckinridge with Mrs. Holt.

Mr. Mills of Arkansas with Mr. Dickinson.

Mr. Gunter with Mr. Harvey.

Mr. Rooney of New York with Mr. Bray.

Mr. Brademas with Mr. Anderson of Illinois.
Mrs. Green of Oregon with Mr. Erlenborn.
Mr. Biaggi with Mr. King.
Mr. Koch with Mr. McCloskey.
Mr. Badillo with Mr. Ryan.
Mr. Corman with Mr. Hosmer.
Mr. Diggs with Mr. Patman.
Mr. Giaimo with Mr. Collier.
Mrs. Grasso with Mrs. Heckler of Massachusetts.
Mr. Macdonald with Mr. Cronin.
Mr. Leggett with Mr. Burgener.
Mr. McFall with Mr. Gerald R. Ford.
Mr. Mollohan with Mr. Armstrong.
Mr. Stephens with Mr. Johnson of Pennsylvania.
Mr. St Germain with Mr. Roncallo of New York.
Mr. Sikes with Mr. Bafalis.
Mr. Sisk with Mr. Del Clawson.
Mr. Reid with Mr. Robison of New York.
Mr. Rees with Mr. Mailliard.
Mr. Passman with Mr. Keating.
Mr. Blatnik with Mr. Ketchum.
Mr. Brown of California with Mr. Gubser.
Mr. Conyers with Mr. Harrington.
Mr. E de la Garza with Mr. Lott.
Mr. Gibbons with Mr. Parris.
Mr. Metcalfe with Mr. Milford.
Mr. Owens with Mr. Robert W. Daniel, Jr.
Mr. Pepper with Mr. Price of Texas.
Mr. Rose with Mr. Robinson of Virginia.
Mr. Seiberling with Mr. Ruppe.
Mr. Litton with Mr. Smith of New York.
Mr. Bob Wilson with Mr. Steiger of Arizona.
Mr. Young of South Carolina with Mr. Whitehurst.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. POAGE. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

PERMISSION FOR COMMITTEE ON ARMED SERVICES TO FILE REPORTS ON PRIVILEGED RESOLUTIONS

Mr. HÉBERT. Mr. Speaker, I ask unanimous consent that the Committee on Armed Services have until midnight tonight, March 1, 1973, to file reports on the following privileged resolutions: House Resolution 26; House Resolution 114; House Resolution 115; and House Resolution 143.

The SPEAKER. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

LEGISLATIVE PROGRAM

(Mr. ARENDS asked and was given permission to address the House for 1 minute.)

Mr. ARENDS. Mr. Speaker, I take this time to ask the majority leader to kindly advise us of the program for next week and whether there is anything more scheduled for today.

Mr. O'NEILL. Mr. Speaker, will the gentleman yield?

Mr. ARENDS. I yield to the distinguished gentleman from Massachusetts.

Mr. O'NEILL. There is no further legislative business for today. On the announcement of the program for next week I will ask unanimous consent to go over until Monday.

The program for the House of Representatives for the week of March 5, 1973, is as follows:

Monday is Consent Calendar day, and there are no bills.

There will be two measures considered under suspension of the rules:

H.R. 4278, School Lunch Act amendments; and

H.J. Res. 393, National Commission on Financing of Postsecondary Education Extension.

Tuesday is Private Calendar day, and there are no bills; and there are no bills scheduled for consideration under suspension of the rules.

The following committee travel and investigative resolutions will be considered:

H. Res. 162, Committee on the District of Columbia;

H. Res. 228, Committee on Public Works; and

H. Res. 253, Committee on Science and Astronautics.

These resolutions are all subject to being reported by the Rules Committee, and may not necessarily be reported in the order listed on the calendar.

For Wednesday and the balance of the week there will be considered:

H.R. 17, Vocational Rehabilitation Act Amendments, subject to a rule being granted; and

H.R. 71, Older Americans Act Amendments, subject to a rule being granted.

Conference reports may be brought up at any time. Any further program will be announced later.

Mr. ARENDS. I thank the gentleman.

ADJOURNMENT OVER TO MONDAY, MARCH 5, 1973

Mr. O'NEILL. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet on Monday next.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. O'NEILL. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule may be dispensed with on Wednesday next.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

PERSONAL EXPLANATION

Mr. SEIBERLING. Mr. Speaker, on the bill that was just adopted (H.R. 3298) a group of Members, of which I am one, was at lunch downstairs in one of the dining rooms, and no buzzer sounded, and, therefore, we missed the vote. If I had been present, I would have voted in favor of the legislation.

Mr. Speaker, I wonder if we should not be checking into that kind of arrangement so that we are notified when a vote is being taken and Members are in any one of the House dining rooms.

The SPEAKER. The statement of the gentleman will appear in the RECORD.

HUBER INTRODUCES BILL TO REGULATE MALPRACTICE SUITS

(Mr. HUBER asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. HUBER. Mr. Speaker, the alarming growth of ever higher awards by the courts in malpractice suits has prompted me to introduce the measure I have today. Some of these awards have been so excessive as to make the cost of insuring against them by physicians prohibitive. To show just what the doctor today faces, note should be taken of the fact that an insurance premium for a class 5 malpractice suit in 1965 in Wayne County, Mich., was $544 a year and now is $3,172. Such awards, in turn, encourage outstanding doctors, in communities across the Nation, to retire early at a time when we are desperately trying to expand our medical schools to meet the doctor shortage and they are at the peak of their ability.

Recently, a case in New Jersey was brought to my attention wherein a team of doctors was carrying out a very delicate operation and the doctor in charge—the patient's doctor—died during the operation. The team of doctors that had been assembled continued the operation and it was a success. However, the patient sued on the basis that he was not operated on by the doctor he had contracted for. Such a situation is patently ridiculous. There was also another case of over $4 million awarded to a teenage boy in California recently.

My research reveals that nothing is pending on this matter in the Congress, aside from legislation that would apply only to the District of Columbia. My bill, briefly, would establish a Commission on Medical Malpractice Awards. It would consist of 24 members, four appointed by the Speaker of the House, four by the President of the Senate, four by the Secretary of the Department of Health, Education, and Welfare, four by the president of the American Medical Association, four by the president of the American Bar Association, one by the president of the American Insurance Association, one by the president of the National Association of Life Underwriters, one by the chairman of the Insurance Information Institute, and the final member would be the Surgeon General of the United States. This Commission would meet for the sole purpose of studying and making recommendation concerning the feasibility and appropriateness of establishing maximum limits on the amount of damages that may be

granted against any physician, dentist or practitioner of the healing arts.

My hope is that the Congress will act on this matter before it gets any further out of hand. People should certainly be compensated for mistakes made by the healing profession that are injurious to them, but at the same time commonsense should prevail in reaching such decisions.

LEGISLATION TO IMPROVE POSTAL SERVICE

(Mr. HILLIS asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. HILLIS. Mr. Speaker, when Congress in 1970 wrote the Postal Reorganization Act and created an independent postal corporation, it did so to take the post office out of politics, to create a more efficient service, raise employee morale instituting collective bargaining, and modernize the system to make it more self-sustaining.

These objectives were as valid today as they were 2 years ago, and there are very few people who would argue in favor of returning the postal system back to the way it was.

However, I doubt that any of the Members of Congress who voted for this reorganization expected a rapid deterioration in postal service as a result. None of us foresaw the volumes of mail we would begin receiving from our constituents complaining about poor postal service, unnecessary delays, cutbacks in traditional services, and so forth. And when we ourselves started noting some of the postmark dates on the letters coming into our office, we could easily realize something had not gone as planned.

As a member of the Post Office and Civil Service Committee, I have taken a particular interest in the decline in mail service and have tried to define the problems and come up with some solutions.

In a nutshell, the major problem seems to be the Postal Service has overlooked its No. 1 function—that of providing reliable service—in favor of accomplishing its economic objective of becoming more efficient and self-sustaining.

That's the reason we have seen a reduction of collection services, reductions in delivery service, window services, parcel deliveries, and so forth. Cost cutting is the reason behind the proposal to eliminate Saturday mail delivery and window service. And cost-cutting is the reason we are seeing unbelievable delays in mail delivery.

In order to modernize without requiring yet another postal rate increase, the management of the Postal Service last year placed a "90-day freeze" on all hiring. This freeze never seemed to get lifted and today the Postal Service has 40,000 vacancies which are waiting to be filled.

This kind of a reduction in the work force processing the mail has to show up eventually in terms of poor service and it has. To further complicate the problem, much of the large machinery which has been ordered to mechanize and speed mail processing has not yet been delivered, but the new systems are already in effect.

This has resulted in jam-ups at central distribution points, delays in moving the mail, paying of large amounts of overtime to overworked employees, and rerouting mail all over the country.

Cost-cutting efforts have also resulted in selection of less than first-class transportation service, both on the ground and in the air. First-class mail is being moved on a standby basis on many air routes, causing further delays. When the mail finally does get moved, a bottleneck is created at the distribution centers. Yet local and regional postal managers have no discretionary funds to cover these exigencies, to hire additional staff for crush hours, et cetera. Again, it is the level of service that suffers in the long run.

All of these problems were eloquently explained to Postmaster General Klassen at a recent meeting of postal managers, and Mr. Klassen promised to do something about these problems. I am relieved to hear this, and I hope that some improvements will become visible soon.

However, while the Postal Service works to iron out these problems and modernization efforts are underway, the public will not stand for the poor mail service it is receiving—who can tell how long these improvements will take. We have been promised better service and received worse.

Today I am introducing legislation which I believe can solve some of these problems without undoing all the good we have done in our postal reorganization efforts—this approach does not disturb the major objectives of the reorganization effort, but assures that the No. 1 purpose of the postal system—service—remains the No. 1 priority.

This bill will establish by law improved nationwide standards of mail service and provide a means for reimbursing the Postal Service for public service costs, while retaining a reasonable and equitable postal rate structure.

I would ask the support of all Members of Congress for this legislation so that we can assure continued high quality service by this country's major communications network—the postal system.

The full text of my legislation follows:

H.R. 5051

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 101(b) of title 39, United States Code, is amended by adding at the end thereof the following sentence: "In carrying out the provisions of this section, the Postal Service shall establish and assure, to all postal patrons, service standards which include but are not limited to—

"(1) Next-day delivery of mail deposited for delivery within a city;

"(2) Delivery within not more than three consecutive days of mail deposited for delivery within the United States;

"(3) Carrier service on a six-day-a-week basis;

"(4) Post office window service on a six-day-a-week basis;

"(5) Second-attempt delivery of parcel post; and

"(6) Multiple delivery and collection service.".

SEC. 2. Section 2401 of title 39, United States Code is amended by striking out subsections (b) and (c) and inserting in lieu thereof the following:

"(b) Public service costs, as determined by postal service, for providing a maximum degree of effective and regular postal service nationwide, in communities where post offices may not be deemed self-sustaining, as elsewhere, and in complying with the public service policy established under section 101 (b) of this title at reasonable and equitable rates and fees shall be paid out of the general fund of the Treasury and shall not constitute direct charges in the form of rates and fees upon any user or class of users of such public services, or of the mails generally.

"(c) The sum determined by the Postal Service to be equal to the difference between the revenues the Postal Service would have received if sections 3217, 3403–3405, and 3626 of this title and the Federal Voting Assistance Act of 1955 had not been enacted and the estimated revenues to be received on mail carried under such sections and Act shall be paid directly out of the general fund of the Treasury.

"(d) The Postal Service, annually, in requesting authorizations for the amounts to be appropriated under subsections (b) and (c) of this section, shall present to the appropriate legislative and appropriations committees of the Congress a comprehensive statement of its compliance with the public service cost policy established under this section and section 101(b) of this title.

"(e) No appropriation shall be made to the Postal Service under subsections (b), (c), or (d) of this section for any fiscal year unless previously authorized by legislation hereafter enacted by the Congress.".

SEC. 3. (a) Section 3627 of title 39, United States Code, is repealed.

(b) The analysis of subchapter II of chapter 36 of title 39, United States Code is amended by striking out—

"3627. Adjusting free and reduced rates.".

(c) Section 3684 of title 39, United States Code is amended by striking out "Except as provided in section 3627 of this title, no" and inserting in lieu thereof "No".

TRIBUTE TO WINTHROP ROCKEFELLER

The SPEAKER pro tempore (Mr. GONZALEZ). Under a previous order of the House, the gentleman from Arkansas (Mr. HAMMERSCHMIDT) is recognized for 60 minutes.

Mr. HAMMERSCHMIDT. Mr. Speaker, my distinguished colleagues in the House of Representatives, I have requested this time to express my deep sorrow over the passing of a great American, former Governor of the State of Arkansas and a dear personal friend; and to give you the opportunity to join me in paying your respects.

Winthrop Rockefeller, who died February 22, 1972, in a Palm Springs, Calif., hospital, leaves our Nation a proud legacy from his varied career which spanned the decades and was highlighted by dedication to improvement of society and preservation of the great American principles.

He was truly a giant among men—simultaneously a philanthropist, business executive, political activist, social reformer, and gentleman farmer. As one of the five grandsons of John D. Rockefeller, "Win" continued to bear the standard of fine family tradition by investing his personal wealth, time, and efforts in the progress of American life, retention of national history, and advancement of technology.

Despite a Rockefeller inheritance, the work ethic was practiced religiously by Win from his early boyhood up to his untimely death last week. As a student in college, he held part-time jobs. After leaving college, he worked as an oil field trainee, earning the singular distinction of the only Rockefeller brother to take employment in hard manual labor.

Win's affinity for fighting to reform social conditions of mankind became apparent well before the age of 30, when he became a director of the National Urban League to deal with special problems of Negroes in urban areas. He continued in a trusteeship position for 24 years. Through a long, successful and busy career, Win never lost his deep concern for minority groups. In recent years, he donated over a million dollars for a model school system in our State with the only stipulation that the school be fully integrated.

If Win appreciated the basics of hard work, he similarly honored the duty of service to his country. He enlisted in the Army, subsequently earned a commission and fought for America in such landmark battles as Guam, Leyte, and Okinawa. His bravery and spirit of sacrifice yielded the highly distinguished Bronze Star with two oak clusters and the Purple Heart.

Following the war, Win again turned to civic-oriented work as chairman of the board of a Rockefeller foundation involved in developing and implementing methods of meeting the needs for low-cost housing both in the United States and abroad.

In 1953, Win moved to Arkansas and purchased acreage atop Petit Jean Mountain. Soon thereafter, Winrock Farms were established and Win began cattle farming and scientific agricultural demonstration projects. Today, the Brangus breed which he developed and the Santa Gertrudis strain which he cultivated are highly prized throughout the ranching world.

Win Rockefeller was soon involved in State government with his 1955 appointment by Gov. Orval E. Faubus to head the Arkansas Industrial Development Commission. His tireless efforts resulted in attracting a great variety and number of new industries into the State, which contributed a tremendous impact to Arkansas economy. His 8 years with AIDC netted some 600 new industries for Arkansas and 90,000 jobs for its citizens.

In addition to a top-level State government position requiring long hours of personal attention and action, Win became involved in the University of Arkansas Medical College and American Red Cross. He served, also during this period, as chairman of Colonial Williamsburg, the restoration begun in the 1920's by his father, John D. Rockefeller, Jr. Generations of Americans to come will appreciate the vast American heritage which has been restored and exists today in Williamsburg, Va.

By the election of Winthrop Rockefeller as Governor of Arkansas in 1966 and 1968, he personally brought the two-party system of government to the State. His accomplishments in office were great, and for years to come his contributions will actively improve the political climate for viable democracy within the State. Heading the first Republican administration since 1874, Win's programs benefited the general populace as well as low-income taxpayers and minority groups. Present Gov. Dale Bumpers cited the Rockefeller terms in office as "a watershed in the history of Arkansas" in that Win "broke new ground and opened up the processes of State government to public participation as never before."

After his 4 years as Governor, Win continued his cattle ranching, home-building and subdivision development, rice and soybean production, and numerous philanthropic activities. He remained active in the Republican Party as well as pursuing efforts to improve the lot of rural America through an organization he helped organize called the Coalition for Rural America.

I know that I must join countless others in the deep sorrow among us because of Win Rockefeller's death. It is too early for him to go at the age of 60. Yet if life is measured in terms of service to others, Win's life was a full one. I shall treasure forever his close friendship and warm counsel that I was privileged to have. For his adopted State of Arkansas, he had a tremendous effect on the physical and economic assets, on the attitude and outlook of the people, and their determination to have a more effective voice in government.

I am inserting, in conclusion, the February 23, 1973, editorial in the Arkansas Democrat, which is a moving tribute to Winthrop Rockefeller.

[From the Arkansas Democrat, Feb. 23, 1973]

AN UNCOMMON RICH MAN

Winthrop Rockefeller, who died yesterday at age 60, spent his last 20 years in Arkansas. They were Arkansas' most successful years, and there was never any question in his mind that they were his best years, too. In fact, with his son and grandchild now living on his farm on Petit Jean, he was enjoying life as never before when his malignancy overtook him.

The fact is that his life, apart from his Army service in World War II, had been rather pointless until he moved to Arkansas. And with his name and wealth, he easily could have become a part of the establishment and amused himself by helping the state's powerful people become even more powerful.

But as everyone now knows, he did exactly the opposite. He challenged the establishment and was soon shaking the courthouses and the banking houses as they had never been shaken before. His breakup of the one-party political stranglehold, his bringing in blue-ribbon (and high-paying) industry and his insistence that the wealthy give and pay higher taxes to support aesthetic improvements like the Arkansas Arts Center are well known. He was a reformer with not only the will but the means to bring it off.

It's interesting to note that the current session of the General Assembly is now completing action on several things that were mentioned for the first time in this state by Winthrop Rockefeller in his 1967 inaugural address—community colleges, public kindergartens, more state turnback for cities and a bigger highway program financed by revenue-sharing from the federal government.

The things that he accomplished (or paved the way to be accomplished later) helped not the rich or powerful people but the poor and the powerless. Rockefeller created thousands of decent, high-paying jobs in Arkansas. He rammed the first minimum-wage law through the General Assembly. He created the first non-political welfare department, which, for the first time, tried to help, not gyp, poor people. He opened up government with a Freedom of Information law, which gives the common people as much information as the cronies and political insiders used to have under previous state administrations. He started improving those chambers of horrors we called prisons, and he made the State Police into a professional agency that treats rich and poor alike. Blacks weren't even allowed in the State Capitol cafeteria when he was elected. But after he became governor he appointed them to public office and encouraged private employers to do likewise.

The front pages are filled today with tributes from the rich and powerful, starting at the White House. And this is as it should be because the Rockefeller family is one of the best-known in the world. But in Arkansas, the greatest sadness at his death will be felt by the ordinary people whom he helped so much in so many different ways. He was an uncommon rich man.

Mr. ALEXANDER. Mr. Speaker, will the gentleman yield?

Mr. HAMMERSCHMIDT. I yield to my distinguished colleague, the gentleman from Arkansas (Mr. ALEXANDER).

Mr. ALEXANDER. Mr. Speaker, I thank the gentleman for yielding.

I would like to say that I had the privilege of knowing Winthrop Rockefeller as a person as a public servant. I personally know of his contributions in time and talent to the State of Arkansas.

He helped our State as a citizen and as the Governor. If his services and accomplishments were listed they would fill several pages of the CONGRESSIONAL RECORD.

His service marked the beginning of a new era in the State of Arkansas. And, I remember Gov. Winthrop Rockefeller as a compassionate humanitarian who always kept the best interests of his people at heart.

I thank the gentleman for yielding.

Mr. BURKE of Massachusetts. Mr. Speaker, will the gentleman yield?

Mr. HAMMERSCHMIDT. Mr. Speaker, I yield to the distinguished gentleman from Massachusetts.

Mr. BURKE of Massachusetts. Mr. Speaker, I thank my colleague, the gentleman from Arkansas (Mr. HAMMERSCHMIDT) for yielding to me.

Mr. Speaker, the recent news of the loss of Gov. Winthrop Rockefeller was a severe blow to all of us. I was particularly saddened by the news of Governor Rockefeller's death since my association with him had been a long standing one. Winthrop Rockefeller was one of my commanding officers in the 77th Infantry Division during World War II. I can remember that, even on my first encounter with him, there was no mistaking his great capacity for leadership. He was the type of man who inspired those around him to strive for excellence. I am sure that I express the sentiments of all men fortunate enough to serve under him in the 77th Infantry Division when I say that Winthrop Rockefeller was, in every sense of the word, a great man. He was a brave man, and an outstanding soldier whose compassion and concern for the men he commanded won our tireless devotion.

If Winthrop Rockefeller had done nothing more than serve in the 77th Infantry Division, it could truly be said that he served his country well and had made an invaluable contribution to his fellow Americans. Winthrop Rockefeller's ability and enthusiasm destined him to continue in the service of his country. As Governor of Arkansas he established a record of achievement unequaled in the history of that State.

He led the fight for integration in Arkansas, succeeded in desegregating schools and fought for equal job opportunities for all. He brought new industry into the State, creating jobs at recordbreaking rates. He successfully led the fight for Arkansas' first minimum wage law, initiated strong programs in penal reform, and overhauled the State insurance departments. The initiative which he took should serve as a model for all of us involved in the governing process. His loss is a sad one indeed, but we may take comfort in knowing that the programs which he created are still working to the betterment of this Nation. There can be no greater tribute to Gov. Winthrop Rockefeller than for us to dedicate ourselves to the tradition which he has left for us to follow.

Mr. CAREY of New York. Mr. Speaker, will the gentleman yield?

Mr. HAMMERSCHMIDT. I yield to my distinguished colleague, the gentleman from New York (Mr. CAREY).

Mr. CAREY of New York, Mr. Speaker, I thank the gentleman from Arkansas for yielding me this time.

Mr. Speaker, the end of this life for Gov. Winthrop Rockefeller of Arkansas is a casualty to our country. He served America beyond any measure of mere duty in war and peace, at home and abroad.

His record of domestic service as Governor of the State of Arkansas is a graphic account of epochal progress in growth. He brought to his adopted State a commitment to progress. He literally lifted Arkansas from its ordinary stature to a position of dynamic leadership in economic growth, planning, and statecraft, and effective management of its splendid natural resources. Opening the industrial and agricultural heartland of Arkansas by the completion of its great river and water resources central project is one of the brightest chapters in the Winthrop Rockefeller Arkansas story. It may be overly simplistic to state that Win Rockefeller picked up Arkansas on his back and carried it into the front ranks of our States, but the astounding 12-percent industrial growth rate of his State during his governorship did just that. Because Win Rockefeller was a front-rank man, we extend to the people of Arkansas, his neighbors and the great congressional delegation of Arkansas, our sympathy in their loss. I add my personal sense of sorrow at the loss of a courageous comrade in arms.

When Win Rockefeller entered the service of his country in 1940, he chose the infantry, the Queen of Battle, again because he thought in terms of the first file, the fighting front of combat against Axis tyranny.

His performance as an enlisted man in officer candidate school was of such outstanding character that he was appointed to the tactical faculty of that school. Under the legendary Colonel Miller of the Infantry School at Fort Benning, he led the instruction team in automatic weapons. It was my good fortune to receive instruction under Win Rockefeller as did thousands of other future combat platoon leaders. His grasp of the need for the maximum development of planning and proficiency in the use of automatic weapons for the infantry was memorable.

There is no question that the superior performance of the American infantry in battle was a result in a major way of his kind of training and teaching. Not content with the school solution to combat situations, Lieutenant Rockefeller went forth from Fort Benning to the South Pacific. In leadership at the company and battalion level, he rose to the rank of major and won the bronze star with clusters and the purple heart as a result of combat wounds in the 77th (Liberty) Division.

So deep was his devotion to the infantry that he joined the effort to build civilian reserve units after the war. Again, I had the opportunity to work with him as a member of the general staff of the 77th Infantry—Reserve—Division in New York under the late Maj. Gen. Julius Ochs Adler. There he demonstrated a depth of capacity for designing and conducting training programs to pass on to others the valuable experience gained in battle. All infantrymen owe him honor and homage.

Through his efforts, the National Infantry Museum at Fort Benning, Ga. has come into being. Truly an American "Shrine of Courage," the Infantry Museum, Hall of Fame, and collection of the records of our great infantry divisions over nearly 200 years is preserved for the future. Win Rockefeller's leadership and energy has brought over $6 million in contributions to the museum. One of the chapters in history at Fort Benning is the service under the "Queen of Battle" of Winthrop Rockefeller himself. He is honored there as a member of our hall of fame.

Like that of Winston Churchill, the life of Winthrop Rockefeller, leader in war and peace on the world scene, deserves to be remembered; and his passing leaves us diminished but not distressed for Winthrop Rockefeller led the life he loved as soldier, Governor, father, and brother of one of the great American families.

To the Rockefeller family, I extend my sincere sympathy with the hope that they will be consoled with the knowledge that their contribution as a family is remembered with gratitude as we pay tribute to Winthrop Rockefeller, outstanding American and valiant son of the Queen of Battle.

Mr. HAMMERSCHMIDT. I thank the gentleman from New York. I yield to the gentleman from Texas (Mr. STEELMAN).

Mr. STEELMAN. Mr. Speaker, I was unaware that today would be a day set aside to eulogize the passing of a former great American, Winthrop Rockefeller; therefore I rise to speak extemporaneously on his life and contributions to his fellow man.

I have the great honor of representing the Fifth District of the State of Texas but I formerly resided in the State of Arkansas, having grown up and graduated from high school in that great State.

I remember so well the contributions of Winthrop Rockefeller to my home State of Arkansas. I remember his coming to the State in the early 1950's. I remember in those days Arkansas was a State thirsty for industry. Indeed, thirsty for new hope that a brighter day was ahead for us.

I remember as a boy my feelings at the time upon the announcement that Winthrop Rockefeller was relocating in Arkansas. I remember a rekindling of this hope in my case, and in the case of my family—and in the case of my own particular family, the company my dad worked for was brought there because of the efforts of Winthrop Rockefeller and the efforts of the Arkansas Industrial Commission.

One of the great problems that rural areas and small towns have in this country today is attracting young people to stay, as opposed to their moving to the big cities.

Winthrop Rockefeller made a very great contribution in that area, and many young people are staying in Arkansas today because of his efforts and the new hope for Arkansas that he was responsible for.

If I might say in a lighter vein, he made my own party affiliation respectable in the State of Arkansas. My family all belonged to the other great American party, the Democratic Party, and were somewhat disturbed when I decided to affiliate with the Republican Party. Indeed, Winthrop Rockefeller's election as a Republican Governor made my going home a little easier than it had been during my earlier days.

America will miss this great American and Arkansas will miss this great Arkansan, but his legend lives on and we are all the greater for his having lived.

Mr. HAMMERSCHMIDT. I thank the gentleman from Texas for his excellent contribution.

Mr. MILLS of Arkansas. Mr. Speaker, it is with deep regret and great sadness that today we mourn the passing of former Gov. Winthrop Rockefeller, of Arkansas, a man of selfless compassion, courageous public conscience, and intense dedication to the two-party system. I have always had the greatest admiration for all of the Rockefeller brothers, and particularly for Win. I have truly lost a very warm personal friend.

It was a very special mark of Win's selfless compassion that as a man of enormous means he cared so much for those who have so little. In his early years, he spurned the chance to assume the lofty financial position which his wealth and family afforded, choosing instead to begin his business career among the manual workers in the oilfields. And throughout his life, perhaps his most pressing desire was to bring about concern and understanding among all people, to turn from hatred and hostility

to achieve true equality, a true brotherhood of man.

It was a very special mark of his courageous public conscience that he threw his Stetson hat into the Arkansas political arena, a native New York Republican in a democratically Southern State, at first to lose, yet with the abiding courage to come back again. But the full scope of his public service was far from totally political, for first as Chairman of the Industrial Development Commission unparalleled jobs and prosperity accompanied the new industry he solicited, and then through his continuing philanthropic efforts, schools, charities, and civic activities found a new and active partner.

And it was, too, a very special mark of his intense devotion to the two-party system that he struggled to build in an alien Democratic land a viable and effective Republican Party. For greater than his Republican heritage was his realization that the essence of American politics is the choice between opposing views, and that challenge and competition question old problems, promote new solutions.

In his farewell message as Governor, Win eloquently reflecting on the accomplishments of his terms as Governor said:

> When the history of the past four years is written, I hope that the historian may think of me more than a political phenomenon, but as a catalyst who hopefully has served to excite in the hearts and minds of people a desire to shape our own destiny.

That is the way that I shall remember him, and that is the way that I believe that Arkansas will remember him.

Of the many monuments throughout Arkansas that bear witness to his selflessness, some of them the visible benefits of industrial prosperity. Less visible, but perhaps most significant, was his work toward bringing about a greater degree of understanding, a common brotherhood of man.

To his family, I extend my deepest sympathy, and from the people of Arkansas, I extend my deepest gratitude that we have had the opportunity to share with you this very special, very human man.

Mr. THORNTON. Mr. Speaker, when we want to show our respect for a capable, compassionate leader, we often call him "great," "outstanding," and "distinguished." But, sometimes, overuse of these frequently deserved superlatives obscures the genuine, human quality of the person we describe.

By any standards, Winthrop Rockefeller was a great leader. He was outstanding, and he was distinguished. But I hope we will never forget that he was also a very good man.

As a champion of prison reform, he showed human concern for the troubled inmates of our penal system.

As a champion of a statewide kindergarten program, he showed confidence in the children who will someday lead our State.

And, as a champion of constitutional revision, human rights, urban redevelopment, freedom of information and a score of other notable reforms, he showed a keen awareness of the need for changes to benefit all of the people of Arkansas.

I want to share with you the closing remarks of a moving tribute to Winthrop Rockefeller, by Paul Greenburg, the Pulitzer Prize-winning editorial writer for the Pine Bluff, Ark., Commercial. His eloquent words express how so many of us feel about Winthrop Rockefeller, the leader, and Winthrop Rockefeller, the man.

> What matters is what he did and still encourages us to do. The small things seem even smaller now—the way he would stomp past big contributors as though they weren't there, his ranking as the worst public speaker in the United States and Canada, his inability to master the slicker tricks of politics. But the big things loom even larger: His example and goodness continue to calm and guide a state making its way out of poverty and leaving hatred behind. And it seems to grow on more and more people what a good man this was, and how fortunate we are to have had him.

Mr. KLUCZYNSKI. Mr. Speaker, it is a privilege to join my voice to those across America who are paying tribute to the late Winthrop Rockefeller, former Governor of Arkansas and one of the most noted political personalities on the national scene in our time. Governor Rockefeller was a man of immense gifts and abilities, which he might have wasted idly as a leading member of one of America's wealthiest families. Instead, he chose to dedicate his life to public service as, in his own very moving words:

> A catalyst who hopefully has served to excite in the hearts and minds of people a desire to shape our own destiny.

He believed passionately in the democratic promise of America, and he never ceased to labor in behalf of the rights and liberties of all. His public career was seldom free from controversy even as his private life was marked from time to time by great unhappiness. Through it all he remained loyal to the concerns of the State of Arkansas and the wellbeing of its people. His administration provided what has been truly termed an "era of excellence," marked by industrialization, social advance, and economic progress. He overcame the liabilities of inherited wealth and social class to win widespread popular support.

Such an achievement was no accident. A dropout from Yale, Governor Rockefeller had worked in the Texas oilfields, and knew at first hand the problems and needs of the workingmen. By temperament a nonconformist, he was able to build a broad case of support from members of both parties. He had a special feeling for the veteran, having served with great distinction in the Second World War, in which he was wounded, winning the Bronze Star and Purple Heart.

His cultural and philanthropic interests were many and varied, in the Rockefeller tradition, and included the Colonial Williamsburg Foundation. His passing removes one of the ablest and most gifted men in American public life, and we are all the poorer for it. His achievements remain as his legacy to the people of Arkansas and to the Nation. To his son and his granddaughter, and to his three surviving brothers and their families, I extend my deepest sympathy, knowing that their sorrow is lightened by the enduring significance of a life well and bravely lived for worthy purposes. Not least among the Governor's qualities was the courage and the dignity with which he faced a terminal illness, qualities sustained by his faith in life and in God.

Mr. SMITH of New York. Mr. Speaker, I join today in paying tribute to the late Honorable Winthrop Rockefeller. I had the pleasure of meeting him several times and have been aware of some of the many things that he accomplished for Arkansas and for the Nation. I was not a close associate of Gov. Winthrop Rockefeller, but I know that the many good things he did have been appreciated and he will be sorely missed by those who knew him.

Mr. DOMINICK V. DANIELS. Mr. Speaker, on Februry 22, 1973, our country suffered a great loss due to the death of former Gov. Winthrop Rockefeller of Arkansas. Governor Rockefeller, a great American, will be greatly missed by his fellow Arkansans and all Americans for his spirit of generosity and philanthropic contributions in service to the citizens of this Nation.

The State of Arkansas will remember this great leader for his service to its citizens as Governor and for his work in aiding the economic growth of the State. As a Nation, we shall remember him for his philanthropic contributions, as seen in his participation in the Rockefeller Brothers Fund, and as chairman for Colonial Williamsburg. In addition, his deep concern for the welfare of the American people was expressed in his leadership in the National Urban League and his trusteeship in the National Fund for Medical Education.

The life of Gov. Winthrop Rockefeller serves as a model for all Americans to follow. I join with all my fellow Americans in honoring his memory and shall hold his accomplishments in my reverence and esteem for their contributions to the progress of this Nation.

Mr. RHODES. Mr. Speaker, I was deeply saddened by the untimely passing of a great American, Gov. Winthrop Rockefeller. Just last August I had the pleasure of working with Win when he served as a member of the Platform Committee at the Republican National Convention. During our long and arduous hours of deliberations, his personal charisma and sense of humor helped to relieve momentary tensions, but perhaps the most significant and lasting impression he made on all of us was his profound and dedicated concern for the disadvantaged. His contributions to the Republican platform of 1972 are only a part of this fine man's legacy to our society. He was truly a fine, productive citizen of our country, and a friend of all mankind.

Mrs. Rhodes joins me in sincere sympathy to the members of his family in their bereavement.

Mr. COHEN. Mr. Speaker, I want to join my House colleagues in mourning the recent passing of former Arkansas Governor Winthrop Rockefeller.

When "Win" Rockefeller died last week in Palm Springs, Calif., America

lost one of our finest public and philanthropic leaders. Not only was he an outstanding political leader who served the State of Arkansas with distinction, but he also gave himself totally to a number of organizations that have benefited millions of Americans. His participation in the Rockefeller Brothers Fund, chairmanship of Colonial Williamsburg, leadership in the National Urban League, and trusteeship in the National Fund for Medical Education, are all examples of selfless giving to others in the tradition that has made America great.

The life of Winthrop Rockefeller has and will continue to serve as an inspiration to all of us in public and private life to dedicate ourselves to the American ideals in which "Win" so deeply believed.

GENERAL LEAVE

Mr. HAMMERSCHMIDT. Mr. Speaker, I ask unanimous consent all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous matter, on the life, character, and public service of the late Winthrop Rockefeller.

MEMBERS URGED TO SUPPORT H.R. 475, A BILL TO AMEND THE SOCIAL SECURITY ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Alabama (Mr. EDWARDS) is recognized for 5 minutes.

Mr. EDWARDS of Alabama. Mr. Speaker, on the opening day of the 93d Congress, I introduced H.R. 475, a bill to amend the Social Security Act to make certain that recipients of aid or assistance under the various Federal-State public assistance and medicaid programs will not have the amount of aid or assistance they receive reduced because of increases in monthly social security benefits. The bill also provides that recipients of veterans' pension and compensation benefits, as well as recipients of any other Federal benefits, will not have their benefits reduced because of social security increases.

I have received many letters from constituents who had their expectations raised by learning of the 20-percent increase in social security benefits. But these hopes were in many cases dashed when other benefit checks, taking into account the individual's increased income from social security, were reduced accordingly. In fact, in some instances, people are actually worse off financially because of the increase.

This circuitous process certainly does not mesh with the intent of Congress at the time the social security increase was enacted. Congress did not intend for the law to benefit State governments by allowing them to decrease their State payments. Congress did not intend for the law to enure to the benefit of the Veterans' Administration or any other Federal agency.

Rather, Congress intended that the increase would reach the people in full force, not be watered down through reductions in benefits from other sources.

Mr. Speaker, people who receive social security benefits feel the pinch of rising rent, food costs, and health care costs as much if not more than anyone else. This fact compounds the unfairness of shuffling the social security increase from one agency to another, rather than making certain that a bona fide increase in income is realized. My bill will see to it that the intent of Congress is carried out, and more importantly, it will make certain that social security beneficiaries receive the income they deserve.

I urge every Member of Congress to support this bill and to work for its early passage.

PERSPECTIVES ON LEGAL SERVICES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. KEMP) is recognized for 20 minutes.

Mr. KEMP. Mr. Speaker, most of us will recall that in September of last year the 92d Congress and the administration reached an impasse on the question of a proposed National Legal Services Corporation. As a result, the legal services program remained within the agency which gave birth to it, the Office of Economic Opportunity.

The issue is before us once more. One of the pivotal concepts with which Congress must wrestle during the coming debate over the mission and structure of a new National Legal Services Corporation is the concept of law reform. It is definable in many ways by many people. It is acceptable to nearly everyone in some form and under some circumstances and in other contexts is deeply repugnant to many. No discussion of the subject makes sense unless it is prefaced with a clear delineation of the particular type of law reform in question.

It is for this reason that I believe it is important for members of Congress to have the advantage of a penetrating analysis of the whole issue of law reform which has come to my attention.

The well-known social critic, Irving Kristol, wrote of the paper: "It is absolutely first rate." The paper, which deals with issues concerning legal services, was prepared by Marshall Boarman, a policy development specialist at the Office of Economic Opportunity.

Mr. Boarman has an M.A. from the University of Toronto and a licentiate degree from the University of Louvain in Belgium. He is currently preparing a doctoral thesis for the University of Pennsylvania. In addition, he is a career civil servant with 12 years experience as a civilian educational administrator for the U.S. Air Force. During the past year, he has been employed in the Office of Program Review at OEO and is currently Chief of the Evaluation Division of the Office of Legal Services.

Because this paper, Issues Concerning Legal Services, is so timely and of such a vital concern to the future of this program, I include it in full in the CONGRESSIONAL RECORD. The cost of printing is $2,252.50.

The paper follows:

ISSUES CONCERNING SERVICES

(Page numbers refer to original paper)

PART I: THE PROBLEM OF ACCOUNTABILITY

On August 18, the Conference Report on H.R. 12350 (the Economic Opportunity Amendments of 1972) was submitted to the House of Representatives—minus the provision which would have established the new National Legal Services Corporation. (The bill as reported was subsequently passed by the House and Senate and signed by the President.) In an editorial on August 30, the Washington Post, deploring the "private executive" of the Corporation, commented as follows:

"When the bill emerged a week later, the legal services corporation—although previously agreed upon—had vanished. Its disappearance was explained as a result of a 'failure to reach agreement' on the *composition of the board* and *'certain other elements of the corporation'*. The disagreement was not, it seems, between the House and the Senate, but between a Congress apparently willing to bend quite flexibly and an administration unwilling to compromise at all" (Emphasis added).

Now it is true that the dispute between the Administration and the Congress over the composition of the Corporation's board was one of the principal reasons for the President's veto of the Corporation the first time around (in December 1971). The President scored the Corporation then for its lack of "accountability", citing as an example of this the restrictions that would have been placed on the President in selecting board members. It is also true that the composition of the board was one of the main sticking points in the debate over the second version of the Corporation, and that the Congress went some distance towards meeting the Administration's objections in this regard.

There has been a widespread misunderstanding, however, both within the Congress and without (as evidenced by the Post editorial), of the full rationale behind the Administration's opposition to the Corporation in the form in which it has been proposed. This misunderstanding has resulted from the tendency, shared by most of the Corporation's defenders and by some of its critics, to conceive the problem of accountability in its narrowest terms, as a problem of "who appoints the board?" The fact of the matter is that the problem is much larger than this, both at the national level on which the board would be operating, and at the local level where the defects of the legal services program are usually seen as resulting merely from a lack of judgment on the part of immature, over-zealous young attorneys. The scope of the real problem is hinted at by the language of the Conference Report (quoted in the Post editorial) which refers somewhat mysteriously to "certain other elements of the Corporation". It is time for these "other elements" to be clearly identified and for all of the dimensions of the problem of accountability to be examined, so that the continuing debate over the direction the legal services program should take can be lifted above the level of peripheral issues and partisan bickering.

The point of departure for a more comprehensive analysis of the problem of accountability is furnished in a recent article on the proposed Corporation by a former official of OEO's Legal Service Office, Richard Blumenthal (81 Yale LJ 231). Blumenthal breaks the term "accountability" into two components: (1) policy-setting and (2) responsiveness. Policy-setting is defined as a concept of management consisting of the selection and definition of goals and priorities and the articulation of broad strategies to achieve these goals through coherent standards and guidelines. In the case of a public program or institution, policy-setting at the deepest level

has to do with the ideological or philosophical drift of the program and poses such questions as: What social, economic and political goals and priorities are in the long-range interest of the public and will most advance the common good? What strategies for implementing these goals are most consistent with the traditions of representative democracy and with the political and constitutional premises which underlie the American system?

Responsiveness, on the other hand, has to do with the problem of control. It is "the sensitivity of an institution to the interest of its various constituencies" and to the claims of these constituencies to a voice in the management of the program or institution. Responsiveness assumes that the deep orientation of a program has already been fixed in policies and sub-policies, and asks such questions as: Who should have access to the program's levers of control? To whom is the program accountable (in the more common but narrower sense of accountable)? In the case of the Legal Services Program, accountability from the standpoint of policy-setting relates to the impact of the program's policies on the fabric of the American system, on the public-at-large and on the program's "clients" (the poor), all of these viewed as more or less passive objects, whereas accountability from the standpoint of responsiveness refers to various segments of the same public taken as agents who, having an investment in the Legal Services Program and therefore a stake in its outcome have a claim to some control.

The issue of accountability as responsiveness was given a considerable airing in the Senate debate on the Legal Services Corporation, while accountability in relation to policy-setting was little discussed. The latter aspect of accountability was, however, suggested by the President in his veto message last December, when he asked Congress to create an agency "which places the needs of low-income clients first, before the political concerns of either legal services attorneys or elected officials". The President was referring to one of the most objectionable features of the Legal Services Program as it has operated in the past: its penchant for putting causes ahead of cases, for using clients as mere vehicles to promote sweeping social and political change.

There are actually two issues entangled here: (1) the propriety of seeking out and giving priority to those indigent clients whose grievances are suited to the kind of test-case litigation the attorney wishes to pursue in his efforts to change the "system" and (2) the propriety of the use of public funds by legal services attorneys to bring about social reform, entirely apart from the question of whether the attorney's activity is or is not determined strictly by the needs of an individual client. Both of these issues presuppose a very crucial distinction between two concepts of legal services for the poor. On the one hand, legal services is conceived in the traditional manner as a program of legal aid to individual clients in an effort to obtain redress under existing law. The alternative concept, while admitting the need for conventional legal aid, puts the main emphasis on law reform, i.e. on substantive changes in existing statutes or in the interpretations of these statutes. Under this latter concept, the indigent client's real adversary is not so much the violator of a law as it is the law itself.

The distinction between these two concepts of legal services was for the most part ignored in the debate over the Legal Services Corporation, while on those rare occasions where it was adverted to by the Corporation's defenders, its validity was usually denied. It is the purpose of this paper: (1) to uphold the validity of the distinction (pp. 7–11); (2) trace the history of the vacillation in OEO between the two concepts of legal services (p. 12) and (3) present the arguments justifying the Administration's rejection of a Legal Services Corporation which would have devoted itself primarily to the practice of social action law, at public expense but without the usual public control (p. 30). The arguments can be summarized in the form of a dialogue between two attorneys, Attorney A who favors the Legal Services Corporation and Attorney B who opposes it:

Attorney A: I know why you're upset with the legal services program and with the Corporation which would replace it. You're opposed to the idea of a lot of young activist lawyers, with more zeal than judgment, ruffling the feathers of politicians and bureaucrats with their suits against the government.

Attorney B: You're referring of course to two of the standard arguments against legal services. One argument I'll call for convenience the "Murphy amendment" argument, since it was Senator Murphy of California who, a few years ago, introduced into the Congress a bill that would have barred use of OEO funds for suits against the government. The other argument can be tagged the "barefoot lawyer" argument in honor of the young legal services attorney (in Colorado I believe) who mortified officialdom by appearing in court in bare feet to argue his case. Now as regards the first argument, there is no doubt that much of the hostility encountered by OEO's legal services program throughout the country is the result of its suits against the government. Many people find something odd, if not outrageous, about the idea of the U.S. Government financing lawsuits against itself. Personally I am not in principle opposed to such suits. There are cases where they are simply harrassing actions. In any event, it is a gross distortion of the legal services issue to reduce it to the question of the propriety of suits against the government. The same goes for the second argument you mentioned: it does not reach the central issue. Of course we should begin to curb the barefoot lawyers and staff the program with older, more experienced attorneys—but I doubt this would cure the basic ills of the program. The indiscretions of the young lawyers are, in many instances, only symptoms of a deep animus against the whole system, and of a fixation on law reform regardless of the immediate interests of the individual client. This latter point is particularly important and is not linked necessarily with youth or immaturity. There certainly seems to be a pattern in the legal services program of using clients this way and I object to it. In a proper attorney-client relationship, it is the client not the lawyer who should call the tune. The lawyer should not put his private concern for social change over the needs and interests of his client.

Attorney A: Now wait a minute. I've been involved in test case litigation and I don't consider that I've been putting my concerns ahead of those of my client. In the case I'm talking about, not only did my client want me to pursue the litigation to the test-case stage, but in this instance it was the only way I could be of any real help to him. He was being victimized not by a wrongdoer but by the law itself.

Attorney B: Please don't misunderstand me. I will concede that there are times when test-case litigation is perfectly proper, just as I conceded above that there are times when suits against the government are in order. My only point was that the OEO record is replete with instances of clients being manipulated. But bad as this is, it does not disturb me nearly as much as something else about test-case litigation: its exploitation by legal services attorneys to bring about fundamental social change. This I find highly questionable. Under our system of representative government, the legislature and not the courtroom is the proper forum for the advocacy of social change.

Attorney A: Fine. We're ready to explore this route with our program of legislative advocacy.

Attorney B: But your involvement in legislative advocacy—or to use the older, blunter term, "lobbying"—in also highly questionable, this time on different constitutional grounds. Is it proper for a legal services attorney, or for any other person who has not been elected to public office, to use public funds to promote a political, philosophical or ideological point of view? There is a substantial body of opinion and law which would answer in the negative.

Attorney A: We lawyers have an ethical mandate—given us by the Code of Professional Responsibility—to engage in legislative advocacy. Publicly-funded lawyers are bound by the same Canons of the Code as privately-paid lawyers.

Attorney B: I beg to differ. Lawyers as lawyers have a mandate to improve the legal system in the sense of perfecting the law in technical and non-controversial areas. An example of a technical matter is the form and clarity of expression of a law. Another example is the relationship of one law with another: are they consistent with each other? Injustices can result from technical defects in the law and it certainly is incumbent on the lawyer as such to try to remove these injustices. But involvement in larger questions of public policy and social goals is, under our system, reserved for the legislator, and for the citizen—including the lawyer as citizen—acting, on and through his elected representatives. So a lawyer can perfectly well carry out his professional duties without engaging in social law reform. As one legal scholar wrote recently: "There simply is no ethical mandate for a lawyer to engage in social law reform".

Attorney A: I'll concede your point that while a lawyer has no mandate to engage in social law reform, he may do so as a citizen. I would add further that he may do as a publicly-paid citizen, so long as the principle of "representativeness" is not violated, a point you made earlier. Now in a sense we legal service attorneys do represent the electorate, since the funds for legal services to the poor are allotted by Congress and the program these funds pay for is administered ultimately by the President.

Attorney B: Very good. To the extent any member of the executive branch, or anyone whose authority derives ultimately—by appointment or otherwise—from the executive branch, engages in lawful lobbying, his activity must be subject to the veto of the executive branch, otherwise the "representativeness" or "accountability" of such lobbying is lost. Your last admission therefore, though not inconsistent with some sort of publicly-funded law reform, is totally inconsistent with the concept of an autonomous National Legal Services Corporation in the form in which it appeared in the latest version of the poverty bill, before it was deleted.

The paper closes with a quote from Professor Geoffrey Hazard of Yale which, by implication, suggests that the function of rendering traditional legal aid and the function of law reform should be separated and that the law reform effort should be carried on by OEO itself, in-house and at the national level, instead of being delegated to either an autonomous corporation or, as is the case at present, to back-up centers and to project attorneys in the field. The demise of the proposed Corporation indicates that the time has come for OEO to reassess its current Legal Services Program, and to revamp the guidelines of the Program in the light of the imperatives which flow from an acceptance of the distinction between the

two concepts of legal services, and the other considerations advanced in this paper.

PART II: TWO CONCEPTS OF LEGAL SERVICES

In the literature dealing with legal services for the poor, two basic approaches are sharply differentiated: the traditional "legal aid" or "service function" approach and the "non-service function" or "law reform" approach. The following excerpts culled mostly from law review articles, will help clarify the distinction:

1. "The service function (is) the representation by the neighborhood lawyer of *individual* clients without regard for *broader reform*" (Lowenstein & Waggoner, 80 *Harvard LR* 810). [Note: The same article lists the following activities as examples of the non-service function: (1) law reform via litigation, with emphasis on the test case, including suits on behalf of individuals and class-action suits; (2) law reform via legislative advocacy or lobbying; (3) the representation of organized groups of poor as opposed to the representation of individual clients; (4) assistance in organizing such groups, whether they be of the self-help or pressure group variety; (5) assistance in organizing rent strikes, buyers strikes, etc.; (6) community education to apprise the poor of their legal rights and obligations. (80 *HLR* 815 sqq)]

2. "The only consideration which distinguishes appeals of this type (i.e. appeals which fall under the non-service function) from the service function is that the neighborhood lawyer places an affirmative value on winning the point of law as well as on winning the case". (Lowenstein and Waggoner, op. cit. 815)

3. "As A. Kenneth Pye, the leading historian of the development of legal services describes it . . . one approach would 'place principal emphasis upon existing legal aid organizations which had close relationship with the organized bar', and 'policies would be negotiated between OEO and the bar with the major objective being providing *more and better representation for individuals'*. The second approach entailed federal funding of new organizations which would be 'prepared to decline legal assistance to eligible applicants if providing representation to such persons would overburden their staffs . . .' and prevent them from 'achieving their *major objective of social, economic and legal reform* through the litigation of test cases" . . . (Hannon, 5 *Cal West LR* 224. Emphasis added.)

4. "The Director of Legal Services (E. Clinton Bamburger, Jr. 1966) was attempting to articulate a national policy on law reform, and he used this forum to cogently describe the role of the poverty lawyer as akin to that of his brothers in private law firms who had long functioned as 'the *architects as well as the artisans of social reform*—redesigning, reforming and creating not only legal institutions but social, economic and political institutions as well' " (Hannon, op. cit. 227. Emphasis added.)

5. "In current legal services jargon, the term 'service function' describes the traditional legal aid work of *serving individual clients*" (Hannon, op. cit., note 228.)

6. "In March 1967 the second Director of the Legal Services Program (Earl Johnson) . . . declared that 'the *primary goal* of the war on poverty's legal services program should be *law reform achieved by significant test cases* that can revise the structure of the world in which the poor live. . . . The goals of providing legal services to all of the poor, community education, legal research and test cases cannot all be reached with limited funds . . . '. For this reason 'more than in the past, legal services programs will set aside staff and funds to concentrate on developing significant appellate cases that are likely to have a substantial impact on large numbers of the poor' " (Hannon, op. cit. 229–230. Emphasis added.)

(NOTE: It is interesting that Johnson, in distinguishing between activities of the "non-service" variety and those of the "service" type, uses for the latter the term "legal services". A corporation set up to provide legal services in this strict sense would therefore not engage in law reform.)

7. "The bar got what it expected as poverty lawyers concentrated on serving individual clients on a mass production basis in the traditional legal manner. *Serving the needs of the individual client* may help the client gain confidence in the political legal system. Such service also may help the individual become more a part of that system. But it is not likely *to change the system itself*, and many observers feel that this is the greatest weakness in the traditional legal aid approach." (Hannon, 6 Cal West LR 48. Emphasis added.)

8. "Law reform . . . the view that the political system should be changed on behalf of the poor." (Hannon, op. cit.)

9. "Many lawyers will give steadfast support to organizations designed primarily *to provide services to individual poor persons* with middle class legal problems but are either apathetic or opposed to organizations with substantial commitments to providing *representation to groups* contemplating civil rights demonstrations, economic boycotts or rent strikes. . . . Hostility is certain to result in the future if the support of the bar is achieved under the guise of *giving a poor man a right to counsel* when the real objective is providing legal leadership for *institutional reform*." (Kenneth Pye as quoted by Hannon op. cit. 52. Emphasis added.)

10. "It is our view that the problems of the poor result far less from unjust rules than from inequitable distribution of wealth and power and that lawyers serving them must focus on *building legal institutions* which can enhance the power of the poor client to *economically* and *politically* cope for himself." (Hannon, quoting CRLA, op. cit. 53. Emphasis added.)

11. (The following are definitions of two elements of the non-service function of legal services, as contrasted with the service function):

"Group representation consists of services provided to an organization or association of low-income individuals who are generally residents of a particular neighborhood or area. *Law reform* may be defined as representation provided to a low-income group or individual *with the primary objective of changing a law or legal interpretation affecting the poor generally and usually involving elemental questions with respect to the distribution of power or wealth*. Such representation is distinguished from *individual casework* or service, which has *the primary objective of improving the situation of a low-income group or individual under existing law*. The two of course, overlap. But the two activities are separable in terms of primary objective." (Blumenthal, 81 *Yale LR*, note 246. Emphasis added.)

12. "Certainly the individual client's case and his need must always be the focal point of the lawyers' work. Legal service in the context of the War on Poverty, however, must mean *something more* as well. Defending the poor against the evils from which lawyers regularly insulate us is only part of the job. . . ." (The rest of the job, according to the author, comprises challenging unethical businessmen and federal and state bureaucrats, and educating the poor in respect to their rights) "In each of (their) functions, lawyers do more than handle a particular legal matter bounded by a particular set of isolated facts. They take the common threads of *social, economic and political problems affecting large groups of people and weave the test case, remedial statute or administrative reform* to solve the pervasive problems and eliminate the cause for the future. Similarly the poor must be represented on a broad and deep scale. . . . Some have cried that group representation and broad research looking to law reform—at least when done by attorneys in legal services programs—are sinister and a departure from the accepted role of lawyers. They call it 'social reform' . . . (But) the law is more than rules of rights and repressions. The law is a dynamic force for social change". (Shriver, XLI *Notre Dame Lawyer*, 848 sqq)

13. "Each of the pending applications (for incorporation submitted by several legal services projects in New York City) in setting forth purposes, is unsatisfactory in the indiscriminate mingling of social goals and legitimate legal practice. Recognizing that the law may be a constructive progressive force in the development of a community, and particularly that social goals involve significant lay leadership and lay individual engagement, the interrelation of social goals with the practice of law must still be better and even precisely defined, or if not definable, separated. In this connection the vaguely suggested subprograms for education alerting the communities to the opportunities for the assertion of legal rights, and the use of the law and its institutions in *achieving social and economic (as distinguished from legal) justice* are especially illustrative of indiscriminate mingling of goals which require either definition or separation." (Judge Preitel, 26 AD 2d 362, NY Sup. Ct. Emphasis added.)

14. "The concept of the neighborhood legal service is identical to the idea that had for decades motivated legal aid societies. The Legal Services program has however, adopted a number of additional objectives that legal aid societies either because of limited funds or lack of scope had previously shunned: *legal reform, education, representing organizations of the poor.*" (Levitan, The Great Society's Poor Law, 177 sqq. Emphasis added.)

15. (The author next quoted distinguishes between four basic concepts of legal services for the poor, two of them extreme (one radical and one conservative) and two of them intermediate. I am assuming that the choice, so far as the Legal Services Corporation is concerned, is between the two intermediate ones. The point will be discussed later in this paper).

"It is possible to discern four distinct concepts of the Program. The most radical concept visualized the Legal Services Program offices as the nuclei of the Community Action Program. There were to be neighborhood-center locations, staffs of politico-legal sophisticates to develop and energize community self-help effort and a pervasive program of organization-education-action-reform. This approach excited doubt and hostility in quarters where opposition would have been fatal to the Legal Services Program, in particular the organized bar and a number of city governments including Chicago. Accordingly, it was implemented only in a few communities and even there has had a tenuous existence.

"The most conservative approach expressed in certain sectors of the bar and also 'implemented' in certain areas was even simpler: There shouldn't be a Legal Services Program, because such a program was unnecessary (the poor had no legal problems or their legal problems were already being taken care of) and essentially socialistic.

"Two intermediate concepts of a Legal Services Program therefore contended for primacy in the main thrust of the Program. One such concept was that expressed by the American Bar Association which explained the Legal Services Program to itself and to others as an expansion of traditional Legal Aid . . . (This) concept of the Legal Services Program generally shared among the legal profession was (of) a program *oriented to individual clients, concerned with individual cases and centered on the routine disorders of daily life*—domestic discord,

trouble with creditors and landlords, and involvements with the police, welfare agencies and other organs of government. . . . *Litigation is recognized* as an appropriate weapon, but only uneasily and *as a last resort*. . . . In the other contending concept of the Legal Services Program . . . legal assistance *is the bridge between broad social grievance* (e.g. bad housing, racial discrimination, expensive credit, chronic unemployment) *and social reform*. . . . *In contemplation . . . is a legal* services program concentrated on group concerns of the poor, concerned with structural problems and centered *on change in the law itself*—reform of welfare, school administration and the law governing such relationships as landlord-tenant and creditor-debtor. The characteristic problem-solving technique is aggressive, prodding, protesting and complaining on behalf of the poor with *litigation as a routine resort* if not ordinary procedure." (Hazard, 36 *Univ. of Chicago LR* 700–703. Emphasis added.)

(Note: Hazard, in his further discussion of the two concepts of legal services, uses such expressions as "the traditional, conservative concept", and "the militant, reformist concept" to refer to what has been called the "non-service function concept". The traditional concept aims at what Hazard calls *civil justice* (procedural justice and the fairness of decision in particular cases, the sort of justice termed "commutative justice" by the Greeks and medievals) while the "militant, reformist" approach aims at *social justice* (the allocation of community resources, what the ancients called "distributive justice"). For Hazard's views on the appropriateness of the reformist approach, see below, beginning on p. 30.

PART III: HISTORY OF THE VACILLATION IN OEO BETWEEN THE TWO CONCEPTS OF LEGAL SERVICES

It should be noted that the choice which confronts policy-making is not between the "legal aid" concept on the one hand and a *pure* "law reform" concept on the other. The alternative to the traditional "legal aid" concept which is under discussion in this paper, though sometimes labeled the "law reform" concept, includes the "service" or "legal aid" component. It adds to this component the non-service functions: law reform (test-case litigation and lobbying), group representation, group organizing and community education.

Section A

All of the authors consulted who have commented on the history of the contention between the two concepts of legal services in OEO agree that, from the inception of the Legal Services Program to the present, OEO has never formally or overtly embraced one concept to the exclusion of the other. The following quotations will bear this out:

1. "The objectives of the Legal Services Program *have never been officially stated in very coherent terms*. The Economic Opportunity Act of 1964 creating OEO did not explicitly authorize a program of legal services; the renewal legislation ratified the Legal Services Program without explaining it. The diverse supporters of the Legal Services Program, ranging from the organized bar to legal elements of the New Left, *found it useful in arguing for the Program to submerge their differences over its policy*. . . . An ambiguous policy has permitted a single federal program to commence operations at a variety of local starting points, including some where no services had previously existed and some where there could already be found large and sophisticated operations. . . . As the program (reaches) perhaps the decisive point of political consideration, it remains as nearly all things to all men as its supporters have been able to make it." (Hazard, 36 *Univ. of Chicago LR* 699–702. Emphasis added.)

2. "The difference between the test case or law reform approach and that of the established legal aid societies, which emphasized service to individuals was dramatic. But OEO failed to choose between the two. It vacillated. Initially OEO did not emphasize the importance of law reform and it continually played down its own position as policy maker or planner. At this juncture national goals were blurred and great stress was placed on the promise that OEO would not dictate a policy for legal services from Washington." (Hannon 5 *Cal Western LR* 225. Emphasis added.)

3. "Professor Pye witnessed OEO's vacillating between the law reform goal and the service function, and he recognized the need for OEO to set its own priorities before allocating funds to local programs. This was not done and the following passage by Professor Pye is particularly prophetic in view of the existing struggle for control of programs: "Agreement on . . . platitudes cannot obscure the necessity of determining the basic objectives of OEO-financed legal services programs. To a large extent the choice of the programs to be financed must depend on the major objectives sought to be achieved." Unfortunately OEO did not heed Professor Pye's warning. . . . This lack of prior planning is almost inexcusable. . . ." (Hannon op. cit. 228)

(*Note:* According to Hannon, the Guidelines for Legal Services Programs which OEO published in 1966 "did not even list law reform among the program's overall objectives." The five Guidelines objectives (listed below) vaguely referred to several activities that could be directed to law reform but priority was assigned to individual casework:

"The specific objectives of the program are to:

1. fund locally-initiated and controlled programs of legal *service* for the people in poverty;

2. accumulate knowledge on the most effective method for bringing assistance of law and lawyers to the poor;

3. sponsor education and research in the areas of procedural and substantive law which affect the cause of poverty;

4. acquaint lawyers with their essential role in combatting poverty;

5. finance programs to teach the poor and those who work with the poor to recognize *problems that can best be resolved by the law and lawyers*."

(From *Guidelines for Legal Services Programs, 1966* (never revised))

The list of objectives includes several, such as community education, which fall under the "non-service function" heading, but studiously avoided any reference to test-case litigation or legislative advocacy, the two principal weapons of law reform. However, the same Guidelines, in another less obstrusive section, entitled "Scope of Services" do authorize law reform, though somewhat tepidly, as follows:

"Advocacy of appropriate reform in statutes, regulations and administrative practices is a part of the traditional role of the lawyer and should be *among the services* afforded by the program. This *may* include *judicial* challenge to particular practices and regulations, research into conflicting or discriminating applications of laws or administrative rules, and proposals for administrative and legislative changes."

Hannon comments: "The Guidelines did mention law reform later as part of the full spectrum of civil law which these programs were expected to undertake, but the emphasis at this time *was definitely not on law reform*." (op. cit. 225.)

4. "A major contributing cause of the (legal services) program's current vulnerability to such (political) interference has been a failure of *policy-setting* and responsiveness. It has been a dual failure: there has been *no clear articulation of policies for projects and personnel to follow;* nor has there been a solution to the problem of defining the proper roles of various constituencies in determining policies." (Blumenthal, 81 *Yale LR* 232)

(*Note*: Blumenthal adds that the first explicit authorization for the Legal Services Program in the Economic Opportunity Amendments of 1967 provides no clue as to which of the two concepts of legal services—the "legal aid" concept or the "law reform" concept—was favored or intended by Congress. The goal of the legal services program is, in the words of the statute, "to further the cause of justice among persons living in poverty by mobilizing the assistance of lawyers and legal institutions and by providing legal advice, and *other appropriate legal services*." The question which remains is: what other services are "appropriate" and is law reform one of these? The legislative history of the statute indicates that Congress never really faced the issue.

According to Hannon:

"Congress as yet has not been forced to face the kind of law reform oriented program which OEO now envisions. Some liberal members of Congress have spoken out in favor of this more aggressive approach, but Congress as a whole has not yet spoken. Most of the rave reviews seem to have been engendered by the lawyers' prodigious labors in servicing individual clients, and Congress has not yet witnessed the results of an extensive law reform campaign. The surprisingly warm reception of the Murphy Amendment does not bode well for the reception which awaits law reform." (Hannon, 6 *Cal Western LR* 51).

Proponents of the Legal Services Corporation largely succeeded in obscuring the issue in the recent Senate debate on the Economic Opportunity Amendments of 1972, and Congress has yet to squarely confront the constitutional questions raised by the problem of accountability on the policy-setting level (Shall the policy be law reform?), rather than on the level of responsiveness (Who exercises political control?). In respect to the motives of those in the Legal Services Program who, though committed to the "law reform" concept, have consistently failed to formally advertise this commitment, see below, pp. 16, 18)

5. "The failure of policy-setting in legal services has been evident in the vagueness of policy guidelines and standards, their silence on many issues, and the uneven nature of their enforcement. The first formal Legal Services Guidelines were issued in 1965, and were acknowledged to be vague and unspecific on a number of issues. . . The Guidelines were never again revised formally. Officials occasionally issued new interpretations of policies through OEO Instructions, or Community Action Memoranda . . . the legal force of which was never fully defined. Most often, these policy statements were expressed informally and ad hoc—in letters to individual programs, conditions on particular contracts and in speeches, articles and working memoranda. . . . Policies on lobbying (a principal instrument for law reform) were equally uncertain. . . . The Instruction on lobbying failed to clearly determine the propriety of the most common and important lobbying activities of projects, largely because of an ambiguous provision that restrictions were not to be interpreted to forbid purely informational activities. . . . The Office of Legal Services never emphasized law reform either in the enumeration of objectives or in a separate document. Nor was there any attempt to determine roughly what proportion of the projects' resources should be devoted to law reform." (Blumenthal op. cit. 238 sqq. Parenthesis added.)

Blumenthal, who once held a position with OEO's Office of Legal Services, is a fervent advocate of the "law reform" concept of legal

services. He feels that the failure on the part of the Office of Legal Services to articulate law reform objectives in the form of specific written policy officially promulgated in the Code of Federal Regulations (not even the Guidelines, vague as they were, were so promulgated) made legal services attorneys much more vulnerable to the attacks and restraints of local bar associations and local administrators than would otherwise have been the case. His article on the Legal Services Program published in the Yale Law review last December was a plea to the leaders of the legal services community to spell out precisely and forthrightly guidelines and objectives for the new National Legal Services Corporation pending before Congress, lest the policy void continue to expose the program to attack, weaken its bargaining position vis a vis its critics and in general undermine the Corporation's autonomy. Some writers, speculating on the possible reasons for the failure of OEO officials to define legal services policy, have concluded that the policy-makers, torn between the claims of centralized policy-setting at the national level and those of self-determination at the local level, were themselves confused both as to which claims to honor and which concept of legal services (the legal aid concept and the law reform concept) to promote. Hannon, for example, writes:

"There is little evidence, if any, that OEO was consciously selling the program to the bar on the basis of a rather tame locally-controlled program while quietly planning a substantially different kind of federally-dominated program. Instead of a nefarious subterfuge one should properly regard the misunderstandings created in the early days of legal services for what they were—a reflection of inadequate planning and preparation by OEO officials. The fact is that at the time OEO leaders did not know what they wanted." (Hannon, *Cal Western LR*, note, 47)

But there is some evidence to show that this was not the case and that the legal services planners and policy-makers had very early and quite decisively opted for the "law reform" approach, although they manifested a continuing reluctance to broadcast this fact to lawmakers and others outside the legal services fraternity. Hannon himself, despite the charitable interpretation he places on OEO's reluctance, appears elsewhere to be accusing OEO of not being "forthright" and of bowing to the political pressures which were generated by the 1967 furor over the California Legal Assistance Corporation (CRLA) and which culminated in the Murphy amendment (a proposal which would have prohibited OEO attorneys from suing Federal, State and local governments).[1] Hannon intimates that the absence of any clearly enunciated and publicly available written policy on such matters as test case litigation not only had the effect of throwing Congress off the scent (see Hannon p. 12 & 14 above, and especially Blumenthal, p. 18 below), but also of forestalling the anticipated opposition of local bar associations. Writes Hannon:

"(The CRLA) started with the assumption that political action and economic development were part of the poverty lawyers' charge. . . . Since legal services headquarters in substance has (sic) adopted this philosophy, the reaction of the board of governors of the California State Bar to CRLA's birth is of more than passing interest to those concerned with the future of legal services. . . . The board opposed CRLA's funding because 'the proposal goes beyond the reasonable bounds of a program designed to meet unfilled legal services requirements of the poor. The proposal is basically one of militant advocacy on a state-wide basis of the contentions of one side of an economic struggle now pending. *Ostensibly designed to furnish only legal services to the poor, the proposal also encompasses the furnishing of political and economic aid.* The proposal appears to be an unwarranted departure from the concept of neighborhood legal services offices established and operated by residents of local communities. *Without any clear statutory justification*, it proposes to operate a social welfare enterprise on a statewide basis, offering its services to political and economic groups as well as individuals.'" (Hannon op. cit. 54)

The impression created by the wording "legal services headquarters *has* adopted this law (law reform) philosophy" is that CRLA did not get the word from headquarters but went off on its own, and only subsequently did OEO adopt the philosophy, thus exonerating OEO of the charge of dissembling. But the Bar's resolution opposing CRLA was passed in April 1966. In that same month, at the Symposium on Justice and the Poor held at the Notre Dame Law School, the Director of OEO's Legal Services Program, E. Clinton Bamberger Jr., clearly propounded the doctrine of law reform and OEO's espousal of it. As Hannon notes in a second article, Bamberger

"Spoke at this conference and after genuflecting in the direction of local initiative . . . explained that OEO was hesitant about funding judicare programs because full-time poverty lawyers were more likely to use the law as an instrument of social reform." (Hannon, 5 *Cal West LR* 226)

Bamberger went on to say that full-time lawyers offer the best vehicle because

"they will be able to devote the time, achieve the perspective and accumulate the knowledge to attack the legal problems of the poor on *a broad and deep scale*. This is what lawyers do for other groups. . . . Lawyers have always been more than mere agents directed by others. They have been the architects as well as the artisans of *social reform*—redesigning, reforming and creating not *only legal institutions but social, economic and political institutions as well.*" (Bamberger, 41 *Notre Dame Lawyer* 850. Emphasis added.)

Bamberger expands on this theme in the remainder of his speech, painting an extravagant picture of the lawyer, as a lawyer, responding to some kind of categorical imperative to lobby, to shape public policy and to advocate solutions to pervasive social, economic and political problems. (For more on the role of a lawyer as such, see below p 45 sqq)

In contrast with Hannon's uncertainty as to the motives of the Legal Services Program's "architects" in masking their policy goals, Blumenthal, an OEO insider, seems to have little doubt that OEO's vagueness was calculated. He writes:

"Throughout recent years, as well as earlier, the absence of written policy increased the Office of Legal Services power over local programs, allowing officials maximum discretion in dictating terms of grants and qualifications of personnel. Most important, however, it gave legal services *a low profile. It made the program a smaller, more elusive target to attack . . . Legal Services officials recognized that an absence of written policy would relieve them of the burden of facing critical arguments on the merits of issues in public forums, such as Congress, where a focus on guidelines might trigger inquiry or debate.*" (Blumenthal, op. cit. Emphasis added.)

It does credit to Blumenthal's honesty that he will not let OEO exculpate itself quite so easily, and that he calls for full and open debate on the real issues which separate conservatives from liberals on the question of legal services. He continues:

"With adequate policy-setting and responsibilities, OLS officials might have defused many suspicions played upon by opponents—particularly suspicious about their *ad hoc* mode of decisionmaking. They might have forced debate to focus on the merits of policies for the nation as a whole, not on the unique defects of particular projects, which opponents were able to use to smear the entire program." (Blumenthal, op. cit. 258)

But the targets of Blumenthal's ire, those in OEO who refused to publish their policies, knew better. They never permitted the catalog of the "unique defects of particular projects" to grow into a searching critique and general indictment of the root concept which bred these defects—and so the nation, through its elected representatives, has not yet had its debate on the merits. One can only marvel at the tactical shrewdness of Senator Mondale, Senator Javits and other advocates of the Corporation who, during the recent Senate debate on the Legal Services Corporation, enticed the opposition into prolonged debate on accountability viewed from the angle of board control, and then—after the debate was concluded—conceded to their opponents almost everything in the matter of selecting board members, having assured themselves that the issue of law reform was no longer in danger of being broached.

Section B

Whether or not legal services policy-setters have engaged in a conscious conspiracy to disguise the true nature of their enterprise from Congress, the bar associations and the American public, several things appear certain: (1) OEO's Legal Services Office has been and *still is* deeply committed to the law reform concept; (2) Congress never enacted this concept into law (contrary to the insinuations of some of its champions that they have a Congressional "mandate" for law reform) and (3) the American Bar Association, initially at least, did not endorse the concept while (4) significant opposition has been recorded on the part of a number of State and local bar associations and judiciaries where they have become aware of the emphasis placed on law reform by legal services projects.[2] Let us consider the evidence for the first of these claims:

1. Bamberger's speech in April 1966 on the subject of law reform has already been cited. The implementation of the Economic Opportunity Act's reference to "other appropriate services" by a passage on legislative advocacy in the Legal Services Guidelines (1966) has been mentioned. In March 1967, Earl Johnson, the second Director of Legal Services, at a conference sponsored by the Harvard Law school, unequivocally put OEO on record as favoring law reform, not merely as a goal incidental to the service function, but as the *primary* goal of legal services. Said Johnson:

"The *primary* (sic!) goal of the war on poverty's legal services program should be *law reform*, achieved by significant test cases that can revise the structure of the world in which the poor live." (Quoted by Hannon, 5 *Cal Western LR* 229. Emphasis added.)

2. A year later (April 1967), the Project Advisory Group, composed of 24 Legal Services staff directors and attorneys, stated that:

". . . a strong national statement from the Director on the primacy of law reform is indicated. It must be clearly and emphatically communicated to lawyers, Legal Services Boards, Community Action Programs, and other concerned parties. Law Reform must be used as the chief criterion in evaluation and funding." (Quoted by Hannon, op. cit. 230 added.)

3. In December 1967 OEO's Director, Sargent Shriver, wrote a paper "to clarify the goals of law reform" entitled "Law Reform and the Poor". In the opening paragraph he declared that OEO "is in the process of making new law through test cases and legislative activity." After describing several landmark test cases brought by Legal Services

Footnotes at end of article.

attorneys, he quoted approvingly a "recent Harvard Law Review note" which stated:

"If the new legal services program were to restrict themselves to the *service function*, their value as part of the War on Poverty would be slight and they would be making only a limited contribution toward the goal of equal justice; the programs would not be aiding the many poor people who, whether because of fear, suspicion, apathy, or ignorance, fail to seek out the services of a lawyer at any time." (Quoted by Shriver, 17 *Amer U LR* 7)

4. Shriver's article signals the beginning of a shift in emphasis from test case litigation as an instrument of law reform, to legislative advocacy or lobbying. (See quotations in 9 and 10 below.) He writes:

"The test case technique has been used most effectively in the area of civil rights where case-by-case over period of years segration was stripped of its legal sanction. . . . However, the limitations of the test case technique when applied to the problem of changing a structure so broad and oppressive as that facing the poor are obvious. In order for real progress to be made, *pressure must be brought to bear on the federal and state legislatures*. Advocacy of appropriate reforms in the law, whether it be done through the judiciary *or the legislature* is a part of the traditional role of the lawyer and is, as it should be, among the services provided by the various legal services projects throughout the country." (Shriver, op. cit. 8. Emphasis added.)

5. In 1969, Hannon wrote that "in recent months OEO has exerted great financial pressure on the local programs to force them to give priority to the kind of aggressive advocacy which hopefully will benefit the poor *as a whole*." (Hannon, op. cit. 230.) But the policy is still not trumpted *ad extra* or published in incriminating formal regulations. The strategy of the low-profile still prevails.

6. In August 1971, the North Mississippi Rural Legal Services project "was rated by OEO one of the best in the nation. . . . The evaluation team was impressed by this project's law reform." (Quoted by Blumenthal, op. cit. 255)

7. In August 1971, the Monmouth County Legal Services Organization in New Jersey was critized in an evaluation made by OEO's Legal Services Office for engaging in "little or no law reform." (Quoted by Blumental op cit. 238)

8. "This mode of law reform (litigation) has become a major component in the policy—and even more so in the rhetoric—of the Legal Services Program of the Office of Economic Opportunity". (Hazard, 37 University of Chicago LR 243)

(Note: Hazard, by "policy", no doubt means the *de facto* activity of project attorneys and back-up centers and by "rhetoric" the informal speeches and articles by the zealots of law reform in the Legal Services Program. Formal written policy is still as hard to come by as ever. The Program's policy is "assumed", wrote a former Legal Services official, "like the air we breathe".)

9. Fred Speaker, a former director of the Office of Legal Services, in a speech delivered in November 1971 at a meeting of the National Legal Aid and Defender Association at Denver, distinguished three techniques of law reform: (1) litigation (principally test cases on behalf of individuals or groups); (2) administrative rule-changing and (3) legislative advocacy or less euphemistically, lobbying. According to Speaker of these three techniques it is lobbying which is the weapon of choice for the future. He said:

"In many instances the frontiers of reform are the most open and the most attractive *in the legislative halls*. Statutory reforms are more permanent than administrative rule changes. And many of the early judicial victories have already been won. Thus it is good that the authority for legislative advocacy is clear in the present laws and *will continue to be clear under the proposed new legislation (for a Legal Services Corporation)*. We have the clear right and certain duty to lobby in appropriate circumstances." (5 *Clearinghouse Review* 434.)

(Note: If the "present law" referred to is the Economic Opportunity Act of 1964, as amended, it contains no such mandate for legislative advocacy or lobbying. The only other reference Speaker made to a legislative mandate is the statement: "Law reform must be a first mission because the statute says so, giving us the charge to 'eliminate the paradox of poverty' ". But it will take some doing indeed to find in the phrase "eliminate the paradox of poverty" a statutory mandate for law reform in general, much less for the species of law reform known as legislative advocacy. The real source of the "mandate" to lobby appears to be Canon 8 of the American Bar Association's Code of Prefessional Responsibility. More on this on p. 45 below.)

10. In another article in the *Clearinghouse Review* in February 1972 written by Mickey Kantor, executive director of Action for Legal Rights, Inc., a former official of the Legal Services Program and one of the principal architects of the charter for the proposed corporation, we find the following:

"The (proposed) National Legal Services Corporation Act . . . clearly authorizes legislative advocacy by Legal Services Attorneys on behalf of their clients . . .The *first priority* of the Office of Legal Services, with or without of the new corporate structure, would be to utilize any funds provided to reflect the growing need for activity in the area of (legislative advocacy) . . . Legislative advocacy, the stepchild of the Legal Services Program, must soon achieve full kinship with litigation as an advocacy tool." (5 *Clearinghouse Review*, 577–578)

In the light of the many pronouncements right up to the recent past by Legal Services officials and former officials on the subject of law reform, there can be little doubt over the course that the proposed Corporation, had it been enacted into law, would have followed. To be sure, the Corporation's board would have been able to write the guidelines, but they would have done this within the parameters set by the Act, and under the influence of the previous momentum of the program and the prevailing climate of opinion among the legal services fraternity. In respect to the Act itself, certain provisions of the title establishing the Corporation confirmed the worst fears of the Corporation's critics that the radical defects of the old program would have been institutionalized and thereby legitimized under the new Corporation. For one thing the bill was silent in respect to one of the old program's most favored activities: test-case litigation. Contrary to Blumenthal's recommendation, no guidelines covering such litigation or any of the other techniques of law reform, for that matter were included in the Corporation's proposed charter. Given the historical background, this silence could easily be interpreted as tacit ratification of the law reform orientation of the old program which was to be carried toward under the new Corporation. Secondly, the section of the charter dealing with lobbying would have given legal services attorneys free rein to use this most potent instrument of law reform, whenever or wherever it suited their agenda, so long as it was done "on behalf of the client". (A detailed analysis of the lobbying issue will be found below in Part IV, p. 40 sqq). It is true that a number of amendments were adopted purporting to improve certain features of the Corporation. But none of the amendments went to the heart of the problem: the issue of accountability from the standpoint not only of responsiveness or control but of policy-setting as well. Enactment of the title on the Legal Services Corporation would have sanctioned and frozen into institutional permanence the "militant reformist" concept of legal service for the poor despite the fact that by and large Congress has not yet really faced this issue, and despite the fact that many segments of the American bar and the informed public find the concept perilous and repugnant on constitutional grounds.

Turning now to our second claim (p. 19 above) that Congress, contrary to the assertions of some of the devotees of the law reform concept, has *not* enacted this concept into law, reference is made again to the passages from Hannon cited above (p. 14), to the unspecific language of the section on legal services in the Economic Opportunity Act Amendments of 1967 (Section 222(a)(3)) and to the lack, at that time, of Congressional debate on the merits of the two concepts of legal services. Furthermore, if there had been a clear legislative mandate, it stands to reason that the Office of Legal Services, eager to foster the concept at the local level, would not have waffled so long in setting policies. Rarely, if ever, in its many tangles with local bars and with mayors and governors, has the Office of Legal Services sought refuge in the language of the Act or in the "intent of Congress". In addition, although the two concepts of law reform were brought up obliquely in some of the speeches inserted in the *Congressional Record* at the time of the recent Senate debate on the Corporation, the issue failed to catch fire on the floor and was the subject of little or no mention in the verbal give-and-take. Almost the whole of the floor discussion dealt with important but more peripheral issues, such as the degree and apportionment of political control of the Corporation (the element of accountability which Blumenthal calls "responsiveness") and the catalog of past scandals, mere symptoms of the underlying malady in OEO's Legal Services Program. There were, to be sure, some exchanges among the Senators on the technical problems raised by the Internal Revneue Code's restrictions on lobbying, but no attempt was made to get to the deep source of these difficulties, the constitutional issue. The verdict of Hannon still stands: Congress and the country have yet to come to grips with the bedrock issue. (Note: Professor Geoffrey Hazard of the Yale University Law School, in a letter to the author agrees that "Congress didn't face the issue . . . although of course many Congressmen assumed that there was no mandate for general law reform. The difference within Congress as to assumptions on that score was why they didn't face the issue, in my opinion".)

The third claim made on p. 19 above was that the American Bar Association, initially at least, did not endorse the "law reform" concept of legal services and was in fact led to believe that OEO's Legal Services Program was to be built around the traditional approach.

1. "Support by the national bar organizations has not been without cost. In exchange for this support, OEO has been forced to play down some of the broader conceptions of the program. Although the original guidelines emphasizing institutional change through group organization and efforts at law reform were retained, and although the local agencies administering the programs were formally required to undertake such tasks to receive funds, there is no evidence that the legal aid societies have lived up to the promises they made. Lewis Powell Jr., a former president of the ABA indicated the extent of the compromise OEO had made to achieve national support: 'So long as this program stays within the broad framework of (the) legal aid concept' he reminded OEO 'there should be very few serious problems' " (Levitan, *The Great Society's Poor law*, 181).

(Note: Lewis Powell, now a U.S. Supreme Court justice, made the above statement

while delivering the closing address to the National Conference on Law and Poverty, cosponsored by OEO, in June 1965. Powell was then President of the American Bar Association. Powell's full statement on the legal aid concept was as follows:

"So long as this program *stays within the broad framework of legal aid concepts*, there should be very few serious problems. I refer here not to any specific legal aid organization or agency but to the *concept of legal aid as this is widely understood by lawyers, social workers, community leaders and local governments*. We can remain within this broad concept and still achieve truly significant gains, especially in broadening the scope of services rendered in liberalizing definitions of indigency, in making service far more readily available through neighborhood centers and the like. It is to be hoped, certainly initially, that the concentration of effort will be towards these familiar ends. . . . We must build upon and benefit from the experience of *established legal aid* agencies—most of which have served with little recognition and great devotion for many years . . . The traditional concept of legal aid has normally not emphasized the use of law as an affirmative instrument to remedy social injustice or to improve economic conditions. There are no doubt many situations where the poor can be properly served in this way. With the availability of increased resources, we must also seek opportunities to practice preventive law and to educate the poor as to their legal rights." (Proceedings, Natl. Conf. on Law and Poverty, June 1965 171–172.)

Comment: There is no doubt that Powell is referring here to the antithesis "service function vs. non-service function." It also seems clear that although he is approaching the matter with great caution in deference both to the conferees, many of whom were legal services people, and to the novelty of OEO's legal services role, he conceives that role to be primarily one of providing an expanded range of *traditional* services to *individual* clients, with law reform viewed as a useful but ancillary activity. The fact that Powell concedes any kind of utility at all to law reform does not exclude him from the ranks of legal conservatives. There is law reform and law reform, which is to say that not only is there procedural law reform and substantive law reform, but there are even several approaches, some legitimate and some illegitimate, to substantive law reform. This point will be discussed more fully below when Geoffrey Hazard's views are examined. Hazard, like Powell, is not hostile to law reform in all of its modalities.

"None but the most sanguine reformists," he writes, "thought that the conservative objective of legal palliation could be ignored, and none but the most serene conservatives thought that the law needed to reform." Hazard is nonetheless a conservative in respect to legal services, which is to say he does not buy the brand of law reform which has been exposed by those who run the OEO program, for reasons to be presented shortly. In any event, Powell's comments on legal aid at the 1965 Conference have been interpreted as an endorsement (coupled with a mild warning) of OEO's legal services program seen *as merely a variation of the traditional legal aid approach*. The program was introduced in this guise by OEO's Community Action Director, Theodore Berry, at the 1965 Conference Powell attended. Berry's speech confirms this fact, as does the passage quoted from Hazard under 2 below. Moreover, one year later, another President of the American Bar Association, Orison Marden, reaffirmed the Bar's view (an erroneous one as it turned out) of OEO's Legal Services Program (see item 3 below).

2. ". . . the American Bar Association explained the Legal Services program to itself and to others *as an expansion of traditional Legal Aid*. . . . The concept of the Legal Services Program generally shared among the legal profession was of a program oriented to individual clients, concerned with *individual cases* and centered on the routine disorders of daily life . . ." (Hazard 36 *Univ. of Chicago LR* 700)

3. "In the beginning, OEO wisely sought the cooperation of the bar by presenting its plans for the proposed legal services program to the bar's leaders. . . . Through a series of high level meetings with bar leaders and by way of numerous law review articles OEO conveyed a picture of legal services. This portrait * led the President elect of the ABA (Orison Marden) to state (in 1966) that after careful study, the bar's leaders had concluded that the legal services program 'would merely involve financial assistance to local communities *for more and better legal aid.*'"

4. "The National Legal Aid and Defender Association (in 1966) welcomes the Office of Economic Opportunity's Legal Services Program. It provides means for achieving goals long aimed at by the NLADA and the bar—the *extension of Organized Legal Aid* on a scale that will make a reality of the ideal of Equal Justice under the Law". (quoted by Hazard, op, cit. 701–702)

(Note: Hazard understands the ABA and NLADA to mean by "legal aid" the generally conservative, non-reformist concept discussed in Part II of this paper.)

What is the position of the American Bar Association now? Its *pro forma* endorsement of OEO's Legal Services Program still stands on the record. Also, it would seem that it gave its official blessing to the proposed Legal Services Corporation (See the letter to Senator Javits from the President of the ABA, Leon Jaworski, in the CONGRESSIONAL RECORD, vol. 118, pt. 18, p. 23242). But as late as 1969, Hannon wrote: "The ABA has not yet thrown its weight behind the law reform movement and there is certainly some doubt about whether it or its members will". The fact that President Jaworski has endorsed the Corporation does not tell us much, for the real issues have not been openly or fairly presented to the public or to the legal profession. The chronic reluctance of those in control of OEO's legal services apparatus to formulate any clear guidelines—a charge which has been levied by some of the program's strongest adherents—has so fuzzed the picture that abuses in the program are mostly seen as merely accidental aberrations due to an excess of zeal on the part of some of the young lawyers. In any case, the judgment of Hannon is probably correct when he writes: "There is no entity which can safely be labeled 'the' bar. No organization, *including the ABA*, speaks with much authority for lawyers in this country. (The majority of the lawyers in the United States do not even belong to the American Bar Association.) It is therefore very difficult to determine the depth and strength of legal services support among lawyers. The NLADA and the ABA positions do not tell us much about the opinions of individual lawyers at the local bar level." Hannon goes on to cite evidence that the bar's membership throughout the country is, by and large, apathetic toward legal services, where it is not downright hostile.

Finally, in respect to the fourth observation above (p. 19) that many State and local bar associations and judiciaries are resisting the law reform thrust of legal services, the record is replete with so many instances of opposition that it would be tedious to try to chronicle them here. Suffice it to mention one of the more interesting and significant examples of judicial distaste, the reaction of the Appellate Division of the N.Y. Supreme Court to applications for incorporation submitted in 1966 by three legal services programs in New York City. The presiding judge, J. Breitel, a Republican who is now a member of New York's highest court, the Court of Appeals in Albany, objected to many features of the applications but in particular to the projected law reform activities. For example, he found all the proposals "deficient . . . in not prohibiting entirely and without evasive qualification political, lobbying and propagandistic activity". Each of the applications were also found to be unsatisfactory "in the discriminate mingling of *social goals* and *legitimate legal practice*" and in the use of the law and its institutions to achieve social and economic justice." In the matter of group representation, Judge Breitel decried the "woeful" lack of definition and standards of eligibility. "It would be one thing to allow neighborhood law offices to handle poor men's credit unions. It would be quite another thing to have them handle, advise, and represent *political factions* or *organizations of social and economic protest*, however worthy. . . ." The judge denied the applications and concluded as follows:

"The court . . . is hospitable to the view that new institutions must be fashioned to function alongside traditional legal aid societies. It believes that such a development will involve change and enlargement in traditional concepts of professional standards, ethics and office organization. Nevertheless it must still require that *protection of the public* be the paramount and final determinant of new programs over which it has responsibilities. Certainly factional, political and narrow group of professional interests must be either *subordinated* or *ignored entirely* in the fashioning of these new institutions, if the service of such interests would *impede the protection of the public.*"

(Note: The above passage touches on the policy-setting aspect of accountability to be discussed in Part IV below.)

In short, the court's reaction to the legal services programs' petitions was totally negative, the court indicating by way of dictum its opposition to most of the proposed innovations, i.e. solicitation, group representation and lobbying. A year later the applications, after extensive modification, were approved but the bench warned the programs "not *to sacrifice service to individual clients upon the altar of law reform.*" (Quoted by Botein, 46 *NYU LR* 749). Subsequently, the court's dictum was promulgated in a comprehensive set of official regulations severely limiting the law reform activities of poverty lawyers. Group representation was prohibited except where it was for the benefit of persons taken as indigent individuals and not as an "entity or group". Lobbying and political activities were proscribed in the following terms:

"Attorneys employed . . . may render professional legal services . . . within the same limits that an attorney in private practice . . . *except* that such attorneys shall not represent political parties or factions thereof . . . nor shall such attorneys, in the name or on behalf of the corporation, or of any other person (presumably including a client), association or group of persons, engage in any political, lobbying or propagandistic activities other than to suggest, testify, comment on, review and interpret legislation (nor shall they) organize protest or civil disobedience groups or social movements. Officers or employees of corporation supported by public funds shall not engage in any conduct prohibited by Section 1502 (a) of the Federal Hatch Act, or hold, or be a candidate for, any public or party office." (NY Ct. Rules, App Div., 1st Dept. Part 608 (a) 605.7 (b) and (c) McKinney 1970.

To appreciate the stringency of these restrictions, one has only to compare the New York regulations with related rules in the Legal Services Program's present guidelines, and with the total absence of any such restrictions in the deleted title which would

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*"The portrait of legal services which OEO initially painted is not an accurate reflection of what OEO now desires." (Hannon, 6 *Cal West LR* 47. Emphasis added.)

have set up the Corporation. A legal services attorney in New York may not organize a protest group or social movement. But under OEO guidelines he may, and is even encouraged, to do so, and the Corporation's charter gave no sign of discontinuing this prerogative. Under the New York rules, an attorney may not lobby while under the present OEO rules, he is permitted to engage in lobbying so long as it not disruptive, does not involve picketing and is not carried on by advertising in the mass media or through mass letter-writing campaigns. (The groups organized by OEO's legal services attorneys for the purpose of influencing legislation have frequently resorted to the above-mentioned lobbying techniques). The charter of the Corporation would have eliminated the restriction against the involvement by attorneys in campaigns of letter-writing and other forms of mass communications, including mass visits to legislatures.[8] This sort of grassroots "lobbying" would have been perfectly permissible, so long as it satisfied the technicality of being conducted "on behalf of a client". Under the New York rules, a legal services attorney may not, in his free time, actively participate in the management of a political campaign or run for office himself, while there are no such restrictions on project attorneys under present OEO regulations or in the charter which was suggested for the Corporation. Incidentally, had this charter become law, there is the strong likelihood that the New York rules would ultimately have become a dead letter on the ground of Federal preemption.

The New York rules have, quite naturally, been bitterly attacked by apostles of the law reform concept, both in law review articles (see Botein, 46 NYU LR 743) and in the courts. In 1966, the rules were challenged in the U.S. District Court of the Southern District of N.Y. by the Young Lords, the National Lawyers Guild and other on the ground that they were unconstitutional infringements on free speech, free association and the equal protection of law. The motion for an injunction was denied "until plaintiffs made further efforts to resolve the issues with the defendants" i.e. the Appellate Division of the N.Y. Court of Appeals. (328 F. Supp. 66). In other words, the Federal Court refused to pass on the Constitutional issues.

Critics of Judge Breitel fear, with good reason, that his regulations will be emulated in other jurisdictions. Were this to happen, it would put a severe crimp indeed in the law reform movement being promoted so aggressively by OEO's legal services attorneys. The New York experience is pertinent to the theme of this paper inasmuch as (1) it illustrates a collision, in the judicial arena, between the two concepts of legal services for the poor compared in Part II of the paper; (2) it provides an impressive example, in a State known for being fairly progressive, of a flat repudiation of the reformist concept in favor of the conservative concept and (3) it brings into focus, though it does not plumb, the constitutional issues raised by Title IX: social justice, free speech, free association and the rights and obligations of a lawyer on the one side and the protection of the American public on the other. It is now time to probe a bit deeper in order to locate the threat to that public (the problem of accountability seen from the standpoint of policy-setting) and to exhibit the juridical, constitutional and philosophical bases for the repugnance felt in so many circles, lay and professional, toward a concept whose first clear embodiment in U.S. history came to pass in OEO's Legal Services Program.

PART IV: THE ARGUMENT AGAINST THE "MILITANT REFORMIST" OR "LAW REFORM" CONCEPT OF LEGAL SERVICES

(N.B., The "militant reformist" concept of law reform stresses the "nonservice" function of a legal services program. This component embraces community education, group representation, group organizing, and law reform, consisting of test-case litigation and legislative advocacy or lobbying. Only the latter two elements of the non-service function, test-case litigation and legislative advocacy, will be examined at any length in this paper.)

One of the few legal scholars who have expressed, on both pragmatic and constitutional grounds, deep misgivings over OEO's Legal Services Program is Geoffrey Hazard, formerly executive director of the American Bar Foundation and a professor of law at the University of Chicago, and currently a full professor of law at Yale University. Professor Hazard is highly thought of, not only by such conservatives as Justice Lewis Powell, but by the legal profession in general, including many of the "exuberant povertyists" (to borrow a phrase from Hazard) who have been promoting the establishment of a National Legal services Corporation. The argument against the law reform concept of legal services which is made in the following pages is based largely on two brilliant essays by Professor Hazard which appeared in the University of Chicago Law Review in 1969 and 1970. The articles emanated from studies done by the American Bar Foundation under contract from the Office of Economic Opportunity (CAP 67–7075, Research Contract No. OEO–4047). In the first of these articles, entitled *Social Justice Through Civil Justice* (36 *University of Chicago LR* 697), Hazard begins by drawing a sharp distinction between the two concepts of legal services discussed in Parts II and III above: the traditional "legal aid" concept and the "militant reformist" concept (see pp. 10–11 above). According to Hazard, *the "legal aid" approach (1) focuses on individual clients, (2) views litigation as a last resort, and (3) employs such litigation as a device to achieve what Hazard calls "civil justice", i.e. . . . fairness of decision in respect to the poor client, whether under existing law or under a revised interpretation or application of existing law brought about by challenging current legal procedures. The "reformist" approach on the other hand (1) concentrates on group concerns of the poor, (2) sees litigation as a routine procedure, and (3) employs such litigation to produce what Hazard calls "social justice", involving a fundamental reallocation of community resources to be brought about by substantive changes in the law.* (See p. 48 below for a comment on the distinction between substantive and procedural law reform).

Hazard then proceeds to call into question a basic assumption which underlies (though in varying degrees) *both* the "legal aid" and the "reformist" varieties of legal services for the poor. The assumption is that since litigation to enforce legal rights can improve the situation of an *individual* poor client, it can also improve the situation of the poor as a *group* and is consequently a key element in the strategy to alleviate poverty. The argument which supports this assumption is reconstructed from Hazard's article as follows:

1. *The rules of law affect the poor unfairly.*

Comment: This premise asserts that the poor, to the extent that they lack the means to purchase legal assistance are unfairly handicapped in our adversary system of justice. They are the victims of *procedural* or *"civil"* injustice.

2. *Government-furnished legal assistance helps correct this imbalance.*

Comment: As in #1, the premise seems to be non-controversial. Legal assistance, which includes help in litigating, provides the poor person with a weapon which enables him to compete fairly with his adversary.

3. *Legal assistance, including litigation, if successful, leads to a "transfer of assets" or using other terms, a "redistribution of property".*

Comment: It is argued that assistance to any individual poor person has both a psychological and (assuming the problem is resolved in the poor person's favor) an economic impact on the poor client. Psychologically, it reduces his sense of inadequacy, despair and lack of confidence in the legal system. It helps restore what Senator Javits, in the recent Senate debate on the legal services corporation, referred to a number of times as "a sense of dignity." Legal assistance also, and even more obviously, has an economic impact on the poor client. Since restitution is frequently the essential objective of a law suit, the suit, if successful, does lead to what can be termed a "transfer of assets." (Hazard, incidentally, seems to regard the economic and psychological effects of remedial justice as the primary and secondary effects of such litigation. He does not discuss the possible causal interrelationship between these effects considered independently of their common cause: successful litigation).

4. *Any transfer of assets to a poor individual alleviates his poverty.*

5. *The poor, taken as a class whose common denominator is that they live in poverty, is simply an aggregate of poor individuals.*

6. *Therefore, successful litigation on behalf of poor individuals makes a significant contribution to the war on poverty.*

Comment: According to Hazard this is one of the basic assumptions which underlie OEO's Legal Services Program, the assumption that "the problem of remedial injustice is central to the problem of poverty," which is to say that "if the *legal* wrongs suffered by the poor (discrimination, fraud, breach of warranty) were remedied for the poor as a class, the poor as a class would be substantially better off." (Hazard op. cit. 707) Hazard contests the validity of this assumption and suggests that his objection, if sustained, "has immediate policy implications for OEO's Legal Services Program."

For one thing, it would require a considerable lowering of sights on the part of the poverty lawyers. Before pursuing this point, however, it might be well to consider Hazard's argument and the counter-argument of those who represent the "militant reformist" concept of legal services for the poor. Hazard rebuts the conclusion reached in step 6 above, as follows:

7. *The transfer of assets referred to in premises (3), (4), and (5) above results either from (a) litigation before existing law or (b) litigation aimed at procedural or even substantive changes in the law without, however, calling into question the soci-politico-economic basis on which existing laws rest.*

Comment: Litigation under existing laws focuses on such wrongs as fraud, breach of contract, discrimination, etc. The law itself is not called into question. In the test cases, on the other hand, described in 7b above, existing law, (or an interpretation or application of existing law) is challenged in order to remedy either procedural inequities or substantive defects which do not involve the essential lineaments of the legal system, or of the social system which the legal system both reflects and protects. Hazard is referring to a notion of law reform here which is acceptable to most of the traditional "legal aid" school of thought. (For a discussion of the distinction between procedural and substantive law reform, see below, pp. 47–48).

It is interesting to note that most of the early planners in OEO's legal services program preferred test-case litigation to ordinary litigation. Although their real intent was substantive change in the laws, in a sense quite unacceptable to the traditional "legal aid" school, this intent was disguised by the "economy" argument: more legal aid for less money. A typical expression of this kind of smokescreening is found in a speech made March 1967 by OEO's Legal Services Director, Earl Johnson, Jr. Declaring that the top goal of the "War on Poverty's" Legal Services Program should be "law reform to be

Footnotes at end of article.

achieved by significant test cases", he justified the preference for test-cases primarily on economic grounds: it was a time-saving and therefore dollar-saving shortcut toward the same goal as could be reached, *if unlimited sums were available*, by taking the case of each indigent individual, one by one. Ironically, the later emphasis on the superiority of legislative advocacy over test-case litigation as an instrument of law reform was partly justified by the excessive cost of test-case litigation. In any event Johnson's speech was paraphrased as follows in an OEO press release:

"Because the Legal Services Program is confronted by limited resources and expanding, heavy caseloads, its local projects must set priorities. The goals of providing adequate legal services to all of the poor (the service function) and community education, legal research and test-cases (the non-service function) cannot all be reached with limited funds. . . .

It would require an estimated $300 to $500 million to provide adequate legal representation to all poor people who have civil legal problems that merit the attention of a lawyer. Therefore, said Johnson, 'the primary goal of the Legal Services Program in the next few years should be bringing about *changes in the structure* of the world in which poor people live. The purpose is to provide, on the largest scale possible and consistent with our limited resources, a legal system in which the poor enjoy the same legal opportunities as the rest of society'."

The history of the Legal Services Program and the utterances of its policy-setters (see parts II & III above, make it clear that the "changes in the structure" Johnson was alluding to represented far more than merely an increased coverage of the poor achieved through test-case litigation. Another example of the economy argument for test-case litigation is found in an article by Sargent Shriver (17 *American Univ LR* 7) who writes:

"Equal justice cannot be accomplished by solving the problems of the poor on a case-by-case basis. There are too many problems, too few attorneys, and too many cases in which there is no solution *given the present structure of the law*, a structure which, to a large extent the poor had absolutely no hand in building. An effective *law reform* program, bringing about significant changes in the law affecting the poor, is the most economical use of time and money."

8. *Given our market system, the transfer of assets described in step 7 above does not ameliorate poverty, to any significant extent.*

9. *Therefore, the success of litigation, including test-case litigation, on behalf of the poor as a group of class is illusory.*

Comment: Whether the transfer of assets results from adjudication of the dispute before existing law or from procedural or substantative changes (in the limited sense of change described in step 7) in the law resulting from test cases, the net impact on poverty as such is minimal, claims Hazard. In other words, given the market economy system in which we operate, enforcement of the legal rights of individual poor persons, even when multiplied on a mass scale, may result in the poor getting what they pay for, but it also results in them having to pay more for what they get. In short, the poor are no better off after the inevitable price adjustments than they were before. Litigation, while it may help poor individuals here and there in the sense of improving the lot of these individuals and bolstering their confidence, does little to end poverty as such. Hazard provides of course a good deal more detail in support of his analysis than can be presented here. He concludes that the strategy of remedying poverty by righting individual wrongs through litigation has been greatly oversold by proponents of *both* the legal aid and the militant reformist" concept of legal services. The strategy doesn't deliver on its promise and comes close to hoaxing the poor.

At this point, the "militant reformist" parts company with the "legal aid conservative" and pursues a counterargument as follows:

10. *Assuming for the sake of argument that Hazard's conclusions in step 9 above are true, there is another alternative open to test-case litigation: a challenge to the market system itself.*

Comment: As Hazard puts it, given the failure of litigation, in the limited sense discusses thus far, to effect any radical lessening of poverty, "a productive strategy would seem to lie elsewhere". An alternative would be to use litigation to try to upset "the manifold market-rigging laws that special interests have succeeded in putting on the books." But this approach is hardly feasible in view of the reluctance of the Supreme Court and State appellate courts to invalidate legislation on such grounds. Another more promising alternative would be to use litigation in an attempt to "modify the effects of market exchange by schemes of taxation and redistribution." This is precisely the solution opted for by the "militant reformist" theorists of OEO's Legal Services Program. Multiple law suits on behalf of the poor, particularly lawsuits of the class action and test-case variety, are devised for the purpose of achieving an aggregate income redistribution. The strategy, in Hazard's words, aims at reaching social justice (the redistribution of income) through civil justice (the enforcement of the legal rights of the poor by means of litigation). The strategy is rejected by Hazard on the grounds that (a) it is "uneconomical and thus practically illusory" and (b) it is "self-contradictory and on this account constitutionally and politically perilous." The steps in Hazard's argument are as follows:

11. *The "militant reformist" strategy for test-case litigation describes in step 10 above is excessively costly.*

Comment: As Hazard puts it, "It is difficult to imagine a more expensive way to redistribute income than by litigation." Indeed, test-case litigation, once hailed in OEO as the principal weapon in the legal services armory, is now yielding its place of honor to legislative advocacy on grounds of economy. Wrote Mickey Kantor last February:

"Litigation was initially viewed as the most relevant and productive forum for the poor. Indeed, the most traumatic and far-reaching decisions on behalf of the poor have been the result of litigation. With all of its benefits, litigation remains expensive, time-consuming, often frustrating and it nearly always results in less for the client than was pleaded for or anticipated." (5 *Clearinghouse Review* 574)

Kantor goes on to plump for legislative advocacy as the new frontier of the law reform movement. Similar thoughts were expressed by earlier writers. In an article on legal services for the poor in the *Harvard Law Review* in 1967 we find the following:

"The law reform device which is most closely related to and arises most naturally out of the service function is the test-case. Test-cases, however, are subject to a number of disadvantages which limit their effectiveness. Much of the law which affects poor people is statutory and hence less susceptible than judge-made law to change by the courts except when vulnerable to the charge of unconstitutionality. The test-case is a long process and always involves the risk of an indecisive or adverse result. The small amounts usually involved in cases in which poor people are parties often make it to the other party's advantage to give in on the particular case rather than face the possibility of an adverse decision. Since the lawyer's first responsibility is to his client, he cannot ethically turn down a generous settlement offer simply because he would like to litigate a point of law. This has been a common problem in cases against government agencies, particularly welfare departments . . . When a more comprehensive and coordinated change in the law is sought, the usefulness of the test-case is usually more limited. If law reform is to be more than a hit-or-miss, limited pursuit, the legal services program must attempt to influence statutory and regulatory as well as judge-made law. Accordingly, almost all the large OEO-funded legal services programs expect to do some legislative work." (Lowenstein & Waggoner 80 HLR 805)

Sargent Shriver made a similar point in 1967 (17 *American University LR* 8) He wrote:

"There are several methods of obtaining reform in the substantive laws affecting the poor, the most natural of which is the test-case . . . However, the limitations of the test-case technique when applied to the problems of changing a structure so broad and oppressive as that facing the poor are obvious. In order for real progress to be made, pressure must be brought to bear on Federal and State legislatures."

One of the limitations referred to of course is the tendency on the part of many a poor person to settle with the other party, thus frustrating his attorney who is bent on winning the point of law, as well as satisfaction for his client. There is little doubt that many attorneys have tended to disregard effective service to the immediate client in their anxiety to make a good test-case. This fact is the basis of another argument against test-case litigation (see step 14 below).

It would, by the way, be inaccurate to infer that test-case litigation has been *abandoned* in favor of legislative advocacy. This simply is not the case. As Mickey Kantor notes "Use of litigation as an advocacy tool remains important (*even*) *today*". It seems safe to assume therefore that the arguments being presented here against the reformist's approach to test-case litigation also tell against the concept of legal services embodied in the Corporation which was originally a part of the Economic Opportunity Amendments of 1972.

12. *The "militant reformist" strategy for test-case litigation described in step 10 above is self-contradictory.*

Comments: On the one hand, the reformist claims that he is using test-case litigation to attack poverty by vindicating *legal ownership rights*. On the other hand, by hypothesis the wronged poor person's grievance is that he *doesn't own enough*. Hence the goal of litigation is the redistribution of income. "But income redistribution requires not only a giving to those who lack but also a taking from those who have. Since the taking cannot be justified by ownership rights, it reduces itself to expropriation . . . A court, being unrepresentative, can only engage in expropriation if it does not follow the law" (Hazard, 36 *U of Chicago LR*, 699). The militant reformist strategy cannot have it both ways. Either an individual's poverty (to the extent that it does not result from fraud, breach of contract or identifiable acts of discrimination) does not involve a violation of his ownership rights and the problem is not amenable to adjudication in a court of law or there is a violation of such rights, but this implies that the poor person is "owed" something by society, that he really "owns" a part of someone else's property, as Marx argued. But this reflects a value judgment (the poor have a right to the income of the non-poor) which is incompatible with the economic system under which we operate, and which can hardly "be reached in arguing about economic imbalance" (Hazard op. cit. p. 710).

13. *The "militant reformist" strategy for test-case litigation described in step 10 above is constitutionally and politically perilous.*

The strategy if actually implemented in spite of the self-contradictory feature, poses a serious threat to the constitutional and political props of our system. Civil justice (or "legal justice" as it is called by some)

involves the enforcement of property claims recognized by law whereas social justice (sometimes called "economic justice") involves transfers of property interests through regulation or taxation. But the proper forum in which a campaign for social justice should be waged is the legislative chamber, not the courtroom. Hazard summarizes the position as follows:

"The *constitutional aspects* of this difficulty is simple: *Taxation without representation is tyranny.* Its political aspect is suggested by considering what happens when a grievance is put in the form of a legal demand.

To put the poor's claim for income redistribution in this form *entails polarizing the issue as one of the poor's need as against everyone else's responsibility; stigmatizing the intended beneficiaries in the course of proclaiming their plight; and forcing a problem of compassion into the mold of obligation.* The *ad hominem* attack involved in this sort of formulation has not been inevitably successful when directed against 'the rich'. It is almost certain to be unsuccessful when directed against those who *pay the bills* in America today—the *middle classes* of whom many are themselves near the 'poverty line'." (Hazard op. cit. 711)

Hazard's analysis suggests two comments in respect to the rationale behind the Administration's opposition to the Legal Services Corporation originally incorporated in the Economic Opportunity Amendments of 1972:

(1) To the extent that the Legal Services Corporation which would have been established by the Amendments sanctioned test-case litigation in the reformist mold (and it does—see p. 22 above), it sanctioned judge-made law in the social area and was consequently diametrically opposed, in its very concept to the Nixon doctrine of strict constructionism followed in his Supreme Court appointments, a doctrine which has met with strong approval among the more conservative elements of both parties.

(2) Hazard's remark that the redistribution of income will be at the expense of the middle classes touches on an issue of increasing concern to the average taxpayer, including the George Wallace constituency. The issue is discussed at some length in an editorial in the *New York Law Journal* by Gary Bellow (NYCJ Oct. 5, 1967). The following is excerpted from the editorial:

"It seems to me that the neighborhood (law) offices, the test-case units, the community education efforts—the whole panoply of legal and supportive services which we have created reflect a set of very narrow assumptions covering the problems with which they deal and the scope of what needs to be done."

One of the assumptions challenged by Bellow is the hypothesis that

". . . the province of legal aid service to the poor is separate from the general problem of the unavailability of legal services to much of the rest of the nation. . . . We cannot focus only the poor. We cannot continue to ignore the millions of people in this nation who do not qualify for legal aid and who in reality are without sufficient funds to hire an attorney. Poverty is a relative concept. To assist people to income levels above the poverty line where they will find themselves without services previously available can never lead to any permanent solution. . . ."

The taxing of middle and lower middle class Americans (the "forgotten clients" who usually cannot themselves afford attorneys), in order to provide the poor with expensive test-case litigation aimed at a further redistribution of the income of the average taxpayer is both inequitable and tyrannical. It is inequitable because it provides "free" services to one class while denying it to another in need. And as Hazard has noted, it is tyrannical to the degree that the reapportionment of income which is the result of much test-case litigation is, in effect, taxation with representation.

Returning to Hazard's argument, although there is some relation between social justice and civil justice and although "the courts can accept some invitations to work distributive justice in the guise of adjudicating legal rights", in the final analysis the only legitimate contribution civil justice can make to social justice in the perspective of the War on Poverty is the remedying of numberless wrongs against the poor, which are "unmistakably *legal* wrongs (such as), fraud, discrimination and unfair procedure". The poor also "suffer the involvements of criminal accusation, domestic conflict and breakdown and troubles arising out of the mismanagement of money. These wrongs correspond to traditional and commonly recognized concepts of what legal rights are and what legal remedies ought to be.

In short, the only concept of legal services which is constitutionally defensible is the "legal aid" concept, as distinct from the "militant reformist" concept. To be sure, in the context of a legal aid program which emphasizes conventional legal assistance to indigent poor persons, the contribution of civil justice to social justice is

"diffuse, microcosmic and dull. Such a program of civil justice does not command the attention, let alone the vocation, of the inventive and passionate minds who have articulated the militant reformist concept of the Legal Services Program. On the other hand, it may serve the needs of the poor. And it leaves the matter of providing social justice where it ought to rest: on the conscience of the community and its sense of prudence, as expressed in its legislation. A strategy of cooperation concerning claims formulated as appeals to conscience and self protection might succeed." (Hazard op. cit. 712)

14. *The "militant reformist" strategy for test-case litigation described in Step 10 above tends to put causes above the interests of the individual poor client.*

Comment: Another objection, in addition to those considered by Hazard, to the use of test-case litigation to achieve broad social reform is formulated by Sargent Shriver as follows:

"Attorneys allegedly tend to disregard effective service to the immediate client in their anxiety to make a good test-case" (17 *Amer Univ LR* 5).

Shriver airily dismisses the objections as being "without merit". But he qualifies his dismissal as follows:

"The one element preventing the disregard of a particular client's desires and needs is the integrity of the attorney involved . . . The fear that individual claims will be mishandled due to an interest in social and 'economic' as opposed to 'legal' justice, therefore, while not completely groundless, are largely exaggerated." [4]

Shriver's distinction between "social" as opposed to "legal" justice, which parallels that made by Hazard between "social" and "civil" justice, is based on a passage in an opinion of Judge Breitel of New York quoted in Part III above (p. 26). Breitel, in rejecting the application for incorporation submitted by Community Action for Legal Services of New York City, remarked that "the use of law and its institutions in achieving social and economic (as distinguished from legal) justice (is) especially illustrative of indiscriminate mingling of goals . . ."

In another court case argued before the Pennsylvania Court of Common Pleas, the presiding justice, Judge Sweet, referred approvingly to Judge Breitel's opinion and echoed Breitel's criticism of the tendency of legal services attorneys to put the cause of the poor as a class ahead of the concerns of individual clients, as follows:

"We are gravely disturbed by the implications of the non-service function referred to indirectly in the application as education, training and research activities. The business of a lawyer engaged by such a nonprofit corporation is to represent indigent persons one by one as they have a need for representation. It is not a class representation of the indigent, as such, nor a collective representation, nor are the poor a single and collective client. To the extent that the Anglo-American legal system still espouses a philosophy of individualism rather than a philosophy of collectivism rights belong to people, individual people, and not to any great gray mass of 'the poor'. We do not think that public money should be used to foment rent strikes, promote race riots or encourage civil disobedience."

But perhaps the most damning indictment of all are the comments of Mary Ellen Hamilton, formerly president of the National Clients' Council. In a footnote in his article on the legal services program (81 *Yale LR* 245), Richard Blumenthal writes:

"Legal Services attorneys have been known to place a high priority on some issues, such as their own status within the program, that are of less concern to the client community. Moreover, on certain issues the interests of the attorneys and the poor may be in direct conflict or at least may be felt to be so. Recently, for example, there have been increasing complaints from clients about attorneys who 'exploit' clients to launch sweeping law reform actions, when the individuals may be seeking much more limited solutions to their problems within existing laws. The clients accuse the attorneys of taking law reform 'ego trips' at their expense. The National Clients' Council has begun compiling documentation on this problem, and plans to make it a major issue. Interview with Hamilton."

But the militant reformist has not yet been checkmated. Seizing on an opening furnished by Hazard's argument, he continues:

15. *In the future, the principal weapon to be employed in the legal services program's efforts to reform the law will be legislative advocacy or lobbying.*

Comment: Assuming the militant reformists were to accept the validity of the argument in steps 11, 12, and 13 above—that test-case litigation for the purpose of righting so-called "social" wrongs is uneconomical, self-contradictory and unconstitutional, the reformists have yet another instrument which Hazard's argument against judge-made law invites them to employ, viz *legislative advocacy.* As a matter of fact, the shift in emphasis from test-case litigation in the courts to advocacy in the legislatures has been underway for some time in the thinking of legal services planners. See pages 20 and 21 Part III above, where Sargent Shriver, Fred Speaker and Mickey Kantor are quoted to the effect that the top goal of the program is no longer test-case litigation but legislative advocacy.

"Advocacy of appropriate reforms in the law, whether it be done through the judiciary *or the legislature* is a part of the traditional role of the lawyer . . . Any program designed to provide legal services to the indigent would be failing in its purpose if it did not vigorously participate in *legislative advocacy.*" (Shriver 1967)

"Many of the early judicial victories (through test-case litigation) have already been won. Thus it is good that the authority for legislative advocacy . . . will continue to be clear under the proposed new legislation (for a Legal Services Corporation." (Speaker 1971)

"The first priority of the Office of Legal Services, with or without the new corporate structure, would be to utilize funds . . . in the area of legislative advocacy." (Kantor 1972)

Footnotes at end of article.

Given the fact, evinced by the above quotations and by numerous other references, that OEO's Legal Services Program is now deeply committed to legislative advocacy, the only reasonable interpretation to be placed on the passage on lobbying in the provision of the Economic Opportunity Amendments which would have set up a Legal Services Corporation is that the Shriver-Speaker-Kantor thesis would have continued to prevail under the proposed Corporation. The pertinent passage of the deleted provision reads as follows:

"906 (e)(1) The Corporation shall establish and publish procedures and guidelines to ensure that no funds or personnel made available by the Corporation shall be used to undertake to influence the passage or defeat of any proposed convention, constitutional amendment, code, statute, executive order, ordinance, regulations, rule, or similar enactment or promulgation considered in any form by any legislative body by representations to such body (or committee or member thereof) or any similar activity except where—

"(A) an attorney representing an eligible member of the client community is *requested by such member* to make such representation or undertake such activity and such representation or activity is carried out in a manner which does not *identify the Corporation* or any legal services program receiving assistance from the Corporation with such representation or activity;

"(B) personnel of the Corporation or any legal services program receiving financial assistance from the Corporation *are requested by a* legislative body (or committee or *member thereof*) to make such representation or undertake such activity.

"(C) procedures and guidelines established by the Corporation under paragraph (1) of this subsection shall ensure that, where applicable, representations or activities permitted under that paragraph are undertaken in a manner which is *consistent with the Code of Professional Responsibilities and Canons of Ethics of the American Bar Association.*" (Emphasis added.)

The use of the term "identify" in 906 (e)(1)A above seems to have been intended to free the Corporation as such from the onus of lobbying. But it is obvious that any organization which is established for the express purpose of providing legal services for the poor community and which authorizes its attorneys, by a formal provision in its charter, to include lobbying among the means to be employed in meeting the needs of the poor community, cannot disclaim official responsibility for and identification with such lobbying activity. Such a disclaimer would be valid only if the attorneys were to engage in lobbying activities as private citizens during their free time. *But the Corporation charter authorized its attorneys to lobby as part of their regular work as employees in carrying out the program and purposes of the Corporation.* Clearly where federal funds are being used to support a given activity, the federal agency which wittingly supplies such funds specifically for that activity cannot avoid identification with the activity.

Again the reference in 906(e)(2) above to the Canons of Ethics, one of which enjoins lawyers to engage in law reform, is another clear indication of the direction the new Corporation would have taken in respect to legislative advocacy (see pp. 45–47 below for a lengthy discussion of the Canon on law reform). It should be noted, by the way, that the provision on lobbying in the proposed Corporation's charter was sufficiently unequivocal to have caused the Internal Revenue Service to express strong doubts that the proposed Corporation could qualify for tax-exempt status as a non-lobbying charitable and educational activity under the Internal Revenue Code. According to the Internal Revenue Code. According to the Internal Revenue Service's Chief of the Exempt Organizations Branch, in a letter dated July 31, 1972:

"The Code and the regulations provide that an organization which otherwise qualifies for exemption from Federal income tax as an organization described in section 501 (c)(3) of the Code, will not be entitled to recognition of exemption if it engages in or is empowered to engage in more than an insubstantial amount of legislation activities. Therefore, *it appears unlikely that the Corporation could qualify* for recognition of exemption from Federal income tax as an organization described in section 501(c)(3) of the Code, if its charter contained the proposed lobbying provision."

Evidently, the Internal Revenue Service was not impressed by the proviso under which the Corporation would somehow be able to escape identification with the lobbying activities of its attorneys.

Returning now to Hazard's argument, his rejoinder to the law reformer's proposal (in step 15 above) to emphasize legislative advocacy over test-case litigation is found in a second article entitled "Law Reforming in the Antipoverty Effort" (37 *Univ of Chicago LR* 242). Here the debate over the two concepts of legal services is continued and brought to a conclusion with a consideration of the problem of legislative advocacy. Hazard opens by reiterating the conclusion of his first article as follows: Legal reforms aimed at the redistribution of income and bargaining power are "characteristically achieved through the medium of legislation" rather than through the medium of test-case litigation. Given the economic and constitutional problems attendant on test-case litigation, its potential for law reform has been greatly exaggerated by the legal services zealots etc. etc. After discussing at some length the limitations of judicial law-making, Hazard seems at first to agree with the "militant reformist" shift to legislative advocacy (proposed in step 15 above). He writes:

". . . the legislative courses would seem obviously preferable for achieving law reform on behalf of the poor that is structural rather than symptomological."

But Hazard then raises an entirely new constitutional objection, one which administers the *coup de grace* to the "militant reformist" concept of legal services. The objection applies to *both* techniques of law reform, test-care litigation and legislative advocacy, and is developed by Hazard as follows:

16. *The use of public funds to support lobbying on behalf of the poor violates constitutional or quasi-constitutional taboo embedded in the American political tradition.*

Comment: In support of his thesis, Hazard offers the following considerations:

"The question in test-case litigation, as in legislative law reform, boils down to the propriety of constituting a publicly funded agency to lobby for the special benefit of a limited sector of the general community. . . . There is a serious, if simple, question of principle involved, namely, whether government predicated on equal participation of all members of the electorate is compatible with providing some of them with special political equipage at public expense."

Hazard admits that there are instances in our history where special interests have been provided with such "equipage at public expense" but two wrongs don't make a right. He continues:

"The fact remains that in a constitutional regime partisan political activity is supposed to be a matter of private initiative. For such a regime to survive it has to stay pretty much that way in fact. However inconstantly the principle is fulfilled, it rests on a recognition that a government which creates agencies to formulate what shall be taken as the people's will is no longer a government by the people.

"The force of the point is suggested by asking what would be the consequences of generalizing the proposition that the poor should have lobbyists paid by the government: Should similar lobbyists be provided the near-poor, the middle-class, the affluent? How does one rationally allocate the political resources through which resource allocation is made? One comes uneasily to the conclusion that the idea simply does not have sustaining attraction."

The thesis enunciated by Hazard in step 16 above has rarely been debated in the pages of law reviews or by the Congress. Nonetheless it has received some very substantial support in the past in the form of several Federal statutes and in a number of court decisions. One of the statutes, entitled "Lobbying with Appropriated Moneys", reads as follows:

"No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation" (18 USC 1913).

This statute undoubtedly reflects the constitutional principle referred to by Hazard in step 16 above, the principle that "a government predicated on equal participation of all members of the electorate" is incompatible with "providing some of them with special equipage at public expense". In other words, the Federal Government ought not to be in the business of subsidizing ideological, philosophical, political or partisan points of view. This taboo is part of the unwritten tradition which underlies such constitutional formulae as the one which relates to the separation of Church and State. It is also reflected in another Federal statute, the sections in Title 26 of the U.S. Code which deal with a kind of indirect federal subsidy, namely the exemption of certain organizations from the requirement to pay taxes. In 1959, in a case which involved this section of the Tax Code (Cammarano vs. the U.S. 79 S. Ct. 524), the Supreme Court reaffirmed the taboo, noting that the use of tax money to promote the views of a particular group or organization is both unfair and dangerous. The unfairness of such a subsidy was emphasized by Justice Harlan who wrote:

"As early as 1934 Congress amended the Code expressly to provide that no tax exemption should be given to organizations, otherwise qualifying, a substantial part of the activities of which 'is carrying on propaganda, or otherwise attempting to influence legislation,' and that deductibility should be denied to contributions by individuals to such organizations. And a year thereafter, when the Code was for the first time amended to permit corporations to deduct certain contributions not qualifying as 'ordinary and necessary' business expenses, an identical limitation was imposed. These limitations, carried over into the 1939 and 1954 Codes, made explicit the conclusion derived by Judge Learned Hand in 1930 that *'political agitation as such is outside the statute, however innocent the aim . . . Controversies of that sort must be conducted without public subvention; the Treasury stands aside from them.'* Petitioners are not being denied a tax deduction because they engage in constitutionally protected activities, *but are simply being required to pay for those activities entirely out of their own pockets, as everyone else engaging in similar activities is required to do under the provisions of the Internal Revenue Code.*

"Nondiscriminatory denial of deduction from gross income to sums expended to promote or defeat legislation is plainly not 'aimed at the suppression of dangerous ideas.' Rather, it appears to us to express a deter-

mination by Congress that since purchased publicity can influence the fate of legislation which will affect, directly or indirectly, *all* in the community, *everyone in the community should stand on the same footing as regards its purchase so far as the Treasury of the United States is concerned.* Affirmed."

In the same case, Justice Douglas, in a separate concurring opinion, made the point that the use of public funds to subsidize private views was not only unfair but dangerous. Wrote Douglas:

"Congress has not undertaken to penalize taxpayers for certain types of advocacy; it has merely allowed some, not all, expenses as deductions. Deductions are a matter of grace, not of right. To hold that this item of expense must be allowed as a deduction would be to give impetus to the view favored in some quarters that First Amendment rights are somehow not fully realized unless they are subsidized by the State. Such a notion runs counter to our Decisions and may indeed conflict with the *underlying premise that a complete hands-off policy on the part of government is at times the only course consistent with First Amendment rights.*

With this addendum, I concur in the opinion of the Court."

The militant reformer now plays his last card as follows:

17. *Canon 8, of the Code of Professional Responsibility lays on the lawyer a duty to lobby for law reform.*

Legal services attorneys, to whom the charter of the proposed Corporation would have granted unrestricted authority to lobby so long as it was done on behalf of a client (see p. 41 above), were viewed by the Corporation's defenders as having, independently of the charter, not only the right but a *duty* to engage in lobbying. "We have the clear right and certain duty to lobby in appropriate circumstances" (Fred Speaker). This duty is usually said to be imposed by the American Bar Association's Code of Professional Responsibility. Subparagraph 906(e)(2) of the proposed charter of the Legal Services Corporation made reference to the Code as follows:

"Procedures . . . established by the Corporation shall ensure that . . . (lobbying activities . . . are undertaken in a manner consistent with the Code of Professional Responsibilities and Canons of Ethics of the American Bar Association".

Shriver professes to find the lobbying mandate in Canon 26 of the Code. Writes Shriver:

"Legislative activity has long been a part of the lawyer's stock in trade. More than any other profession, lawyers are in a position to determine the need for overhauling the law, refining and clarifying it, and correcting its inequities. It is therefore one of the duties that a lawyer owes to his clients and to society, to lend his particular skill to the lawmaking bodies of the nation. Indeed, the American Bar Association assumes the existence of this duty when it provides in the *Canons of Ethics*, that the same standards of conduct required for practice before the judiciary shall apply to practice before the legislature.

"Private attorneys are constantly called upon to make presentations before legislative bodies. 'This field of legal services is of increasing importance and can be a means of rendering invaluable service to the client. . . . It is an essential part of the legislative process and serves a valuable purpose in providing essential facts and in conveying the wishes of the people to the legislators'. Any program designed to provide legal services to the indigent would be failing in its purpose if it did not vigorously participate in legislative advocacy" (17 *Amer Univ LR* 9).

The Canon Shriver refers to, Canon 26, reads as follows:

"26. *Professional Advocacy Other Than Before Courts.* A lawyer openly, and in his true character, may render professional service before legislative or other bodies, regarding proposed legislation and in advocacy of claims before departments of government, upon the same principles of ethics which justify his appearance before the Courts; but it is unprofessional for a lawyer so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding, to influence action."

However, the Canon usually cited as the basis for the lobbying duty is Canon 8, which reads (in part) as follows:

"A Lawyer Should Assist in Improving the Legal System. EC 8–4. Changes in human affairs and imperfections in human institutions make necessary constant efforts to maintain and improve our legal system. This system should function in a manner that commands public respect and fosters the use of legal remedies to achieve redress of grievances. By reason of education and experience, lawyers are especially qualified to recognize deficiences in the legal system and to initiate corrective measures therein. *Thus they should participate in proposing and and supporting legislation and programs to improve the system,* without regard to the general interests or desires of clients or former clients.

EC 8–2. Rules of law are deficient if they are not just, understandable, and responsive to the needs of society. If a lawyer believes that the existence or absence of a rule of law, substantive or procedural, causes or contributes to an unjust result, he *should endeavor by lawful means to obtain appropriate changes in the law. He should encourage the simplification of laws and the repeal or amendment of laws that are outmoded.* Likewise, legal procedures should be improved whenever experience indicates a change is needed. . . .

EC 8–4. Whenever a lawyer seeks legislative or administrative changes, he should identify the capacity in which he appears, whether on behalf of himself a client, or the public. A lawyer may advocate such changes on behalf of a client even though he does not agree with them. But when a lawyer purports to act on behalf of the public, he should espouse only those changes which he conscientiously believes to be in the public interest. . . .

EC 8–9. The advancement of our legal system is of vital importance in maintaining the rule of law and in facilitating orderly changes; therefore, lawyers should encourage, and should aid in making, needed changes and improvements."

In his critique of federally-funded legislative advocacy, Hazard does not discuss *ex professo* the problem raised by the Code of Professional Responsibility. But the argument that will now be developed (under step 18 below) against the interpretation placed on the Canons by some of the legal services fraternity is consistent with Hazard's general approach, and with his remark that "making such a choice between clients (i.e. those who might be helped by legal aid and those who might be helped by law reform) is not contemplated in the ethics and conventions defining the lawyer's role, certainly not in those defining the advocate's role" (37 *U. of Chicago LR* 253). Hazard's concurrence with the position taken in this paper is confirmed in a letter he wrote recently (see p. 50).

18. *The legislative advocacy "mandated" by Canon 8 of the Code of Professional Responsibility does not refer to advocacy that falls within the scope of social justice. To the extent that the lawyer engages in such advocacy he does so under his rights as a citizen and not under his duties as a lawyer.*

Comment: If the advocacy of substantive changes in laws relating to social policy is not countenanced by the Revenue Code's provisions on tax exemption, a form of *indirect* subsidy, then it would seem that *a fortiori* such advocacy would be inappropriate in the case of organizations such as the proposed Legal Services Corporation and its delegate agencies which would have been *directly* subsidized by the Federal government. That the advocacy of legislation dealing with broad issues of social policy is not incumbent on the lawyer as such is evident from a ruling in 1959 by the U.S. Court of Appeals in the case of John Foster Dulles vs. James Johnson, formerly Collector of Revenue for the Third District of New York (273 F2d 362).

The case involved the eligibility of New York City, County and State bar associations (organizations analogous to the Legal Services Corporation insofar as their lobbying activities are concerned) to receive tax deductible bequests in view of their extensive involvement in legislative advocacy. The court held that bequests to bar associations in New York were tax deductible despite the fact that the bar associations included, among the purposes listed in their charters, "promoting reforms in the law." Noting that various committees of the bar associations made a practice of studying proposed and existing legislation and sending copies of their reports to federal and state legislatures, the court found that the major portion of this work was "of a *technical* nature involving the adequacy of proposed and existing legislation in terms of its *form, clarity of expression and its effect on and relation to other law.*" In the court's view, the bar association reports discussed "matters uniquely within the fields of experts" and were efforts "to improve the law in *technical* and *non-controversial areas,*" e.g. to *"improve court procedure or clarify some technical matter of substantive law."* They avoided "questions which turn largely on *economic or political decisions."* The legislative changes advocated in the reports were not concerned with *"broad principles of social amelioration"* and were not designed to promote *"some larger principle of governmental policy."* The plain implication of the Court's decision is that if the bar associations' lobbying activities had (1) dealt with the *content* rather than the *form* of the law, and (2) had touched on questions of *social* policy, the associations would have been ineligible for tax-deductible bequests or for tax-exempt status under Section 501 (c)(3) of the Code.

The Court's decision brings to mind a distinction, frequently mentioned elsewhere, between two types of law reform: *procedural* reform which affects the form of the law and *substantive* reform which affects the content of the law. The decision also intimates, though not too clearly, a further, somewhat more subtle, distinction between two sorts of substantive law reform. Professor Hazard is helpful here. The article in which he questions the propriety and even the constitutionality of poverty lawyers lobbying at public expense (37 *U. of Chicago LR* 242), furnishes a basis for drawing a sharper line, conceptually at least, between the two kinds of substantive law reform. Hazard's distinction between the domain of civil justice and that of social justice suggests a parallel distinction between substantive law reform aimed at enforcement of clients' *legal* rights by eliminating *legal* impediments to such enforcement, and substantive law reform aimed at bringing about *fundamental social change.*

Now all sides are agreed that the lawyer as a lawyer has a right and even a duty, whether on behalf of a client or not, to engage in legislative advocacy on behalf of *procedural* law reform. This, at the very least, is the kind of law reform activity condoned by the Court of Appeals in the case cited above and "mandated" by Canon 8 of Professional Responsibility. The lawyer *as a lawyer* may not only lobby on behalf of procedural reform but, as the Court of Appeals decision implies, he may even do so at public expense.

On the other hand, it is Hazard's view that

advocacy directed at overhauling the law *in the name of social justice* is, when it takes the form of litigation, constitutionally questionable for all lawyers and when it takes the form of lobbying, constitutionally questionable for those lawyers who are on the public payroll. It would also appear that legislative advocacy of this nature, if engaged in by a non-federally-paid lawyer, is an exercise of his right *as a citizen* rather than the performance of his duties *as a lawyer*. This idea, of course, clearly runs counter to the rather grandiose conception of a lawyer's duties which prevails among "social action" lawyers. A good illustration of their views is found in an article written for the *Notre Dame Lawyer* in 1966 by E. Clinton Bamberger, Jr., former director of OEO's Office of Legal Services (XL *ND Lawyer* 847). According to Bamberger:

"The law has been the instrument for orderly social change throughout our nation's history, and lawyers have always been more than mere agents directed by others. They have been the architects as well as the artisans of social reform—redesigning, reforming and creating not only legal institutions but social, economic and political institutions as well. Wearing a wide variety of hats in American life, lawyers are not only counselors to our large corporations, business councils and cooperatives, trade unions and suburban neighborhood improvement associations, but more often, policymakers and strategists as well. Lawyers are our most effective public servants in all areas of government, in foundations and in other institutional public service. Lawyers are our lobbyists. Lawyers are our legislators. Lawyers sat in more than sixty percent of the seats of the Congress which passed the Economic Opportunity Act. In each of these functions, lawyers do more than handle a particular legal matter bounded by a particular isolated set for facts. They take the common threads of social, economic and political problems affecting large groups of people and weave the test-case, remedial statute or administrative reform to solve the pervasive problems and eliminate the cause for the future."

No doubt lawyers have done all the things Bamberg credits them with doing, and in doing these things, have contributed inestimably to the common good. But the point is—and it is more than a quibble—did they do these things *as lawyers*? It is one thing for a lawyer to do X and another for X to be done by the lawyer precisely in his capacity as a lawyer. If the involvement of a lawyer in campaigns for social and political reform does not flow from his role as a lawyer, then it is futile for him to argue that the Code of Professional Responsibility requires such involvement. To read "substantive law reform for social justice" into the Code's reference to "substantive law reform" is simply to beg the question."

The interpretation of the Code being defended here was sent to Professor Hazard for review and elicited the following comments:

"It is pertinent to observe that when the bar speaks of the lawyer's responsibility for law reform, they are usually talking about reform and improvement of the administration of justice rather than substantive legal reform, or the consolidation and modification of substantive law along lines that have already been demarcated by the judicial, legislative, political, and critical processes, e.g., the Model Penal Code, Uniform Commercial Code . . . *There is simply no ethical mandate for lawyers to adopt a program of social reform.* The line between reform of the administration of justice and social law reform, however, is no easier to draw than that between legal aid and law reform, because the distinction involved is essentially the same one".

There remains the problem of the intermediate type of advocacy which seeks to change in some sense the *substance* of laws, but within the area defined by the notion of *civil* as distinct from *social* justice. May the lawyer *as a lawyer* engage in such advocacy? Does he, as a lawyer, have a *duty* to engage in such advocacy? What if he is a lawyer on the public payroll? The answers to these questions are not at all clear. Nonetheless in light of the above analysis, there would seem to be no objection, on constitutional grounds, to the proposition that a federally-funded organization of lawyers may lobby not only for procedural reform of the law but for substantive change as well, *so long as the lawyers stay on this side of the line between civil and social justice* (an immense problem of practical definition, to be sure). The further problem of the conditions, if any, under which a Federal agency may cross this line is discussed in the next and concluding part of this paper.

PART V: SOME SUGGESTIONS FOR REORIENTING OEO'S LEGAL SERVICES PROGRAM

The theses advanced in this paper take for granted the validity of the fundamental distinction elaborated in Parts II and III between the two concepts of legal services: the traditional legal aid concept and the law reform concept (or, in Professor Hazard's words the "militant reformist" concept). Unfortunately the terminology—"legal aid" and "law reform"—tends to confuse the issue. For example, there are those who genuinely doubt the validity of the distinction and they may well be right at times, depending on what is meant by "legal aid" and "law reform". The distinction is admittedly a false one if it is between pure legal aid *without any element of law reform* on the one hand, and pure law reform or a mix of law reform and legal aid on the other. To put it another way, when the term "pure legal aid" is applied to a *program* rather than to an individual instance of legal services, the term is an abstraction and it is difficult to imagine a legal services program in the real world which would exemplify the concept. Likewise, although the term "pure law reform" does have an analogue among programs in the real world, the "militant reformist" version of a legal services program which has figured in the above discussion is not and has never claimed to be a program of pure law reform. In short, the two approaches to legal services which have been pitted against each other in this paper each contain both a legal aid component and a law reform component.

What then is the difference between the two approaches? At the very least the difference is one of emphasis, a point made repeatedly by the writers quoted in Part II of this paper. The militant reformist approach puts law reform ahead of individual legal aid, while the traditional approach will use litigation up to and including test case litigation only as a last resort. As Blumenthal puts it, the primary objective of the law reform approach is *"changing a law* or legal interpretation affecting the poor generally" in contrast with the legal aid approach which stresses "individual case work or service" and "has the primary objective of improving the situation of a low-income group or individual under *existing* law. *The two of course overlap. But the two activities are separable in terms of primary objective"* (Blumenthal 81 *Yale LR* Note 246 quoted above on p. 9. Emphasis added.)

The difficulty, however, with Blumenthal's way of characterizing legal aid versus law reform is that it suggests that the difference is merely one of degree and not also one of kind. From the Blumenthal perspective, the problem of reorienting a legal services program of the "militant reformist" type is deceptively simple: a little less law reform activity and a little more emphasis on service to individual clients might turn the trick (along with some reining in of the "barefoot lawyers" by apprenticing them to older and wiser heads). But the problem is much more complicated, if the conclusions put forward in the paraphrase of Hazard's argument in Part IV above are accepted. The complexity can be unravelled only by carefully distinguishing the *several aspects* of *each* of the three classical components of law reform: test-case litigation which operates in the sphere of judge-made law; administrative rule-changing whose bailiwick is regulatory law and legislative advocacy which seeks to change statutory law.

In the area of litigation, there is first the distinction discussed above (p. 48) between law reform which aims at *procedural* change in the law or in interpretations of the law formulated by a government agency, and reform which seeks *substantive* change. On the side of substantive change. Hazard drew a further line between test-case litigation which keeps within the limits of *"civil"* or "commutative" justice (fairness of decision in particular cases (and the test-case litigation which is directed toward *"social"* or "distributive" justice (re-allocation of community resources). He suggested that the use of litigation to achieve justice in the latter sense was "self-contradictory and on this account constitutionally and politically perilous". Hence any project to revamp a legal services program of the "militant reformist" type would include among its guidelines a definition of test-case litigation of the "fundamental social change" variety along with a strong injunction against its use. There would, of course, have to be some tolerance of the fact that the distinction between the two uses of test-case litigation ("civil" vs. "social"), though conceptually fairly clear, is at times extraordinarily difficult to draw in actual practice.

With test-case litigation to bring about fundamental social change disposed of, there is still the need for further distinctions and guidelines in respect to that form of test-case litigation which is, in principle, acceptable. For one thing it is clear that a legal services program which adheres to the "legal aid" model will keep *all* litigation to an absolute minimum, resorting to it only when all other techniques for the settlement of differences in an individual client's case have been exhausted. This rule ought to be followed even more scrupulously in the case of taxpayer-supported litigation, given the fact that litigation is the most expensive way of serving a client. Secondly, guidelines are needed to discourage the tendency of many lawyers of the social action persuasion to hunt for clients whose grievances might be suited to class-action or test-case litigation on behalf of a point of law the attorney wants to establish. (For confirmation of the fact that client-hunting is not at all uncommon, see a recent article entitled "The Action Lawyers" by Gerald Lubenow, *SR* Aug 28 1972). The problem just mention suggests another distinction which might profitably be substituted for the standard one employed throughout this paper between the legal aid and law reform concepts of legal services. The new and less ambivalent distinction would be between *client-centered or client-generated legal activity* and *non-client centered or lawyer-generated activity.*

It is important to point out at once that the term "client" in the above expressions is being used in its narrow and technical sense, as a legal term, in contrast with the looser meaning it has in such expressions as "the poor are the clients of OEO". Client-centered legal activity corresponds to the sort of activity countenanced by the traditional "legal aid" approach to legal services for the poor. It consists largely of individual case work involving non-litigative, and when needed, litigative representation, and embraces on occasion intervention in the administrative process for the purpose of changing regulatory law and, much more rarely, intervention in the legislative process for the

purpose of changing statutory law, *all in the name of an individual client*. Non-client-centered or lawyer-generated legal activity on the other hand comprises for the most part intervention in the administrative and legislative processes (legislative advocacy) on behalf not of an individual client but *of the public-at-large or a segment of the public*, e.g. the segment called gun-owners, or the segment called consumers or the segment called the poor. When legal activity in the public interest moves beyond attempts to influence regulatory or statutory law and into litigation, it enters a zone of controversy where the question of standing looms as a formidable obstacle to intervention. Without attempting to resolve—or even get involved in—the latter problem, that of the legitimacy and limits of public interest litigation, this paper will conclude with a very tentative statement of some of the ways in which the distinctions made above might be applied to the problem of refashioning OEO's legal services program so that it will conform to the traditional legal aid model without this entailing the abandonment by the Agency, and particularly by the Director, of the role of advocate of the poor.

In the first place, as already noted, test-case litigation to achieve social justice in the sense defined by Hazard would be ruled out at any level, whether it be client-centered litigation by project attorneys working at the local level or non-client-centered public interest litigation at the national level (see p. 36 above for reasons for the ban). Secondly, the functions of client-centered and legitimate non-client-centered litigation would be sharply separated, with the first of these being delegated down, as at present, to the legal services projects and the second shifted to the national level. The notion of accountability taken in the sense of responsiveness (see p. 2 above) is relevant here. Client-centered litigation operates under the shield of the attorney-client relationship. Once engaged in such a relationship, the attorney's first loyalty is to his client. But another accountability is added inexorably if the attorney is on the public payroll, and there is now a potential for a serious conflict between the two accountabilities. The attorney must be responsive to his client and he must also be responsive to the public. Some purists would hold that the conflict is in principle irresolvable and would do away with legal services altogether. A more moderate view would seem to entail, at the very least, a search for devices which would diminish the potential for conflict. The separation of functions advocated above is just such a device. *When the law reformist attorneys and others try to assimilate what is essentially non-client-centered public interest litigation to client-centered litigation in order to gain immunity from public control, they simply place the whole federally-funded client-centered enterprise in jeopardy.*[5] On the other hand, the separation of the two functions would have the following advantages: (1) it would eliminate much of the temptation to exploit clients for social objectives; (2) it would reduce outside pressures on client-centered litigation and (3) it would render non-client-centered litigation more accountable, i.e. more amenable to public control. The opponents of the law reformist approach have frequently made the wrong point. They have insisted that everything the project attorneys do, they *must do on behalf of a client*, thus encouraging the very client-hunting that is deemed so objectionable. The point is rather that there are a number of things the project attorney does not *have* to do to carry out his main task and which, for the reasons given in this paper, he *ought* not to do.

Footnotes at end of article.

Considerations similar to those adduced above in the case of litigation apply also to the other two species of law reform: administrative rule-changing of government agencies and particularly in the proceedings of Federal and State regulatory agencies is an important goal of the network of legal services projects and back-up centers as they presently operate. While the problem of administrative rule-changing has been mentioned only incidentally in this paper, it would be consistent with the general argument to separate the function of client-centered intervention in administrative proceedings from the function of public interest (or low-income-*group*-centered) intervention, and to reserve the latter activity for an in-house advocacy unit at the level of OEO headquarters. This unit would at the very least be charged with the task of speaking for the poor before *Federal* agencies, although a precedent for participating in State proceedings is found in the civil rights actions brought against State governments and local municipalities by the Department of Justice.

Finally under the plan for the reform of the legal services program proposed in this paper, almost the whole of the activity known as "legislative advocacy" or lobbying would be transferred from legal services projects and back-up centers to a national advocacy unit housed in OEO headquarters. Not only is there very little client-centered legislative advocacy anyway, but by refusing to delegate the function of lobbying for the poor, OEO and its grantees would run far less risk of breaching the thin but vital line between permissible and impermissible lobbying at public expense. It was a grave defect of the proposed legal Services Corporation that it did not provide for a separation of these functions. On the contrary, lobbying authority would have been vested not only in back-up centers but in each project attorney, rendering the problem of control insoluble.

Professor Hazard wonders why OEO has overlooked this way (the way proposed above) out of the lobbying impasse. After remarking that "it is perhaps practically impossible over time to have a litigation-oriented legal services agency and a legislative law reform agency under one roof", he concludes his article on law reform as follows:

"What the interest groups among the poor will need from the professional technicians are specific reform proposals that can be sold. Reform proposals meeting the test of the political market place must be related to some general principle of fairness or justice, respond to interests broad enough to command the necessary votes, and represent a coherent piece of work from a technical point of view."

"The task of drafting law-reform proposals that meet these tests is exacting, time-consuming and expensive. Drafting such proposals is the vocation of agencies whose endeavors have been regarded as standing on the legitimate side of the line between *legal policy analysis* and *lobbying*—for example, the National Conference of Commissioners on Uniform Laws, the American Law Institute, the Brookings Institution, the Legislative Drafting Service of Columbia Law School, the law revision commissions of several states, and an "unending series of *ad hoc* commissions at every level of government. Just why this approach to law reform has not been seriously pursued through the Legal Services Program is not clear" (37 *U. of Chicago LR* 255).

The distinction made by Hazard, in the passage just quoted, between "legal policy analysis" (including the drafting of legislation) and "lobbying" is of critical importance for any project to (1) reform the legal services program and, going one step further (2) establish an advocacy unit in OEO headquarters. Like the term "law reform", "lobbying" is a term which has been burdened with many meanings, some of them in conflict with each other. In its root sense, "lobbying" or "legislative advocacy" refers simply to any activity which aims at the passage or defeat of legislation. It was in this generic sense that the term was employed in the section of this paper devoted to legislative advocacy (p. 40 above). So taken, lobbying is neither lawful or unlawful, constitutional nor unconstitutional, proper nor improper. In order to make a value judgment on the activity, we need to know more. In the earlier discussion, for example, it was not lobbying per se, but lobbying *at public expense* which was judged by Hazard as unconstitutional, or at the very least, unwise from the policy point of view, given the traditions of a representative democracy. But obviously some further qualifications of the term "lobbying" are now needed, or else Professor Hazard can rightly be charged with contradicting himself. That is, he is on record as objecting to any federally-funded attempt to influence legislation, as follows:

"The question . . . boils down to the propriety of constituting a publicly funded agency to lobby for the special benefit of a limited sector of the general community . . . There is a serious, if simple, question of principle involved, namely, whether government predicated on equal participation of all members of the electorate is compatible with providing some of them with special political equipage at public expense." (37 *Univ of Chicago* LR 242, quoted above on p. 43)

From the context, it is clear that Hazard is using the term "lobby" in the above passage in a purely neutral, non-pejorative sense, a sense which would include an attempt to influence legislation by actually drafting a legislative proposal. The key term above is not "lobby" but "publicly funded". Yet in the second passage on legislative advocacy (cited on p. 54 above), Hazard is making a plea for a *publicly-funded* effort to draft legislative proprosals, so long as such effort is kept "on the legitimate side of the line between legal policy analysis and lobbying". How does one resolve this seeming contradiction?

In the first place, in opposing "legal policy analysis" to "lobbying", there is no question Hazard is employing the term "lobbying" in a narrower sense than he has used it elsewhere, and that he is using it in a pejorative sense ("legal policy analysis" is on the "legitimate" side of the line). But there are still several ways in which lobbying can be improper. From the context of Hazard's whole discussion, I would assume he is referring to something akin to "grassroots" lobbying, the whipping up of public sentiment for or against a piece of legislation, with the expression of that sentiment taking the form of mass letter-writing, mass visits and, on occasion, disruptive pressure. Publicly-funded "grassroots" lobbying is unacceptable for Hazard, while publicly funded lobbying in the sense of "legal policy analysis" is acceptable. "Legal policy analysis" includes for Hazard the element of "drafting legislative proposals". I would think the term could be further extended to include testimony before a legislative body, the sort of activity Judge Breitel condones when he contrasts "lobbying or propagandistic activities" with "suggesting, testifying, commenting on, reviewing and interpreting legislation (see p. 18 above).

But Breitel's remark suggests there is a need for a further distinction to round off this discussion on lobbying. The distinction, which Hazard does not make explicit, is between "legal policy analysis" which is *accountable* to the public and such analysis which is *not* accountable. Breitel would keep

legal services project attorneys from propagandistic and "grassroots" lobbying, but he would allow them to engage in "legal policy analysis", drafting legislation, testifying etc. Hazard would separate the two functions of "litigation-oriented legal services" and "legislative law reform", assigning the former to the project attorneys and the latter to a separate, and by implication, single unit, possibly located within the Office of Legal Services. The grounds for Hazard's recommendation to strip the legal services projects of the non-client-centered legislative advocacy function seem to be twofold: (1) the problem of "grassroots" lobbying would be easier to settle and (2) the *modus operandi* of a client-centered, litigation-oriented activity is so different from that of a dispassionate, non-adversary legislative reform activity that the two would be getting in each other's way were they placed "under one roof". But what about the propriety of *federally-funded* legislative reform activity? It avoids the objections Hazard lodged against test-case litigation on behalf of social change, but no matter how dispassionate and how non-adversary such legislative reform activity is, it still represents someone's socio-political point of view as to what is in the public interest. The conclusion is inescapable: *the only way to reconcile the seeming contradiction in Hazard's argument and to justify not only the detachment of legislative advocacy from local legal services projects but also its continued existence within OEO at the headquarters level is to invoke the principle of accountability.* Delegated down or contracted out, legislative advocacy is no longer accountable. Housed in the Director's office, or at the headquarters level within range of his control, it is accountable. The taboo against the federal subsidy of a point of view is not violated so long as the element of representativeness is not lost. The Director and the Agency represent the President who in turn is the elected representative of all of the people.

The role of the Director (and the Agency) as lobbyist for the poor ought not to discomfort anyone. It's not just that every government agency does it anyway, but that there is a large area of legislative advocacy in which any Federal agency has not only the right but the duty to operate. The statute against the use of Federal funds for lobbying specifically empowers Federal officials to "communicate . . . to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business." From the point of view of the Congress, the kind of lobbying which an agency may *not* indulge in is the stirring up of "grassroots" pressure for or against legislation. From the point of view of the White House, the kind of lobbying which is excluded is the drafting of proposals and testimony in support of proposals which are inconsistent with Administration policies and objectives. Within these limits, the field for legislative advocacy is wide open. Not only may the Director of OEO formulate and promote, with the concurrence of the Administration, legislation needed to carry out the objectives of the Economic Opportunity Act, but he would also seem to have the right to monitor and comment on non-OEO initiated legislation, and even to initiate legislation other than amendments to the EOA, so long as it is poverty-related—his right being based on his role as poverty-evaluator and coordinator. For a fuller discussion of non-adversary advocacy which includes OEO's intervention both in the administrative and the legislative processes (legislative advocacy) see the report of the Task Force on Advocacy which picks up where this examination of the Legal Services Program leaves off.

MARSHALL BOARMAN.

September 1972.

Addenum: The title of the concluding part of this paper is somewhat misleading. The purpose of the paper as a whole, including Part V, was not to formulate *practical* recommendations for *specific* steps to be taken in reforming OEO's legal services program. The intent was rather to lay the *conceptual groundwork* for such reform, or, at the very least, to both stimulate and (hopefully) refocus the debate within the Agency over the direction the legal services program should take. One serious problem that was not explored at all is that of group representation or the attorney's role as group organizer. This will be one of the principal issues to be discussed in a second paper on the meaning and history of the concept of "maximum feasible participation".

FOOTNOTES

[1] This episode is not to be confused with CRLA's later (1971) troubles with Governor Reagan which led to the appointment by the OEO Director of an investigatory commission.

[2] *Poverty Law Reports,* 9163.505; 9170.50; 6 *Cal West LR* 52, 54, 55; 41 *Notre Dame LR* 860. See p. 26 below.

[3] The OEO Instruction on lobbying (Inst. 6907–01) prohibits (1) disruptive lobbying, (2) the picketing of legislators, (3) media campaigns, and (4) mass visits and mass communications to legislators. The original and amended versions of S. 3010 eliminated the crucial 4th prohibition. The Conference Report on H.R. 12350 also omitted any reference to the 4th prohibition.

[4] For a view which flatly contradicts this, see a recent article entitled "The Action Lawyers" by Gerald Lubenow, SR Aug. 28, 1972.

[5] *See* Pye, 31 Law—Contemp. Prob. 244 (Inc.).

NIGHTMARE AT 5:45 A.M.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. CRANE) is recognized for 5 minutes.

Mr. CRANE. Mr. Speaker, flags have been flying at half-staff in my district this past week in tribute to three brave volunteer firemen who died while fighting an early morning fire in Palatine, Ill.

Too often, we take the dedication and bravery of such volunteers for granted. While most residents of Palatine were still comfortably sleeping at 5:45 a.m., these men and their colleagues from numerous other communities in my district were risking their lives, as they do so often without notice.

Many words of praise have been written about these heroes: John T. Wilson, Warren H. Ahlgrim and Richard H. Freeman. Unfortunately, the words will not return them to their families and their community.

I would like to add my sincere condolences to the Wilson, Ahlgrim, and Freeman families and to their many friends. Palatine has lost three of its most beloved sons who died doing what they had so often done, working to make their community a safe, good place to live.

The Palatine Herald published two stories on February 26 which I would like to share with my colleagues at this point:

VILLAGERS EXPRESS SHOCK, DISBELIEF AT FRIDAY'S DEATHS—FALLEN FIREMEN "WERE THE BEST": PALATINE

(By Toni Ginnetti)

"They were the best."

That was the way one volunteer described his three fellow firemen, John Wilson, Richard Freeman and Warren Ahlgrim, who were killed Friday in the fire that destroyed the Ben Franklin store in downtown Palatine.

And though they used different terms, anyone else who spoke of the dead firemen Friday expressed the same opinion. People had an obviously difficult time talking about the men in words short of superlatives.

"They were all good men who knew what to do," Palatine Fire Chief Orville Helms said. It was noticeably difficult for Helms to talk about the men and his phrases were emotionally short and direct.

"John Wilson, he's been here in Palatine all his life. Dick Freeman, he was born and raised here. Auggie Ahlgrim was also born and raised here and had his own plumbing store here in town.

"They were well trained. They were all good family men. That's all I can say," he murmured before turning away.

The firemen were killed attempting to put out the fire that gutted the store early Friday. Wilson, 40, and the father of three children, owned the store. He had been a volunteer fireman for 11 years and like Freeman and Ahlgrim, was a popular resident.

"He went to the same church that I go to," Jean Steeves said. Mrs. Steeves is employed at Olsen's Musicland, a half block south of Wilson's store. Mrs. Steeves said Wilson had a "very fine family." The Wilson family had owned the store since 1940.

There was a hint of disbelief in the voice of Dr. Charles L. Schnibben, when he spoke of Ahlgrim, who had been a volunteer since 1964. Schnibben's orthodontist office is located next to the Palatine fire department.

"He was one of the finest men in town," Schnibben said of the 32-year-old Ahlgrim. "He was always doing something for the village, like being a volunteer fireman. They don't get paid much for that.

"His daughter is a patient of mine and he had done plumbing work for me. He was just a wonderful man," he said. "I'm sure if you ask anyone in town, they'll tell you the same thing."

Two boys who knew Ahlgrim did.

"We knew Mr. Ahlgrim," 12-year-olds Mike Johnson and Wayne Prochaska said. "He was our neighbor. My folks have known him since we moved here," Mike, who likes at 360 W. Illinois, said in a firm tone.

"He was always very helpful and never in a bad mood, added Wayne, of 349 W. Illinois. "He always played with the kids in the neighborhood." The boys said Ahlgrim was the kind of man "who would say hi to you down the street."

"We knew him and that's why we came here to see the fire," Wayne said.

The third man killed, 25-year-old Richard Freeman, had only been a volunteer for two years. His father, Howard Freeman, is a lieutenant on the volunteer force and the owner of Zimmer Hardware, located a block from the Franklin store.

Ironically, the Freemans were the second Palatine father-son firemen pair to be touched by death in the line of duty. In 1946, 24-year-old Wesley Comfort III was killed in a truck-train collision while en route to a fire call. Young Wesley's father was the Palatine fire chief at the time.

One volunteer said Friday the elder Freeman was among those fighting to contain the blaze and save his son.

"They were so close to the department, too. It was convenient for them because Zimmer Hardware is only a half block from the fire department," he said.

The only other volunteer injured Friday, Jose Pannhausen who suffered a broken ankle in a fall while fighting the fire, said he had known the three "all my life." Of his own injury Pannhausen said, "I feel very fortunate."

While some may argue the deaths might have been avoided had the village had a full time, professional fire fighting force, both

Palatine Mayor Jack Moodie and Village Mgr. Berton G. Braun said the deaths were not due to the fact that they were volunteers.

"They were well-trained men," Braun said.

"The firemen run the risk all the time," Moodie said. "A combination of circumstances is what did them in."

NIGHTMARE AT 5:45 A.M.

(By Doug Ray)

John Wilson, Warren Ahlgrim and Richard Freeman died like soldiers in battle. All Palatine volunteer firemen, they were overcome by smoke and perished in the rubble of the basement of the Ben Franklin store in downtown Palatine Friday.

The fire began sometime before 5:45 a.m. A customer who entered Joseph Seidel's nearby pastry shop detected smoke in the morning darkness. Seidel immediately called the Palatine Fire Department, and within a few minutes Wilson, Ahlgrim and Freeman, who was on overnight duty at the fire station, were at the scene.

Wilson, owner of the Ben Franklin Variety Store, 36 N. Brockway, "said he thought he knew where the fire was," said Fire Chief Orville Helms. Wilson went into the basement furnace area from the back entrance and came back up. "It's in the furnace," Helms recalls Wilson saying.

Then all three men, equipped with portable oxygen units and face masks, went down the stairway of the one-story brick building. They had more than a 20-minute supply of oxygen. Half an hour passed. Wilson, Ahlgrim and Freeman were still in the basement and the fire raged on, billowing clouds of smoke over Palatine.

Wilson almost made it out of the fiery inferno. He was found at about 8:30 a.m. part way up the stairway.

His body, wrapped in a green tarpaulin, was carried from the building. He was pronounced dead on arrival at Northwest Community Hospital in Arlington Heights.

At 11:15 another body was taken from the basement. And 10 minutes later the last man was brought out. Both were taken to the hospital, but they were dead.

Helms said this weekend that all three men definitely died of smoke inhalation and that the floor above the basement did not collapse on the firemen. Apparently, the men's oxygen supply was depleted and they suffocated, he said.

Joe Pannhausen, 33, of 435 S. Benton, also a Palatine volunteer fireman, slipped on the icy surface while fighting the blaze and suffered a broken ankle. He was treated at the hospital and released Friday.

The Palatine Fire Department was aided by units from Arlington Heights and Rolling Meadows. Other firemen from throughout the Northwest suburbs came to the scene to give assistance.

And as word spread that the three comrades were dead, the story was written not only on the firemen's faces, but on those of hundreds of spectators in the downtown areas.

At 9:30 a.m., most realized the fate of Ahlgrim and Freeman, who were still inside the gutted building. A young Palatine fireman, his face blackened and his voice coarse from breathing smoke, said he just learned of the disaster. He was almost crying.

Freeman's father, Howard, battled the fire while his son lay trapped. Ahlgrim's brother-in-law, Clifford Steif, also was one of the volunteers fighting the fire.

"It was like looking inside a furnace," said Lt. David Tobin, a 15-year veteran of the Palatine Fire Department. To stop the blaze, firemen flooded the basement to the rafters, he said. And late in the morning, when the fire was contained, pumpers were used to remove water from the basement where Ahlgrim and Freeman still were trapped.

The two bodies were brought up the stairs on a stretcher and were taken to the hospital by ambulance. Firemen also removed 60 feet of hose the three men took to stop the fire in the basement.

John Wente, 25, who rode the fire truck with Freeman and manned the vehicle, said afterwards, "I just don't believe it . . . I just couldn't go to work after this." Another Palatine fireman nearby said, "Nobody will."

The basement where the men died contained toys and other items Wilson could not put on the shelves, said Henry Babcock, retail sales manager of the Ben Franklin chain stores.

Helms estimated the damage to the store at some $200,000. Much of the structure was pulled down late Friday and firemen were at the scene because rubble was smoldering.

The Ben Franklin store was located between Coleman's Pharmacy and the Left Bank, a boutique. They were not structurally damaged.

Yesterday, many flags throughout the area were dropped to half-staff in mourning for the fallen firemen. Helms said flags will remain at half-staff in Palatine for a week.

SKYJACKING LEGISLATION—"KIDNAPING BY SEIZURE OF AN AIRCRAFT"

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Tennessee (Mr. BAKER) is recognized for 5 minutes.

Mr. BAKER. Mr. Speaker, on November 10, 1972, three men seized control of a Southern Airways Jetliner DC–9 in Birmingham, Ala., at gunpoint. The 30 persons aboard were held hostage on a wild flight crisscrossing the United States while the three demanded ransom of varying amounts from $2 to $10 million and other considerations in exchange for the lives of the passengers.

The State of Tennessee and my district, the Third, is even more personally concerned with this incident than others since one of the three alleged skyjackers was Melvin Cale. Melvin Cale had served 13 months of a 5-year term for two robberies when he "walked away" from the prison center at Nashville. At the time of the skyjacking, Cale was attending Tennessee State University during the day, returning to the prison center at night.

The other two accused skyjackers had been charged in particularly vicious crimes—of assault and rape—in Michigan.

During the 2-day ordeal, the trio circled the Knoxville airport, demanding $10 million in ransom and other concessions, including jet fuel to fly to Cuba. When demands were not met the plane was diverted to Chattanooga, which is in my district, after a threat to crash it into the nuclear installation at Oak Ridge, which is in my district.

Ransom money was put aboard at Chattanooga along with bulletproof vests, medical supplies and 50 meals and the plane was flown to Havana. There, after some altercation with Cuban authorities it returned to Key West, refueled and again flew to Havana.

We are told that Cuban authorities were something less than enthusiastic about the refugees. This is borne out by the pact which has now been agreed to between Cuba and the United States which provides that all such fugitives will be returned.

If similar agreement can be reached with Algeria it will be a step toward controlling the mounting number of skyjackings which we have witnessed in recent months.

We must, however, move on other fronts as well. Measures must be taken to provide against such persons boarding a plane in the first place. Perhaps we need to apply more control to such programs as work-release which allowed Cale the freedom to perpetrate such a crime while ostensibly attending the University of Tennessee.

It is interesting to note that for all intents and purposes the three accused kidnaped the passengers in the Southern jetliner and held them hostage. It is also interesting to note that we have seen a resurgence of kidnapings since the recent ruling by the Supreme Court regarding the death penalty. I am today proposing legislation which would make the Lindbergh kidnaping legislation principle applicable to kidnaping by seizing an aircraft. I am pleased that representatives of the Airline Pilots Association have expressed approval of the provisions of the proposed bill feeling that it will be a definite deterrent to future skyjackers.

The bill would also allow the death penalty for such an offense at the discretion of the judge, and would fix responsibility for airport security in one agency, the Federal Aviation Administration. Under this legislation the FAA would have authority to search passengers before boarding planes, search luggage or any property at any airport or aboard any plane intended for operation in interstate or intrastate air transportation for dangerous weapons or other destructive devices. It may also deputize State and local law enforcement personnel in order to exercise this authority and carry firearms necessary to the carrying out of such provisions.

THE PRESIDENT AND CONGRESS: WHO'S IN CHARGE HERE?

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. MCFALL) is recognized for 10 minutes.

Mr. MCFALL. Mr. Speaker, Ralph Huitt, executive director of the National Association of State Universities and Land-Grant Colleges, contributed a major paper to the Time, Inc. 50th anniversary project, "The Role of Congress." His thought-provoking remarks on the issue involved in the inherent tension between the executive and legislative branches, contained in "The President and Congress: Who's in Charge Here?" are inserted below:

THE PRESIDENT AND CONGRESS: WHO'S IN CHARGE HERE?

(By Ralph K. Huitt)

The conventional wisdom of our time holds that Congress is the weak sister in the national triune and must be propped up and

reformed. Congress is weak and the President strong, so it goes, and the imbalance is becoming progressively more grave. The argument is supported by a Janus-like logic which, in its way, is unanswerable: if a flood of major legislation is passed, it is because Congress is weak and compliant; if legislation does not move, it is because Congress is weak and obstructive. A national preoccupation among the system pundits, therefore, is diagnosis of the congressional malaise and prescriptions for it. It is not a new game: Woodrow Wilson initiated the long-unrequited love affair of many American political scientists with the British parliamentary system almost a century ago. Today an array of reformers make some part of their living telling Congress what it ought to be and do.

Even some members of Congress have joined the chorus, but it is obvious that Congress itself, in its institutional life, has not got the word. It summons Executive officers just short of the President to come to the Hill to advise or to account for their performance. Members of Congress seldom budge from their marble retreats; they seem unaware even that the platoons who wait upon them have no parking at any time and no cab service after 4:30 in the afternoon. Ignorant of its impotence, Congress pigeonholes or rewrites Administration bills, re-enacts vetoed appropriations, and sometimes overrides vetoes. The Senate refuses confirmation of Supreme Court nominees. Members introduce bills of their own as if that were their right and often see all or part of their ideas incorporated into law.

The history of Congress is a curious story of failure indeed when viewed in the context of its historical counterparts. Since the time when Congress was established in the first article on the Constitution, Britain has seen its monarch—a real chief executive then—become a bored civil servant, its upper house lose all its power to the lower, which in turn has succumbed to a ministry that runs the Commons and the bureaucracy both. France has run through two kingdoms, two empires, five republics and one Charles de Gaulle. The list could go on but this should do. Congress has changed with the times within its original constitutional structure and mandate. It is today without question the most powerful national legislature in the world. The powers and prerogatives of its individual members are the envy of their brethren in the most prestigious of parliaments.

Let us examine briefly the relations of Congress with its partner and competitor, the Executive Branch, and then ponder the contradiction of its good health and its bad press.

I

The Articles of Confederation leave no doubt that the colonial Americans who beat Britain had had their fill of the Executive: they left him out entirely. Their government was a Congress empowered to perform such executive functions as were necessary through its own committees. Experience under the Articles caused the Constitution makers to believe an Executive was necessary, so a strong one was provided in the Constitution. But two features of that document insured that Congress would develop independently of the President. One is the so-called "separation of powers," which is not that at all but a separation of institutions. The respective personnel of Legislature and Executive are specifically prescribed from holding office in both. Thus the founders made impossible, perhaps unwittingly, the development here of the parliamentary form that was evolving unnoticed in Britain. The second fundamental feature, federalism, conformed to the facts of our geography and history. No nation was possible except a union of states.

These two foundation provisions are the basis of the so-far unbreakable strength of Congress. The separation put Legislature and Executive at arm's length. The Congress could not accept the leadership of the Executive, nor the information furnished by a bureaucracy controlled more or less by him, with the security of a Commons that could hold its own leadership accountable for its performance as Executive. Some Congressional mechanism was required. The chosen instrument was the committee—first, a special committee, which in time was given specialized jurisdiction. A potent instrument, which could and did become the repository of knowledge and expertise, which in time often confronted the Executive with greater experience and superior knowledge of the matter at hand. Moreover, among them the committees constituted a network of power, with the authority of the parent body parceled out among them. If the analogy is not pushed too far, the committees can be likened to a feudal system whose principal barons a king might lead but never force.

Committee chairmen still might have been intimidated by a President who could appeal to the national interest if it were not so patently true from the beginning that the members of Congress were local men. For so many decades most Americans were first of all loyal to their states. The popular requirement of residency in congressional districts grew up naturally when Congressmen spent most of their time at home, working at another job. So it has been possible for members to build their strength at the grass roots beyond the grasp of the most popular and powerful President. To the legal ascription of representative was added the strong bond of representativeness in the true sense—that of thinking and acting like the people represented. There is a story that once a new Congressman, who was obviously not up to his job, said to Speaker Rayburn: "You and I know I don't belong here, but you're not going to get rid of me because I'm just like my folks." The phenomenon of the ballot split between the President and a Congressman who opposes him is too familiar for comment. Indeed the most help a President can give a recalcitrant chairman might be to try to root him out.

The final bond of committee system independence was forged, of course, with the adoption in practice of the seniority system in committees. With it no combination of President and congressional party leaders could flank a sitting chairman.

II

What is the relative strength of the Executive and Congress?

One is confronted at once with the lack of an adequate measure of political power. Equally ambiguous is the matter of which performs better the shared functions of governance for the system. Perhaps this is the place to begin—with a summary analysis of the way each goes about the tasks of representation, legislation and controlling the government of the United States.

Whatever its deficiencies, Congress is a representative body (which may be why the American people see its flaws so clearly). Its members literally are never wholly safe with the electorate. Most keep in touch with constituents, some obsessively, through visits home, newsletters, TV and radio tapes, and a variety of other tactics. Almost any citizen can have some degree of access through his representative because no member of Congress is impotent and some are influential indeed. Interest groups need not work their way into the inner sanctum of a ministry. Multiple points of access are offered by members of appropriate committees. The marvelous flexibility of committee hearings lends itself to a variety of representational roles. Information and public education on new problems—say, radiation fallout—can be had from the best faculty the country affords. Causes that cannot win can be given their day in court. Explosive issues can be slowly deflated through progressively duller and more technical witnesses. Morality plays can be staged. The permutations are almost endless.

It is safe to say the Executive Branch cannot match the warmth and versatility of Congress's representational performance. But who can strike a balance between that and the grand role of the President as Chief of State, symbol of unity, spokesman for America? The founding fathers knew the nation needed a king and gave it one. After all, they were accustomed to a regal chief executive, monarch and politician in one. The endless difficulties caused by this unhappy mixture are well known, especially to a presidential candidate running against an incumbent. Nevertheless the combination provides assets too. In a time of crisis no committee can equal the grandeur of the single leader.

The division of labor in the legislative function is not so easy to delineate. Congress is pleased to consider the President the initiator; his bills and messages are the points of departure, at least, for what the committees do. But Congressmen initiate too, often well before a proposal has caught on with the public. When it does, the Administration appropriates it as it pleases, seldom giving credit. The specialized committees probably give an individual measure as good consideration as it could get. They are in continuous communication with the interest groups that are themselves part of the representational system. But the executive agencies are, in effect, interest groups as well. Their help is invaluable in bringing to bear the vast resources of the bureaucracy. It is useful to think, not of a legislative policy system but of many, each made up of Congressmen, bureaucrats, interest groups, and concerned publics, all of which are involved in a policy issue.

But one distinction may be made sharply: only the President can set priorities. Strengths have their costs: the decentralized power structure of Congress, which is proof against presidential domination, precludes the kind of party leadership that can make national programs. It may be argued that the appropriations committees do something like that but the supporting evidence is thin. The congressional system has respected its inner logic, rejecting devices that might exercise control over the whole body, just as the British parliamentary system has rejected whatever might dilute the perfect and responsible concentration of power in the Prime Minister and his colleagues.

What of control of the government? In his justly famous *Considerations on Representative Government*, published in 1861, John Stuart Mill said: "Instead of the function of governing, for which it is radically unfit, the proper office of a representative assembly is to watch and control the government . . ." This the House of Commons tries to do by holding the ministry, which is its own leadership, responsible for all the acts of the government. Congress requires in its rules that each specialized committee shall oversee the work of the agencies that administer the programs in the committee's jurisdiction. It is safe to say congressional oversight is not very effective. Congressmen can and do perform well as ombudsmen for constituents who think they find the bureaucracy unresponsive. But the important task of seeing to it that legislation is carried out as its authors intended is another matter. Committees try to spell out congressional intent in hearings and reports, floor debate and conference reports. There is no way they can make sure that those who write

regulations and supply details will read the record.

In fairness, it should be said that the President probably does not do much better Two million civil servants spread across a continent wide nation are hardly susceptible of control by a thin overlay of temporary political appointees. What makes the bureaucracy generally a productive and responsive partner in governance is not political control, in my opinion, but professional integrity and a commitment to the democratic ideals that most of us share.

If the foregoing truncated assessments are fair, we have not offered much help in measuring the respective strengths of Executive and Congress. Perhaps it would be better to put the question more crudely: To what extent can the President get his own way? More than before?

In foreign policy, everyone knows the answer: the President is dominant; Congress is reduced pretty much to scolding. Not so in domestic affairs. The power of the President vis-a-vis Congress has shifted and continues to shift, over time and within single Administrations. Thomas Jefferson, great champion of legislative supremacy, as party leader managed Congress through three Administrations (his, Madison's, Monroe's)—a matter of 24 years. No modern President has approached that. Lincoln was a virtual dictator; his successor missed conviction on impeachment by one vote. Franklin D. Roosevelt's influence waxed and waned dramatically during twelve years. Legislative leadership likewise is spotty. The three great bursts of legislative creativity in this century occurred in the first year or so of the first terms of Wilson, Roosevelt and Johnson. Even a slight knowledge of history will suggest that situational factors were as important as the personal.

A similarly ambiguous answer is suggested by the record of the respective branches in protecting their own turfs. Each has aggressed on the other; both have avoided constitutional showdowns. Roland Young states in his *Congressional Politics in the Second World War* that both President and Congress clearly crossed the boundary into the other's domain several times; when the outcome was satisfactory neither complained. This suggests that pragmatic common sense has had much to do with the success of the partnership.

In any event, "partnership" is the key word. I do not believe the evidence shows that either partner can attain a lasting primacy over the other.

If Congress is, as I believe it to be, a highly successful political institution and a durable partner in the grand alliance, how can we account for the widespread clamor for its reform and reorganization?

The reasons doubtless are many—including always the possibility that the critics' assessment may be right. But I will suggest one: the operations of Congress are far and away more open and public than those of the President and the appellate courts. Congress, its committees and members, are on almost continuous display. We know its faults because we can see them—over and over again.

The President, who begins with the advantage of the inherent drama of his office, can, with modern technology, stage-manage almost every appearance he makes before the public. He is becoming increasingly remote from the American people. The internal life of his office is not open to systematic scrutiny by anyone. The decisionmaking processes of the administrative agencies are likewise secure from public view. It is easy, therefore, to believe that they are more rational and based on better knowledge than the untidy procedures of Congress. In my experience, they are not.

The Supreme Court enjoys even more nearly complete privacy. Black-robed Justices render decisions of far-reaching political import and explain how they arrived at them mostly in legalisms.

Not for one moment would I suggest that Congress improve its "image" through better stagecraft. Democracy at work should be seen—even when it hurts.

TO DESIGNATE THE BIRTHDAY OF MARTIN LUTHER KING, JR., AS A LEGAL PUBLIC HOLIDAY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. RODINO) is recognized for 5 minutes.

Mr. RODINO. Mr. Speaker, in the first session of the 92d Congress, I cosponsored with the gentleman from Michigan (Mr. CONYERS) H.R. 4099, a bill which would make the birthday of the late Dr. Martin Luther King, Jr., January 15, a legal public holiday. Today I would like to reintroduce that bill. As chairman of the House Committee on the Judiciary, it has been my privilege to refer all bills providing for a national holiday to commemorate Martin Luther King's birthday to Subcommittee No. 4 under the able chairmanship of my esteemed colleague Congressman DON EDWARDS.

All of us remember Dr. King's struggle to help black Americans secure their civil rights. But too often we forget that Martin Luther King waged battle for all Americans. Dr. King once said:

> We have learned in the course of our freedom struggle that the needs of 20 million Negroes are not truly separable from those of nearly 200 million whites and Negroes in America, all of whom will benefit from a color blind land of plenty.

For nearly a decade, Martin Luther King fought to satisfy the most basic needs of our citizens. It is fitting that as Americans we take this opportunity to honor this great man.

In 1965, Martin Luther King led 8,000 people from Selma to Montgomery in protest of the plight of thousands of disenfranchised blacks. That march resulted in passage of the 1965 Voting Rights, which initiated in the Committee on the Judiciary. In many ways, the Montgomery march epitomized Dr. King's approach to the racial problems which plagued our society. Martin Luther King knew that the right to vote is the common denominator of citizens in a democratic society. He knew that when that right is abridged for any group of people based solely on the color of their skin, the foundations of our society are threatened.

We are indebted to Martin Luther King not as black people or poor people or oppressed people, but as a nation.

He fought to free black people from the ravages of racism and he liberated all of us. At a time when our national commitment to civil rights is in dire need of reaffirmation, it is proper that we commemorate the birthday of Martin Luther King.

PANAMA CANAL: IMPORTANT REPORT ON CURRENT INVESTIGATIONS BY HOUSE SUBCOMMITTEE ON THE PANAMA CANAL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. FLOOD) is recognized for 10 minutes.

Mr. FLOOD. Mr. Speaker, over a period of years I have addressed the Congress many times on the complicated interoceanic canal question with the purpose of clarifying its crucial issues and bringing about policies derived from reasoned lines of thought. Some of my more significant addresses were published in a volume of Isthmian Canal Policy Questions—House Document No. 474, 89th Congress. The addresses quoted therein and in subsequent issues of the CONGRESSIONAL RECORD by Senator STROM THURMOND and myself cover the more critical angles in the subject.

Following the submission on December 1, 1970, of the voluminous report of the sea level canal study group under Public Law 88–609 that took some $22.2 million to prepare, the subcommittee on the Panama Canal of the House Committee on Merchant Marine and Fisheries, under the chairmanship of my able colleague from New York (Mr. MURPHY), on November 29, 1971, started upon a comprehensive inquiry into this vital matter that is still in progress.

The first volumes of the subcommittee's hearings between November 29, 1971, and August 10, 1972, on "Panama Canal Treaty Negotiations" were published as Serials No. 92–30 and 92–30A, and given wide circulation. The first report of the activities of the Subcommittee on the Panama Canal summarizing the results of the indicated inquiry was published on January 2, 1973, in House Report No. 1629, 92d Congress, in what is the first comprehensive congressional report on Isthmian canal policy since early in this century.

Because of its importance I wish to emphasize that the indicated report—

First. Stresses that article IV, section 3, clause 2 of the U.S. Constitution vests the power to dispose of territory and other property of the United States in the Congress, which includes the House of Representatives as well as the Senate.

Second. Shows how this provision had been ignored by our officials engaged in diplomatic negotiations with Panama.

Third. Describes the ecological hazards involved in the construction of a salt water channel between the oceans.

Fourth. Exposes the narcotic problem on the Isthmus and the position of the State Department in relation thereto.

Fifth. Supplies detailed information on the Panamanian seizure of the U.S.-owned Panama Light & Power Co. and the hijacking at gun point in the Canal Zone by Panamanians of U.S.-owned buses.

The subcommittee's report is well organized, with section headings convenient for review. In this connection, Mr. Speaker, I would emphasize that many of the minor matters that have filled thousands of pages of contentious propaganda are not proper subjects for a

treaty, but mere administrative adjustments between Canal Zone authorities who understand the problem at first hand and Panamanian authorities. Officials in Washington who have never served on the Isthmus and have nothing but superficial knowledge of the problems of the canal have no business dealing with matters of such magnitude. The persons who should control are the Governor of the Canal Zone and his experienced advisers who speak with the authority gained through responsibility for the maintenance, operation, sanitation, and protection of the greatest waterway in the world.

Mr. Speaker, it is indeed gratifying to note that the subcommittee emphasized the major canal issues as follows:

First. Retention by the United States of its undiluted sovereign rights, power, and authority over the canal's indispensable protective frame of the zone territory; and

Second. Major modernization of the existing Panama Canal within the Canal Zone, which does not require a new treaty with Panama.

The subcommittee's summary of major issues correctly emphasizes that all other canal questions, however important, including the much discussed "sea level" canal proposal, are "irrelevant" and should not be allowed to confuse the proper solution of the canal question. As has been stated by informed Members of Congress on many previous occasions, such solution consists merely of the increase of capacity and operational improvement of the existing canal under the time-tested and strongly supported Terminal Lake-third locks proposal for which legislation is now pending and on which hearings will soon be held. Moreover, this plan preserves the fresh water barrier of Gatun Lake between the Atlantic and Pacific oceans, thus protecting both from ecological dangers, and would revitalize the Isthmus.

Another important feature of the subcommittee's report is the inclusion of appendixes listing the various U.S. economic and military assistance benefits received by Panama since 1946. This totals $496,400,000 which amounts to over $300 for every person in that country. In addition to those direct benefits, Panama has been, and still is, a major beneficiary of the canal with an income from Canal Zone sources in fiscal year 1971 of $168,092,000 which will increase in the future.

Because of the Panama Canal the Republic of Panama has a special relationship with the United States in which it is not a partner in the canal enterprise but a principal beneficiary and our country the bearer of responsibility. A reading of the cited report will show that the time has come to terminate the present negotiations for the simple reason that there is nothing to negotiate.

As the mass news media did not feature this report as it should have been featured, I quote it as parts of my remarks and urge its careful reading by all concerned with the canal subject:

REPORT ON ACTIVITIES DURING THE 92D CONGRESS OF THE COMMITTEE ON MERCHANT MARINE AND FISHERIES

(Mr. Garmatz, from the Committee on Merchant Marine and Fisheries, submitted the following report.)

Your Committee on Merchant Marine and Fisheries reports herewith on its activities during the 92d Congress on the application, administration and execution of laws or parts of laws by agencies subject to its jurisdiction, all as provided by section 136 of the Legislative Reorganization Act of 1946 (2 U.S.C. 190d), as amended by section 118 of the Legislative Reorganization Act of 1970 (Public Law 91–510); (84 Stat. 1156), and as further amended by Public Law 92–136 (85 Stat. 376).

The Merchant Marine and Fisheries Committee exercises jurisdiction, in whole or in part, over the activities of the following Federal agencies:

1. The Maritime Administration of the Department of Commerce.
2. The Federal Maritime Commission.
3. The United States Coast Guard of the Department of Transportation.
4. The Panama Canal Company and the Panama Canal.
5. The Council on Environmental Quality.
6. The National Oceanic and Atmospheric Administration.
7. The Bureau of Sports Fisheries and Wildlife of the Department of the Interior.
8. Maritime Education and Training.

* * * * *

THE PANAMA CANAL AND THE PANAMA CANAL COMPANY

Résumé of subcommittee hearings

Starting on 29 November 1971, the Subcommittee started upon a series of hearings in Washington on the Isthmus and on various aspects of the Canal equation as recorded in the printed volume entitled *"Panama Canal Treaty Negotiations."*

The principal results of those hearings were as follows: they;

(*a*) stressed the provision in the U.S. Constitution (Art. IV Sect. 3, Clause 2) that vests the power to dispose of territory and other property of the United States in the Congress, which includes the House of Representatives as well as the Senate.

(*b*) showed these provisions were being ignored by our negotiators.

(*c*) outlined some of the practices and policies of the United States that were adding to the friction between the two countries.

(*d*) revealed the ecological dangers involved in the construction of a salt water channel between the oceans.

(*e*) exposed the narcotic problem of the Isthmus and those involved in it.

(*f*) revealed the true motives of the Panamanian government with the seizure of Fuerza y Luz (the U.S.-owned Panamanian Power and Light Company) by force of arms and the more recent hijacking of U.S.-owned buses by armed Panamanians.

The purpose of the Subcommittee hearings beginning in November of 1971, was to expose to the public and the Congress enough information to dispel some of the fear that had been engendered by extremists on both sides. For example, we found a lack of communication between the U.S. negotiators, the State Department and the Congress had led to apprehension on the part of many members of Congress over the future of our $5 billion investment in the Canal. The hearings served to assure Congress and concerned American citizens that the United States intended to maintain the operation of the Canal and a defense posture commensurate with that mission.

The Panamanians took an increasingly "hard line" as the talks—and hearings—progressed and to add to the stress, on July 1, 1972, took Fuerza y Luz, the American-owned Panama Power and Light Company, by force of arms with an announced intention to "buy" the $87 million facility from its American owners, Boise-Cascade. This was followed in November by the hijacking of 17 Canal Zone buses, several at pistol point, into the Republic of Panama. The State Department worked frantically to resolve this action and was able to retrieve the buses—but apparently at the cost of another Panamanian takeover of an American business enterprise.

The treaty talks as of this report appear to be stalemated, with the Panamanians hopeful of wringing more concessions out of the United States by convening a meeting of the U.N. Security Council in March of 1973 *in Panama*. (That is the month when it will be the Panama delegates turn to be president of the Council.) It is expected that the Panamanians will use this meeting as a vehicle to publicize their complaints—and demands—against the "colossus of the North" in the hope that world opinion will force the United States to submit to the somewhat extravagant demands of the Junta Government. Aquilino Boyd, the Panamanian delegate to the U.N. in referring to Panamanian aspiration in this regard has said that the presence of the Security Council in Panama "would help public opinion to appreciate the inequities Panama has endured."

The question of House jurisdiction

In brief, based on our interpretation of the law, there is no question or equivocation—the authority of the U.S. House of Representatives is required before real and other property paid for from appropriated funds is given up or conveyed by treaty as the Executive Branch seeks to do in the proposed treaty with Panama.

The proposed sea level canal

An international ecology dispute has erupted because of the negotiations for a sea-level canal. For example, Professor of Zoology John Biggs at South Florida University states that the sea-level canal would permit widespread migration of marine animals in either direction, and he predicted that a sea-level canal would induce invasion of the eastern Pacific by more than 6,000 species and, of the Western Atlantic by more than 4,000 types. Further, he predicted that large scale extinction of marine life would take place.

Because this will have a bearing on our future thinking on a sea-level canal, discussions of this proposal were held in Panama with Dr. Ira Rubinoff, Assistant Director for Marine Biology, Smithsonian Tropical Research Institute, and Dr. Martin Moynihan, Director of the Institute. Witnesses who testified on the subject before the Committee included Dr. William A. Dunson, associate professor of biology at Penn State University, Dr. Jon Weber, associate professor of marine geology and geochemistry at Penn State and Dr. Meredith L. Jones of the Smithsonian Institution in Washington, D.C. These scientists were critical of the Interoceanic Canal Studies which neglected the question of the development of a biotic barrier in any proposed sea level canal which would prevent the movement of marine life from one ocean to the other.

The potential biological disaster that a sea level canal might bring about was highlighted in the testimony of Dr. Dunson who is an expert on the venomous sea snake (*Pelamis*). Dr. Dunson claimed that a sea level canal could cause the colonization of the Atlantic by these sea snakes from the beaches of the North Carolina-Virginia area to southern Brazil. In referring to the infestation of the

Atlantic by *Pelamis* (whose venom is deadlier than the Cobra) Dr. Dunson testified:

"The Caribbean area would stand to lose the most from the psychological effect of potentially deadly sea snakes on the tourist trade. The possible ecological effect of this snake can only be guessed at. There is always the possibility that if the snakes become numerous they may alter the population balance of a food fish which might be a commercially important species."

However, Dr. Dunson pointed out that the ecology of the two oceans could be upset by any of the ten thousand species of marine animals which might pass through a barrier free sea level canal when he testified that it is likely that:

"Such an ecological catastrophe due to the proposed canal will come from an unexpected source. Too little is known about parasites and diseases, for example, of the organisms of the Atlantic and Pacific to predict the effects of mixing. In summary it is fair to say that all scientific evidence points to successful movement and colonization of the Atlantic Ocean by the Pacific sea snake *Pelamis* if the proposed sea level canal is built *without barriers*. The canal is an unacceptable risk unless it could be demonstrated that an effective system of barriers to prevent inter-ocean movement of virtually all organisms is available."

Dr. Dunson concluded that the construction of a sea level canal "would be a disaster."

Dr. Weber discussed the possibilities of the migration of the reef-coral devouring "Crown-of-thorns" starfish into the Caribbean through a sea level canal. At worst, Dr. Weber testified:

"If *Acanthaster* were introduced to the Caribbean and permitted to multiply to the infestation levels observed on Guam and on parts of the Great Barrier Reef, the destruction of reef corals in the Caribbean could be severe and this might have very serious consequences."

While the scientists cautioned that their predictions were based on scientific opinion the important consideration is that precise knowledge on these issues is not now known. This lack of knowledge did not prevent the National Academy of Science Committee which examined the ecological implications of a sea level canal from warning that "great danger" could result and that if the canal had to be built, elaborate precautions would be necessary to prevent migration by marine animals.

In view of the evidence presented at the hearings and on-site inspections, the Subcommittee is convinced of the need for a biotic barrier in the event a sea level canal is ever built and will at the appropriate time propose the auguration of a feasibility study for such a barrier. Further, the Subcommittee will encourage the development of scientific knowledge relative to the incursion of sea life from one ocean to another and the acquiring of solid information on the range of effects of such incursions.

The seizure of the Panama Power & Light Co. and "hijacking" of Canal Zone buses

Hearings were called by the Subcommittee on July 24 and August 10, 1972, on the military seizure on June 1, 1972, of the Panama Power and Light Company, called *Fuerza y Luz* (FYL), owned by the Boise-Cascade Corporation of Boise, Idaho.

Members of this Subcommittee found it difficult to accept what in effect was a military operation against a legitimate American business enterprise. The takeover of the company was carried out by troops of the Panamanian National Guard who were posted throughout the building and who searched persons entering and leaving the premises. The takeover was directed by Colonel Manuel Noriega, the Intelligence Chief of the National Guard and Dario Arosemena, the Director of the National Department of Investigations (DENI).

During the year, negotiations between the Junta Government and *Fuerza y Luz* had been proceeding on some long standing problems that had been underway for several years. On May 31, 1972, without warning the Junta Government issued Executive Decree No. 109, which ordered the temporary occupation of the facility. Decree 109 charged that the Company had failed to pay its fuel bills, which in turn threatened a blackout of Panama's major cities of Colon and Panama City; discontinued its investment program which had stopped the normal development of the country and endangered the national economy; and that *Fuerza y Luz* had "only in mind their interest and economic gains against the Revolutionary Government, thus forgetting the general welfare."

Testimony taken during Executive session hearings on August 10, 1972, showed that the allegations made by the Junta Government in Decree 109 were *categorically not true*.

This major step in the escalation of demands on the hostile actions against the United States by the Panamanians was just one example of the attitude of the Provincial Junta Government of Panama toward this country that has given two hundred million dollars in aid and assistance since it came into power.

While the Panamanian Government's major excuse for the seizure of *Fuerza y Luz* was that the Company had failed to pay its fuel bills. In reality, the Company's dire cash position was brought about in great measure by the failure of that very same Junta Government to pay approximately $2½ million in back bills for electric and telephone service.

Despite the intimidation of a military takeover, representatives of the Company upheld its position during 30 days of negotiations in June and offered what it considered reasonable offers to the demands of the Panamanians. They also indicated to the Panamanians that they were very much interested in remaining in business in Panama. It did not take Boise-Cascade negotiators long to realize that the military regime in Panama started on that particular adventure with expropriation in mind even though they claimed otherwise. (The manager of the Panama Federal Power Commission had publicly stated that the more militant in the Junta Government were in favor of immediate expropriation rather than the 90 day drama that was acted out.)

And at the end of a series of fruitless talks in June, the military junta delivered an ultimatum to Boise-Cascade to "sell" its assets and installations to the Panamanian Government in 60 days.

If it failed to accept the Panamanian offer, the National Guard was ordered to expropriate the Company on September 1, 1972.

The hopelessness of Boise-Cascade's position was found in a memo dated July 7, 1972 which reads:

"Boise-Cascade Corporation finds itself in a very difficult position in that (1) the Government, not Boise, is in possession of the Company and the properties which the Government wishes to acquire, and (2) the success of any negotiations that could take place during the next 60 days will necessarily depend upon the willingness of the Government to truly negotiate, there being no pressure on the Government to come to mutually reasonable terms during that period."

The wisdom of that memo is found in the fact that Boise-Cascade was forced to "sell" *Fuerza y Luz* with a book value of 87 million dollars to the Panamanians for 22 million dollars.

Such treatment of United States interests hardy instills faith in the good intentions of a government with whom we are expected to sign a new treaty to operate one of the most important world waterways for international commerce and which is of utmost importance to the Southern Defense of the United States of America.

Subcommittee inquiries prior to the July-August hearings on the Boise-Cascade seizure indicated that there was ample evidence that the State Department allowed violations of the spirit and intent of President Nixon's policy on expropriations outlined in a statement of January 19, 1972.

There was also evidence that the State Department permitted violations of the laws of the United States by not exercising its responsibilities in this case.

For example, the President said that under certain expropriatory circumstances he will presume that the United States Government will withhold its support from loans under consideration in multilateral development banks. He also proclaimed that the Department of State would follow expropriation cases to determine whether the rights of Americans are being observed under international law and indeed, under the laws of the United States of America.

The Congress expressed its position in these matters in a law passed in March of 1972, which concerned itself with loans approved by the Inter-American Development Bank. This law stipulates that the United States would deny loans to any country which had expropriated *or seized ownership or control* of property owned by any U.S. citizen or corporation. Yet, on July 5, 1972, thirty-five days after the Panamanian military seized and occupied Boise-Cascade properties, the Inter-American Development Bank approved a $6.9 million loan to the Republic of Panama. That same law further states that loans will be denied to any country which has taken steps to repudiate or nullify existing contracts or agreements with any U.S. corporation. The Provisional Junta Government of Panama, by refusing to pay at latest count $2.5 million to FYL for services supplied that very government, according to the authors of this law, repudiated or nullified their contract with that company making them ineligible for American supported financial loans.

The Chairman of the Subcommittee stated at the beginning of the Boise-Cascade hearings that we were attempting to find out if this particular American firm was being given the full protection and support of the American Government as outlined by President Nixon in his White House statement of January, 1972, dealing with the policy of the United States in situations involving expropriatory acts. In his opening remarks the Chairman predicted:

"If Boise-Cascade is not receiving the full support of the American Government and its rights under international law are not being observed, this may be only the beginning of a series of seizures by the Provisional Junta Government of Panama which could ultimately deteriorate United States control and operation of the Panama Canal."

One month after the final takeover of the Panama Power and Light Company, the Panamanians seized the Canal Zone Bus Service, Inc.

State and Treasury Department witnesses testified that there was "full consideration" given to withholding the $6.9 million loan but the decision was made to grant it because in the judgment of the government the Panamanians were negotiating the Boise-Cascade takeover "in good faith". This judgment was made despite the overwhelming

evidence that there was never a doubt over the true intentions of the Panamanians. They concocted a series of phony charges against the company, Fuerza y Luz then took it by force and Boise-Cascade was forced to accept one quarter of its book value of $87 million dollars in "compensation".

The State and Treasury Departments made much of the fact that Boise-Cascade was consulted in their decision-making process on the loan and that the company concurred that the Panamanians were negotiating "in good faith". The truth of the matter is that Boise-Cascade officials were fearful that if the $6.9 million loan were withheld by our government, the Panamanians would retaliate by expropriating the company outright and there would be no payment at all for the facility.

This Subcommittee feels it is time this country begins to receive from the Panamanian government the same kind of consideration we have shown the people of Panama. We will, therefore, take a hard look at loans that are now in process and at AID monies that are earmarked for the Republic of Panama with a view toward severely limiting the generous attitude we have taken toward a military junta whose leaders daily announce in a controlled press their hatred and contempt for the United States presence in their country.

In the judgment of this Subcommittee, while the Panamanian Government plays fast and loose with our country, its citizens and corporations, the State Department's position has been one of timidity, vascillation, and indecision. The Panamanian Junta is apparently pushing the United States to the wall to see how far they can go. And the Department of State appears to be perfectly willing to let the United States be pushed in a variety of areas in order to appease the Panamanians.

Seizure of Canal Zone bus company property

As the Chairman of the Subcommittee, Mr. Murphy, indicated at the end of the Boise-Cascade hearings, if the Panamanians succeeded in the takeover of that American company, we might well ask, "What is next?". The Chairman, from evidence coming to the Subcommittee, indicated that other major Americans firms were marked for similar action. And, indeed, before the final takeover of Boise-Cascade had even been consummated, a government-inspired takeover of the Canal Zone Bus Company was initiated.

The Panamanian Government has consistently protested the operation of the Canal Zone Bus Service, Inc., as a violation of the 1936 Panama-United States treaty concerning the operation of private businesses within the Canal Zone. The Panamanians argued that the bus company was in no way related to the operation of the Canal and was, therefore, illegal. The position of the Canal Zone Company has been that inasmuch as the Bus Service is used to transport the employees of the Canal to and from work, the operation of the bus company has a direct bearing on the efficient and continued operation of the Canal.

Having failed in its efforts to convince the American Government that its position was justified, the Junta Government apparently instigated the Bus Company employees to hostile action. Early in the morning of November 20, 1972, 12 of the Company's buses were illegally removed by a group of militant drivers from the Canal Zone and driven to Panama City, whereupon the Guardia Nacionale took the vehicles into "protective custody". On the night of the 20th, two additional buses were highjacked by two armed passengers who allegedly held pistols to the heads of the drivers and forced them to drive into Panama City. Subsequently, two additional buses were taken into the Republic by their drivers and a company-owned station wagon was taken on the night of November 24th. A final bus was driven into Panama City on November 25, which brought the total number of vehicles to 17 buses and the station wagon. The United States State Department indicated it viewed this action with "serious concern".

An inquiry was begun into this extreme act of provocation against a private American-owned firm. (The Canal Zone Bus Company, Inc., is incorporated in Delaware, owned by American citizens residing in Panama, whose employees are all Panamanian nationals.)

After a week of negotiations, during which time it was determined that the incident that sparked the highjacking involved a union organizer allegedly caught stealing gasoline by the company and dismissed, a group of dissident drivers demanded that this official be reinstated. In addition, these dissidents seized on the opportunity to demand social security and other benefits available to Panamanian bus drivers who work in the Republic of Panama. The United States owners who pay their drivers the U.S. minimum wage which is triple that paid to their Republic of Panama counterparts, are, of course, not under any obligation to adhere to Panamanian rules governing their employees.

It is important to note that the great bulk of the company's drivers disassociated themselves from the actions of the militants.

As a result of the State Department's intervention, the bus company will be sold to a Panamanian bus cooperative, Corporacion de Transporte S.A. (CUTSA). The State Department reports the drivers who highjacked the buses were dismissed, but they each received $200 in severance pay from the American Company.

The Guardia Nacionale returned all of the buses and the station wagon to the Canal Zone Bus Service, Inc., on November 30th.

One hundred and five of the Canal Zone Bus Service drivers petitioned Canal Zone Governor David S. Parker to keep the bus company in the Zone under American auspices. The drivers issued a joint statement to the press indicating their desires in this incident, i.e., that the Company not be sold and that it remain under control of the Canal Zone Government. They were immediately subjected to attack and vilification in the Junta Government-controlled press. The Panamanian Government charged that the statement issued by the bus drivers, which was favorable to the United States, was extracted from them in the administrative offices of the Canal Zone Company "who had a revolver pointed at their stomachs." The charge is, of course, ridiculous. However, it is an indication of the vehemence with which the military regime of Panama views any effort by the people of Panama to maintain normal relations with the people and Government of the United States of America.

CONCLUSION

The Boise-Cascade and the Canal Zone bus episodes are symbols of the loss of American rights on the Isthmus of Panama, and the Members of this Subcommittee are convinced it is time we take a stand to prevent the continued piecemeal erosion of our position there.

The United States has been largely responsible for funnelling over one-half billion dollars in economic and military assistance into the Republic of Panama since 1946. Over $200 million of this aid has gone to the current Junta Government during just the past four years.

This means that of the recent Panamanian Governments the one that appears to be most dedicated to the goal of limitless extortion of the United States and U.S. citizens has received two-fifths of all the economic and military aid during the past 26 years in less than one-sixth of that time span. (The yearly aid figures are contained in a General Accounting Office report prepared for Chairman Murphy of the Panama Canal Subcommittee and is included at the end of this report as Appendix A.)

Additional loans and other economic aid in the tens of millions are presently in the works to help Panama with its internal problems. This is in spite of the fact there is strong evidence that Administration agencies allowed violations of Public Law 92-246 and Public Law 92-247. These laws explicitly forbid economic assistance and loans to countries that:

(A) Expropriate or seize U.S. property or repudiate or nullify existing contracts with U.S. citizens or corporations such as the Boise-Cascade case, and, countries.

(B) That have failed to take adequate steps to prevent narcotic drugs from being transported through such countries for sale in the United States.

In view of the overwhelming evidence that the Panamanian Government has not only failed to stop the transshipment of drugs but is, in part, part of the conspiracy to do just the opposite, this Subcommittee intends early in the 93rd Congress to examine all current aid and loan programs to Panama to determine if the laws of the United States have been violated and the will of Congress thwarted. If this is found to be true, the Subcommittee will consider recommending to the Congress the reduction or termination of all aid programs to Panama as well as other sanctions. The continued operation and control of the Panama Canal by the United States may well depend on such actions.

MAJOR CANAL ISSUES SUMMARIZED

The inquiry is far from over. The remaining key issues to be resolved are:

(*a*) Retention by the United States of its undiluted sovereign rights, power and authority over the Canal Zone, which is the absolutely necessary protective frame of the Canal; and

(*b*) major modernization of the existing Canal within the present Canal Zone which means that we do not necessarily need a new treaty with Panama.

All other large Canal questions, however important, including the much discussed "sea level" proposal, are irrelevant and should not be allowed to confuse that of the Canal's major needs, i.e., its increase in capacity and operational improvements.

In forthcoming hearings the question of type of canal will be examined.

APPENDIX A: ECONOMIC AND MILITARY ASSISTANCE TO THE REPUBLIC OF PANAMA; SCHEDULE A

REPUBLIC OF PANAMA, TOTAL DIRECT AND INDIRECT U.S. ECONOMIC AND MILITARY ASSISTANCE, GROSS OBLIGATIONS, AND LOAN AUTHORIZATIONS, FISCAL YEAR 1946–72

	Millions of dollars
Total Direct (see schedule C)	$345.9
Total Indirect (see schedule E)	57.7
Grand total	403.6

REPUBLIC OF PANAMA

SCHEDULE B.—TOTAL ECONOMIC AND MILITARY ASSISTANCE, GROSS OBLIGATIONS AND LOAN AUTHORIZATIONS

[U.S. fiscal year, millions of dollars]

Year	U.S. direct assistance	International agencies assistance	Tota
1946-61	75.0	15.4	90.4
1962	25.5	3.4	28.9
1963	10.6	4.9	15.5
1964	25.2	.6	25.8
1965	24.4	4.0	28.4
1966	15.0	11.1	26.1
1967	37.0	10.5	47.5
1968	21.0	.4	21.4
1969	17.7	1.5	19.2
1970	16.8	53.0	69.8
1971	15.4	23.5	38.9
1972	62.3	22.2	84.5
Total	345.9	150.5	496.4

SCHEDULE C.—U.S. DIRECT ECONOMIC AND MILITARY ASSISTANCE, GROSS OBLIGATIONS AND LOAN AUTHORIZATIONS

[U.S. fiscal years; millions of dollars]

Assistance donor	1946–61	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	Total 1946–72
AID and predecessor agencies	28.9	12.5	8.8	9.1	11.4	12.8	35.2	19.6	16.0	11.8	11.1	22.8	200.0
Loans	14.8		6.0	7.5	9.2	11.3	28.5	15.8	13.1	8.5	7.0	19.1	140.8
Grants	14.1	12.5	2.8	1.6	2.2	1.5	6.7	3.8	2.9	3.3	4.1	3.7	59.2
Food for Peace: Title II, Voluntary, Relief agencies	5.7		.7	.8	.6	.5	.6	.3	.6	1.0	.6	1.2	13.0
Peace Corps			.4	.9	.9	1.1	.7	.9	.8	.7	.5		6.9
Social progress trust fund		10.4			2.5								12.9
Other	23.3			6.8	5.3							9.8	45.2
Export-Import Bank: Long term Economic loans	17.0	1.9		7.4	3.5					2.5	2.7	27.8	62.8
Military assistance	.1	.3	.7	.2	.2	.6	.5	.2	.3	.8	.5	.7	5.1
Total U.S. direct assistance	75.0	25.5	10.6	25.2	24.4	15.0	37.0	21.0	17.7	16.8	15.4	62.3	345.9

Note.—From fiscal year 1955 to present obligations are on a gross basis, that is, total new obligations entered into during the year; not adjusted for deobligations of prior year's funds. For period 1946–72; net AID obligations are $188,400,000.

SCHEDULE D.—INTERNATIONAL AGENCY ASSISTANCE, GROSS OBLIGATIONS AND LOAN AUTHORIZATIONS

[U.S. fiscal years; millions of dollars]

International agency	1946–61	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	Total 1946–71
IBRD	14.0		4.0							4.20		20.0	80.0
IFC											1.5		1.5
IDB		2.9		0.1	1.0	9.7	9.0			9.8	19.1		51.6
UN	1.4	.5	.9	.5	3.0	1.4	1.5	0.4	1.5	1.2	2.9	2.2	17.4
Total	15.4	3.4	4.9	.6	4.0	11.1	10.5	.4	1.5	53.0	23.5	22.2	150.5

SCHEDULE E.—U.S. INDIRECT ASSISTANCE, GROSS OBLIGATIONS AND LOAN AUTHORIZATIONS, FISCAL YEARS 1946–72

[Dollar amounts in millions of U.S. dollars]

International agency	Total assistance	Percent U.S. participation	Total U.S. indirect assistance
IBRD	80.0	25.9	20.7
IFC	1.5	27.0	.4
IDB	51.6	57.8	29.8
UN	17.4	39.0	6.8
Total	150.5		57.7

SCHEDULE F.—SECTOR BREAKOUT OF TOTAL GROSS BILATERAL AND MULTILATERAL ASSISTANCE, FISCAL YEARS 1946–72

	Amount (millions)	Percent
Transportation	$123.4	24.9
Electric power	55.0	11.1
Education	43.1	8.7
Industry, labor, and mining	41.2	8.3
Health and sanitation	40.9	8.2
Agriculture and natural resources	34.2	6.9
Social welfare and housing	32.0	6.4
Military and public safety	16.3	3.3
Private enterprise	13.8	2.8
Food for peace	13.0	2.6
Other [1]	83.5	16.8
Total	496.4	100.0

[1] Includes $6,900,000 for Peace Corps, $12,300,000 as other AID assistance such as feasibility studies, special development activities and technical support. The remainder is assistance which we were unable to identify by sector.

SCHEDULE G.—PLANNED U.S. ECONOMIC AND MILITARY ASSISTANCE, FISCAL YEAR 1973

AID: [1]	Millions of dollars
Loans	19.0
Grants	3.3
Food for Peace	1.1
Social Progress Trust Fund	-----
Export-Import Bank, long term economic loans	(2)
Military assistance	.5

[1] As of November 1972 AID was operating under a continuing funding resolution providing emergency financing for the foreign aid program permitting spending at the fiscal year 1972 rate.

[2] Unknown. Due to the nature of the Bank's operations—primarily export oriented—they cannot effectively project program levels by individual countries.

SUPPLEMENTAL APPROPRIATIONS FOR THE MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT (PUBLIC LAW 92–513)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. Moss) is recognized for 5 minutes.

Mr. MOSS. Mr. Speaker, I am making this statement on behalf of myself, Representative JOHN J. MCFALL, of California, chairman of the Transportation Subcommittee of the House Appropriations Committee; on behalf of the majority party members of the Subcommittee on Commerce and Finance of the House Interstate and Foreign Commerce Committee, Representatives W. S. "BILL" STUCKEY, of Georgia, BOB ECKHARDT, of Texas, HENRY HELSTOSKI, of New Jersey, and JOHN BRECKINRIDGE, of Kentucky, on behalf of Representative CHARLES J. CARNEY, OF Ohio, and also on behalf of Senators WARREN G. MAGNUSON, of Washington, PHILIP A. HART, of Michigan, and FRANK E. MOSS, of Utah, of the Senate Commerce Committee.

It is now over 4 months since the enactment by Congress of the Motor Vehicle Information and Cost Savings Act—Public Law 92–513. It is 2 months since the convening of the 93d Congress and over 1 month since President Nixon sent his 1974 budget to Congress.

During this time the administration has failed to prepare and forward to Congress any request for supplemental appropriations for the purpose of funding the Motor Vehicle Information and Cost Savings Act during the balance of fiscal 1973—ending June 30, 1973. In addition, the administration's 1974 budget request for this legislation is only $15 million, in contrast to $37 million authorized by Congress for fiscal 1974. And this is the legislation that the President called a "significant victory for the American consumer" when he signed it on October 21, 1972. This retreat by the administration is a great disservice to every American who owns an automobile, who has paid an inflated repair bill or who has had his car repaired inadequately or not at all.

Mr. Speaker, the American public pays $7.9 billion a year in premiums for automobile property damage insurance. The American public pays an estimated $8 to $10 billion a year for repair work on automobiles which was never done, which was unneeded or which was improperly performed. This legislation, if properly administered and funded, could help save American motorists a significant portion of these expenditures.

Because of the inexcusable delay of the administration in seeking prompt funding for the Motor Vehicle Information and Cost Savings Act I am today introducing a supplemental appropriations bill on behalf of myself and my colleagues, Representatives MCFALL, STUCKEY, ECKHARDT, HELSTOSKI, BRECKINRIDGE, and CARNEY. The supplemental appropriations bill which we are offering provides for the following funding, which is the funding authorized for fiscal 1973, in Public Law 92–513:

First. For carrying out the provisions of title I relating to the promulgation of bumper standards to reduce damage susceptibility of automobile—$5 million.

Second. For carrying out the provisions of title II relating to furnishing the public with comparable information on the damage susceptibility of differing makes and models of automobiles—$3 million.

Third. For carrying out the provisions of title III directing the establishment of diagnostic inspection demonstration projects for the purpose of testing safety, emission, and other defects in automobiles—$15 million.

These amounts are modest indeed compared with the potential benefits to motorists. They were carefully reviewed and substantially reduced by a bipartisan House-Senate conference committee in

October 1972. The administration's further reductions are totally unwarranted.

Mr. Speaker, I have discussed this important legislation with Chairman McFALL of the Transportation Subcommittee of the House Appropriations Committee. He has agreed to join with us in cosponsoring this bill because of his belief in the potential benefits involved for every American consumer. Therefore, I know this bill will receive very serious consideration by the House Appropriations Committee.

I have also communicated with Senators WARREN MAGNUSON, PHILIP HART, and FRANK MOSS who were the leading sponsors of the Motor Vehicle Information and Cost Savings Act in the Senate. They have advised me that they join in this statement and have offered their cooperation in pressing for passage of similar legislation in the Senate.

Mr. Speaker, it is my belief that this Government exists to serve the people. This bill will test who the administration serves.

The text of the legislation is as follows:

H.R. 5064

A bill making appropriations to carry out the provisions of the Motor Vehicle Information and Cost Savings Act for the fiscal year ending June 30, 1973

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby appropriated to the Secretary of Transportation for the fiscal year ending June 30, 1973, out of any money in the Treasury not otherwise appropriated—

(1) for carrying out the provisions of title I (relating to bumper standards) of the Motor Vehicle Information and Cost Savings Act (Public Law 92–513), $5,000,000;

(2) for carrying out the provisions of title II (relating to automobile consumer information study) of such Act, $3,000,000; and

(3) for carrying out the provisions of title III (relating to diagnostic inspection demonstration projects) of such Act, $15,000,000.

Amounts appropriated under the preceding sentence shall remain available until expended.

THE RECLAMATION LANDS AUTHORITY ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin (Mr. KASTENMEIER) is recognized for 15 minutes.

Mr. KASTENMEIER. Mr. Speaker, nationwide attention has been focused on the increasing trend of giant corporations, aided by Federal tax loopholes and subsidies, to monopolize our land and agriculture. This trend has had disastrous results for the independent family farmer who has been disappearing from rural America at an alarming rate, and I find it particularly disturbing that the Government has failed to enforce laws which were intended to prevent the unhealthy development of the large agribusinesses.

In view of this situation, several of my colleagues, Mr. BROWN of California, Mr. DANIELSON, Mr. EDWARDS of California, and Mr. WALDIE, have joined with me today in introducing legislation, the Reclamation Lands Authority Act, which would carry out the congressional intent respecting the provisions of the Federal Reclamation Act of June 17, 1902.

That law provided that landholders could receive federally subsidized water for farms of 160 acres or less, or 320 acres in the case of a husband and wife, provided that they live on, or very near, their land. The objectives of the 160-acre limitation were to break up large, private landholdings in order to provide an opportunity for a maximum number of settlers on the land and to promote homebuilding; to spread the benefits of the subsidized irrigation program to the maximum number of people; and to promote the family-size farm as a desirable form of rural life.

In 1926, Congress strengthened the 1902 act by providing that a landowner who owns more than 160 acres should not receive water from any federally irrigated water resources project for use on the "excess" land over 160 acres unless he entered into a recordable contract agreeing to dispose of his "excess" land at a price not to exceed the approved appraised value of the land under preproject conditions. The intent of this legislation was to break up large landholdings and to prevent land speculation. For one reason or another, however, this law has not been fully enforced.

President Theodore Roosevelt, who signed the 1902 Reclamation Act into law and founded the Nation's conservation movement, explained to the Commonwealth Club of California at a 1911 meeting in San Francisco the meaning of the public policy provision in the law:

No right to the use of water for land in private ownership shall be sold for a tract exceeding 160 acres to any one landowner.

He said:

If we had a right to dispose of the land, not absolute but on condition that certain requirements are complied with, doing that in the interest of the democracy as a whole, we have a right to dispose of the land with a proviso as to the use of the water running over it, designed to secure that use for the people as a whole and to prevent it from ever being absorbed by a small monopoly.

But administration of Theodore Roosevelt's "excess" land law has fallen far short of original conservationist hopes. This has been testified to before congressional committees, declared on the floor of Congress, written into statistical Government reports and conceded by former Secretary of the Interior Stewart Udall who, in 1964, stated that administrators had "on occasion" exhibited a "degree of concern for the excess landowner—difficult to reconcile with the policies embraced by the excess land law." Hundreds of thousands, yes, millions, of acres receive subsidized water above the legal limit.

According to a November 30, 1972, General Accounting Office review of the Central Valley project in California, the largest Bureau of Reclamation project, the 160-acre reclamation law limitation has not resulted in preventing large landowners and farm operators from benefiting under subsidized irrigation programs and has not prevented landowners and farm operators from retaining or acquiring large landholdings.

The extent of the Federal water subsidy appears to range from $600 to $2,000 per acre, which remains unrepaid to the public treasury. The doorway of the treasury opens wider and wider. Congress has appropriated or authorized spending of $11 billion on reclamation projects. Meanwhile the doorway of public policy limitations shrinks narrower and narrower. Is it any wonder why giant corporations and large landowners holding many thousands of acres want the 160-acre limitation removed? In a 1945 letter to the San Francisco News explaining why the giant landowners wanted the 160-acre limitation cast aside, Harold L. Ickes, then Secretary of the Interior, bluntly wrote:

It is the age-old battle over who is to cash in on the unearned increment in land values created by a public investment . . . Their principal objective is to avoid application . . . of the long-established reclamation policy of the Congress which provides for the distribution of the benefits of great irrigation projects among the many and which prevents speculation in lands by the few.

The principal legal loophole that permits this evasion of public policy is the absence of a provision that the Government itself shall purchase "excess" lands. The 1926 statute requires sale of "excess" lands by their owners at a preproject price, but provides no ready purchaser.

The purpose of the Reclamation Lands Authority Act, then, is to modernize reclamation law so as to fulfill the unrealized potentials of the historic 1902 act that marked the dawn of the national conservation movement. Specifically the proposals of this bill are threefold:

One, to enact a long overdue, and long recommended, method for enforcing the public interest provisions of reclamation law effectively;

Two, to finance public education by grants of revenues created from public water development, just as grants of 94 million acres of public lands financed public education at an earlier point in our history; and

Three, to enable the public itself, through a newly established authority, to plan the environment that public water development creates.

The Reclamation Lands Authority Act formally proposes Government purchase of "excess" lands to make public policy truly effective. It would authorize the Government to buy "excess" land at a preproject market price which the owner already is bound by law to sell. The Authority then would lease or sell this land at a postproject market price. The public treasury itself would be able to reap from public investment the windfall profits that the lax enforcement of the "excess" land law now gives only to the few. The concept that the Government should purchase "excess" lands is well established. In 1924, the historic Fact Finders Commission, reviewing the operation of the reclamation program, reported the recommendation:

No reclamation project should hereafter be authorized until all privately owned land in excess of a single farmstead unit for each owner shall have been acquired by the United States or by contract placed under control of the Bureau of Reclamation.

The profits that the Government would receive from the sale or lease of the "ex-

cess" lands would be deposited in an "education, conservation, and economic opportunity fund," which would be used to serve public purposes. The Reclamation Lands Authority Act proposes that 70 percent of these revenues be earmarked as grants to public education, following the Thomas Jefferson-Abraham Lincoln tradition of financing education with land grants, and for such purposes as Congress may authorize. It transfers 10 percent of the net revenues to the Land and Water Conservation Fund. The remaining 20 percent of the fund shall be made available upon specific appropriation by Congress for the development of public facilities servicing project areas, for advancing economic opportunities of veterans and persons living in substandard conditions, for the development of healthful environments and communities needing open spaces and for such other environmental and ecological benefits as Congress may authorize.

Furthermore, this legislation creates a Reclamation Lands Authority to administer this program. The Authority will be established as an independent agency under a board of three members, appointed by the President with consent of the Senate and responsible to the President.

Mr. Speaker, although physically, the reclamation program takes place in western States, the waters that it uses and the money that finances the projects both belong to the Nation. The people of Wisconsin as well as citizens from other States not benefiting from the Federal reclamation program, nonetheless, are paying taxes and have paid taxes to build dams, reservoirs, conduits, and irrigation systems in the West. They have paid these taxes against their own economic interests because they believed it was in the national interest. I believe the American people will agree with me that, if Federal money is used to irrigate lands for farming, the beneficiaries of this Government policy should be family sized farmers and not owners of immense agricultural kingdoms.

The tax money we contribute for reclamation projects should be used to foster and maintain an agrarian democracy and not huge agrarian estates. The Reclamation Lands Authority Act reaffirms the historic purpose of the Reclamation Act, especially as it applies to the development and use of "excess" lands, and provides modern means to make that intent and purpose operative in the national interest and the direct benefit of its citizens. The purpose of the Reclamation Act, as stated by the U.S. Supreme Court in 1958, is to distribute the benefits from reclamation "in accordance with the greatest good to the greatest number of individuals," and to prevent "use of the Federal reclamation service for speculative purposes."

The reclamation program of the 1970's can adopt the same human spirit that pervaded in the 1860's. This can be done, but it will not be done unless the public insists that the circumvention of the 160-acre limitation be brought to an end, and the attacks upon it cease. The public must insist that Congress provide for purchase of "excess" lands receiving publicly subsidized water, and that the use of these lands be turned away from private speculation and monopoly toward the truly public purposes of education, conservation, and economic opportunity.

FORTY-TWO YEARS AS BUFFALO'S AM—MC FOR CLINT BUEHLMAN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. DULSKI) is recognized for 15 minutes.

Mr. DULSKI. Mr. Speaker, this morning marked the beginning of Clint Buehlman's 42d year as Buffalo's "AM—MC—CB."

Since March 1, 1932, Clint has been a weekday "waker-upper" feature on Buffalo radio—the last 30 years on WBEN. Over the entire period, he has worked the hours 6 to 9 a.m., extending the segment to 10 a.m. 5 years ago.

In Buffalo and all of western New York, Clint Buehlman has become an institution, doling out friendly philosophy and tidbits interspersed with the oft-repeated and vital morning informational ingredients: time and weather.

Clint's multitude of friends and listeners do not ask the temperature; instead, it is "What does Arthur say?"—meaning, of course, Arthur Mometer—our thermometer.

Being in the right place at the right time is what Clint credits for the job that became a lifetime career. Clint Buehlman was just out of high school at the beginning of the great depression and an expected job with his dad's employer fell through in the general belt-tightening. He had always liked radio and had performed often for free.

CLINT SKEPTICAL AT FIRST

In March 1931, he was hired by the Buffalo Broadcasting Corp., which then had three Buffalo radio stations, and wound up on an evening prime-time trick.

A year later, March 1932, he condescended to try the 6 to 9 a.m. stint which a station salesman was sure he could sell on the "waker-upper" approach. He promised Clint a share and Clint is still at it.

Clint had wanted from the outset to be on WBEN but he missed by a few weeks and the brandnew station was full staff when he applied. He jumped at the chance to move over to WBEN in March 1943, when the Army called the morning man, Jack Paar, who later made his own name in another broadcast medium, the Tonight show on television.

To Clint, his job is a "morning man"—he dislikes the term disc jockey—and the name of the game is "Service First," because he knows he is talking to people on-the-run.

In this respect, Clint Buehlman is the man who keeps tabs on Buffalo's extra-wintry weather, for example. He has a special telephone number and code for principals and superintendents to notify him promptly when there will be no school that day. His word is it. The same goes for major industrial plants. What is more, he keeps the Niagara Frontier informed on road conditions and other emergencies.

For 41 years, Clint has been arising daily at 4:30 a.m.—he still hates it—for his 6 o'clock date to begin helping western New Yorkers get to their jobs, schools, or whatever on time.

March is a busy anniversary month for Clint. His 42d anniversary in radio today, also his 41st anniversary as a morning man, and his 30th anniversary with WBEN. His birthday is March 8 and he usually takes his vacation in March. On March 15, hundreds of his friends are going to gather for a big anniversary party to mark his 30 years at WBEN.

Clint heard from a lot of his friends during his program this morning and I want to join from the Nation's Capital in a fond salute to Buffalo's beloved "AM—MC—CB."

COSPONSORS OF H.R. 4779, THE METRIC CONVERSION ACT OF 1973

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Minnesota (Mr. FRASER) is recognized for 5 minutes.

Mr. FRASER. Mr. Speaker, when I introduced my bill, the Metric Conversion Act of 1973, H.R. 4779 on Tuesday, February 27, the name of Representative BENJAMIN A. GILMAN of New York was inadvertantly included as a cosponsor. This was the result of an error I deeply regret. Mr. GILMAN should not be considered a cosponsor of H.R. 4779.

HEARINGS ANNOUNCED FOR HOUSE RESOLUTION 220

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. EILBERG) is recognized for 10 minutes.

Mr. EILBERG. Mr. Speaker, I wish to announce that Subcommittee No. 1 of the Committee on the Judiciary will hold a public hearing on March 13, 1973, to consider House Resolution 220, a resolution of inquiry, and similar resolutions.

Inasmuch as this resolution is out of the ordinary, I include the text thereof:

Resolved, That the Attorney General be, and he is hereby directed to furnish the House of Representatives within ten days after the adoption of this resolution, with the following information:

1. The basis of the venue in the Northern District of Texas of the present grand jury investigation before which Kenneth Tierney, Thomas Laffey, Matthias Reilly, Paschal Morahan, and Daniel Crawford have been summoned.

2. A listing of any other districts in which the said grand jury investigation might have been conducted, together with the basis of venue for each such district.

The hearing will be held in room 2141, Rayburn House Office Building and will begin at 10 a.m.

This resolution pertains to five Irish Americans from the New York City area who are incarcerated in Fort Worth, Tex., for civil contempt of court due to their refusal to testify before a grand jury there.

PRESIDENT NIXON'S BUDGET

The SPEAKER pro tempore. Under a previous order of the House, the gentle-

man from Massachusetts (Mr. O'NEILL) is recognized for 10 minutes.

Mr. O'NEILL. Mr. Speaker, a month has passed since Mr. Nixon submitted his budget to the Congress.

The budget package consists of well over a thousand pages of text, tables and numbers and, whether deliberately or not, the massiveness of the document tends to obscure some important facts. But the President's budget, like any family budget, tells you a lot about a person's hopes, dreams and sense of priority.

Now that we have had some time to study the budget, it is appropriate to try to explain just what it will mean to the American people.

My own impression is, on the whole, that Mr. Nixon's budget is the handiwork of someone who has limited vision for his country, and inadequate faith in his countrymen.

Let me be specific:

First, the President has shown selective tough mindedness. He showed himself tough minded—even ruthless—in cutting social programs. But he lost his courage when it came to the revenue side of the budget, failing even to suggest reform of the tax code. The fact is that we can close tax loopholes and thereby gain revenue to pay for programs this country really needs.

As the New York Times said editorially in January, the President has "at best half a program"—"much cutting but little or no constructive replacement." For example, the recommendation to cut funds for community mental health centers should have been coupled with a recommendation which insures that a citizen in need of mental health care has access to that care, such as through a sensible national system of health insurance.

Second, Mr. Nixon's budget is, in many ways, an appeal to selfishness. The budget does not appeal to the better instincts of our citizens. It is a reminder of the contemptuous slogan: "I fight poverty, I work." It lacks compassion for the sick, the handicapped, the poor. It lacks foresight. Critical of what he called throwing money at problems during the Kennedy-Johnson era, Mr. Nixon proposes to throw to States and localities an additional $6.9 billion along with the current $30 billion in revenue sharing—and to allow this nearly $37 billion to be spent without meaningful spending guidelines.

His talk of returning revenues to family budgets and local communities may make for short-term political popularity, but it is misleading and shows a remarkable callousness about our national problems.

No one wants a clumsy and inefficient Federal Government, but many national problems are just that—national in scope. Just as it took a national effort to put a man in space and on the moon, so it takes such an effort to forge lasting answers to poverty amid affluence; to urban deterioration; to skyrocketing costs of health and medical care; to consumer needs; and so forth.

Third, the budget is an example of social irresponsibility. Neither the President nor his budget have put forward a plan for American domestic needs. And new needs and problems will be generated by the budget iself. What is to become of the beneficiaries of current programs? The hard-core unemployed father will be deprived of emergency employment assistance; the voice of the poor in community action programs will be silenced; the working mother will be denied day care, and faced with the choice of quitting a needed job or locking her children up, unsupervised, at home.

Congress must, and will, do what the administration says it did, but very likely did not do in preparing this budget. We will scrutinize every spending program to determine its worth relative to other programs, and whether in itself it is sufficiently desirable to warrant tax expenditure. Congress will find opportunities to cut spending which the President overlooked, opportunities for tax reform which the President entirely ignored, and opportunities to restore necessary programs cut down by a wild swing of the Presidential meat axe.

Now, let us look at Mr. Nixon's priorities.

The President has resurrected the discredited notion of benign neglect and made it the motto of his domestic policy.

How does he lead this country toward the "more perfect Union" envisioned by the Constitution with a budget which provides:

No higher education program worthy of the name;

No housing program;

No long-range agricultural program;

No program for welfare reform;

No program for health and medical insurance;

No effective manpower program;

No environmental program;

No meaningful civil rights program; and

No indication of any hard thinking about how America can meet her domestic challenges.

Where is the economy in this cost-cutting budget? It has a $12 billion deficit built in. The increase in the defense budget—some $4 billion—is alone enough to wage the war on poverty for 2 full years, with funds left over.

For 4 years the President has been preoccupied with international affairs. He now seems incapable of focusing on domestic needs. "The cost of maintaining our strength continues to be substantial" he says in defense of the military budget, "but far less than the cost of allowing our defenses to deteriorate." Well, we have domestic dangers too, and they may be more pressing than foreign threats now that international tensions are relaxed.

Let us consider:

Urban needs. No hope from the President, who proposes no new funds—and no new ideas—for model cities, open space, neighborhood facilities, water and sewage systems, rehabilitation loans, public facility loans, low and moderate-income housing.

Unemployment. No hope from the President, who offers no funds—and no ideas—for solving our unemployment problem. Instead, he seeks to eliminate the Emergency Employment Program under which 280,000 jobless found public service work, and he proposes a poorly-conceived dispersion of our manpower programs. How are we ever to achieve full employment in Mr. Nixon's full employment budget?

Research. No hope from the President, who proposes cuts in a host of vital areas, including child health and safety, mass transit, ocean resources and agriculture. This country has achieved the highest standard of living the world has known because we have applied our minds and our resources to research and development. Mr. Nixon apparently thinks we now know all there is to know.

Agriculture. No hope from the President, whose budget says "no" to youngsters in the school milk and lunch programs, "no" to the needy in rural areas who are to be deprived of low-income housing loans, and "no" to the family farmer who is trying to make sense out of the administration's nonpolicy for coherent food production.

Education. No hope from the President, who proposes destruction of the Elementary and Secondary Education Act of 1965. No hope for the disadvantaged youngster, or the handicapped child, who needs special help. No hope for teacher training, library assistance, or college construction.

Civil rights. No hope from the President, whose budget carries favor with those few who need help least and neglects the many who need it most. Dollars for minority businessmen is no substitute and no excuse for abdicating civil rights efforts for citizens denied full access to American bounty and opportunity.

Tax policy. No hope from the President for the low- and middle-income taxpayers who are trapped in an increasingly regressive tax system in which many wealthy individual and corporate taxpayers do not pay their fair share. This budget amounts to a wink to those 100 taxpayers who last year paid no taxes on annual incomes in excess of $200,000 and it is an insult if not a pocket picking of the American wage earner.

Welfare reform. No hope from the President, who seems to have forgotten all about how essential he thought it was, last year, for thoroughgoing welfare reform.

Poverty. No hope from the Commander in Chief, whose budget hoists the white flag of surrender over the war on poverty. No "peace with honor" here. Can he really expect revenue sharing to solve this problem? Remember, the whole point of the community action program was that the poor, who are always a minority in the community, needed a voice so that their needs for life's bare necessities would not take a back seat to everyone else's wants. Mr. Nixon has abandoned "maximum feasible participation of the poor" for "minimum visibility and impact of the poor."

Housing. No hope from the President, who proposes to abandon a program simply because his own administration lacked the managerial talent to make a sound concept work. The housing programs the President proposes to scrap

have helped 2½ million American families.

Health. No hope from the President, whose budget is so preoccupied with cutting medical research and training of health workers that he has overlooked our most pressing national health need—a solution to the surging costs of health, hospital and medical care through a system of national insurance.

Consumers. No hope from the President whose mismanagement of the economy is evident in every family's grocery bill, who proposes to slash funds for the Bureau of Consumer Protection at the Federal Trade Commission, and who has eliminated the Consumer Affairs Office from the White House for burial in the recesses of the Department of Health, Education, and Welfare.

Environmental protection. No hope from the President, who has cut EPA's solid waste management program from $30 to $5.7 million, and Interior's desalinization program from $26 to $2 million.

Now, who pays for these budget cuts?

Not the military establishment;

Not big business;

Not the millionaires who escaped all taxation last year and, under the Nixon no-tax-reform plan will avoid taxation again this year;

Not the Government contractors, who enjoy corporate welfare for cost overruns;

Not the junketing businessman who gets a tax break when he sits down to a martini and filet mignon luncheon at a New York convention; and

Not the speculators who can deduct more dollars than they actually invest.

Here is who pays:

You, the American middle-income taxpayer, who will continue to pay a disproportionately large share of your income in Federal taxes while getting fewer Federal services in return:

You, the indigent American, who are being cheated, humiliated and perpetuated in poverty as long as we fail to reform the welfare system.

You, the young American family and older citizen, who deserve real protection against the expense of skyrocketing health and medical expenses, and the economic devastation of catastrophic illness.

You, our future generation, who deserve the progress that medical, educational, technological, and social research can help assure you.

You, our American minorities, who are entitled to vigorous Federal enforcement of your rights.

Moreover, parts of the budget are seriously misleading. For example:

The crowing about fewer Federal employees obscures the fact that in most cases such employees will remain "government" employees on State and local payrolls. For example, the 7,200 Federal employees dropped from Federal payrolls will turn up on local payrolls as a result of transfer of certain hospitals to localities.

While the budget talks about national health insurance, not 1 cent is budgeted for the purpose.

Though Mr. Nixon has publicly committed his administration to billions in economic aid to postwar Vietnam, not 1 cent for this purpose appears in the budget.

The military portion of the budget is "lower" only because other items such as social security increases, distort the budget.

Revenue sharing, even with the new special revenue sharing proposed, cannot begin to solve the difficult problems the Nation faces. Nor do these funds make up the difference lost as a result of Nixon cuts. Mr. Nixon's rhetoric about all the good qualities of revenue sharing remind me of a medicine man tooting the properties of all-curing snake oil.

This is a cold-blooded budget, my friends, which does no credit to its author. It is now up to the Congress, where the people's representatives speak, for humanity, and commonsense, to be restored to our national goals.

RESOLUTION PASSED BY TEXAS LEGISLATURE PAYING TRIBUTE TO THE LATE PRESIDENT LYNDON BAINES JOHNSON

(Mr. PICKLE asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. PICKLE. Mr. Speaker, one of the most moving and eloquent resolutions ever passed by any State legislative body was passed last week by the Texas legislature. It is a resolution paying its high regards to the life and accomplishments of our former President Lyndon Baines Johnson. The resolution—House Concurrent Resolution 35—was signed by the Governor of our State, the Honorable Dolph Briscoe and Lt. Gov. William Hobby and Speaker of the House Price Daniel, Jr.

Mr. Speaker, I commend this resolution to the entire membership of this body because I think it is a graphic and moving description of the life of this great man, and I therefore include this resolution in the body of the RECORD at this point:

HOUSE CONCURRENT RESOLUTION 35

Whereas, A Life which was devoted to Honour and its Country, is no longer ours.

With the death of President Lyndon Baines Johnson on January 22, 1973, Texas and the Nation lost one of their most distinguished sons and the World one of its greatest leaders. The loss is felt across the "flaming ramparts of the world."

Who can look back upon the public services and exalted virtues of the deceased, without exclaiming in the anguish of despair . . . "Is he, too, numbered among the silent dead"? He who bore the anguish and travails of a war against aggression, to which he succeeded, is gone to the realms of eternal peace; and

Whereas, History already has built around him a name and a fame that will light the pathway of generations yet unborn for centuries to come. Patriotism and admiration will not let us forget his mighty stroke of compassion for his fellowman and his unswerving devotion to duty. His talents were employed on the side of righteousness and at whose approach oppressed humanity felt a secret rapture. It was thus that he sometimes soared so high and shone with a radiance so transcendent "as filled those around him with awe and gave to him the force and authority of a prophet." President Johnson lived a life characterized by splendid manhood—crowded with deeds and crowned with honours. He was superb in his effort to attain the goals to which he aspired. His actions vitalized the principle that "they fail, and they alone, who have not striven"; and

Whereas, This tall Texan—large as Texas, nerself—a son of the picturesque and enchanting vistas of the Hill Country, which he dearly loved, coursed by the cool, clear waters of the meandering Pedernales River, inspired by the rugged land from which he sprang and in which his roots were laid deep, rose to the pinnacle of world fame upon the precepts and examples taught and set by his fond and loving mother, Mrs. Rebekah Baines Johnson, and his distinguished father, Honorable Sam Ealy Johnson, Jr. with encouragement from his loyal helpmeet of 38 years, the lovely "Lady Bird" Johnson; and

Whereas, Following his graduation from Southwest Texas State Teachers College, now Southwest Texas State University, at San Marcos in February, 1927, he taught school at Cotulla, Texas, before becoming an aide to the late Honorable Richard M. Kleberg, Sr., then United States Representative from Kingsville, thereby launching a public and political career spanning nearly 40 years of continuous, constructive service to his country and to the world. After serving as Director of the National Youth Administration in 1935, he was elected to the United States House of Representatives in 1937, in which he served with dedication to the ideals of his friend, President Franklin D. Roosevelt. Following a period of "seasoning" in the House, under the leadership of Speaker Rayburn, familiarly known as "Mr. Sam", with an interlude of courageous service in the United States Navy during World War II, he was elected to the United States Senate in 1948. By dint of hard work, coupled with his innate ability, his training, his skills and energy, he became the Majority Whip in 1950. Senator Johnson was chosen as Majority Leader in 1953, in which capacity he distinguished himself and demonstrated his dynamic leadership with his policy of "reasoning" together. He was called the "most powerful man" in America, as he guided the Democratic-controlled United States Senate through a period of responsible cooperation with the Republican administration of President Eisenhower. It has been said that "Johnson was the Senate and the Senate was Johnson"; and

Whereas, With his acceptance of the nomination of his Party and his election to the Vice Presidency in 1960, Mr. Johnson served in that office with dignity, honour and loyalty while carrying out numerous missions and responsibilities delegated to him by President Kennedy. Whatsoever his hand found to do, he did it with all his might.

The leadership of our country passed into the capable and experienced hands of President Johnson when President Kennedy succumbed to the assassin's lethal messenger. There was hope and assurance for America midst the sadness of the hour. His legislative, diplomatic, political and native abilities provided him with the experience and valuable knowledge peculiar to the Office of President of the United States, gained from his close association with Presidents Roosevelt, Truman, Eisenhower and as the "right arm" of President Kennedy, available to no other man on the American scene, to lead our country; and

Whereas, Among the many and varied proposals which became the law of the land during his administration are to be found greatly increased Federal Aid to Education, Medicare and Medicaid, the 1964 Civil Rights Act, the 1965 Voting Act, the War on Poverty, to mention some. While President Johnson's public service was fraught with contro-

versy—a characteristic of strong-willed and determined, dedicated men—nevertheless, his noblest motive was the public good. It may be said of him that he made many friends and lost very few. He made many enemies of the right kind and kept them all. He said that he could not prescribe a formula for success, but that the formula for failure is to try to please everybody. His success was due, largely, to his constancy of purpose; and

Whereas, President Johnson, like former President Truman, was plagued by a foreign conflict during which he strove to preserve the integrity of our treaty commitment, negotiated by a former administration and affirmed by subsequent action of the Congress with the adoption of the "Gulf of Tonkin Resolution." He believed that if America reneged on her agreement it would imperil many other nations and, consequently, jeopardize the peace of the world. He never wavered in his desire and efforts to bring about an honourable peace. President Johnson was, in his day, a much maligned man. He knew that blatant demagoguery and a scurrilous press must be tolerated and borne by patriots. Comfort, however, could be found in the words of General Washington who said that "Real patriots who resist the intrigues of the favorite, are liable to become suspected and odious; while its tools and dupes usurp the applause and confidence of the people to surrender their interests"; and

Whereas, President Johnson's courage and patriotism were never more genuinely demonstrated than when, on March 31, 1968, he offered himself a willing sacrifice to the good of his country hopefully to end the Vietnam War with his decision not to become a candidate for re-election; and

Whereas, His private virtues, his public services, his great abilities, involuntarily excite the warmest feelings for him. In all the private relations of life he was honest, faithful, generous and humane and his heart was the seat of manly virtue.

His public services were many—splendid and great. His memory is enshrined in the esteem and affection of his contemporaries and will be consecrated by the gratitude of his country to future ages; and

Whereas, He may have had failings. On these let the tear that pities human weakness fall; on these let the veil which covers human frailty rest, since posterity is incurious about the minor faults of its heroes; and

Whereas, President Johnson was married to Miss Claudia Alta Taylor, familiarly known as "Lady Bird" on November 17, 1934, to which union were born two charming daughters, Lynda, now Mrs. Charles S. Robb of Charlottesville, Virginia, and Luci, now Mrs. Patrick J. Nugent of Austin, Texas, both of whom gave joy and delight to their doting father. President Johnson not infrequently said that the charming, intelligent and understanding companionship of "Lady Bird" profoundly influenced his course and career; and

Whereas, He was beloved by his friends, endeared to his family; the statesman, the patriot, is gone. At the fall of such a man, grief is silent and eloquence muses eulogiums which cannot be expressed. He has left us the remembrance of his greatness. As the gigantic figure that envelops men within the folds of his dark mantle, and even with the robe drawn about him, President Johnson seems so unshrouded that:

"Nothing can cover his high fame but
heaven;
No pyramids set off his memories
But the eternal substance of his greatness;
To which I leave him"; and

Whereas, This Concurrent Resolution was prepared at my request by Honorable Dorsey B. Hardeman, a former member of this body, a long-time member of the Senate and a friend of President and Mrs. Johnson for more than 30 years; now, therefore, be it

Resolved by the House of Representatives of the 63rd Legislature of the State of Texas, the Senate concurring, That they express their abiding sympathy to Mrs. Johnson and the surviving members of the family, and their admiration and gratitude for the life and contributions of the man whose simple dignity consisted not in possessing honours but in deserving them by his faith and his works through which he brought joy to his Creator; and, be it further

Resolved, That copies of this Resolution be forwarded to Mrs. Johnson and her daughters; to President Nixon and to all members of the Texas delegation in the Congress of the United States, by the Clerk of the House of Representatives, under the Seal of the House, and that the members of the House of Representatives and of the Senate devote this day to pious contemplation, suitable to the melancholy event which it commemorates and that pages in the respective Journals of each House of the 63rd Legislature of the State of Texas be set aside for preserving this Resolution in memory of President Johnson in the knowledge that men's homage and their love shall never cease to follow him.

SENTENCING DISPARITY SHOWN IN FEDERAL COURT SYSTEM

(Mr. HASTINGS asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. HASTINGS. Mr. Speaker, recently there has come to my attention a study compiled by the Southern District of New York on sentencing problems in the Federal courts.

Mr. Whitney North Seymour, Jr., the U.S. attorney for the southern district, whose office made the study, said it was based chiefly on an evaluation of 645 sentences imposed during a 6-month period between May and October 1972.

The study shows widespread disparity in sentences imposed throughout the Federal court system and underlines a need for remedial action if justice is to be really just.

Because I feel that this study is deserving of close scrutiny by everyone concerned with our Federal court system, I am submitting it for the RECORD:

A 1972 SENTENCING STUDY, SOUTHERN DISTRICT OF NEW YORK

INTRODUCTION

Reliable information concerning sentencing practices in the Federal courts is woefully inadequate. Some generalized figures are available through Reports of the Administrative Office of the United States Courts, but these are of limited utility. Recently, more particularized information has become available through the statistical study published by the Federal Bureau of Prisons for the fiscal years 1969–1970, which provides some new insights into the sentencing disparities between individual districts. Within each Federal district, however, there is no regular compilation of data upon which one can assess the fairness of the sentencing process. In the Spring of 1972, the United States Attorney's Office for the Southern District of New York undertook to conduct a detailed case-by-case study of all sentences imposed in the district over the course of a six-month period.

The following report is largely based on an analysis of all such sentences imposed during the period from May 1, 1972, through October 31, 1972. The information was supplied by individual Assistant U.S. Attorneys in charge of the respective cases and therefore is subject to possible human error, but is believed to be essentially complete. The study covers the sentencing of 645 individual defendants. Although this is a good sample for most purposes, in the case of the analysis of sentencing patterns for specific violations or the action of specific judges, the sample sometimes becomes quite small, so that one cannot rely entirely on generalizations drawn from some of the detailed data. Nonetheless, the overall results are significant and the conclusions essentially sound.

The United States Attorney's Office is particularly indebted to three of its talented research assistants, Mrs. Poppy Quattlebaum, Federico Virella, and Richard Weisberg, for their many hours of hard work in putting together the data on which this study is based.

It should be emphasized that the recommendations set forth at the end of this study are made on behalf of the United States Attorney's Office for the Southern District of New York and do not necessarily represent the views of the Department of Justice.

OTHER RECENT STUDIES

In June, 1972, the National Institute of Law Enforcement and Criminal Justice submitted a report to the U.S. Senate Subcommittee on Criminal Law and Procedure (McClellan Committee) reporting on sentencing variations in the Federal Courts, based on a computerized study of sentences imposed during the four-year period from 1967 to 1970. The Institute concluded that there are "considerable variations in sentence length" in the U.S. District Courts which occur both between districts and within districts. Part of the study focused on variations in sentences according to the race of the defendant. Among the more remarkable findings was that 28% of white defendants convicted of interstate thefts were sentenced to prison during the four-year period, while 48% of black defendants convicted of the same offense were sentenced to prison. For postal theft, the imprisonment rate was 39% for white defendants and 48% for black defendants. In other categories of offenses the variation between racial groups was not so significant, although the study concluded:

"The percent of Black defendants given prison sentences is higher than the percent of White defendants, for all crimes except Income Tax Violation; the percent of other defendants given prison sentences is even higher than the percent of Black defendants, for the same crimes."

The Statistical Report of the Federal Bureau of Prisons for Fiscal Years 1969 and 1970 disclosed that out of all prisoners sentenced to Federal prisons during the fiscal year ending June 30, 1970, the average sentence for whites was 42.9 months, while for blacks it was 57.5 months—more than a year longer on the average. In the preceding fiscal year, the average sentence was 42.6 months and 52.9 months, respectively, a spread of 10 months.

DISCRIMINATION IN SENTENCING

Our study does not support the conclusion that there is a differentiation in sentencing in the Southern District of New York as between black and white defendants charged with the same offense. There does, however, appear to be a form of indirect discrimination growing out of the different treatment of offenders for different classes of violations. There are plain indications that white collar defendants, predominantly white, receive more lenient treatment as a general rule, while defendants charged with common crimes, largely committed by the unemployed and undereducated, a group which embraces large numbers of blacks in today's society, are more likely to be sent to prison. If these indications are correct, then one may conclude that poor persons receive harsher treatment in the Federal Courts than do well to do defendants charged with more sophisticated crimes. Many indi-

vidual judges in this district have made a conscientious effort to overcome this disparity and equalize the treatment of defendants, but these efforts, unfortunately, are not universal throughout the court.

DISPARITY IN SENTENCES BETWEEN OFFENSES

During the six-month period covered by the Southern District of New York sentencing study, defendants convicted of white collar crimes stood a 36% chance of going to prison; defendants convicted of non-violent common crimes stood a 53% chance of going to prison; and defendants convicted of violent common crimes stood an 80% chance of going to prison.

Turning to specific violations, the study revealed that 100% (8 out of 8) of those convicted for the theft of securities received prison terms (with an average sentence of two years and 8 months for those with no prior criminal record); while only 66% of those convicted for securities fraud (6 out of 9) received prison sentences (with an average term of one year and 7 months for those without prior criminal records). The average sentence for those convicted of income tax evasion (5 out of 10), with no prior record, was two months; the average sentence for those convicted of inside theft of mail (14 out of 32), with no prior record, was five months (the average amount of tax evaded was $24,000, while the average amount stolen from the mails was $200).

Annexed hereto as Exhibit "A" is a schedule showing the likelihood of a prison sentence for defendants convicted of different types of offenses, and also the variations in average length of sentences imposed in cases where the defendant is sent to prison. These disparities are shown both for sentences imposed in the Southern District of New York during the six-month study period, and also the comparative national averages for the fiscal year ending June 30, 1972. It will be seen that the chances of being sent to prison in the Southern District of New York range from 23% for bank embezzlement, to 83% for bank robbery. (The national average is 20% and 89%.) The defendant convicted of bribery faces only a 25% chance of imprisonment in the Southern District compared to 55% if he were convicted of interstate theft. (The national figures are 27% and 42%, respectively.) Not only is the likelihood of going to prison much higher for certain offenses, but the average prison sentence itself is also markedly different. The average prison sentence in the Southern District of New York was 18 months for bank embezzlement; 69 months for bank robbery; 11 months for bribery; and 18 months for interstate theft. Happily the record of the Southern District of New York is substantially better than the rest of the country in many respects.

DISPARITY IN SENTENCING BETWEEN INDIVIDUAL JUDGES

The practice of "judge shopping" has been halted in the Southern District of New York by a system of assigning cases by lot. But the underlying evil has not been eliminated. The chances of a defendant going to jail are still largely determined by which judge his case is assigned to. Different judges have different personal views about different violations, and permitting these differences in personal opinion to control sentencing largely destroys the ideal of evenhanded justice for the individual defendant.

The wide disparity in personal sentencing practices can be most easily demonstrated in Selective Service violations. Because of the similarity in the nature of the cases, it is possible to analyze the sentencing philosophy of each District Court Judge by studying how he has handled the sentences in the cases before him. Such an analysis is annexed hereto as Exhibit "B". In order to insure an adequate statistical base, the study period for these cases was extended to three years (even so, the sample in some cases is obviously too small to generalize). It would clearly be impossible to explain to the parents of a boy who has been sent to prison by Judge "W", and would not have been if his case had been assigned to Judge "C", that the present system is fair and just.

On the off-chance that the special nature of Selective Service cases, which often generate heated views in many quarters, might not be typical of the whole, we also conducted a five year study of sentences imposed on postal employees charged with postal thefts with similar results. By definition, such cases are essentially similar both on the facts and on the backgrounds of the defendants. The results are set forth in Exhibit "C". Any such defendant assigned to Judge T stood a 50–50 chance of going to prison, while if he was assigned to Judge AA his chances were only 1 in 25.

DISPARITY IN SENTENCING BETWEEN DISTRICTS

The National Institute's 1972 study for the McClellan Committee, referred to above, found a wide spread between the average sentences among the 93 Federal districts, and concluded that ". . . [The] length of sentence which a defendant can expect is very much dependent upon which district he happens to be tried in."

Based on average sentences, a person convicted of forgery in the Southern District of New York will receive twice as long a sentence as one convicted in the Northern District of New York. Likewise, a person convicted of interstate transportation of a stolen motor vehicle in the Southern District of New York will receive a 50% higher sentence than a person convicted in the Northern District of New York. If he has the misfortune of being convicted in the Eastern District of New York, the sentence will be more than double that of the Northern District of New York. On the other hand, a defendant convicted of a Selective Service violation in the Southern District of New York will receive a sentence of less than one-third as long as in the Northern District of New York. An analysis of these disparities in length of prison sentences between individual districts in the Second Circuit is annexed hereto as Exhibit "D".

A similar analysis of variations between Circuits for the same offenses is annexed hereto as Exhibit "E". The range in average sentences for forgery runs from 30 months in the Third Circuit to 82 months in the District of Columbia Circuit. For interstate transportation of stolen motor vehicles, the extremes in average sentences are 22 months in the First Circuit and 42 months in the Tenth Circuit. For Selective Service Cases, the extremes are 28 months in the First Circuit and 46 months in the Tenth Circuit.

DISPARITY IN SENTENCE BETWEEN INDIVIDUAL CASES

The following synopsis of selected individual cases in which prison sentences were imposed during the six-month study period graphically illustrates the basis for the sense of injustice on the part of individual defendants at the difference in sentencing of white collar and common criminals. Other, more extreme, examples can be found in a larger period of time, but these are sufficient to make the point. All of these cases involve defendants with no prior convictions:

Case 1. Defendant A, a Caucasian male in his mid-forties and vice-president of a Wall Street brokerage firm, was charged with securities fraud by violating Regulation T and the margin requirements established by the Federal Reserve System. The amount involved in the transactions reached the sum of $3 million of excess credit, on which the defendant personally realized unlawful commissions of a good many thousands of dollars. Upon his plea of guilty, defendant A was ordered to pay a fine of $6,000.

Case 2. Defendants B and C, father and son, were charged with income tax evasion for concealing $100,000 in income over a three-year period. Defendant B, a widower, is a 65 year old Caucasian male and his son, defendant C, is a 35 year old Caucasian who is married and has a family. Both defendants are self-employed, earning $40,000 and $20,000 a year, respectively. Defendants B and C pleaded guilty and made restitution of the back taxes owed. Both were directed to pay fines of $2,500.

Case 3. Defendant D, a fifty year old Caucasian male, was employed by the IRS as a Special Agent. While in the process of carrying out his official duties D accepted a bribe in the amount of $3,000 and was arrested shortly thereafter. D, who is married and has a family, cooperated with the authorities and testified against two other agents resulting in their convictions. After pleading guilty to the charge, D was placed on unsupervised probation for one day.

Case 4. Defendant E, a 64 year old Caucasian male and doctor of medicine, with yearly earnings of $60,000, was charged with concealing $80,000 income over a three-year period. The defendant pleaded guilty, paid all taxes due, and was ordered to pay a fine of $10,000.

Case 5. Defendant G, a 40 year old Black male, had served in the Armed Forces for over fourteen years where he earned the Bronze Star. G was arrested and charged with the transportation in interstate commerce of stolen U.S. Treasury checks valued at $13,000. The defendant, who is married and has a family, had been arrested on a gun violation on a prior occasion but had no record of convictions. Defendant G pleaded guilty and was sentenced to a term of imprisonment of two years.

Case 6. Defendant H, a 34 year old black female, was the accomplice of defendant G in the transportation of the $13,000 worth of stolen Treasury checks in interstate commerce. H, who had prior arrests but no convictions, was unemployed and receiving welfare payments for herself and her three children at the time of the crime. Like G, defendant H, pleaded guilty to the charge. She was sentenced to serve six months in prison.

Case 7. Defendant I, a 31 year old Caucasian male, broke into a post office at night and stole $20,000 worth of stamps. Upon his plea of guilty, defendant I was sentenced to prison for four years.

SUMMARY AND RECOMMENDATIONS

The study of sentences in the Southern District of New York underscores the need for a more evenhanded approach to the sentencing process. The irrational disparities referred to here are not abstract numbers but real flesh and blood problems involving the sense of justice and fair play of individual human beings. Fairness in sentencing is absolutely basic to any system of justice. As expressed in the recent final report of the New York State Special Commission on Attica, headed by Dean Robert B. McKay of NYU Law School:

"Experiences with the inequities of bail, with plea bargaining, adjournments, overworked defense attorneys, interminable presentence delays, and *disparities in sentences* imposed for identical offenses leave those who are convicted with a deep sense of disgust and betrayal. If the criminal justice system fails to dispense justice and impose punishment fairly, equally, and swiftly, there can be little hope of rehabilitating the offender after he is processed through that system and deposited in a prison. . . ." [Emphasis added.]

Most of us connected with the Federal courts share a belief that the Federal system is the best in the country. But it is clear from the findings of these recent sentencing studies that the Federal system is not immune to apparent inequities in the treatment of individual defendants. For those of us concerned with maintaininng the excellence of the Federal system, the need for effective reforms is clear. But the importance

of corrective action goes far beyond the Federal system itself.

Because of the presence of Federal District Courts in every state in the nation, the Federal judicial system should also be setting an example of fairness and impartiality to which state and local judges might aspire. Leadership from the Federal bench could contribute significantly to the elimination of disparity of sentencing in all courts in all parts of the country.

The following recommendations recognize the fact that any system of sentencing must be tailored to the individual defendant in the individual case. The goal in sentencing should not be uniformity in every sentence that is imposed, but rather a uniformity in policy and overall approach, with the specific sentence tailored to fit the facts of the particular case and the personality of individual defendant. The individual variations in sentencing, however, should be rational and based on recognized standards, and not merely reflect the personal predelictions of the individual judge toward the offense or his particular attitude toward corrections.

A. SHORT-RANGE GOALS

1. It is recommended that reports containing detailed data on sentences imposed in each district be compiled on a quarterly basis under the supervision of the Circuit Council, indicating the individual sentences imposed by each District Judge, together with sufficient information to permit an intelligent appraisal of the sentence under the circumstances of the case. Possibly a uniform system might be developed to show the weight given to various factors in arriving at the final sentence. These quarterly reports should then be circulated to every judge in the district for his own self-education and also as a basis for informal discussions between himself and his colleagues.

2. Annual sentencing institutes might be held within each circuit for the express purpose of discussing sentencing policies with respect to particular offenses and particular defendant personality profiles, and reviewing past sentencing patterns.

3. An annual conference on sentences might be held on the national level with focus on differences in sentencing patterns and approaches between the various circuits, with a goal of seeking common policies which can then be communicated to the individual district judges throughout the country.

B. LONG-RANGE GOALS

1. The overall approach to sentencing should be reoriented to reflect the difference between *rehabilitation* of the individual defendant and *deterrence* of others who might otherwise be tempted to violate the law. The two concepts are mutually contradictory to a large extent, and an appropriate accommodation between these two conflicting concepts must be worked out. Essentially, defendants sentenced primarily for purposes of rehabilitation should be assigned to suitable facilities and programs expressly planned and staffed to achieve rehabilitation. Defendants sentenced primarily for purposes of deterrence should be assigned to humane custodial facilities.

2. In cases where rehabilitation of the defendant is the paramount objective, primary reliance should be placed on two techniques: (a) deferred prosecution and immediate rehabilitation efforts for adequately motivated defendants in lieu of conventional prosecution, conviction and sentencing; (b) controlled use of indeterminate sentences within maximum limits fixed by the court in each case, administered by properly qualified correction administrators, utilizing suitable facilities. This includes complete overhauling of the present parole procedures and approach, with principal emphasis placed on rewarding rehabilitation progress in accordance with objective yardsticks. We recognize that there are many objections to this approach but they relate primarily to how the concept is administered rather than to the validity of the concept itself.

3. The primary objective of *deterrence* should be focused on those deliberate and willful crimes which might be prevented by prompt and firm detection, prosecution and sentencing (e.g., white collar crimes, extortion, narcotics trafficking). To achieve deterrence, it is recommended that a fixed sentence be imposed by the court (subject to some individual variation as appropriate) based on a percentage of the maximum sentence authorized by Congress under the statute. The term of imprisonment should be served in primarily custodial institutions, with rehabilitation services only secondary.

A possible workable formula would be the imposition of one-third of the maximum sentence for the first offense; two-thirds for a second offense; and the full maximum sentence for a third or subsequent offense. In determining whether the violation constitutes a second or third offense, similar prior convictions should be taken into account. Obviously, to achieve effective deterrence, no parole should be permitted under such sentences. (Similar yardsticks might be used to fix the maximum sentence to be served where rehabilitation is the goal, permitting the administrator to discharge the defendant at any time prior to the completion of the term.) In individualizing the sentence imposed for deterrent purposes, the term obviously should be increased where aggravated circumstances are present, and reduced in recognition of special efforts by the defendant to make amends, such as voluntary restitution or active cooperation with law enforcement agencies to assist in apprehending and prosecuting other violators.

If such a policy toward uniform sentences were adopted, it is also obvious that Congress should be encouraged to review the present structure of maximum sentences to be sure they are consistent with legislative intent and a sound national policy.

EXHIBIT A

DISPARITY IN SENTENCING PATTERNS BETWEEN DIFFERENT TYPES OF OFFENSES, AND BETWEEN SDNY AND THE NATIONAL AVERAGE FOR FEDERAL COURTS

Offenses	Likelihood of imprisonment (percent)		Average length of prison sentences (months)	
	SDNY [1]	All Federal courts [2]	SDNY [2]	All Federal courts [2]
Bail jumping	66.7	66.2	10.0	25.6
Bank embezzlement	23.2	19.5	18.0	21.3
Bank robbery	82.8	91.8	69.6	124.1
Bribery	25.0	42.5	11.0	15.1
Counterfeiting	51.7	53.7	14.8	40.3
Forgery	41.6	42.8	16.8	32.0
Gambling	37.2	29.9	3.3	14.5
Guns	50.0	45.3	28.2	32.1
Immigration	50.0	42.8	2.5	6.4
IRS	35.4	36.5	5.9	10.4
Interstate	54.8	43.7	18.1	33.8
Narcotics	77.0	70.6	62.4	46.4
Perjury	50.0	53.0	5.2	28.0
Postal	44.3	40.7	18.8	32.5
Embezzlement	43.7	19.0	5.0	11.6
Other	46.3	47.3	20.1	50.5
Rackets and extortion	55.5	47.1	46.2	31.2
Securities	70.4	55.4	31.8	38.7
Fraud	66.7	21.5	20.5	
Theft	100.0	57.4	36.5	38.7
Selective Service	63.3	27.8	12.4	22.2
Total [3]	54.1	43.8	35.2	38.1

[1] Figures for SDNY are based on sentences imposed during 6-month period from May to October 1972.

[2] Figures for all Federal courts are based on sentences imposed during the fiscal year ending June 30, 1972, and are from the annual report of the Director of the Administrative Office of the United States Courts. Cases for SDNY are grouped according to classification of offenses as best as can be determined from the data given in the report.

[3] Figures in the "total" section include all the crimes committed in both the SDNY and the Federal courts for the above period which were not enumerated in the chart.

EXHIBIT B

LIKELIHOOD OF A PRISON SENTENCE IN SELECTIVE SERVICE CAUSES IN THE SDNY BASED ON A 3-YEAR SAMPLING (1970–72)

Judge	Percentage of imposition of prison sentence	Total number of defendants sentenced
A	60.0	5
B	33.0	6
C	0	6
D	50.0	2
E	50.0	2
F	80.0	5
G	75.0	4
H	50.0	4
J	40.0	5
K	0	1
L	100.0	1
M	15.0	13
N	0	2
O	33.0	6
P	33.0	9
Q	50.0	2
R	0	2
S	40.0	5
T	57.0	7
U	0	4
V	0	1
W	100.0	10
X	60.0	5
Y	0	3
Z	0	2
Total	41.8	112

Note: Letter code designates judges selected at random. The study covers all convictions during the years 1970, 1971, 1972

EXHIBIT C

LIKELIHOOD OF A PRISON SENTENCE IN INSIDE POSTAL THEFT CASES AGAINST POSTAL EMPLOYEES IN THE SDNY BASED ON A 5-YEAR SAMPLING, 1967–71 (LISTING ONLY JUDGES WITH 10 OR MORE CASES)

Judge	Percentage of imposition of prison sentence	Total number of defendants sentenced
A	26.3	19
B	17.9	28
C	11.4	70
D		
E	19.0	21
F		
G	39.1	23
H	28.6	28
I		
J	19.4	31
K	29.7	37
L		
M		
N	29.2	24
O	20.5	39
P	23.6	34
Q	27.8	36
R	25.0	48
S	10.7	28
T	50.0	24
U	16.7	12
V		
W	10.6	47
X	32.4	71
Y	7.8	13
Z	34.0	53
AA	4.0	25
BB	12.5	32

Note: Letter code designates judges selected at random. The study covers al convictions during the years 1967, 1968, 1969, 1970, and 1971.

EXHIBIT D

DISPARITY IN AVERAGE LENGTH OF PRISON SENTENCES FOR SELECTED OFFENSES WITHIN THE 2D CIRCUIT DURING FISCAL YEAR ENDED JUNE 30, 1970

[From Federal Bureau of Prisons statistical report, table B–9; in months]

2d District	Forgery	Stolen motor vehicles	Selective service	Robbery
Connecticut	18.8	44.4	40.0	142.3
NDNY	15.0	20.9	48.0	68.0

2d District	Forgery	Stolen motor vehicles	Selective service	Robbery
EDNY	37.4	51.0	40.7	152.3
SDNY	32.9	30.7	14.0	100.0
WDNY	21.0	43.2	20.8	66.0
Vermont	24.0	40.0	48.0	--------
Circuit average	31.6	35.9	33.7	122.2

EXHIBIT E

DISPARITY IN AVERAGE LENGTH OF PRISON SENTENCES FOR SELECTED OFFENSES BETWEEN CIRCUITS THROUGHOUT THE UNITED STATES DURING FISCAL YEAR ENDED JUNE 30, 1970

[From Federal Bureau of Prison statistical report, table B-9, in months]

Circuits	Forgery	Stolen motor vehicles	Selective service	Robbery
1st Circuit	32.4	22.3	28.3	106.3
2d Circuit	31.6	35.9	33.7	112.2
3d Circuit	30.7	37.9	33.5	132.5
4th Circuit	34.3	35.9	42.5	185.3
5th Circuit	37.0	37.0	39.7	177.8
6th Circuit	37.3	32.4	40.0	143.1
7th Circuit	38.2	35.5	31.4	137.9
8th Circuit	32.0	36.7	39.6	157.9
9th Circuit	34.7	41.6	28.6	131.3
10th Circuit	48.7	41.8	46.7	146.1
District of Columbia Circuit	82.0	----------	----------	330.0
National average	36.4	37.3	35.7	148.2

SECURITIES EXCHANGE ACT AMENDMENTS OF 1973

(Mr. MOSS asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. MOSS. Mr. Speaker, during the 92d Congress the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce conducted an exhaustive study of the securities industry. On August 23, 1972, it issued its unanimous report containing its conclusions and recommendations for legislative action. Today, I have the privilege of introducing a bill designed to implement the conclusions and recommendations of that report. Like the report itself, the bill is cosponsored by every member of the subcommittee.

Mr. Speaker, I include herewith the bill and a short analysis thereof:

SUMMARY, BY SECTIONS, OF THE MAJOR PROVISIONS OF THE BILL INTRODUCED BY REPRESENTATIVE JOHN E. MOSS TO IMPLEMENT RECOMMENDATIONS OF THE REPORT OF THE SUBCOMMITTEE ON COMMERCE AND FINANCE WITH RESPECT TO ITS SECURITIES INDUSTRY STUDY

TITLE I—SELECTION AND ADMINISTRATION OF THE SECURITIES AND EXCHANGE COMMISSION

Section 101 amends Section 4 of the Securities Exchange Act of 1934 to:

1. Provide that any commissioner may be removed by the President for neglect of duty or misfeasance in office, but for no other cause;

2. Provide a procedure for the appointment of a Commission chairman:

3. Provide that the Commission is authorized to conduct its own civil litigation, including litigation in the Supreme Court;

4. Provide that the Commission shall submit any budget request to the Congress concurrently with transmittal to OMB; and

5. Provide that when the Commission transmits any legislative recommendations, testimony, or comment on legislation to the Executive, it shall concurrently transmit a copy to the Congress.

It also adds a new subsection concerning the obligation of the Commission to supply requested documents to the Congress.

TITLE II—REGULATION OF EXCHANGES AND ASSOCIATIONS

Section 201 amends Section 3(a)(3) of the Securities Exchange Act of 1934 to redefine "member" when used with respect to an exchange. Current law includes within this definition a person who can make use of the facilities of an exchange to execute a transaction at the so-called "intra-member rate" (a rate less than the fixed minimum commission rate charged the general public). Since the bill abolishes all fixed minimum commissions, this part of the definition of "member" is stricken and a new definitional section is added to include within the term "member" any person who agrees to be regulated by an exchange and with respect to whom the exchange undertakes to enforce the federal securities laws and the exchange rules.

This amendment shall take effect February 1, 1975, coincident with the mandatory phase-out of fixed rates.

Section 202 amends Section 6 of the Securities Exchange Act of 1934 to make it conform to Section 15A, which deals with national securities associations, so that registered national securities exchanges and registered national securities associations will be subject to substantially identical regulatory provisions. Among the changes in existing law are the following:

1. Any registered broker or dealer meeting applicable capital or competency requirements must be allowed to join any registered national securities exchange;

2. At least half of the governing body of every such exchange must be composed of "public representatives" and the exchange must provide adequate resources to permit the public representatives to employ staff or retain professional personnel independent of the exchange staff;

3. Registered national securities exchanges are prohibited from imposing any schedule of prices or fixing rates of commissions, allowances, discounts, or other charges subject to a statutory timetable for the elimination of the current fixed minimum commission rate system (Under this timetable commission rates cannot be fixed on portions of transactions involving more than $100,000 after February 1, 1974, and cannot be fixed on any transaction after February 1, 1975; except that the SEC can, by rule, extend this deadline by one year upon a finding that such extension is in the public interest);

4. Persons denied membership on an exchange are permitted to seek review of such denial by the SEC and the courts;

5. Members disciplined by an exchange are permitted to appeal such disciplines to the SEC and to the courts;

6. Disciplinary actions taken by exchanges must be publicly noticed;

7. Any proposed change in exchange rules must be filed with the SEC, the SEC must publish such proposed change and allow interested persons a reasonable opportunity for comment thereon, and the proposed change shall take effect sixty days after publication by the SEC unless the SEC disapproves it;

8. In reviewing exchange disciplinary actions the Commission may increase as well as decrease the penalties imposed by the exchange; and

9. Registered national securities exchanges are allowed, with the concurrence of the SEC, to share the cost, functions and responsibility of the conduct of examinations and inspections of members, and to furnish copies of any reports of inspections or examinations to each other.

Section 203 amends the Securities Exchange Act of 1934 by adding a new section, designated Section 6A, establishing a new procedure to be followed by the Commission in compelling exchanges to change their rules, to take the place of the procedure now found in section 19(b).

Section 204 amends Section 11(a) of the Securities Exchange Act of 1934 to give the SEC additional authority to regulate off-floor trading by exchange members.

Section 205 amends the Securities Exchange Act of 1934 by adding a new section, designated Section 11A, to deal with the so-called "institutional membership" question. The section provides for a ban on transactions with "affiliated persons" (the so-called 100-0 test) to take effect on February 1, 1974. In accordance with the Subcommittee's report, an "affiliated person" is defined to include pension funds as well as mutual funds. Persons who were members of a registered national securities exchange prior to February 1, 1973, and who do not comply with the 100-0 requirement, are given a period not to exceed one year from the effective date of the legislation to bring themselves into compliance.

Section 206 amends Section 15A of the Securities Exchange Act of 1934 so that this section, dealing with national securities associations, and Section 6, dealing with national securities exchanges, are basically identical.

Section 207 amends the Securities Exchange Act of 1934 by adding a new section, designated Section 15B, establishing a new procedure to be followed by the Commission in compelling national securities associations to change their rules to conform to the procedure to be followed with respect to exchanges in new Section 6A.

Section 208 amends Section 19 of the Securities Exchange Act of 1934 to:

1. Give the SEC the authority to suspend or expel exchange members who have violated exchange rules;

2. Direct the Commission to take such steps as are within its power to establish a national market system for securities transactions by February 1, 1975, and to report annually to the Congress its progress in such an undertaking; and

3. Delete from the section outdated matters authorizing the SEC to conduct the Special Study of 1963 and the Institutional Investor Study of 1970.

Section 209 amends the Securities Exchange Act of 1934 by adding a new section, designated Section 20A, which:

1. Prohibits national securities exchanges and national securities associations from preventing their members from executing transactions for customers in other markets whenever those markets offer a better price to such customers;

2. Requires the SEC to adopt rules to assure that customers are getting best price from their brokers; and

3. Prohibits national securities exchanges and national securities associations from preventing its members from participating in any registered clearing agency or securities depository.

Section 210 amends Section 21 of the Securities Exchange Act of 1934 to give the SEC authority to investigate and bring injunctive actions for violations of NASD and exchange rules and bring injunctive actions to compel a registered national securities exchange or association to enforce compliance with the rules of such exchange or association.

TITLE III—FINANCIAL RESPONSIBILITY; REGULATION OF BROKERS, DEALERS AND MEMBERS; REPORTS AND EXAMINATIONS

Section 301 amends Section 8 of the Securities Exchange Act of 1934 to:

1. Delete that subsection dealing with capital rules (See, however, Section 304); and

2. Broaden existing prohibitions on improper hypothecation of securities by brokers, dealers and members to embrace improper lending of such securities.

Section 302 amends Section 15(a) of the Securities Exchange Act of 1934 to require all members of a registered national securities exchange to register with the SEC.

Section 303 amends Section 15(b) of the Securities Exchange Act of 1934 to:

1. Require persons registering as broker-dealers to file certified financial statements with their application (the current procedure calls only for verified statements);

2. Require the Commission to order effective an application for registration as a broker-dealer. (The law currently provides for such application to become effective automatically unless the Commission acts to prevent it.);

3. Require that, within six months of the granting of an application for registration, the Commission, or an exchange or the NASD as designated by the Commission, examine the new broker-dealer to determine whether it is operating in conformity with the federal securities laws;

4. Add armed robbery and grand larceny to the list of statutory offenses which bar a person from becoming a broker-dealer; and

5. Require the Commission, in cooperation with the exchanges and the NASD, to devise and administer a uniform examination which, with respect to partners, officers, and supervisory employees shall include questions relating to certain enumerated matters.

Section 304 amends Section 15(c)(3) of the Securities Exchange Act to:

1. Direct the SEC, by no later than January 1, 1974, to establish minimum capital requirements providing for ample, liquid and permanent capital for brokers, dealers and members;

2. Authorize the Commission to classify brokers, dealers and members for purposes of establishing such requirements; and

3. Prohibit the SEC from exempting from such requirements any broker, dealer or member.

Section 305 amends Section 17 of the Securities Exchange Act of 1934 to:

1. Make clear the duty of registered national securities exchanges to furnish copies of documents to the SEC upon request;

2. Require registered brokers, dealers and members to supply their customers with certified comparative balance sheets and income statements; and

3. Make clear the Commission's authority to adopt rules concerning a consolidated transactional tape and a composite quotation system and to prescribe uniformity in accounting procedures and systems of brokers and dealers and members.

TITLE IV—SECURITIES PROCESSING

Section 401 amends Section 2 of the Securities Exchange Act of 1934 to provide that one of the purposes of that Act is the development of an integrated national system for the prompt and accurate processing and settlement of securities transactions.

Section 402 amends Section 3(a) of the Securities Exchange Act of 1934 further by adding new paragraphs defining the following terms; clearing agency, securities depository, participant person associated with a participant, transfer agent, bank regulatory agency, rules of a clearing agency and rules of a securities depository.

Section 403 amends Section 15(c) of the Securities Exchange Act of 1934 further by adding a new paragraph to make clear that the Commission has authority to make rules applicable to brokers or dealers regulating the time and method of making settlements, payments and deliveries and of closing accounts. Also in the interests of clarity it is provided that, in the exercise of this rule-making authority, the Commission shall not affect the authority of the Board of Governors of the Federal Reserve System to regulate securities credit pursuant to Section 7 of the Securities Exchange Act.

Section 404 adds a new Section 17A to the Securities Exchange Act of 1934 dealing with the registration and regulation of clearing agencies, securities depositories and transfer agents. Under this section:

1. Clearing agencies, securities depositories and transfer agents are required to register with the SEC and appropriate procedures established;

2. Procedures are established under which the Commission must grant or deny applications for registration of clearing agencies and securities depositories;

3. The Commission is given the authority to establish terms and conditions under which a clearing agency, securities depository or transfer agent may withdraw from registration;

4. The SEC is given direct rulemaking power over clearing agencies, securities depositories and transfer agents;

5. The SEC is authorized to review clearing agency or securities depository action in the areas of disciplinary action or denial of admission to a participant; and

6. The Commission is given disciplinary powers with respect to clearing agencies, securties depositories and transfer agents.

This section also directs the SEC to, on or before December 31, 1976, take appropriate steps to eliminate the use of the stock certificate as a means of settlement of securities transactions between brokers and dealers.

Section 405 amends Section 24 of the Securities Exchange Act of 1934 to authorize the Commission to grant confidential treatment to material filed with it only under very limited conditions, including a finding that disclosure is not in the public interest.

Section 406 amends Section 12 of the Securities Exchange Act of 1934 by adding new subsections to:

1. Authorize the Commission to prescribe rules with respect to the form or format of securities issued by companies, any class of whose securities is registered under Section 12 of the Securities Exchange Act, or which would be required to be so registered except for the exemptions from registration provided for securities of registered investment companies or insurance companies under certain conditions; and

2. Direct every issuer whose securities are registered on a national securities exchange to consolidate in a single person the functions of transfer agent and registrar.

Section 407 further amends Section 19 of the Securities Exchange Act of 1934 to direct the Securities and Exchange Commission to conduct a study to consider the public policy implications of the growing practice of registering securities in "street name" and to determine whether steps can be taken to facilitate communications between corporations and their shareholders while, at the same time, retaining the benefits of such registration.

Section 408 amends Section 28 of the Securities Exchange Act of 1934 by adding a new subsection which prevents the imposition of state or local taxes on securities, or on the transfer of securities, solely because the facilities of a registered clearing agency or securities depository are physically located in the taxing jurisdiction.

Section 409 amends the Securities Exchange Act of 1934 by inserting a new section, designated 19A, to require registered national securities exchanges, associations, brokers, dealers, clearing agencies and securities depositories to:

1. Report information about missing, lost or stolen securities to the SEC or such person as the SEC designates; and

2. Require the fingerprinting of partners, directors, officers, and employees and the submittal of such fingerprints to the Attorney General of the United States for identification and appropriate processing.

TITLE V—MISCELLANEOUS

Section 501 amends Section 23(b) of the Securities Exchange Act of 1934 to require the SEC to include in its annual report to Congress certain designated information concerning the Commission's administration of the Freedom of Information Act.

Section 502 amends Section 31 of the Securities Exchange Act of 1934 to raise the amount of the registration fee every national securities exchange must pay to the SEC from $\frac{1}{500}$th of one percent to $\frac{1}{100}$th of one percent of the dollar amount of sales of securities (other than certain Governmental obligations) transacted on that exchange.

Section 503 amends the six acts administered by the SEC to make uniform criminal penalties which may be imposed under these acts.

Section 504 amends Section 203(c) of the Investment Advisers Act of 1940 to require the SEC to order the registration of an investment adviser effective rather than allowing such registration to take effect by the passage of time. This amendment conforms to Section 303's amendment of Section 15(b) of the Securities Exchange Act of 1934.

LIST OF COSPONSORS

Mr. Moss (for himself, Mr. Broyhill of North Carolina, Mr. Stuckey, Mr. Ware, Mr. Eckhardt, Mr. McCollister, Mr. Helstoski, Mr. Young of Illinois, and Mr. Breckinridge.)

H.R. —

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 "Securities Exchange Act Amendments of 1973".

TITLE I—SELECTION AND ADMINISTRATION OF THE COMMISSION

SEC. 101. (a) Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended to read as follows:

"SECURITIES AND EXCHANGE COMMISSION

SEC. 4. (a) There is hereby established a Securities and Exchange Commission (hereinafter referred to as the 'Commission') to be composed of five Commissioners to be appointed by the President by and with the advice and consent of the Senate. Not more than three of such Commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable. No Commissioner shall engage in any business, vocation, or employment other than that of serving as Commissioner, nor shall any Commissioner participate, directly or indirectly, in any stock market operations or transactions of a character subject to regulation by the Commission pursuant to this title. Each Commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the session of Congress in session at the time of the expiration of said fixed term of office, and except (1) any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (2) any Commissioner may be removed by the President for neglect of duty or malfeasance in office, but for no other cause.

"(b) The President shall appoint a Chairman from the Commission's membership, by and with the advice and consent of the Senate; and the Commissioner so appointed shall serve as Chairman until the expiration of his term as Commissioner (except that he may continue to serve as Chairman for so long as he remains a Commissioner and his successor as Chairman has not taken office). In considering any nomination to the office of Chairman the Senate shall give consideration to the qualifications of the nominee to serve as Chairman of the Commission. An individual may be appointed as a Commis-

sioner at the same time he is appointed as Chairman.

"(c) The Commission is authorized to appoint and fix the compensation of such officers, attorneys, examiners, and other experts as may be necessary for carrying out its functions under this Act without regard to the provisions of other laws applicable to the employment and compensation of officers and employees of the United States and the Commission may subject to the civil service laws appoint such other officers and employees as are necessary in the execution of its functions and fix their salaries in accordance with title 5, United States Code, as amended.

"(d) Notwithstanding any other provision of law—

"(1) the Commission is authorized to conduct in its own name and through its own attorneys litigation in any State court and in the United States district courts, courts of appeal and Supreme Court in any civil action in which the Commission is participating or chooses to participate.

"(2) whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that estimate or request to the Congress.

"(3) whenever the Commission transmits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations or testimony or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Commission voluntarily seeks to obtain the comments or review of any agency of the United States or of any other person, the Commission shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress.

"(e) (1) Notwithstanding section 24 of this Act, or any other provision of law, whenever the House Interstate and Foreign Commerce Committee or the Senate Banking, Housing and Urban Affairs Committee (or any subcommittee or member of either such committee under the authority of a rule or other action of such committee) makes a written request for documents in the possession or under control of the Commission, the Commission shall within two days after the receipt of such request submit to such committee all of such documents (or copies thereof).

"(2) If the Commission transfers any document in its possession or under its control to any other agency or to any person, it shall retain copies of such material, or if not feasible, shall condition the transfer on the transferee's returning such document to the Commission for purposes of complying with paragraph (1) of this subsection.

"(3) For purposes of this subsection, the term 'document' means any book, paper, correspondence, memorandum, or other record, including a copy of any of the foregoing.

"(4) This subsection shall not be deemed to restrict any other authority of either House of Congress or any committee or subcommittee thereof to obtain documents."

(b) Reorganization Plan Numbered 10 of 1950 (64 Stat. 1265) is amended by striking out section 3.

(c) The amendments and repeals made by this section shall not require the reappointment or effect the terms of members of the Commission (including the Chairman of the Commission) holding office on the effective date of the Securities Exchange Act Amendments of 1973.

TITLE II—REGULATION OF EXCHANGES AND ASSOCIATIONS

SEC. 201. (a) Section 3(a)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78c (a)(3)) is amended to read as follows:

"(3) The term 'member' when used with respect to an exchange means (A) any person who is permitted to effect transactions on the exchange without the services of another person acting as broker, or (B) any person who transacts business as a broker or a dealer who agrees to be regulated by an exchange and with respect to whom the exchange undertakes to enforce compliance with its rules and with the provisions of this title, and any amendment thereto and any rule or regulation made or to be made thereunder, and includes any broker or dealer with which a member is an associated person."

(b) The amendment made by subsection (a) of this section shall take effect February 1, 1975.

SEC. 202. Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended to read as follows:

"NATIONAL SECURITIES EXCHANGES

"SEC. 6. (a) Any exchange may register with the Commission as national securities exchange under the terms and conditions provided in this section by filing with the Commisison a registration statement in such form as the Commission may prescribe setting forth the following information and accompanied by the following documents:

"(1) Copies of its constitution, articles of incorporation, bylaws, or rules or instruments corresponding to the foregoing, and its stated policies and practices relating to its organization, membership, and procedures, hereinafter collectively referred to in this title as the 'rules of the exchange'.

"(2) Such other information as the Commission may, by rule, require.

"(b) An applicant shall not be registered as a national securities exchange unless it appears to the Commission that—

"(1) such exchange will be able to comply with the provisions of this title, and the rules and regulations thereunder, and to enforce compliance by its members with this title and the rules and regulations thereunder, and with the rules of the exchange and to carry out the purposes of this section;

"(2) the rules of the exchange provide that any broker or dealer registered under this title may become a member of such exchange in conformity with the requirements of subsection (m) of this section;

"(3) the rules of the exchange assure a fair representation of its members, investors, issuers of securities listed on the exchange, and the public, in the adoption of rules of the exchange and amendments thereto, the selection of its officers and directors, and in all other phases of the administration of its affairs, including, as a minimum, provisions that—

"(A) at least half of the governing body of the exchange, whether called a Board of Governors, Board of Directors, or some other name, consist of individuals who are not brokers, dealers, members, persons associated with a broker or dealer or persons associated with a member, and who are representative of all segments of the investing public (hereinafter referred to as the 'public representatives');

"(B) the public representatives elect their own successors to the governing body of the exchange;

"(C) on voting for members of the governing body of the exchange who are not public representatives, the exchange members have cumulative voting rights;

"(D) the governing body of the exchange has the power to amend the rules of the exchange;

"(E) the exchange appropriate for the use of the public representatives such sums as are necessary to permit the public representatives to employ such staff or retain such attorneys, consultants, or other experts as they may reasonably require, independent of the exchange staff;

"(F) the voting power of members of the exchange is distributed on a fair and equitable basis; and

"(G) there are reasonable limits on the length of time and the number of terms members of the governing body may serve;

"(4) the rules of the exchange provide for the equitable allocation of dues, fees, and other charges among its members;

"(5) the rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to provide safeguards against unreasonable profits or unreasonable rates of commissions or other charges, and, in general, to protect investors and the public interest, and to remove impediments to and perfect the mechanism of a free and open market; and are not designed to permit unfair discrimination between or among customers, issuers, or brokers or dealers, to fix minimum profits, to impose any schedule of prices, or to impose any schedule or fix rates of commissions, allowances, discounts, or other charges, except that (A) until February 1, 1974, such rules may fix reasonable minimum rates of commission for transactions or portions of transactions which involve $200,000 or less; and (B) until February 1, 1975, such rules may fix reasonable minimum rates of commissions for transactions or portions of transactions which involve $100,000 or less: *Provided*, however, That the Commission may, by rule, permit an exchange to fix reasonable minimum rates of commission until February 1, 1976, for transactions or portions of transactions which involve $100,000 or less if the Commission finds that the public interest requires the continuation, establishment, or reestablishment of reasonable fixed minimum rates for such transactions or portions of transactions.

"(6) the rules of the exchange provide that its members and persons associated with its members shall be appropriately disciplined for any violation of its rules by expulsion, suspension, fine, or censure, and in the case of a person associated with a member, by being suspended or barred from being associated with a member;

"(7) the rules of the exchange provide a fair and orderly procedure with respect to the disciplinary of members and persons associated with members and the denial of membership to any person seeking membership therein including that the rules, as a minimum, meet the requirements of subsections (f) and (g) of this section; and

"(8) the rules of the exchange are sufficient and reasonably necessary to permit the exchange to discharge its regulatory responsibilities under this title.

"(c) The Commission shall, upon the filing of an application for registration pursuant to subsection (a) publish notice of the filing and afford interested persons a reasonable opportunity for comment. Within sixty days of the filing of an application for registration pursuant to subsection (a) the Commission shall—

"(1) by order grant such registration if the Commission finds that the requirements of this section are satisfied, or

"(2) institute appropriate administrative action to determine whether the application should be denied. If, after appropriate notice and opportunity for hearing, the Commission finds that any requirement of this section is not satisfied, the Commission shall by order deny such registration. The Commission shall conclude administrative action and issue an order either granting or denying an application within one hundred and twenty days

of the filing of the application, unless the Commission finds good cause for extending the period, in which case, the Commission may extend such period for an additional ninety days.

"(d) A registered national securities exchange may, upon such terms and conditions as the Commission may deem necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any such registrant or such other person for whom an application of registration is pending is no longer in existence or has ceased to do business in the capacity specified in the registration statement, the Commission shall by order cancel or deny the registration.

"(e) (1) Each registered national securities exchange shall file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed changes in, additions to, deletions from or amendments to the rules of the exchange, to be accompanied by a summary statement of the basis and purpose of such proposed change, addition, deletion or amendment, and such other information and documents as the Commission may require to keep current or supplement the registration statement and documents filed pursuant to subsection (a). No such proposed change, addition, deletion or amendment shall take effect except in accordance with the provisions of this subsection.

"(2) The Commission shall, upon the filing of a proposed change, addition, deletion or amendment, publish notice of such proposal together with the exchange's statement of basis and purpose, and shall afford interested persons a reasonable opportunity for comment on the proposed change, addition, deletion or amendment. Such proposed changes, additions, deletions or amendments shall take effect sixty days after publication of such notice by the Commission, unless the Commission, by order, disapproves such proposed change, addition, deletion or amendment as inconsistent with the purposes of this title or otherwise inconsistent with the public interest, but the Commission may extend this time up to an additional ninety days by providing interested persons an opportunity for oral presentation of views, data or arguments concerning the proposed change, addition, deletion or amendment.

(f) In any proceeding to determine whether a member or person associated with a member should be disciplined, rules of a national securities exchange registered under this section shall require that specific charges of any violation be brought; that such member or person associated with a member shall be notified of and be given an opportunity to defend against such charges; and that a record shall be kept. A determination to take disciplinary action shall be supported by a statement setting forth—

"(1) any act or practice in which such member or person associated with such member may be found to have engaged, or any required act or practice which such member or person associated with such member may be found to have omitted;

"(2) the specific rule or rules of the exchange or provisions of this title or rules or regulations thereunder which any such act or practice, or omission to act, is deemed to violate; and

"(3) the sanction or penalty imposed and the reasons for that sanction or penalty.

Such statement shall be publicly noticed in accordance with such procedures as the Commission shall, by rule, specify which rule shall, as a minimum, require that such statement be sent to all members of such exchange and be published in a manner reasonably designed to provide investors with notice of such disciplinary action.

"(g) In any proceeding to determine whether a person shall be denied membership, rules of a national securities exchange registered under this section shall provide that the applicant for membership shall be notified of, and be given an opportunity to be heard upon, the specific grounds for denial which are under consideration; and that a record be kept. A determination to deny membership shall be supported by a statement setting forth the specific grounds on which the denial is based.

"(h) (1) If any registered national securities exchange takes any disciplinary action against or concludes disciplinary proceedings with respect to any member thereof, or any person associated with a member, or denies admission to any person seeking membership therein, the exchange shall promptly notify the Commission. Such action or proceedings shall be subject to review by the Commission, on its own motion, or upon application by any person aggrieved thereby filed within thirty days after notice of such action has been received by the Commission or within such longer period as the Commission may determine. The Commission may, upon the application of an aggrieved party for review or upon the initiation of review by the Commission on its own motion, order a stay of such disciplinary action pending completion of the review proceeding.

"(i) (1) In a proceeding to review disciplinary proceedings of a national securities exchange registered under this section with respect to a member or any person associated with a member, after notice and opportunity for hearing—

"(A) if the Commission finds that such member or such person has engaged in such acts or practices, or has omitted such acts, as the exchange has charged or has found him to have engaged in or to have omitted, and determines that such acts or practices, or omission to act, are in violation of the provisions of this title, or the rules adopted thereunder, or the rules of the exchange as have been designated in the determination of the exchange, it shall by order so declare and affirm the action taken by the exchange or, if appropriate, modify the sanctions or penalties in accordance with paragraph (2) of this subsection; or

"(B) if the Commission finds that such person has not engaged in such acts or practices, or has not omitted such acts, as the exchange has charged or has found him to have engaged in or to have omitted, or that such acts or practices are not prohibited by the designated provisions of this title, or the rules adopted thereunder, or by the designated rule or rules of the exchange or that such act is alleged or found to have been omitted is not required by such designated provisions, rule or rules, the Commission shall by order so declare and set aside the action of the exchange.

"(2) If the Commission, having due regard for the public interest, finds that the disposition of the proceedings before the exchange with respect to sanctions or penalties against a member or person associated with a member is inappropriate, the Commission may, by order, cancel, reduce, require the remission, increase, broaden the scope of or otherwise require the modification of such sanction or penalty or require the imposition of a different sanction or penalty.

"(j) In any proceeding to review the denial of membership in a registered national securities exchange, if the Commission, after appropriate notice and opportunity for hearing, (A) finds that the specific grounds on which such denial or bar is based exist in fact and are valid under this section, it shall by order so declare and affirm the exchange's action; or (B) finds that the specific grounds do not exist or are invalid under the section, the Commission shall by order so declare and set aside the action of the exchange and require it to admit the applicant to membership.

"(k) National securities exchanges registered under this section, with the concurrence of the Commission, may, with respect to any person who is a member of more than one exchange, agree to share the costs, functions, and the responsibility for the conduct of examinations and inspections of such member.

"(l) A registered national securities exchange shall furnish copies of any reports of inspections or examinations of its members to any other national securities exchange or national securities association of which such member is a member upon the request of such member, exchange or association, or upon the request of the Commission.

"(m) A registered national securities exchange shall permit any broker or dealer registered under this title to become a member of such exchange; except that, any exchange may—

"(1) deny membership to any person who has been expelled or suspended from membership in any other exchange or any registered national securities association during the period of such expulsion or suspension;

"(2) with the approval of the Commission, deny membership to any person on those grounds set forth in section 15 of this title upon which such person may be denied registration under that section;

"(3) condition membership on the member's meeting financial responsibility requirements which are additional to those imposed by rules or regulations adopted pursuant to section 15 of this title and which the Commission determines are reasonable and consistent with the purposes of this title and with the public interest; and

"(4) condition membership on the member's meeting competency requirements which are additional to those imposed by rules or regulations adopted pursuant to section 15(b)(8) and which the Commission determines are reasonable and consistent with the purposes of this title and with the public interest.

An exchange may limit the number of its members permitted to effect transactions on the exchange without the services of another person acting as broker to the extent that such limitations are found by the Commission to be justified by reason of limitations in the physical capacity of the exchange.

"(n) This section shall not require any securities exchange which was registered on the date of enactment of the Securities Exchange Act Amendments of 1973 to re-register with the Commission. Six months after the effective date of such Act, the Commission shall, after notice and opportunity for hearing, suspend the registration of any such exchange if it finds that the rules of the exchange do not conform to the requirements of this section, and any such suspension shall remain in effect until the Commission issues an order determining that such rules have been modified to conform with such requirements."

SEC. 203. The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended to add after section 6 of the following new section:

"AUTHORITY TO AMEND EXCHANGE RULES

"SEC. 6A. (a) The Commission, by rule or regulation, may amend the rules of any registered exchange (the term 'amend,' when used with respect to any rule of a registered exchange, means to abrogate, or compel the adoption of an alteration of, or supplement to, such rule, or to adopt a new rule) in the following manner:

"(1) The Commission shall publish in the Federal Register its proposed rule or regulation, which shall contain the text of the proposed amendment in the rules of the registered exchange; a full statement of the bases for the Commission's determination to require the amendment; any facts upon which the Commission's determination is founded; and an evaluation by the Commission of the

effect of the proposed amendment to the rules of such exchange.

"(2) Rules or regulations which have been proposed under paragraph (1) shall be promulgated pursuant to section 553 of title 5, United States Code, except that the Commission shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation. The Commission may make written submissions or oral presentations respecting any matter on which it intends to rely under paragraph (3) in promulgating the rule or regulation. Any such submission or presentation by the Commission shall be included in the record of the proceeding.

"(3) Whenever the Commission promulgates a rule or regulation to which this subsection applies, it shall publish with such rule or regulation a statement describing the bases for the Commission's determination to require the amendment, and containing any facts upon which the Commission's determination is founded, and an evaluation by the Commission of the effect of the proposed amendment and on valuation of the principal arguments made in any oral presentation under paragraph (2) or in any written comment submitted under such paragraph.

"(b)(1) Within one hundred twenty days from the promulgation of such rule or regulation any person adversely affected by a rule or regulation prescribed under subsection (a) may file a petition with the United States Court of Appeals for the District of Columbia or for the circuit in which such person resides or has his principal place of business for judicial review of such regulation. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by it for that purpose. The Commission shall file in the court the record of the proceedings on which the Commission based its rule or regulation. For purposes of this subsection, the term 'record' means the regulation, and the statement published therewith; the transcript required by subsection (a)(2) of any oral presentations by the Commission and by interested persons; and any written submission by interested persons or by the Commission in a proceeding under such subsection and any additional views, data, or arguments adduced pursuant to paragraph (2) of this subsection.

"(2) If the petitioner applies to the court for leave to adduce additional data, views, or arguments and shows to the satisfaction of the court that such additional data, views, or arguments are material and that there were reasonable grounds for the petitioner's failure to adduce such data, views, or arguments in the proceeding before the Commission, the court may order the Commission to provide additional opportunity for the oral presentation of data, views, or arguments and for written submissions. The Commission may modify its findings, or make new findings by reason of the additional data, views, or arguments so taken and shall file such modified or new findings, and its recommendations, if any, for the modification or setting aside of its original rule or regulation, with the return of such additional data, views, or arguments.

"(3) Upon the filing of the petition under paragraph (1) of this subsection the court shall have jurisdiction to review the regulation in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided in such chapter; except that the regulation shall not be affirmed unless the Commission shows that, on the basis of the record taken as a whole, (A) its action is prescribing the rule or regulation is not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; and (B) that its action is not (i) contrary to constitutional right, power, privilege, or immunity; (ii) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right; or (iii) without observance of procedure required by law.

"(4) The judgment of the court affirming or setting aside, in whole or in part, any rule or regulation under subsection (b) shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28 of the United States Code.

"(5) The remedies provided for in this subsection shall be in addition to and not in lieu of any other remedies provided by law."

SEC. 204. Section 11(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78h(a)) is amended to read as follows:

"(a)(1) The Commission shall prescribe such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors, (A) to regulate or prevent floor trading by members of national securities exchanges, directly or indirectly for their own account or for discretionary accounts, and (B) to regulate or prevent trading on the exchange but off the floor by members, directly or indirectly for their own account, or for the account of any affiliated person as defined in section 11A of this title. Rules under this section shall, as a minimum, (i) require that transactions on the floor by members, directly or indirectly for their own account or for discretionary accounts, and transactions on the exchange but off the floor by members, directly or indirectly for their own account or for the account of any such affiliated person, shall yield priority, parity, and precedence to orders of nonaffiliated persons and (ii) prevent those transactions which do not contribute to the maintenance of a fair and orderly market.

"(2) It shall be unlawful for a member to effect any transaction in a security in contravention of rules and regulations under paragraph (1), but such rules and regulations may make such exemptions for arbitrage, block positioning or market maker transactions, for transactions in exempted securities, for transactions by odd-lot dealers and specialists (within the limitations of subsection (b) of this section), and for such other transactions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors. Rules under this subsection may limit the aggregate amount of such transactions in relation to the total transactions effected by such member on a national securities exchange."

SEC. 205. The Securities Exchange Act of 1934 is amended by inserting after section 11 (15 U.S.C. 78h) the following new section:

"TRANSACTIONS WITH AFFILIATED PERSONS

"SEC. 11A. (a)(1) On or after February 1, 1974, it shall be unlawful for any member of a registered national securities exchange to effect, whether as broker or dealer, any transaction on an exchange for himself or with or for any affiliated person. For purposes of this section an 'affiliated person' shall include—

"(A) any person directly or indirectly controlling, controlled by or under common control with such member, whether by contractual arrangement or otherwise;

"(B) any officer, director, partner or employee of such member or any person or account in which such member or officer, director, partner or employee of such member has a direct or indirect interest or any person or account of such person directly or indirectly controlling, controlled by, or under common control with an officer, director, partner or employee of such member; and

"(C) any person (including any investment company, insurance company, bank, trust company, pension-benefit or profit sharing or similar plan, foundation, or educational or charitable endowment), for which such member or any person controlled by, controlling or under common control with such member, or any partner, officer, director or employee of such member: (i) is empowered to determine what securities or other property shall be purchased or sold or is otherwise authorized to select the securities bought or sold or (ii) regularly furnishes advice with respect to the desirability of investing in, purchasing or selling securities or other property. For the purposes of this section a member or an affiliate of such member shall not be considered to be regularly furnishing advice with respect to the desirability of investing in, purchasing or selling securities or other property if such member or its affiliate furnishes only statistical or other factual information, advice regarding economic factors and trends, or advice as to occasional transactions in specific securities or if such member's or affiliate's advice is furnished solely through uniform publications distributed to subscribers thereto.

For purposes of this section a person controls another person if such person has a right to participate to the extent of 10 per centum or more in the profits of such other person or owns beneficially, directly or indirectly, 10 per centum or more of the outstanding voting securities of such person, or if such person accounts for 10 per centum or more of the value of exchange transactions effected by such member in any six-month period, whether as broker or dealer.

"(2) The provisions of paragraph (1) of this subsection shall not apply to—

"(A) any transaction by a registered specialist, acting in such capacity, in a security in which he is so registered;

"(B) any transaction for the account of an odd-lot dealer in a security in which he is so registered;

"(C) any transaction determined by an exchange in accordance with criteria acceptable to the Commission to be a transaction by a block positioner acting as such, except where an affiliated person is a party to the transaction;

"(D) any stabilizing transaction effected in compliance with rules under section 10(b) of this title to facilitate a distribution of a security in which the member effecting such transaction is participating;

"(E) any bona fide arbitrage transaction, including hedging between an equity security and a security entitling the holder to acquire such equity security, or any risk arbitrage transaction in connection with a merger, acquisition, tender, offer, or similar transaction involving a recapitalization;

"(F) any transaction for the account of an individual for which a member of an affiliated person exercises investment discretion if such individual is not otherwise an affiliated person of such member;

"(G) any transaction for a member who is an individual, or for an account of an affiliated person who is an individual, made in compliance with rules promulgated by the Commission under section 11(a) of this title; and

"(H) any transaction to offset a transaction made in error.

"(b) Any member of an exchange who does not comply with the requirements of this section, and who acquired membership on such exchange prior to February 1, 1973, shall be given a period not to exceed one year following the effective date of this subsection to bring itself into compliance if within thirty days after the effective date of this subsection such member shall furnish a written commitment to the exchange of which it is a member to make good faith efforts to comply with the requirements of this subsection, accompanied by a written plan setting forth in detail those steps such member intends to take to comply with such requirements. No plan filed pursuant to this subsection shall be deemed to satisfy the

requirements of this subsection unless the plan has been declared effective by the exchange with which it is filed after the exchange has first reviewed the plan and determined that it is reasonably calculated to enable such member to comply with the requirements of this subsection within one year from the effective date of this subsection.

"(c) The failure of an exchange diligently and effectively to enforce any provision of this subsection, or to require diligent compliance by any of its members with the terms of an effective plan filed by such member with that exchange pursuant to subsection (b) of this subsection, shall constitute a violation of this title.

"(d) After appropriate notice and opportunity for hearing, the Commission may in addition to any disciplinary action taken by the exchange order any member to forfeit and pay over to the Treasury of the United States any commission or other charge made in connection with transactions not in compliance with the provisions of this section."

SEC. 206. Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) is amended to read as follows:

"NATIONAL SECURITIES ASSOCIATIONS

"SEC. 15A. (a) Any association of brokers or dealers may register with the Commission as a national securities association pursuant to subsection (b) under the terms and conditions provided in this section, by filing with the Commission a registration statement in such form as the Commission may prescribe, setting forth the following information and accompanied by the following documents:

"(1) Copies of its constitution, articles of incorporation, bylaws, or rules or instruments corresponding to the foregoing, and its stated policies and practices relating to its organization, membership, and procedures, hereinafter collectively referred to in this title as the 'rules of the association'.

"(2) Such other information as the Commission may, by rule, require.

"(b) An applicant shall not be registered as a national securities association unless it appears to the Commission that—

"(1) such association will be able to comply with the provisions of this title, and the rules and regulations thereunder, and to enforce compliance by its members with this title and the rules and regulations thereunder, and with the rules of the association and to carry out the purposes of this section.

"(2) the rules of the association provide that any broker or dealer who makes use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security otherwise than on a national securities exchange, may become a member of such association, except such as are excluded pursuant to paragraph (3) of this subsection, or a rule of the association permitted under this paragraph. The rules of the association may condition membership (i) on the member's meeting financial responsibility requirements which are additional to those imposed under section 15 of this title and which the Commission determines are reasonable and consistent with the purposes of this title and with the public interest; or (ii) on the member's meeting competency requirements which are additional to those imposed under section 15 (b) (8) and which the Commission determines are reasonable and consistent with the purposes of this title and with the public interest. Rules adopted by the association may provide that the association may, unless the Commission directs otherwise in cases in which the Commission finds it appropriate in the public interest so to direct, deny admission to or refuse to continue in such association any broker or dealer if—

"(A) such broker or dealer, whether prior or subsequent to becoming such, or

"(B) any person associated with such broker or dealer, whether prior or subsequent to becoming so associated,

has been and is suspended or expelled from a national securities exchange registered under section 6 of this title or an association registered under this section, or has been and is barred or suspended from being associated with all members of such exchange or such association, for violation of any rule of such exchange or association.

"(3) the rules of the association provide that, except with the approval or at the direction of the Commission in cases in which the Commission finds it appropriate in the public interest so to approve or direct no broker or dealer shall be admitted to or continued in membership in such association, if such broker or dealer—

"(A) has been and is suspended or expelled from a registered securities association or from a national securities exchange or has been and is barred or suspended from being associated with all members of such association or from being associated with all brokers or dealers which are members of such exchange, for violation of any rule of such association or exchange which prohibits any act or transaction constituting conduct inconsistent with just and equitable principles of trade, or requires any act the omission of which constitutes conduct inconsistent with just and equitable principles of trade.

"(B) is subject to an order of the Commission denying, suspending for a period not exceeding twelve months, or revoking his registration pursuant to section 15 of this title, or expelling or suspending him from membership in a registered securities association or a national securities exchange, or barring or suspending him from being associated with a broker or dealer.

"(C) whether prior or subsequent to becoming a broker or dealer, by his conduct while associated with a broker or dealer, was a cause of any suspension, expulsion, or order of the character described in clause (A) or (B) which is in effect with respect to such broker or dealer, and in entering such a suspension, expulsion, or order, the Commission or any such exchange or association shall have jurisdiction to determine whether or not any person was a cause thereof.

"(D) has associated with any person who is known, or in the exercise of reasonable care should be known, to him to be a person who, if such person were a broker or dealer, would be ineligible for admission to or continuance in membership under clause (A), (B), or (C) of this paragraph.

"(4) the rules of the association assure a fair representation of its members, investors, issuers and the public in the adoption of any rule of the association or amendment thereto, the selection of its officers and directors, and in all other phases of the administration of its affairs, including as a minimum, that the rules require that—

"(A) at least half of the governing body of the association, whether called a Board of Governors, Board of Directors, or some other name, consist of individuals who are not brokers, dealers, members, persons associated with a broker or dealer or persons associated with a member, and who are representative of all segments of the investing public (hereinafter referred to as the 'public representatives');

"(B) the public representatives elect their own successors to the governing body of the association;

"(C) on voting for members of the governing body of the association who are not public representatives, the association members have cumulative voting rights;

"(D) the governing body of the association has the power to amend the rules of the association;

"(E) the association will appropriate for the use of the public representatives such sums as are necessary to permit the public representatives to employ such staff or retain such attorneys, consultants, or other experts as they may reasonably require, independent of the association's staff;

"(F) the voting power of members of the association is distributed on a fair and equitable basis; and

"(G) there are reasonable limits on the amount of time and the number of terms members of the governing body may serve;

"(5) the rules of the association provide for the equitable allocation of dues, fees, and other charges among its members,

"(6) the rules of the association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to provide safeguards against unreasonable profits or unreasonable rates of commissions or other charges, and, in general, to protect investors and the public interest, and to remove impediments to and perfect the mechanism of a free and open market; and are not designed to permit unfair discrimination between customers or issuers, or brokers, or dealers, to fix minimum profits, to impose any schedule of prices, or to impose any schedule or fix minimum rates of commissions, allowances, discounts, or other charges.

"(7) the rules of the association provide that its members and persons associated with its members shall be appropriately disciplined, by expulsion, suspension, fine, censure, or being suspended or barred from being associated with all members, or any other fitting penalty, for any violation of its rules.

"(8) the rules of the association provide a fair and orderly procedure with respect to the disciplining of members and persons associated with members and the denial of membership to any broker or dealer seeking membership therein or the barring of any person from being associated with a member. In any proceeding to determine whether any member or other person shall be disciplined, such rules shall require that specific charges be brought; that such member or person shall be notified of, and be given an opportunity to defend against, such charges; that a record shall be kept; and that the determination shall include—

"(A) a statement setting forth any act or practice in which such member or other person may be found to have engaged, or which such member or other person may be found to have omitted.

"(B) a statement setting forth the specific rule or rules of the association of which any such act or practice, or omission to act, is deemed to be in violation.

"(C) a statement whether the acts or practices prohibited by such rule or rules, or the omission of any act required thereby, are deemed to constitute conduct inconsistent with just and equitable principles of trade.

"(D) a statement setting forth the penalty imposed and the reasons for the penalty.

The statement containing the information called for in (A) through (D) above shall be publicly noticed in accordance with such procedures as the Commission shall, by rule, specify, which rule shall, as a minimum, require that such statement be sent to all members of the association and be published in a manner reasonably designed to provide investors with notice of such disciplinary action. In any proceeding to determine whether a broker or dealer shall be denied membership or whether any person shall be barred from being associated with a member, such rules shall provide that the broker or dealer or person shall be notified of, and be given an opportunity to be heard upon, the specific grounds for denial or bar which are under consideration; that a record shall be kept; and that the determination shall set forth the specific grounds upon which the denial or bar is based.

"(9) the rules of the association include

provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be disseminated by any member or any person associated with a member, and the persons to whom such quotations may be supplied. Such rules relating to quotations shall be designed to produce fair and informative quotations, both at the wholesale and retail level, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting and publishing quotations.

"(10) the rules of the association are sufficient and reasonably necessary to permit the association to discharge its regulatory responsibilities under this title.

"(c) The Commission shall, upon the filing of an application for registration pursuant to subsection (b), publish notice of the filing and afford interested persons a reasonable opportunity for comment. Within sixty days of the filing of an application for registration pursuant to subsection (b) the Commission shall—

"(1) by order grant such registration if the requirements of this section are satisfied, or

"(2) institute appropriate administrative action to determine whether the application should be denied. If, after appropriate notice and opportunity for hearing, it appears to the Commission that any requirement of this section is not satisfied, the Commission shall by order deny such registration. The Commission shall conclude administrative action and issue an order granting or denying an application within one hundred and twenty days of the filing of the application, unless the Commission finds good cause for extending the period, in which case the Commission may extend such period for an additional ninety days.

"(d) A registered securities association may, upon such terms and conditions as the Commission may deem necessary in the public interest or for the protection of investors, withdraw from registration by filing with the Commission a written notice of withdrawal in such form as the Commission may prescribe.

"(e) If any registered securities association takes any disciplinary action against or concludes disciplinary proceedings with respect to any member thereof or any person associated with such a member or denies admission to any broker or dealer seeking membership therein, or bars any person from being associated with a member, the association shall promptly notify the Commission. Such action or proceedings shall be subject to review by the Commission, on its own motion, or upon application by any person aggrieved thereby filed within thirty days after notice of such action has been received by the Commission, or within such longer period as Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall operate as a stay of such action until an order is issued upon such review pursuant to subsection (h), unless the Commission otherwise orders after notice and opportunity for hearings on the question of a stay (which hearing may consist solely of affidavits and oral arguments).

"(f)(1) In a proceeding to review disciplinary proceedings of a registered securities association with respect to a member thereof or a person associated with a member, if the Commission, after appropriate notice and opportunity for hearing,

"(A) finds that such member or person has engaged in such acts or practices, or has omitted such act, as the association has charged or has found him to have engaged in or omitted, and

"(B) finds that such acts or practices, or omission to act, are in violation of such rules of the association as have been designated in the charges or the determination of the association,

the Commission shall by order so declare and, if appropriate, dismiss the review proceeding, unless it appears to the Commission that such action should be modified in accordance with paragraph (2) of this subsection. The Commission shall likewise determine whether the acts or practices prohibited, or the omission of any act required, by any such rule constitute conduct inconsistent with just and equitable principles of trade, and shall so declare. If the Commission finds that the evidence does not warrant the finding required in clause (A), or if the Commission finds that such acts or practices are not prohibited by the designated rule or rules of the association, or that such act as is alleged or found to have been omitted is not required by such designated rule or rules, the Commission shall by order so declare and, if appropriate, set aside the action of the association.

"(2) If the Commission, having due regard for the public interest, finds that the disposition of the proceedings before the association with respect to sanctions or penalties against a member or person associated with a member is inappropriate, the Commission may by order cancel, reduce, require the remission, increase, broaden the scope or otherwise require the modification of such sanction or penalty or require the imposition of different sanction or penalty.

"(3) In any proceeding to review the denial of membership in a registered securities association or the barring of any person from being associated with a member, if the Commission, after appropriate notice and opportunity for hearing, finds that the specific grounds on which such denial or bar is based exist in fact and are valid under this section, the Commission shall by order dismiss the proceeding; otherwise, the Commission shall by order set aside the action of the association and require it to admit the applicant broker or dealer to membership therein, or to permit such person to be associated with a member.

"(g)(1) The rules of a registered securities association may provide that no member thereof shall deal with any nonmember broker or dealer (as defined in paragraph (2) of this subsection) except at the same prices, for the same commissions or fees, and on the same terms and conditions as are by such member accorded to the general public.

"(2) For the purposes of this subsection, the term 'nonmember broker or dealer' shall include any broker or dealer who makes use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security otherwise than on a national securities exchange, who is not a member of any registered securities association, except a broker or dealer who deals exclusively in commercial paper, bankers' acceptances, or commercial bills.

"(3) Nothing in this subsection shall be so construed or applied as to prevent any member of a registered securities association from granting to any other member of any registered securities association any dealer's discount, allowance, commission, or special terms.

"(h)(1) Every registered securities association shall file with the Commission in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, copies of any proposed changes in, additions to, deletions from, or amendments to the rules of the association, accompanied by a summary statement of the basis and purpose of such proposed change, addition, deletion, or amendment, and such other information and documents as the Commission may require to keep current or to supplement the registration statement and documents filed pursuant to subsection (a). No such proposed change, addition, deletion, or amendment shall take effect except in accordance with the provisions of this subsection.

"(2) The Commission shall, upon the filing of a proposed change, addition, deletion or amendment, publish notice of such proposal together with the association's statements of basis and purpose, and shall afford interested persons a reasonable opportunity for comment on the proposed change, addition, deletion or amendment. Such proposed changes, additions, deletions or amendments shall take effect sixty days after publication of such notice by the Commission, unless the Commission, by order, disapproves such proposed change, addition, deletion or amendment as inconsistent with the purposes of this title or otherwise inconsistent with the public interest, but the Commission may extend this time up to an additional ninety days by providing interested persons an opportunity for oral presentation of views, data or arguments concerning the proposed change, addition, deletion or amendment.

"(i) This section shall not require a national securities association which was registered with the Commission on the date of enactment of the Securities Exchange Act Amendments of 1973 to re-register with the Commission. Six months after the effective date of such Act, the Commission shall, after notice and opportunity for hearing, suspend the registration of any such association if it finds that the rules thereof do not conform to the requirements of this section, as amended by section 206 of the Securities Exchange Act Amendments of 1973 and any such suspension shall remain in effect until the Commission issues an order determining that such rules have been modified to conform with such requirements.

"(j) The Commission is authorized, if such action appears to it to be necessary or appropriate in the public interest or for the protection of investors or to carry out the purposes of this section—

"(1) after appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or to revoke the registration of a registered securities association, if the Commission finds that such association has violated any provision of this title or any rule or regulation thereunder, or has failed to enforce compliance with such rules or with its own rules, or has engaged in any other activity tending to defeat the purposes of this section.

"(2) after appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or to expel from a registered securities association any member thereof, or to suspend for a period not exceeding twelve months or to bar any person from being associated with a member thereof, if the Commission finds that such member or person has willfully violated any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or of this title or a rule or regulation under any of such statutes, or has violated a rule of such association or of any national securities exchange of which such person was a member, or has effected any transaction for any other person who, he had reason to believe, was violating with respect to such transaction any provision of any of such statutes or any rule or regulation thereunder or any rule of such association or of any national securities exchange of which such person was a member.

"(3) after appropriate notice and opportunity for hearing, by order to remove from office any officer, director, or employee of a registered securities association who, the Commission finds, has willfully failed to enforce the rules of the association, or has willfully abused his authority.

"(k) Nothing in this section shall be con-

strued to apply with respect to any transaction by a broker or dealer in any exempted security."

SEC. 207. The Securities Exchange Act of 1934 is amended by adding after section 15A (15 U.S.C. 17o–3) the following new section:

"AUTHORITY TO AMEND ASSOCIATION RULES

"SEC. 15B. (a) The Commission, by rule or regulation, may amend the rules of any registered association (the term 'amend' when used with respect to any rule of a registered association, means to abrogate, or compel the adoption of an alteration of, or supplement to, such rule, or to adopt a new rule) in the following manner:

"(1) The Commission shall publish in the Federal Register a proposed rule or regulation, which shall contain the text of the proposed amendment to the rules of the registered association; a full statement of the bases for the Commission's determination to require the amendment; any facts upon which the Commission's determination is founded; and an evaluation by the Commission of the effect of the proposed amendment to the rules of such association.

"(2) Rules or regulations which have been proposed under paragraph (1) shall be promulgated pursuant to section 553 of title 5, United States Code, except that the Commission shall give interested persons an apportunity for the oral presentation of data, views, or arguments, in addition to an apportunity to make written submissions. A transcript shall be kept of any oral presentation. The Commission may make written submissions or oral presentations respecting any matter on which it intends to rely under paragraph (3) in promulgating the rule or regulation. Any such submission or presentation by the Commission shall be included in the record of the proceeding.

"(3) Whenever the Commission promulgates a rule or regulation to which this subsection applies, it shall publish with such rule or regulation a statement describing the basis for the Commission's determination to require the amendment; and containing any facts upon which the Commission's determination is founded, and an evaluation by the Commission of the effect of the proposed amendment, and an evaluation of the principal arguments made in any oral presentation under paragraph (2) or in any written comment submitted under such paragraph.

"(b)(1) Within one hundred twenty days from the promulgation of such rule or regulation any person adversely affected by a rule or regulation prescribed under subsection (a) may file a petition with the United States Court of Appeals for the District of Columbia or for the circuit in which such person resides or has his principal place of business for judicial review of such regulation. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by it for that purpose. The Commission shall file in the court the record of the proceedings on which the Commission based its rule or regulation. For purposes of this subsection, the term 'record' means the regulation, and the statement published therewith; the transcript required by subsection (b)(2) of any oral presentations by the Commission and by interested persons: and any written submission by interested persons or by the Commission in a proceeding under such subsection and any additional views, data, or arguments adduced pursuant to paragraph (2) of this subsection.

"(2) If the petitioner applies to the court for leave to adduce additional data, views, or arguments and shows to the satisfaction of the court that such additional data, views, or arguments are material and that there were reasonable grounds for the petitioner's failure to adduce such data, views, or arguments in the proceeding before the Commission, the court may order the Commission to provide additional opportunity for the oral presentation of data, views, or arguments and for written submissions. The Commission may modify its findings, or make new findings by reason of the additional data, views, or arguments so taken and shall file such modified or new findings, and its recommendations, if any, for the modification or setting aside of its original regulation, with the return of such additional data, views, or arguments.

"(3) Upon the filing of the petition under paragraph (1) of this subsection the court shall have jurisdiction to review the regulation in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided in such chapter; except that the regulation shall not be affirmed unless the Commission shows that, on the basis of the record taken as a whole, (A) its action in prescribing the regulation is not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; and (B) that its action is not (i) contrary to constitutional right, power, privilege, or immunity; (ii) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right; or (iii) without observance of procedure required by law.

"(4) The judgment of the court affirming or setting aside, in whole or in part, any regulation under subsection (b) shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28 of the United States Code.

"(5) The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by law."

SEC. 208. Section 19 of the Securities Exchange Act of 1934 (15 U.S.C. 78s) is amended to read as follows:

"POWERS WITH RESPECT TO EXCHANGES AND SECURITIES

"SEC. 19. (a) The Commission is authorized, if in its opinion such action is necessary or appropriate for the protection of investors—

"(1) After appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or to revoke the registration of a national securities exchange if the Commission finds that such exchange has violated any provision of this title or any rules or regulations thereunder or has failed to enforce compliance with such rules or with its own rules by a member or by an issuer of a security registered thereon.

"(2) After appropriate notice and opportunity for hearing, by order to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to withdraw, the registration of a security if the Commission finds that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder, or any rule of a registered national securities exchange upon which such security is listed for trading.

"(3) After appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or to expel from a national securities exchange any member thereof, or to suspend for a period not exceeding twelve months or to bar any person from being associated with a member thereof, whom the Commission finds has violated any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or of this title, or a rule or regulation under any of such statutes, or has violated a rule of such exchange or of any registered securities association of which such person was a member or has affected any transaction for any other person who, he had reason to believe, was violating in respect to such transaction any provision of any of such statutes, or a rule or regulation thereunder, or a rule of such exchange or of any registered securities association of which such person was a member.

"(4) After appropriate notice and opportunity for hearing, by order to remove from office any officer, director or employee of a registered national securities exchange who, the Commission finds, has willfully failed to enforce the rules of the exchange, or has willfully abused his authority.

"(5) And if in its opinion the public interest so requires, summarily to suspend trading in any registered security on any national securities exchange for a period not exceeding ten days, or with the approval of the President, summarily to suspend all trading on any national securities exchange for a period not exceeding ninety days.

"(b) The Commission, having due regard for the public interest, the protection of investors and the need to assure fair dealing in securities, and to preserve and foster competition among exchanges and between exchange markets and markets occurring otherwise than on an exchange, shall, on or before February 1, 1975, take such steps as are within its power to establish a national market system for transactions in securities. The Commission shall, commencing in 1973 and ending in 1975, report annually to the Congress (1) the steps it has taken and its evaluation of the progress made toward the creation of a national market system, and (2) its recommendations, if any, for further legislative authority to create such a system."

SEC. 209. The Securities Exchange Act of 1934 is amended by adding after section 20 (15 U.S.C. 78t), the following new section:

"SEC. 20A. (a) No national securities exchange registered under section 6 shall by rule or otherwise prohibit any of its members, when acting on behalf of a customer, from transacting business on any other exchange, or otherwise than on an exchange, and on national securities assocation registered under section 15A shall by rule or otherwise prohibit any of its members, when acting on behalf of a customer, from transacting business on a national securities exchange.

"(b) The Commission shall adopt rules which assure that any transaction by any registered broker or dealer or member of an exchange is executed at a net price to such member's customer which is better than or equivalent to the net price which would have been obtainable if such transaction were to have been executed (in any unit of trading) on any other exchange or otherwise than on an exchange.

"(c) No national securities exchange registered under section 6 and no national securities association registered under section 15A shall by rule or otherwise prohibit any of its members from participating in any clearing agency or securities depository registered under section 17A."

SEC. 210. Section 21 of the Securities Exchange Act of 1934 (U.S.C. 78u) is amended to read as follows:

"INVESTIGATIONS, INJUNCTIONS, AND PROSECUTION OF OFFENSES

"SEC. 31. (a) The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this title or any rule or regulation thereunder, or any rule of a registered securities association or national securities exchange of which such person is a member, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Commission is authorized, in its discretion, to publish information concerning any such violations, and to investigate any facts, conditions, practices, or matters which it may deem necessary or proper to aid in the enforcement of the provisons of this title, in the prescribing of rules and regula-

tions thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this title relates.

"(b) For the purpose of any such investigation, or any other proceeding under this title, any member of the Commission or any officer designated by it is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

"(c) In case of contumacy by, or refusal to obey a subpena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. And such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if in his power so to do, in obedience to the subpena of the Commission, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

"(d) Wherever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this title, or any rule or regulation thereunder, or any rule of a registered securities association or national securities exchange of which such person is a member, it may in its discretion bring an action in the proper district court of the United States, the United States District Court for the District of Columbia or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General, who may, in his discretion, institute the necessary criminal proceedings under this title.

"(e) Upon application of the Commission the district courts of the United States, the United States District Court for the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall also have jurisdiction to issue writs or mandamus commanding any person to comply with the provisions of this title or any order of the Commission made in pursuance thereof, or any rule of a registered securities association or national securities exchange of which such person is a member, or with any undertaking contained in a registration statement as provided in subsection (d) of section 15 of this title or to compel a registered national securities exchange or association to enforce compliance with the rules of such exchange or association."

TITLE III—FINANCIAL RESPONSIBILITY; REGULATION OF BROKERS, DEALERS AND MEMBERS; REPORTS AND EXAMINATIONS

SEC. 301. Section 8 of the Securities Exchange Act of 1934 (15 U.S.C. 78h) is amended to read as follows:

"RESTRICTIONS ON BORROWING BY MEMBERS, BROKERS, AND DEALERS

"SEC. 8. It shall be unlawful for any registered broker or dealer or member of a registered national securities exchange or any broker or dealer who transacts a business in securities through the medium of any such member, directly or indirectly—

"(a) To borrow in the ordinary course of business as a broker or dealer on any security (other than an exempted security) registered on a national securities exchange except (1) from or through a member bank of the Federal Reserve System, (2) from any nonmember bank which shall have filed with the Board of Governors of the Federal Reserve System an agreement, which is still in force and which is in the form prescribed by the Board, undertaking to comply with all provisions of this Act, the Federal Reserve Act as amended, and the Banking Act of 1933, which are applicable to member banks and which relate to the use of credit to finance transactions in securities, and with such rules and regulations as may be prescribed pursuant to such provisions of law or for the purpose of preventing evasions thereof, or (3) in accordance with such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe to permit loans between such members and/or brokers and/or dealers, or to permit loans to meet emergency needs. Any such agreement filed with the Board of Governors of the Federal Reserve System shall be subject to termination at any time by order of the Board after appropriate notice and opportunity for hearing because of any failure by such bank to comply with the provisions thereof or with such provisions of law or rules or regulation; and, for any willful violation of such agreement, such bank shall be subject to the penalties provided for violations of rules and regulations prescribed under this title. The provisions of sections 21 and 25 of this title shall apply in the case of any such proceeding or order of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply in the case of proceedings and orders of the Commission.

"(b) In contravention of such rules and regulations as the Commission shall prescribe for the protection of investors to hypothecate or lend or arrange for hypothecation or lending of any securities carried for the account of any customer under circumstances (1) that will permit the commingling of his securities without his written consent with the securities of any other customer, (2) that will permit such securities to be commingled with the securities of any person other than a bona fide customer, or (3) that will permit such securities to be loaned or hypothecated, or subjected to any lien or claim of the pledgee for a sum in excess of the aggregate indebtedness of such customers in respect of such securities.

"(c) To lend or arrange for the lending of any securities carried for the account of any customer without the written consent of such customer."

SEC. 302. Section 15(a) of the Securities Exchange Act of 1934 (14 U.S.C. 78o(a)), is amended to read as follows:

"SEC. 15. (a) (1) No broker or dealer (other than one whose business is exclusively intrastate) shall make use of the mails or of any means or instrumentality of interstate commerce, and no member of an exchange shall make use of an exchange facility, to effect any transaction in, or to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer or member is registered in accordance with subsection (b) of this section.

"(2) The Commission may by such rules and regulations or orders as it deems necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions or for specified periods, exempt from paragraph (1) of this subsection any broker or dealer or member of class of brokers or dealers or members specified in such rules, regulations, or orders."

SEC. 303. (a) Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended to read as follows:

"(b)(1) A broker or dealer or member of an exchange may be registered for the purpose of this section by filing with the Commission an application for registration, which shall contain financial statements certified by an independent public or certified accountant and such other information in such detail as to such broker or dealer or member and any persons associated with such broker or dealer or member as the Commission may by rules and regulations require as necessary or appropriate in the public interest or for the protection of investors. Within forty-five days of the filing of such application or any amendment to such application the Commission shall—

"(A) by order grant such registration if the Commission finds that the requirements of this section are satisfied, or

"(B) institute appropriate administrative action to determine whether the application should be denied, If, after appropriate notice and opportunity for hearing, the Commission finds that any requirement of this section is not satisfied, the Commission shall by order deny such registration. The Commission shall conclude administrative action and issue an order granting or denying the application within one hundred and twenty days of the filing of such application, unless the Commission finds good cause for extending the period, in which case the Commission may extend such period for an additional ninety days.

"(2) An application for registration of a broker or dealer to be formed or organized may be made by a broker or dealer to which the broker or dealer to be formed or organized is to be the successor. Such application shall contain financial statements certified by an independent or certified public accountant and such other information in such detail as to the applicant and as to the successor and any person associated with the applicant or the successor, as the Commission may by rules and regulations require as necessary or appropriate in the public interest or for the protection of investors. The effectiveness of such application shall be governed by the same procedures as set forth in subsection (b)(1). Should the Commission grant such application for registration, the registration shall terminate on the forty-fifth day after the effective date thereof, unless prior thereto the successor shall, in accordance with such rules and regulations as the Commission may prescribe, adopt such application as its own.

"(3) Within six months of the granting of an application for registration the Commission, or such registered national securities association or registered national securities exchange of which such broker or dealer is a member as the Commission may, by rule, designate, shall conduct an inspection of the broker or dealer or member so registered, to determine whether such broker or dealer or member is operating in conformity with the provisions of this title, and the rules and regulations adopted thereunder.

"(4) Any provision of this title (other than

section 5 and subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce are used in connection therewith shall also prohibit any such act, practice, or course of business by any broker or dealer or member registered pursuant to this subsection or any person acting on behalf of such a broker or dealer, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

"(5) The Commission shall, after appropriate notice and opportunity for hearing, by order censure, deny registration to, suspend for a period not exceeding twelve months, or revoke the registration of, any broker or dealer or member if it finds that such censure, denial, suspension, or revocation is in the public interest and that such broker or dealer or member, whether prior or subsequent to becoming such, or any person associated with such broker or dealer or member, whether prior or subsequent to becoming so associated—

"(A) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission under this title, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein.

"(B) has been convicted within ten years preceding the filing of the application or at any time thereafter of the crimes of armed robbery or grand larceny or of any felony or misdemeanor which the Commission finds—

"(i) involves the purchase or sale of any security.

"(ii) arises out of the conduct of the business of a broker, dealer, or investment adviser.

"(iii) involves embezzlement, fraudulent conversion, or misappropriation of funds or securities.

"(iv) involves the violation of section 1341, 1342, or 1343 of title 18, United States Code.

"(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, or dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or firm engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

"(D) has willfully violated any provision of the Securities Act of 1933, or of the Investment Advisers Act of 1940, or of the Investment Company Act of 1940, or of this title, or any rule or regulation under any of such statutes, or any rule or regulation of a registered national securities exchange or registered national securities association of which such person was a member.

"(E) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of the Securities Act of 1933, or the Investment Advisers Act of 1940, or the Investment Company Act of 1940, or of this title, or any rule or regulation under any of such statutes, or any rule or regulation of a registered national securities exchange or registered national securities association of which such person was a member, or has failed reasonably to supervise, with a view to preventing violations of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this clause (E) no person shall be deemed to have failed reasonably to supervise any person, if—

"(i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

"(ii) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.

"(F) is subject to an order of the Commission entered pursuant to paragraph (7) of this subsection (b) barring or suspending the right of such person to be associated with a broker or dealer, which order is in effect with respect to such person.

(6) Pending final determination whether any registration under this subsection shall be revoked, the Commission shall by order suspend such registration if, after appropriate notice and opportunity for hearing, such suspension shall appear to the Commission to be necessary or appropriate in the public interest or for the protection of investors. Any registered broker or dealer or member may, upon such terms and conditions as the Commission may deem necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered broker or dealer or member is no longer in existence or has ceased to do business as a broker or dealer or member, the Commission shall, after appropriate notice and opportunity for hearing, by order cancel the registration or application of such broker or dealer or member.

"(7) The Commission may, after appropriate notice and opportunity for hearing, by order censure any person, or bar or suspend for a period not exceeding twelve months any person from being associated with a broker or dealer or member, if the Commission finds that such censure, barring, or suspension is in the public interest and that such person has committed or omitted any act or omission enumerated in clause (A), (D), or (E) of paragraph (5) of this subsection or has been convicted of any offense specified in clause (B) of said paragraph (5) within t ne years of the commencement of the proceedings under this paragraph or is enjoined from any action, conduct, or practice specified in clause (C) of said paragraph (5). It shall be unlawful for any person as to whom such an order barring or suspending him from being associated with a broker or dealer is in effect, willfully to become, or to be, associated with a broker or dealer or member, without the consent of the commencement of the proceedings under this para- or dealer is in effect, willfully to become, or to be, associated remain, a person associated with him, without the consent of the Commission, if such broker or dealer or member knew, or in the exercise of reasonable care, should have known, of such order.

"(8) No broker or dealer or member registered under section 15 of this title shall, effect any transaction in, or induce the purchase or sale of, any security unless such broker or dealer or member and all natural persons associated with such broker or dealer or member meet such specified and appropriate standards with respect to training, experience and age, and such other qualifications as the Commission finds necessary or desirable. The Commission shall establish such standards by rules and regulation, which may—

"(A) appropriately classify brokers and dealers and members and persons associated with brokers and dealers and members (taking into account relevant matters, including types of business done and nature of securities sold).

"(B) specify that all or any portion of such standards shall be applicable to any such class.

"(C) require persons in any such class to pass examinations prescribed in accordance with such rules and regulations, which examination shall, with respect to partners, officers, and supervisory employees (which latter term may be defined by the Commission's rules and regulations and as so defined shall include branch managers of brokers or dealers or members), include questions relating to bookkeeping, accounting, internal control over cash and securities, proper supervision of employees, proper maintenance of records, and other similar matters

"(D) provide that persons in any such class other than a broker or a dealer and partners, officers, and supervisory employees of brokers or dealers, may be qualified solely on the basis of compliance with such specified standards of training and such other qualifications as the Commission finds appropriate.

The Commission may prescribe by rules and regulations reasonable fees and charges to defray its costs in carrying out this paragraph, including, but not limited to, fees for any examination administered by it or under its direction. The Commission may cooperate with securities associations registered under section 15A of this title and with national securities exchanges registered under section 6 of this title in devising and administering examinations and may require brokers and dealers and members registered under this section and persons associated with such brokers and dealers and members to pass examinations administered by or on behalf of any such association or exchange and to pay such association or exchange reasonable fees or charges to defray the costs incurred by such association or exchange in administering such examinations.

"(9) In addition to the fees and charges authorized by paragraph (8) each broker or dealer registered under section 15 of this title not a member of a securities association registered pursuant to section 15A of this title shall pay to the Commission such reasonable fees and charges as may be necessary to defray the costs of additional regulatory duties required to be performed by the Commission because such broker or dealer is not a member of such a securities association. The Commission shall establish such fees and charges by rules and regulations.

"(10) No broker or dealer subject to paragraph (9) of this subsection shall effect any transaction in, or induce the purchase or sale of, any security (otherwise than on a national securities exchange) in contravention of such rules and regulations as the Commission may prescribe designed to promote just and equitable principles of trade, to provide safeguards against unreasonable profits or unreasonable rates of commissions or other charges, and in general to protect investors and the public interest, and to remove impediments to and perfect the mechanism of a free and open market."

(b) The amendments and repeals made by this section shall not require the reregistration of any person registered pursuant to subsection 15(b) on the date on which the Securities Exchange Amendments Act of 1973 takes effect.

SEC. 304. Section 15(c)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78o (c)(3)) is amended to read as follows:

"(3)(A) No broker or dealer shall make use of the mails or of any means or instrumentality of interstate commerce and no member of an exchange shall make use of an exchange facility, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial

responsibility and related practices of such brokers, dealers and members including, but not limited to, the acceptance of custody and use of customers' securities, and the carrying and use of customers' deposits or credit balances. Such rules and regulations shall (i) require the maintenance of reserves with respect to customers' deposits or credit balances, and (ii) by no later than January 1, 1974, establish minimum capital requirements providing for ample liquid and permanent capital of such brokers, dealers and members;

"(B) The Commission shall have authority, after appropriate notice and opportunity for hearing, to order any broker or dealer or member or class thereof to restrict any of its activities if the Commission finds that such restrictions are reasonably necessary to assure continued compliance with rules under this section.

"(C) For the purposes of this paragraph, the Commission is authorized to classify brokers, dealers and members of national securities exchanges on appropriate bases including the type of business in which they are engaged and risks attendant thereto.

"(D) The Commission is not authorized to exempt any broker, dealer or member of a national securities exchange, or any class thereof, from any rule promulgated under this paragraph."

SEC. 305. Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended to read as follows:

"ACCOUNTS AND RECORDS, REPORTS, EXAMINATIONS OF EXCHANGES, MEMBERS, AND OTHERS

"SEC. 17. (a) Every national securities exchange, every member thereof registered under section 15 of this title, every broker or dealer who transacts a business in securities through the medium of any such member, every registered securities association; and every broker or dealer registered pursuant to section 15 of this title; shall make, keep, and preserve for such periods, such accounts, correspondence, memoranda, papers, books, and other records, and furnish such copies thereof, and make such reports, as the Commission by its rules and regulations may prescribe as necessary or appropriate in the public interest or for the protection of investors.

"(b) Such accounts, correspondence, memoranda, papers, books, and other records shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by examiners or other representatives of the Commission as the Commission may deem necessary or appropriate in the public interest or for the protection of investors.

"(c) Every broker or dealer or member registered under this title shall file with the Commission, and send to its customers, such information concerning its financial condition as the Commission shall, by rule, require. Such information shall include certified balance sheets and certified income statements prepared on a calendar or fiscal year basis for the current year and, as a minimum, the preceding year.

"(d) Rules under subsection (a) of this section may include rules (1) regulating the reporting of transactions executed on an exchange, or otherwise than on an exchange; (2) regulating the reporting of bids and offers for securities traded on an exchange or otherwise than on an exchange; and (3) prescribing uniformity in accounting procedures and systems of brokers and dealers and members registered under this title.

"(e) Any broker, dealer, member or other person extending credit who is subject to the rules and regulations prescribed by the Board of Governors of the Federal Reserve System pursuant to this title shall make such reports to the Board as it may require as necessary or appropriate to enable it to perform the functions conferred upon it by this title. If any such broker, dealer, member or other person shall fail to make any such report or fail to furnish full information therein, or, if in the judgment of the Board it is otherwise necessary, such broker, dealer, member or other person shall permit such inspections to be made by the Board with respect to the business operations of such broker, dealer, member or other person as the Board may deem necessary to enable it to obtain the required information."

TITLE IV—SECURITIES PROCESSING

SEC. 401. Section 2 of the Securities Exchange Act of 1934 (15 U.S.C. 78b) is amended by striking the word "and" immediately before the phrase "to impose requirements necessary to make such regulations and control reasonably complete and effective," and by adding the following immediately after that phrase: "and to provide for the development of an integrated national system for the prompt and accurate processing and settlement of securities transactions,".

SEC. 402. Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is further amended by adding at the end thereof the following new paragraphs:

"(22)(A) The term 'clearing agency' means any person who acts as an intermediary in making payments or deliveries (or both) in connection with transactions in securities or who provides facilities (i) for comparison of data respecting the terms of settlement of securities transactions, (ii) to reduce the number of settlements of securities transactions, or (iii) for the allocation of securities settlement responsibilities.

"(B) The term 'securities depository' means any person who acts as a custodian of securities in connection with a system which permits securities so held to be transferred, loaned, or pledged without physical delivery of securities certificates, or which otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.

"(C) The terms 'clearing agency' and 'securities depository' shall not include (i) Federal Reserve Banks, Federal Home Loan Banks, Federal Land Banks and (ii) banks, brokers, building and loan, savings and loan, and homestead associations and cooperative banks by reason of lending, fiduciary, correspondent, or safekeeping functions commonly performed by them on the date of enactment of this paragraph.

"(D) The terms 'clearing agency' and 'securities depository' shall not include (i) life insurance companies, or their registered separate accounts, by reason of functions commonly performed by such entities in connection with variable annuity contracts issued by insurance companies; or (ii) registered open-end investment companies or unit investment trusts by reason of functions commonly performed by such entities in connection with shares in registered open-end investment companies or unit investment trusts.

"(23) The term 'participant', when used with respect to a clearing agency or securities depository, means any person who uses a clearing agency or securities depository for the purpose of settling or comparing transactions in securities or making or receiving payment for or delivery, lending, or hypothecation of securities; but does not include a person whose only use of a clearing agency or securities depository is through another person.

"(24) The term 'person associated with a participant' when used with respect to a registered clearing agency or securities depository means any partner, officer, director, or any person directly or indirectly controlling or controlled by such participant, including any employee of such participant. The Commission may by rules and regulations classify persons, including employees controlled by a participant.

"(25) The term 'transfer agent' means any person who engages, on behalf of an issuer, or on behalf of itself as an issuer, of securities in: (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar; (C) registering the transfer of such securities; or (D) exchanging or converting such securities. The term 'transfer agent' shall not include any person who performs such functions solely, with respect to variable annuity contracts issued by insurance companies.

"(26) The term 'bank regulating agency', when used with respect to a bank acting as a clearing agency, securities depository, or transfer agent required to be registered under this title means:

"(A) the Comptroller of the Currency, in the case of a national bank or a bank operating under the Code of Law for the District of Columbia, or a subsidiary of any such bank;

"(B) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System or subsidiary thereof; and

"(C) the Federal Deposit Insurance Corportation in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) or a subsidiary thereof.

"(27) The terms 'rules of a clearing agency' or 'rules of a securities depository' mean the clearing agency's or securities depository's constitution, articles of incorporation, bylaws, or rules or instruments corresponding to the foregoing, and its stated policies and practices relating to its organization, participation, rules of procedures, financial condition, methods of safekeeping, transferring, hypothecating, lending and accounting for funds and securities, and similar matters."

SEC. 403. Section 15(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)) is further amended by adding the following new paragraph at the end thereof:

"(6) No broker or dealer shall make use of the mails or of any means or instrumentality of interstate commerce and no member of a national securities exchange shall make use of an exchange facility to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors to regulate the time and method of making settlements, payments, and deliveries and of opening, maintaining, and closing accounts. Nothing in this paragraph shall be construed (i) to affect the authority of the Board of Governors of the Federal Reserve System, pursuant to section 7 of this title, to prescribe rules and regulations for the purpose of preventing the excessive use of credit for the purchase or carrying of securities, or (ii) to authorize the Commission to prescribe such rules or regulations for such purpose."

SEC. 404. The Securities Exchange Act of 1934 is amended by inserting after section 17 (15 U.S.C. 78q) the following new section:

"PROCESSING OF SECURITIES TRANSACTIONS

"SEC. 17A. (a)(1) One hundred and eighty days after the effective date of the Securities Exchange Act Amendments of 1973 and except as otherwise provided in this subsection, it shall be unlawful for any person, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the function of a clearing agency, securities depository or transfer agent with respect to any security

unless such person is registered under this section. The Commission, by rules and regulations or by order, upon its own motion, or upon application, may conditionally or unconditionally exempt any person, security, transaction, clearing agency, securities depository, transfer agent, or any class or classes of persons, securities, transactions clearing agencies, securities depositories or transfer agents from any provision or provisions of this section or of any rule or regulation prescribed under this section if the Commission finds that the application of such provision or provisions to such person, security, transaction, clearing agency, securities depository, transfer agent, or class or classes of persons, securities, transactions, clearing agencies, securities depositories or transfer agents is not practical or not necessary or appropriate in the public interest or for the prompt and accurate processing and settlement of securities transactions.

"(2) The Commission shall include in its annual reports to Congress required by section 23(b) of this title information concerning the number of requests for exemptions received, the number granted, and the basis or bases upon which the exemptions were granted.

"(3) The provisions of this section shall apply only to securities and to persons performing the function of transfer agent with respect to securities which are registered under section 12 of this title or which would be required to be so registered except for the exemption from registration provided in subsection (g)(2)(B) or (g)(2)(G) of that section. The provisions of this section shall not apply to variable annuity contracts issued by insurance companies.

"(b) Any transfer agent may be registered for the purposes of this title by filing with the Commission a registration statement which shall state the address of its principal office or offices for transfer agent activities, the identity of the issuers and issues of securities for which it is then acting as transfer agent, and such other information in such detail as the Commission may by rule require as necessary or appropriate in the public interest, for the protection of investors or to assure the prompt and accurate processing and settlement of securities transactions.

"(c) Any clearing agency or securities depository may be registered for the purposes of this section by filing with the Commission a registration statement in such form as the Commission may prescribe setting forth the following information and accompanied by the following documents:

"(1) The rules of the clearing agency or securities depository.

"(2) Such other information as the Commission may, by rule, require.

"(d) An applicant shall not be registered as a clearing agency or a securities depository unless the Commission finds that—

"(1) such clearing agency or securities depository is organized so as to facilitate the prompt and orderly settlement of securities transactions, to safeguard funds and securities held for the accounts of participants, and to comply with the provisions of this title and the rules and regulations thereunder, and to carry out the purposes of this section;

"(2) the rules of the clearing agency or securities depository provide that (A) all registered brokers or dealers or members of a national securities exchange, (B) other registered clearing agencies or securities depositories, (C) registered investment companies, (D) banks (as defined in section 2(a)(5) of the Investment Company Act of 1940), and (E) such other persons or classes of persons as the Commission may from time to time designate by rule as appropriate to the development of an integrated national system for the prompt and accurate processing and settlement of securities transactions are eligible to become participants in such clearing agency or securities depository, subject only to such other rules of the clearing agency or securities depository as are expressly permitted under this paragraph. The rules of the clearing agency or securities depository may restrict or condition participation upon the deposit or the posting of a bond with the clearing agency or securities depository in an amount which bears a reasonable relationship to the risks attendant to such participants' use of such clearing agency or securities depository, and may deny participation to persons who have been expelled or suspended by a registered clearing agency or securities depository during the period of such expulsion or suspension. With respect to persons not included in clauses (A) through (D) above, the rules of the clearing agency or securities depository may also restrict or condition participation on the basis of the ability of the participants to meet reasonable requirements as to financial condition or operations capability and may provide for the exclusion of persons not included in clauses (A) through (D) who have been convicted within ten years preceding the filing of the application for participation of the crimes of armed robbery or grand larceny or of any felony or misdemeanor which the clearing agency or securities depository finds—

"(i) involves the purchase or sale of any security,

"(ii) involves embezzlement, fraudulent conversion, or misappropriation of funds or securities, or

"(iii) involves the violation of section 1341, 1342, or 1343 of title 18, United States Code;

"(3) the rules of the clearing agency or securities depository assure a fair representation of its shareholders (or members) and participants in the adoption of rules of the clearing agency or securities depository and any amendment thereto, the selection of its officers and directors, and in all other phases of the administration of its affairs;

"(4) the rules of the clearing agency or securities depository provide for the equitable allocation of dues, fees, and other charges among its participants;

"(5) the rules of the clearing agency or securities depository do not impose any schedule of prices, or fix minimum rates or charges, for services rendered by its participants;

"(6) the rules of the clearing agency or securities depository are designed to promote the prompt and orderly processing and settlement of securities transactions, to provide safeguards for securities and funds which are in its custody, to foster cooperation and coordination with national securities exchanges, national securities associations, other clearing agencies or securities depositories, brokers, dealers, banks, registered investment companies, and with other persons engaged in the settlement and processing of securities transactions, and to protect investors and the public interest; and do not have the effect of unfairly discriminating in the admission of participants in the use of such clearing agency or security depository;

"(7) the rules of the clearing agency or securities depository provide that its participants and persons associated with participants shall be appropriately disciplined for any violation of its rules by expulsion, suspension, fine, or censure, or in the case of a person associated with a participant, by being suspended or barred from being associated with participants; and

"(8) the rules of the clearing agency or securities depository provide a fair and orderly procedure with respect to the disciplining of participants and persons associated with participants and the denial of participation to any person seeking participation therein. In any proceeding to determine whether a participant or person associated with a participant should be disciplined, such rules shall require that specific charges of any rule violation be brought; that such participant or person associated with such participant shall be notified of and be given an opportunity to defend against such charges; that a record shall be kept; and that a determination to take disciplinary action shall be supported by a statement setting forth—

"(A) any act or practice in which such participant or person associated with such participant may be found to have engaged, or any required act or practice which such participant or person associated with such participant may be found to have omitted;

"(B) the specific rule or rules of the clearing agency or securities depository which any such act or practice, or omission to act, is deemed to violate; and

"(C) the penalty imposed and the reason therefor.

In any proceeding to determine whether a person shall be denied participation, such rules shall provide that the prospective participant shall be notified of, and be given an opportunity to be heard upon, the specific grounds for denial which are under consideration; that a record shall be kept and that the determination to deny participation shall be supported by a statement setting forth the specific grounds on which the denial is based. Notwithstanding any other provision of this section, the rules of the clearing agency or securities depository may provide for the temporary suspension of a participant, the prohibition of such participants, use of the clearing agency or securities depository and the closing of its accounts pending determination on the merits of any disciplinary proceeding if, in the opinion of the clearing agency or securities depository, such suspension or prohibition on use and closing of accounts are necessary for the protection of the clearing agency or securities depository or its participants or for the protection of investors or to facilitate the orderly and continuous performance of the clearing agency's or securities depository's services. The rules shall afford the participant an expedited hearing on the merits in the case of any temporary suspension.

"(e) The Commission shall, upon the filing of an application for registration pursuant to subsection (c), publish notice of the filing and afford interested persons a reasonable opportunity for comment. Within sixty days of the filing of an application for registration pursuant to subsection (b) and (c) the Commission shall:

"(1) by order grant such registration if the Commission finds that the requirements of this section are satisfied, or

"(2) institute appropriate administrative action to determine whether the application should be denied. After appropriate notice and opportunity for hearing, the Commission shall by order grant such registration unless it finds that any requirement of this section is not satisfied, or, in the case of an applicant who is a transfer agent, that the applicant does not have procedures or the means to be able to comply with the provisions of this section and the rules and regulations promulgated under those provisions, in which case the Commission shall by order deny such registration. The Commission shall conclude administrative action and issue an order granting or denying an application within one hundred and eighty days of the filing of the application unless the Commission finds good cause to extend such period and publishes its reasons therefor.

"(f) A clearing agency, securities depository, or transfer agent, registered under this section may, upon such terms and conditions as the Commission may deem necessary in the public interest, for the protection of investors, or to assure the prompt and accurate processing and settlement of securities transactions, withdraw from registration by filing a written notice of withdrawal from the Commission. If the Commission finds that any such registrant or such other person for whom an application of registration is pending is no longer in existence or has ceased

to do business in the capacity specified in the registration statement, the Commission shall by order cancel or deny the registration.

"(g) No clearing agency, securities depository, or transfer agent registered under this section shall, directly or indirectly, engage in any activity as clearing agency, securities depository, or transfer agent with respect to any security in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors.

"(h) If any registered clearing agency or securities depository takes any disciplinary action against any participant therein, or any person associated with a participant, or denies admission to any person seeking participation therein, such action shall be subject to review by the Commission, on its own motion, or upon application by any person aggrieved thereby filed within thirty days after such action has been taken or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such action, unless the Commission otherwise orders, after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of affidavits and oral arguments).

"(i)(1) In a proceeding to review disciplinary action taken by a registered clearing agency or a securities depository against a participant or a person associated with a participant, after notice and opportunity for hearing

"(A) if the Commission finds that such participant or person associated with such participant has engaged in such acts or practices, or has omitted such acts, as the clearing agency or securities depository has found him to have engaged in or to have omitted, and that such acts or practices, or omission to act, are in violation of such rules of the clearing agency or securities depository as have been designated in the determination of the clearing agency or securities depository, it shall by order so declare and affirm the action taken by the clearing agency or securities association or, if appropriate modify the sanctions or penalties in accordance with paragraph (2) of this subsection or,

"(B) if the Commission finds that the evidence does not warrant the finding required in clause (A), or if the Commission determines that such acts or practices as are found to have been engaged in are not prohibited by the designated rule or rules of the clearing agency or securities depository or that such act as is found to have been omitted is not required by such designated rule or rules, the Commission shall by order set aside the action of the clearing agency or securities depository.

"(2) With respect to any penalty imposed by a clearing agency or a securities depository upon a participant or a person associated with a participant the Commission may, having due regard to the public interest, if it finds that such penalty is inappropriate, cancel, reduce, increase, require the remission, broaden the scope or otherwise require modification of such sanction or penalty.

"(j) In any proceeding to review the denial of participation in a registered clearing agency or a securities depository, if the Commission, after appropriate notice and opportunity for hearing, determines that the specific grounds on which such denial or bar is based exist in fact and are valid under this section, it shall by order dismiss the proceeding; otherwise, the Commission shall by order set aside the action of the clearing agency or securities depository and require it to admit the applicant to participation therein.

"(k)(1) Each registered clearing agency or securities depository shall file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed changes in, additions to, or amendments to the rules of the clearing agency or securites depository to be accompanied by a summary statement of the basis and purpose for such proposed change, addition or amendment, and each registered clearing agency, securities depository and transfer agent shall file with the Commission, in accordance with such rules as the Commission may prescribe, such other information and documents, as the Commission may require to keep current or to supplement the registration statement and documents filed pursuant to subsection (b) or (c). No such proposed change, addition, or amendment shall become effective except in accordance with the provisions of this subsection.

"(2) The Commission shall, upon the filing of a proposed change in, addition, or amendment to the rules of clearing agency or securities depository, publish notice of such proposal together with the clearing agencies or securities depository's statement of basis and purpose, and shall afford interested persons a reasonable opportunity for comment on the proposed change, addition, or amendment. Such change, addition, or amendment shall take effect sixty days after publication of such notice by the Commission, unless the Commission disapproves such change, addition, or amendment as inconsistent with the purposes of this section or otherwise inconsistent with the public interest: *Provided*, That the Commission may extend this period for an additional ninety days by instituting public administrative proceedings concerning such proposed change, addition, or amendment.

"(l) The Commission may, after appropriate notice and opportunity for hearing, by order, censure, bar, suspend for a period not exceeding twelve months, or place limitations upon any transfer agent, or any partner, officer, director, or employer of any such transfer agent, or revoke the registration of any transfer agent, if the Commission finds that such censure, barring, suspension, placing of limitations, or revocation is in the public interest or necessary for the protection of investors and that such transfer agent or any partner, officer, director, or employee thereof has willfully violated or is unable to comply with any provision of this section or any rule or regulation promulgated thereunder.

"(m) The Commission is authorized, if it finds such action to be necessary or appropriate in the public interest or for the protection of investors or to carry out the purposes of this section—

"(1) after appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or revoke the registration of a registered clearing agency or a securities depository or impose limitations upon the activities, functions, or operations of such clearing agency or securities depository, if the Commission finds that such clearing agency or securities depository has violated any provision of this title, or any rule or regulation thereunder, or has failed to enforce compliance with its own rules, or has engaged in any other activity tending to defeat the purposes of this section;

"(2) after appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or expel from a registered clearing agency or securities depository any participant therein, or suspend for a period not exceeding twelve months or bar any person associated with the participant, if the Commission finds that such person has violated any provision of this title or any rule or regulation thereunder or any rule of the clearing agency or securities depository; and

"(3) after appropriate notice and opportunity for hearing, by order to remove from office any officer or director of a registered clearing agency or a securities depository who, the Commission finds, has willfully failed to enforce the rules of the clearing agency or securities depository, or has willfully abused his authority.

"(n) If a proceeding under subsection (m)(1) of this section results in the suspension or revocation of the registration of a clearing agency or a securities depository, the Commission may, upon notice to such clearing agency or securities depository, apply to any court of competent jurisdiction specified in section 21(e) or 27 of this title for the appointment of a trustee. In such event, the court may, to the extent it deems necessary or appropriate, take exclusive jurisdiction of the clearing agency or securities depository involved, and the books, records, and assets thereof, wherever located; and the court shall appoint the Commission or a person designated by the Commission as the trustee with the power to take possession and to continue to operate or to terminate the facilities of such clearing agency or securities depository in an orderly manner, for the protection of participants and public investors, subject to such terms and conditions as the court may prescribe.

"(o) Each registered clearing agency, securities depository, and transfer agent shall make, keep, and preserve for such periods such accounts, correspondence, memorandums, papers, books, and other records, and furnish such copies thereof and make such reports, as the Commission by its rules and regulations may prescribe as necessary or appropriate in the public interest, or to facilitate cooperation among clearing agencies and securities depositories and the prompt and orderly settlement of securities transactions, to safeguard funds and securities held for the accounts of participants, or for the protection of investors. Such accounts, correspondence, memorandums, papers, books, and other records shall be subject at any time to such reasonable periodic, special, or other examinations by examiners or other representatives of the Commission as the Commission may deem necessary or appropriate in the public interest or for the protection of investors.

"(p)(1) The Commission shall make a full and detailed report of all examinations conducted by it of any bank which is a registered clearing agency, securities depository, or transfer agent and shall, upon request, furnish a copy of such report to the appropriate bank regulatory agency.

"(2) The Commission shall, in the conduct of its responsibilities under this title with respect to banks registered as clearing agencies, securities depositories, or transfer agents, consult and cooperate with the appropriate bank regulatory agencies toward the end that their mutual regulatory needs and responsibilities be fulfilled to the maximum extent practicable.

"(q) The provisions of this section 17A or of any rule or regulation thereunder shall not apply to any person acting as transfer agent with respect to securities transactions which occur without the jurisdiction of the United States, unless such person acts in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of this title.

"(r) The Commission shall, on or before December 31, 1976, take such steps as are within its power to bring about elimination of the stock certificate as a means of settlement among brokers or dealers of transactions consummated on national securities exchanges or by means of the mails or other means or instrumentalities of interstate commerce. Commencing in 1973 and ending in 1976, the Commission shall report annually to the Congress (1) the steps it has taken and progress it has made toward elimination of the stock certificate as a means of settlement, and (2) its recommendations, if any, for further legislation to eliminate the stock certificate."

SEC. 405. Section 24 of the Securities Exchange Act of 1934 (15 U.S.C. 78x) is amended to read as follows:

"INFORMATION FILED WITH THE COMMISSION

"SEC. 24. (a) Any person filing information contained in a registration statement, document, report, contract, correspondence or other paper filed with the Commission pursuant to this title may make written objection to the public disclosure of such information stating the grounds for such objection. The Commission is authorized to hear objections in any such case where it deems it advisable. The Commission shall grant confidential treatment to such information for which application has been made if it finds (1) that disclosure is not in the public interest, and (2) that disclosure would (A) jeopardize the safety of funds or securities, (B) require the revealing of trade secrets or processes, or (C) impair the value of a contract.

"(b) The Commission is authorized to treat such information as confidential pending the findings required by subsection (a), but if the Commission does not make such a finding within thirty days from the date the information is received by the Commission, then the information shall cease to be afforded confidential treatment.

"(c) Nothing in this section shall prohibit the Commission from disclosing any information in any administrative or judicial proceeding.

"(d) Nothing in this section shall authorize the Commission to withhold information from the duly authorized committees of the Congress.

"(e) It shall be unlawful for any member, officer, or employee of the Commission to disclose to any person other than a member, officer, or employee of the Commission, or to use for personal benefit, any information contained in any registration statement, document, report, contract, correspondence, or other paper filed with the Commission which is not made available to the public pursuant to subsection (a) of this section: *Provided*, That the Commission may make available to an appropriate regulatory agency any information requested by such agency for the purpose of enabling it to perform its duties under this title."

SEC. 406. Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781) is amended by inserting after subsection (i) the following new subsections:

"(j) It shall be unlawful for an issuer, any class of whose securities is registered under this section or which would be required to be so registered except for the exemption from registration provided by paragraph (2)(B) or (2)(G) of subsection (g), by the use of any means or instrumentality of interstate commerce, or of the mails, to issue, either originally or upon transfer, such securities whose form or format contravenes such rules and regulations as the Commission may prescribe as necessary or appropriate for the prompt and accurate processing of transactions in securities.

"(k) Every issuer whose securities are registered on a national securities exchange shall consolidate in a single person the functions of transfer agent and registrar and otherwise comply with such rules and regulations as the Commission shall promulgate as necessary to assure the prompt and accurate processing and settlement of securities transactions."

SEC. 407. Section 19 of the Securities Exchange Act of 1934 (15 U.S.C. 78s) is further amended by inserting at the end thereof the following new subsection:

"(c) The Commission is authorized and directed to make a study and investigation of the practice of registration of securities other than in the name of the beneficial owner and to determine (1) whether such registration is consistent with the policies and purposes of this title, with particular reference to section 14, and (2) if consistent, whether steps can be taken to facilitate communications between corporations and their shareholders while at the same time retaining the benefits of such registration. The Commission shall report to the Congress its preliminary findings within six months after the date of enactment of this subsection, and its final results and recommendations within one year of such date."

SEC. 408. Section 28 of the Securities Exchange Act of 1934 (15 U.S.C. 78bb) is amended by inserting after subsection (b) the following new subsection:

"(c) No State or political subdivision thereof shall impose any tax on any change in beneficial or record ownership of securities effected through the facilities of a registered clearing agency or securities depository or any nominee thereof or custodian therefor or upon the delivery or transfer of securities to or through or receipt from such agency or depository or any nominee thereof or custodian therefor, unless such transfer or delivery or receipt would otherwise be taxable by such State or political subdivision if the facilities of such registered clearing agency or securities depository or any nominee thereof or custodian therefor were not physically located in the taxing State or political subdivision. No State or political subdivision thereof shall impose any tax on securities which are deposited in or retained by a registered clearing agency or securities depository or any nominee thereof or custodian therefor, unless such securities would otherwise be taxable by such State or political subdivision if the facilities of such registered clearing agency or securities depository or any nominee thereof or custodian therefor were not physically located in the taxing State or political subdivision."

SEC. 409. The Securities Exchange Act of 1934 is amended by inserting after section 19 (15 U.S.C. 78s) the following new section:

"LOST AND STOLEN SECURITIES; FINGERPRINTING

"SEC. 19A. (a) Every registered national securities exchange, national securities association, broker, dealer, member of an exchange, clearing agency and securities depository, registered pursuant to this title, shall—

"(1) report such information about missing, lost or stolen securities in such form and within such time as the Commission determines by rule is necessary or appropriate in the public interest or for the protection of investors to the Commission or to such other person as the Commission may by rule designate, and such information shall be made available, for a reasonable fee, to any such exchange, association, broker, dealer, member, clearing agency or securities depository who shall request it; and

"(2) in the case of a clearing agency, securities depository, broker, dealer or member, require that each of its partners, directors, officers, and employees be fingerprinted and shall submit such fingerprints, or cause the same to be submitted, to the Attorney General of the United States for identification and appropriate processing. The Commission may by rule exempt from the provisions of this subsection (2), upon such terms and conditions and for such period as it deems necessary or appropriate, any one or more classifications of partners, directors, officers, or employees of any one or more of such clearing agencies, securities depositories, brokers, dealers, or members if the Commission finds that such action is not inconsistent with the public interest or the protection of investors."

TITLE V—MISCELLANEOUS

SEC. 501. Section 23(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(b)) is amended to read as follows:

"(b) The Commission and the Board of Governors of the Federal Reserve System, respectively, shall include in their annual reports to Congress such information, data, and recommendation for further legislation as they may deem advisable with regard to matters within their respective jurisdictions under this title. The Commission shall also include in its annual report each year information detailing its administration of the Freedom of Information Act (5 U.S.C. 552). Such information shall include a detailed description of its processes for handling requests under the Act, including the names of persons assigned to carry out those processes; and also include data on schedules of fees (if any), and on the number of written requests for records under the Act, the number of denials, the section relied upon in each denial, the number of administrative appeals, the elapsed time in responding to initial requests and the handling of appeals, the number of suits filed within the year, and any regulatory changes made during the year."

SEC. 502. Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended to read as follows:

"REGISTRATION FEES

"SEC. 31. Every national securities exchange shall pay to the Commission on or before March 15 of each calendar year a registration fee for the privilege of doing business as a national securities exchange during the preceding calendar year or any part thereof. Such fee shall be in an amount equal to one one-hundredth of 1 per centum of the aggregate dollar amount of the sales of securities (other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States or such securities issued or guaranteed by corporations in which the United States has a direct or an indirect interest as shall be designated for exemption from the provisions of this section by the Secretary of the Treasury) transacted on such national securities exchange during the preceding calendar year and subsequent to its registration as a national securities exchange."

SEC. 503. (a) Section 24 of the Securities Act of 1933 (15 U.S.C. 77x) is amended by changing the figure "$5,000" to "$10,000".

(b) Section 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff(a)) is amended by changing the phrase "or imprisoned not more than two years" to read "or imprisoned not more than five years".

(c) Section 29 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–3) is amended by changing the phrase "or imprisoned not more than two years" to read "or imprisoned not more than five years".

(d) Section 325 of the Trust Indenture Act of 1939 (15 U.S.C. 77yyy) is amended by changing the figure "$5,000" to "$10,000".

(e) Section 49 of the Investment Company Act of 1940 (15 U.S.C. 80a–48) is amended by changing the phrase "or imprisoned not more than two years" to read "or imprisoned not more than five years".

(f) Section 217 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–17) is amended by changing the phrase "imprisoned for not more than two years" to read "imprisoned for not more than five years".

SEC. 504. Section 203(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) is amended to read as follows:

"(c) Any investment adviser, or any person who presently contemplates becoming an investment adviser, may register under this section by filing with the Commission an application for registration. Such application shall contain such of the following information, in such form and detail, as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors:

"(1) information in respect of—

"(A) the name and form of organization under which the investment adviser engages or intends to engage in business; the name of the State or other sovereign power under which such investment adviser is organized;

the location of his or its principal business office and branch offices, if any; the names and addresses of his or its partners, officers, directors, and persons performing similar functions or, if such an investment adviser be an individual, of such individual; and the number of his or its employees;

"(B) the education, the business affiliations for the past ten years, and the present business affiliations of such investment adviser and of his or its partners, officers, directors, and persons performing similar functions and of any controlling person thereof;

"(C) the nature of the business of such investment adviser, including the manner of giving advice and rendering analyses or reports;

"(D) the nature and scope of the authority of such investment adviser with respect to clients' funds and accounts;

"(E) the basis or bases upon which such investment adviser is compensated; and

"(F) whether such investment adviser, or any person associated with such investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of such investment adviser under the provisions of subsection (e), and

"(2) a statement as to whether the principal business of such investment adviser consists or is to consist of acting as investment adviser and a statement as to whether a substantial part of the business of such investment adviser consists or is to consist of rendering investment supervisory services.

"(3) Within forty-five days of the filing of such application or any amendment to such application the Commission shall—

"(A) by order grant such registration if the Commission finds that the requirements of this section are satisfied, or

"(B) institute appropriate administrative action to determine whether the application should be denied. If, after appropriate notice and opportunity for hearing, it appears to the Commission that any requirement of this section is not satisfied, the Commission shall by order deny such registration. The Commission shall conclude administrative action and issue an order granting or denying the application within one hundred and twenty days of the filing of such application, unless the Commission finds good cause for extending the period, in which case the Commission may extend such period for an additional ninety days."

AMNESTY? INDEED!

(Mr. DEVINE asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. DEVINE. Mr. Speaker, playing with figures and statistics is an exercise demonstrating the total inaccuracy as is so well documented by Pat Buchanan's "The 'Facts' on Exiles" which appeared in the February 20 New York Times:

THE "FACTS" ON EXILES

(By Patrick J. Buchanan)

WASHINGTON.—On Dec. 14, 1971, introducing his Amnesty Act of 1972, Senator Robert Taft of Ohio observed, ". . . estimates of the number of young Americans living in exile range as high as 70,000." Therein lies a tale.

Within 72 hours one free-lance journalist found Taft's highest estimate low and reported that "over 70,000 of these young men are now sitting in exile or in prison because of their opposition to the war in Vietnam."

Clearly, the situation called for a manifesto. On Jan. 1, 1972, sixteen worthies, anchored by the indefatigable Joe Rauh, issued a call for blanket amnesty: 'There are at least 70,000 and some say as many as 100,000 young American men in Canada, men who have quit the military or refused the draft . . . We say: Let them go and let their records be made clean."

The next morning a nationally syndicated columnist redeveloped the 70,000-man army somewhat, declaring. "There are 15,000 exiles in Canada, some 55,000 in other countries."

By Jan. 11, however, The New York Times reported from Ottawa, "As many as 40,000 exiles . . . are in Toronto, the favorite haven, and some 10,000 may be in Montreal. Many others of the 50,000-to-70,000 draft resisters in Canada are not fortunate where jobs are concerned."

So it went through '72 and throughout the U.S. media. By early February of 1973, a Washington correspondent was declaring categorically, "There are about 60,000-to-100,000 draft evaders in exile from the United States."

What are the facts? Well, the fact is the United States Government places the figure of verified deserters and draft dodgers in Canada at just under 4,000. Outside Canada and the U.S. it estimates an additional 1,200.

Of the 2,533 "deserters at large" outside the U.S., the Pentagon places about 1,800 plus in Canada, while of the 2,400 "fugitives" from draft law indictments, Selective Service places just under 2,000 with our neighbor.

Official Canadian statistics do not contradict U.S. estimates. Between 1960 and 1964, before Vietnam became an American war, roughly 1,300 U.S. males between the ages of 15 and 29 annually became "landed immigrants" in Canada. If one concedes that every single American male, over 14 and under 30—above that annual average—who became a "landed immigrant" in Canada between January 1965 and January 1972, was either a draft dodger or a deserter—an obvious impossibility—even then the official total for all of Canada could have come to no more than 17,000 at the very time The New York Times located 40,000 in Toronto alone.

What about the "55,000 in other countries"? Well, the second most popular sanctuary for the "over the hill" army has been Sweden. On that situation The Washington Post reported two weeks ago: "Sweden, generally believed to have the next (after Canada) largest number of American deserters or war resisters, does maintain an official count of deserters. A count made last fall said there were 602 deserters in Sweden."

This squares with official U.S. figures.

Thanks to the statistic-mindedness of Mr. Palme's regime, we have an idea what the Stockholm crowd is up to when not guarding the national conscience. The Swedish Director of Immigration William Leth was quoted as saying last November that from 1967 to 1970, of the 585 Americans allowed to enter the country, 110 were involved in major crimes, citing the following: 36 thefts; seven robberies; 40 drug-related cases including pushing. . . . He said that 52 deserters had been jailed and nearly thirty persons deported. Quite a performance.

What Mr. Leth is telling us in a nice way is that in one three-year period, 20 per cent of our Stockholm Brigade was involved in major crimes; 10 per cent jailed, and 6 per cent deported. Those statistics seem not only a trifle high for "guardians of the national conscience"; they would have been considered an embarrassment by Crazy Joe Gallo and the Brooklyn Mafia.

What do these statistics say? This, I think. First, 7,000 to 10,000 seems a more honest, justifiable estimate of the actual Canadian contingent of draft dodgers and deserters than the 70,000 to 100,000 we have been constantly fed. Secondly, that because of an ideological bias, otherwise competent American newsmen have engaged in inexcusably sloppy journalism, swallowing whole without inspection bogus statistics fed them by Canadian-based anti-war groups—when a few phone calls and a little arithmetic would have shown the number almost certainly outlandish. Third, that, for two years, some of the nation's principal news organizations have thus grossly misled the American people about the magnitude of the problem they confront in the matter of amnesty for runaways. Fourth, that some U.S. journalists and politicians have been characterizing as the "best of our younger generation," and the "guardians of the national conscience" a collection of draft-dodgers and deserters whose statistical profile and performance in exile show them to contain more than the customary complement of malingerers, opportunists, criminals and cowards.

Especially as one watches the genuine heroes of our age and time debark at Clark Field, to hear the boys who ran away to Toronto and Montreal and Stockholm lionized as "moral heroes" is—obscene.

PRESCRIPTION DRUGS FOR ELDERLY

(Mr. SEIBERLING asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. SEIBERLING. Mr. Speaker, last month I was honored to join once again with my distinguished colleague, the gentleman from Wisconsin (Mr. OBEY) in introducing his bill, H.R. 2715, to include the costs of certain outpatient prescription drugs under medicare.

The need for the bill has been well documented. Statistics show that elderly persons with chronic illnesses have prescription drug expenditures three times as high as those without chronic illnesses. Furthermore, we know that nearly one-quarter of all elderly persons have incomes below the official poverty level, and that the cost of prescription drugs are a terrible burden for most. For many, drugs are a luxury they simply cannot afford.

Despite my familiarity with these facts, I was shocked today when I received a letter from two constituents detailing how much they spend a year on prescription drugs. My constituents are an elderly couple, the man is 77 and the woman is 75. In futile hope of getting some reimbursement from medicare for their drug bills, they requested the pharmacist to itemize their prescriptions for 1972, including the date of the prescription, the name of the drug, and the cost. I will include the list, prepared and signed by a registered pharmacist, in the RECORD following my remarks.

There are a total of 90 separate prescriptions for this couple over a 1-year period at a total cost of $298.65. I find these figures absolutely astounding. Undoubtedly, they say a great deal about our pill-directed society—a serious problem in itself.

But the immediate concern for my constituents is that they are paying $300 a year for prescription drugs, and this is without being forced to buy some of the more expensive drugs commonly prescribed for elderly persons.

Clearly, a minority can afford this kind of burden. But for most, we know that such costs are prohibitive. The Obey bill would bring substantial relief to those hardest hit by the high costs of prescription drugs. It deserves the prompt and favorable attention of the Congress and the administration.

The material referred to follows:

Date	Number	Patient	Cost	Drug
Jan. 8, 1972	147-452	Russell	$4.45	30 Aristocort tablets 2 mg.
Do	150-550	do	3.95	16 Tetrex capsules 250 mg.
Jan. 9, 1972	177-427	do	1.75	30 Nembutal capsules 100 mg.
Jan. 12, 1972	135-673	do	.75	4 oz. Elixophyllin elixir.
Jan. 23, 1972	135-673	do	1.50	8 oz. Elixophyllin elixir.
Do	178-307	Margaret	2.15	2 oz. Dionin solution ½ percent.
Feb. 4, 1972	139-645	Russell	2.75	25 Dyrenium tablets 100 mg.
Feb. 8, 1972	177-427	do	1.75	30 Nembutal capsules 100 mg.
Feb. 14, 1972	135-673	do	1.50	8 oz. Elixophyllin elixir.
Mar. 6, 1972	135-673	do	1.50	Do.
Mar. 10, 1972	177-427	do	1.75	30 Nembutal capsules 100 mg.
Mar. 29, 1972	135-673	do	1.50	8 oz. Elixophyllin elixir.
Apr. 6, 1972	138-176	do	2.75	100 Cardilate tablets 5 mg.
Apr. 8, 1972	155-451	Margaret	9.30	60 g. Synalar ointment.
Apr. 9, 1972	182-137	Russell	2.10	30 Nembutal capsules 100 mg.
Apr. 18, 1972	138-673	do	1.50	8 oz. Elixophyllin elixir.
Apr. 19, 1972	182-556	do	4.90	20 Tetrex capsules 250 mg.
Do	182-557	do	4.50	30 Aristocort tablets 2 mg.
May 10, 1972	135-673	do	1.50	8 oz. Elixophyllin elixir.
Do	182-137	do	2.10	30 Nembutal capsules 100 mg.
Do	183-585	do	1.25	½ oz. Bacitracin ointment.
May 15, 1972	183-768	do	3.60	30 Robaxin tablets 750 mg.
June 2, 1972	135-673	do	1.50	8 oz. Elixophyllin elixir.
June 10, 1972	182-137	do	2.10	30 Nembutal capsules 100 mg.
June 22, 1972	135-673	do	1.50	8 oz. Elixophyllin elixir.
July 10, 1972	135-673	do	1.50	Do.
Do	186-314	do	2.10	30 Nembutal capsules 100 mg.
July 14, 1972	186-534	Margaret	2.50	30 Antivert tablets 12.5 mg.
July 18, 1972	182-557	Russell	4.50	30 Aristocort tablets 2 mg.
Do	182-556	do	4.90	20 Tetrex capsules 250 mg.
July 19, 1972	186-711	Margaret	7.30	100 Arlidin tablets 6 mg.
July 21, 1972	186-825	Russell	3.20	5 cc. Cortisporin ophthalmic solution.
July 25, 1972	186-534	Margaret	2.50	30 Antivert tablets 12.5 mg.
Do	186-945	do	2.15	2 oz. Dionin solution ½ percent.
July 28, 1972	186-825	Russell	3.20	5 cc. Cortisporin ophthalmic solution.
Do	138-176	do	2.75	100 Cardilate tablets 5 mg.
Aug. 4, 1972	186-825	do	3.20	5 cc. Cortisporin ophthalmic solution.
Do	139-645	do	2.75	25 Dyrenium tablets 100 mg.
Do	135-673	do	1.50	8 oz. Elixophyllin elixir.
Do	186-534	Margaret	1.25	15 Antivert tablets 12.5 mg.
Aug. 5, 1972	187-497	do	5.25	30 Robaxin tablets 750 mg.
Aug. 8, 1972	186-534	do	3.75	45 Antivert tablets 12.5 mg.
Do	186-711	do	7.30	100 Arlidin tablets 6 mg.
Do	186-825	Russell	3.20	5 cc. Cortisporin ophthalmic solution.
Aug. 12, 1972	187-497	Margaret	5.25	30 Robaxin tablets 750 mg.
Aug. 14, 1972	186-314	Russell	2.10	30 Nembutal capsules 100 mg.
Aug. 20, 1972	187-497	Margaret	$1.80	10 Robaxin tablets 750 mg.
Do	188-030	Russell	2.95	5 cc. Cortisporin ophthalmic solution.
Aug. 22, 1972	187-489	Margaret	5.25	30 Robaxin tablets 750 mg.
Aug. 23, 1972	188-303	Russell	2.95	5 cc. Cortisporin ophthalmic solution.
Do	186-534	Margaret	2.50	30 Antivert tablets 12.5 mg.
Sept. 2, 1972	186-711	do	7.30	100 Arlidin tablets 6 mg.
Do	186-534	do	2.50	30 Antivert tablets 12. 5 mg.
Do	187-497	do	5.25	30 Robaxin tablets 750 mg.
Sept. 10, 1972	187-497	do	5.25	Do.
Do	186-534	do	2.50	30 Antivert tablets 12. 5 mg.
Do	188-030	Russell	2.95	5 cc. Cortisporin ophthalmic solution.
Sept. 14, 1972	186-314	do	2.10	30 Nembutal capsules 100 mg.
Sept. 15, 1972	189-213	do	1.50	8 oz. Elixophyllin elixir.
Sept. 20, 1972	186-534	Margaret	2.50	30 Antivert tablets 12. 5 mg.
Do	186-711	do	7.30	100 Arlidin tablets 6 mg.
Do	187-497	do	5.25	30 Robaxin tablets 750 mg.
Sept. 21, 1972	189-471	Russell	5.32	10 cc. Blephamide ophthalmic solution.
Oct. 3, 1972	187-497	Margaret	5.25	30 Robaxin tablets 750 mg.
Do	186-711	do	7.30	100 Arlidin tablets 6 mg.
Do	186-534	do	2.50	30 Antivert tablets 12. 5 mg.
Oct. 13, 1972	186-534	do	2.50	Do.
Oct. 14, 1972	189-213	Russell	1.50	8 oz. Elixophyllin elixir.
Oct. 16, 1972	190-637	do	2.10	30 Nembutal capsules 110 mg.
Oct. 21, 1972	189-471	do	5.32	10 cc. Blephamide Ophthalmic solution.
Oct. 24, 1972	186-534	Margaret	2.50	30 Antivert tablets 12.5 mg.
Nov. 3, 1972	186-534	do	2.50	Do.
Nov. 5, 1972	189-213	Russell	1.50	8 oz. Elixophyllin elixir.
Nov. 14, 1972	190-637	do	2.10	30 Nembutal capsules 100 mg.
Do	189-491	do	5.32	10 cc. Blephamide ophthalmic solution.
Do	183-585	do	1.25	1 oz. Bacitracin ointment.
Nov. 25, 1972	186-534	Margaret	2.50	30 Antivert Tablets 12.5 mg.
Do	186-534	do	2.50	Do.
Nov. 30, 1972	138-176	Russell	2.75	100 Cardilate tablets 5 mg.
Dec. 6, 1972	189-213	do	2.50	8 oz. Elixophyllin elixir.
Do	186-534	Margaret	2.50	30 Antivert tablets 12.5 mg.
Do	192-744	do	8.00	100 Arlidin tablets 6 mg.
Dec. 7, 1972	189-471	Russell	5.32	10 cc. Blephamide ophthalmic solution.
Dec. 15, 1972	186-534	Margaret	2.50	30 Antivert tablets 12.5 mg.
Do	190-637	Russell	2.10	30 Nembutal capsules 100 mg.
Do	182-557	do	4.50	30 Aristocort tablets 2 mg.
Do	182-556	do	4.90	20 Tetrex capsules 250 mg.
Dec. 29, 1972	192-744	Margaret	8.00	100 Arlidin tablets 6 mg.
Do	186-534	do	2.50	30 Antivert tablets 12.5 mg.
Do	189-471	Russell	5.32	10 cc. Blephamide ophthalmic solution.
Total			298.65	

REMARKS OF DR. JOHN S. FOSTER, JR., TO WOMEN'S FORUM ON NATIONAL SECURITY

(Mr. STAGGERS asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. STAGGERS. Mr. Speaker. Dr. John S. Foster, Jr., one of the Nation's preeminent scientific figures, delivered the keynote address, February 18, to the Women's Forum on National Security meeting in Washington, D.C. Dr. Foster has served the Department of Defense as Director of Defense Research and Engineering since October 1, 1965. In that role, he has emerged as one of the Nation's most thoughtful and articulate spokesman for national security needs, a subject on which he also has strong feelings as a private citizen. He willingly gives much of his personal time and energy to appear before important meetings, such as the Women's Forum on National Security, which brings together women delegates from 17 participating organizations across the Nation, in an exercise of concerned patriotism.

Dr. Foster's credentials are impressive. He holds a B.S. degree from McGill University in Montreal, Canada and a Ph. D. in physics from the University of California, Berkeley. His first interests were in radar and radar countermeasures, then nuclear physics, plasma physics, and high vacuum technology. Since 1953 he has been involved in the design and development of nuclear explosives for peaceful and military purposes. He has served on many notable scientific advisory committees and has been the recipient of several distinguished honors for his achievements in the public service.

I am pleased to invite the attention of my colleagues to the remarks of this distinguished scientist:

ADDRESS BY DR. JOHN S. FOSTER, JR., DIRECTOR OF DEFENSE RESEARCH AND ENGINEERING BEFORE THE WOMEN'S FORUM ON NATIONAL SECURITY, FEBRUARY 18, 1973, WASHINGTON, D.C.

Last Monday, while most of us watched or listened, Navy Captain Jeremiah Denton stepped out of the first plane bringing the returning prisoners back from North Vietnam and then said:

"We are honored to have the opportunity to serve our country under difficult circumstances. We are profoundly grateful to our Commander-in-Chief and to our nation for this day. God bless America."

His words and actions and the actions of the men for whom he spoke show a remarkable commitment to the ideals of America. He said he was honored and was grateful to us. But it is we who are profoundly honored by him and by all the other men and women who have served, and who have died, in Southeast Asia. We are deeply grateful to them all.

I believe most Americans understand that the service of men like Captain Denton was necessary if our country was to achieve its goal of peace with honor in Asia and to preserve its credibility everywhere else in the world. Success always demands sacrifice. Clearly, the great twin goals endorsed by this gathering, security and peace, will require further sacrifice and special commitment—not just from our military men and women but from all of us.

Not all Americans can commit themselves, their careers and their families in just exactly the way our Armed Forces people do, nor are all Americans as active in public affairs as are those of you in this audience. But this nation would not have thrived for 200 years and would not be standing today at the door of new opportunities for security and peace if most Americans did not share in large measure the commitment of Captain Denton and the others who are returning.

So in talking about peace and security tonight, I will emphasize what our common commitments have won for our society in the past and what will be required of us in the future.

This is an appropriate time to look back and then forward, for we stand tonight at a watershed. We have a ceasefire in Vietnam. The prisoners of war and our few remaining troops in Vietnam are coming home. Our President has committed the country to the objective of a generation of peace. A new era of negotiation with the Soviet Union and China has begun.

If we look backward a decade, we must say that this day and these opportunities were not assured. Let me recall the decade of the Sixties and some of the problems we all faced:

There was trouble in Southeast Asia which grew into a war; there were social problems; we were concerned with crime, with drugs, with environment, with city riots and with student unrest; there was questioning by some of our fundamental way of life. The Sixties challenged us repeatedly—to the point where many wondered if we could make it—but we met the challenges. Let me remind you:

The North Vietnamese with the support of their allies, could easily have overrun South Vietnam in 1965 and then done as they pleased with the rest of Southeast Asia. Later in the decade, we might have abandoned our efforts—and with them our allies and our honor—and wasted the sacrifices of our young men, but we did not. We stuck it out and it now appears that we are in sight of our basic national objective of world peace.

There was racial unrest so serious that some parts of a few great cities were burned during the Sixties, and we feared for other cities. But we were able to stop the flames from spreading by renewed commitments to

justice, order and equal opportunity. Problems remain, but we are making good progress and the mass destruction has stopped.

Protesters on many issues tried to disrupt the government, but they failed. Today, public protest is still a part of life, but it does not often threaten the basic stability of our government.

While many of our youth adopted during the Sixties dress and hair styles strange to my generation, a small minority of young people tried to drop out" and literally become irresponsible citizens. "Drop out" could have become the basic theme of the young, but the vast majority of our youth remain responsible contributors to society.

The problem of drugs swept like wildfire through our cities, schools and the Armed Services in the last decade, but concerned people faced the problem head-on, and now there has been a downturn in drug abuse.

And it was in the Sixties, don't forget, that the Soviets caught up to us in nuclear war technology and went ahead in raw power of long-range missiles. But nuclear holocaust did not happen, and we were successful in deterring general war.

Looking backward, we might ask just how we were able to do so well. How did the United States come through the smoldering Sixties with only a few outbursts of flame?

I believe we were successful because most Americans are like you and the people you represent. They are committed to a nation that is responsible and vigorous, that solves its problems—does not walk away or drop out—that recognizes its responsibilities around the world and makes good on its promises.

And, above all, we are a nation with a form of government which allows us to criticize ourselves and to respond to the concern of the people.

Yes, we have come through difficult times, but the generation of peace which President Nixon has set as our goal will not be achieved simply because we are proud of what we have done.

Peace has not yet come to all of Asia; our domestic problems are being addressed with new calmness and realism, but they are not solved; and the rest of the world has not suddenly turned all benign and benevolent.

No, unfortunately, we must expect to see some difficult times in the decade of the 1970s. As much as we search for brotherhood among men, experience shows that there still are aggressors in the world.

Our experience also shows us, however, that we can convert our common commitment to American ideals into practical formulas for security and peace. President Nixon is moving us from an era of confrontation further into an era of negotiation. This means in practice that we are actively seeking with our allies, means to turn potential aggressors away from serious thoughts of military actions and into serious discussions. In this process, it is our strength and clear resolve which will make an adversary change his mind; it is our strength and resolve which will permit us to negotiate without losing.

The role of the American and allied armed forces is to maintain military strength which is clearly sufficient to keep a potential aggressor from enjoying the fruits of aggression and to encourage him to negotiate. This is the essence of our first security goal: deterrence. Deterrence is a difficult and delicate art. It is based on an ability, first, to see and understand what a potential aggressor is doing, or capable of doing, and then to demonstrate that we have both the resolve and the military force in-being to thwart his aggressive intentions. If deterrence fails, then we must be ready to deliver a sufficient fighting force quickly to the scene and sustain a military operation with minimum loss of life or territory and without sacrifice of national goals. If the aggressor understands that we can do all of these things well, then he will have little incentive to move militarily. He will be deterred from war and turned toward negotiations.

Out of these requirements for deterrence arise the specifications for our forces. First of all, they must be highly survivable; sufficiently mobile; they must be able to apply force quickly and precisely; they must be able to face the high quality and large numbers of weapons available to the Soviet Union and its client state.

Our most import task in the Department of Defense is to maintain an effective force for deterrence of all-out nuclear war. We must provide an adequate margin of safety here, because to fail to deter would be a disaster for the world. Our forces have successfully deterred nuclear war. If we continue to act prudently, nuclear weapons will never be used in a war. They will be used rather to save us from blackmail threats and to convince the Soviets—and others who have nuclear weapons—that negotiations and mutual arms reduction are in the common interest.

Because of the need for an extra margin of safety, we maintain three basic kinds of long-range nuclear weapons, and we improve them continually as the defensive and the offensive forces of the Soviet Union grow in numbers and change in quality. The three forces, missiles at sea, missiles on land, and intercontinental bombers, have different characteristics which permit the weapons to complement each other and, when working together, to pose an enormously difficult problem for an aggressor to solve.

Today, we are modernizing all three of our basic strategic weapons. The Polaris/Poseidon sea-based forces will get a longer-range, more versatile weapons system, the new Trident submarine will have much longer-range missiles, and will be quieter than the ships it will replace. Our basic land missile, the Minuteman, is getting an improved penetration system, extra hardening, and some ballistic missile defense. We are developing a new long-range bomber, the B–1, which will be less vulnerable to attack either in the United States or in penetrating enemy territory than the B–52 it replaces.

Of course, strategic deterrent weapons cost money, but only ten percent of the total defense budget. I believe any lesser investment would create a much higher risk of blackmail or war. We intend to maintain sufficient strategic forces while seeking further international agreements on mutual limitations.

General nuclear war is only one kind of conflict which we must be able to deter or handle. We must also be able to deter or if necessary cope with lesser situations.

Although we are not the world's policemen, we must still help our allies play their substantial—in fact, pre-eminent—roles in deterrence of smaller and local wars. Again, our forces and those of our allies must be adequate in numbers and quality to constitute an effective fighting force—in the eyes of the aggressors.

Unfortunately, confrontations can occur almost anyplace in the world—land, sea and air—and at varying levels of intensity. To deter such conflicts, we must have forces which are both conspicuous and capable. To be effective, our forces must be able to accomplish their military objectives with minimum casualties. We Americans place a special value on human life. We do not want to lose a single individual if we can help it. Thus, our General Purpose Forces must be flexible, mobile and possess accurate and effective firepower.

The spectrum of forces we may have to face is not limited to those of the smaller nations which may have aggressive intentions. The vast General Purpose Forces of the Soviet Union and its allies, and China and its allies are of vital concern. They may be used against us or our allies directly—as in Europe—or indirectly—as in North Korea and Vietnam.

At sea, the Soviet Union has already overtaken us in size of their attack submarine forces; their surface ships use modern turbine engines and advanced missiles; they are building their first aircraft carrier; and they have good long-range ocean surveillance.

The Soviet land and air forces are steadily improving, and they are providing large quantities of new equipment to their allies.

To be responsive we and our allies must have the right weapons in quantity and at minimum cost. We understand the importance of these forces, and we are making good progress in many key areas.

The difficult experience of Vietnam and our continuing efforts to maintain superiority in all our tactical forces have provided us with new technology which offers greatly increased effectiveness for the individual soldier while according him greater physical safety. Let me mention a few of these advances.

New attack and transport helicopters of improved speed and error.

Night vision instruments which allow us to see the battlefield with clarity 24-hours a day.

Remote sensors for interdiction and perimeter defense, which can give detailed information about the position and strength of the enemy without risking our people.

Remotely piloted vehicles which—further in the future—will permit our weapons to be sent unmanned into battle. The pilot cannot be killed or captured. He will stay in a safe area while he guides his weapon by remote control in the combat zone.

The so-called "smart" weapons, so effective toward the end of the Vietnam war, can guide themselves exactly to their targets. Truly revolutionary weapons, they permit us to destroy targets precisely, avoid additional destruction in the immediate vicinity, and do it all cheaper and at lower risk to our fighting men.

Lasers, already proven for weapon guidance and reconnaissance, are being pursued as tactical weapons.

Not all of our forces can be provided through this kind of "technology jump" that we Americans are so good at exploiting. The backbone of our capability still arises from steady improvement of familiar arms.

But, more important than the tactical and strategic arms I have been describing are the dedicated and capable people who run them. People are the most valuable—and the most costly—ingredient of a capable military force. In fact, as we move toward the all volunteer force this year, the cost of people has risen to 56% of the defense budget.

We are managing, however, to hold down on defense spending. For the past few years and for the next few, defense spending, in terms of purchasing power, has been and will remain about the same.

The capabilities of our potential adversaries are moving steadily upward, however. Clearly, we must make more economic use of what is available. Otherwise, we will lose the leverage that brings successful negotiations and brings what we here tonight are seeking—security and peace.

We stretch our resources in several ways.

First, we use technology to multiply the effectiveness of our military men and women.

Second, we use technology to lower the cost of our weapons and provide equipment which gives us more performance.

Third, we seek a greater contribution from our allies. We will use their scientific and technical developments when they offer an advantage over our own, and we depend on the allies to provide local deterrence and fighting capability in their areas of the world.

Fourth, we manage our resources better. We have better methods now to determine our needs, insure that we develop and buy only what we need, and monitor the whole complex process of research, development, procurement, maintenance and support.

The cost of defense will be down next year to 6 percent of the gross national product, the lowest percentage in 24 years. But, while defense outlays have remained substantially the same since 1968, non-defense federal spending has grown by 91 percent. You should understand that in defense we are cutting it as close as we prudently dare.

Let me sum up.

President Nixon is committed to the search for a generation of peace.

Obviously his commitment coincides with yours and with those of the American people.

We have a growing economy, and we are devoting that growth to domestic and private needs.

The magnitude of the problem of deterring war and of turning our adversaries to negotiation expands as the forces of our adversaries expand and improve.

But we are convinced that the combination of available defense funds, the technology within our grasp, and the calibre of people who will step forward to serve their country can provide a generation of peace.

It is difficult for your government to walk the narrow path between what is too little to deter our adversaries and what is too much to permit us to meet our domestic needs. Committed people like yourselves must help us walk this path. This is the reason I have come here tonight to talk with you. This is the reason our new Secretary of Defense, Elliot Richardson, and the Chairman of the Joint Chiefs of Staff, Admiral Thomas Moorer, are going to the Congress and to the public next month with detailed explanations of our defense plans.

But, speeches and Congressional testimony and publications are not enough to meet the challenges of the Seventies and Eighties. In the end, the only thing which will suffice will be a commitment by concerned people. The commitment we need is like the one that got us to the moon before 1970, or the one that carried us through the ordeals of the Sixties, or particularly, the one that sustained the Vietnam prisoners of war through all of their trials. They have been through so much, and yet they are grateful to America. The steadfastness and faith they showed are a tribute to those who died, an example to their comrades who still serve and an inspiration to all of us.

To gain peace, it is not enough to praise the sacrifices and the work which brought us to our new opportunities. We must also commit ourselves to meet whatever challenges lie ahead. You must realize that because of your past performance and our presence here tonight, we are already counting on your commitment.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. CORMAN, for today, on account of official business.

Mr. RINALDO for today (at the request of Mr. GERALD R. FORD), on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

Mr. O'NEILL, for 10 minutes, today; and to revise and extend his remarks and include extraneous matter.

(The following Members (at the request of Mr. FRENZEL) to revise and extend their remarks and include extraneous matter:)

Mr. QUIE, for 30 minutes, today.

Mr. EDWARDS of Alabama, for 5 minutes, today.

Mr. KEMP, for 20 minutes, today.

Mr. CRANE, for 5 minutes, today.

Mr. BAKER, for 5 minutes, today.

Mr. ABDNOR, for 5 minutes, today.

(The following Members (at the request of Miss JORDAN) to revise and extend their remarks and include extraneous matter:)

Mr. MCFALL, for 10 minutes, today.

Mr. RODINO, for 5 minutes, today.

Mr. EVANS of Colorado, for 5 minutes, today.

Mr. GONZALEZ, for 5 minutes, today.

Ms. ABZUG, for 10 minutes, today.

Mr. FLOOD, for 10 minutes, today.

Mr. HARRINGTON, for 5 minutes, today.

Mr. MOSS, for 5 minutes, today.

Mr. KASTENMEIER, for 15 minutes, today.

Mr. DULSKI, for 15 minutes, today.

Mr. FRASER, for 5 minutes, today.

Mr. EILBERG, for 10 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. MOSS, and to include extraneous material, notwithstanding the fact that it exceeds two pages of the RECORD, and the cost thereof is estimated by the Public Printer to be $2,167.50.

Mr. MADDEN, to revise and extend his remarks and to include a resolution.

Mr. HASTINGS, and to include extraneous matter, notwithstanding the fact that it exceeds five pages of the CONGRESSIONAL RECORD and is estimated by the Public Printer to cost $595.

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. KEMP and to include extraneous matter notwithstanding the fact that it exceeds 13 pages of the CONGRESSIONAL RECORD and is estimated by the Public Printer to cost $2,200.

(The following Members (at the request of Mr. FRENZEL) and to include extraneous matter:)

Mr. FINDLEY.

Mr. WYATT in two instances.

Mr. DUNCAN.

Mr. BROWN of Ohio.

Mr. FROEHLICH.

Mr. CRANE in five instances.

Mr. SNYDER in three instances.

Mr. WHITEHURST.

Mr. SHOUP in two instances.

Mr. J. WILLIAM STANTON.

Mr. YOUNG of Florida in five instances.

Mr. SYMMS.

Mr. RAILSBACK.

Mr. WYMAN in two instances.

(The following Members (at the request of Miss JORDAN) and to include extraneous matter:)

Mr. CONYERS in 10 instances.

Mr. HARRINGTON.

Mr. GONZALEZ in three instances.

Mr. REUSS in six instances.

Mr. RARICK in three instances.

Mr. HELSTOSKI in 10 instances.

Mr. REID.

Mr. DE LA GARZA in 10 instances.

Mr. RONCALIO of Wyoming in 10 instances.

Mrs. GRASSO in 10 instances.

Mr. BRASCO in two instances.

Mr. MATHIS of Georgia.

Mr. UDALL.

Mr. NICHOLS in two instances.

Mr. STEED.

Mr. JOHNSON of California.

Mr. BRECKINRIDGE in five instances.

Mr. PEPPER.

Mr. RIEGLE in 10 instances.

Mr. PODELL in two instances.

Mr. HUNGATE.

Mr. DE LUGO.

ADJOURNMENT TO MONDAY, MARCH 5, 1973

Miss JORDAN. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 1 o'clock and 57 minutes p.m.), under its previous order, the House adjourned until Monday, March 5, 1973, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

519. A letter from the Deputy Secretary of Defense, transmitting a report covering calendar year 1972 on special pay for duty subject to hostile fire, pursuant to 37 U.S.C. 310; to the Committee on Armed Services.

520. A letter from the Acting Director of ACTION, transmitting a draft of proposed legislation authorizing continuing appropriations for Peace Corps; to the Committee on Foreign Affairs.

521. A letter from the Deputy Assistant Secretary of the Interior, transmitting a copy of a proposed contract with Theodore Barry & Associates, Los Angeles, Calif., for a research project entitled "Analyze Ore Handling Systems in Underground Metal Mines for Improved Safety and Efficiency," pursuant to Public Law 89–672; to the Committee on Interior and Insular Affairs.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DULSKI: Committee on Post Office and Civil Service. Report on census programs of several countries in Europe and the Middle East (Rept. No. 93–34). Referred to the Committee of the Whole House on the State of the Union.

Mr. DULSKI: Committee on Post Office and Civil Service. Report on the personnel problems at the San Ysidro, Calif., customs inspection station (Rept. No. 93–35). Referred to the Committee of the Whole House on the State of the Union.

Mr. PERKINS: Committee on Education and Labor. H.R. 4278. A bill to amend the National School Lunch Act to assure that Federal financial assistance to the child nutrition programs is maintained at the level budgeted for fiscal year ending June 30, 1973; with amendment (Rept. No. 93–36). Referred to the Committee of the Whole House on the State of the Union.

Mr. PERKINS: Committee on Education and Labor. House Joint Resolution 393. Joint resolution to amend the Education Amendments of 1972 to extend the authorization of the National Commission on the Financing

of Postsecondary Education and the period within which it must make its final report (Rept. No. 93–37). Referred to the Committee of the Whole House on the State of the Union.

Mr. HÉBERT: Committee on Armed Services. House Resolution 114. Resolution on inquiry into the extent of the bombing of North Vietnam, December 17, 1972, through January 10, 1973 (Rept. No. 93–38). Referred to the House Calendar.

Mr. HÉBERT: Committee on Armed Services. House Resolution 115. Resolution on inquiry into the extent of the bombing of North Vietnam, December 17, 1972, through January 10, 1973 (Rept. No. 93–39). Referred to the House Calendar.

Mr. HÉBERT: Committee on Armed Services. House Resolution 26. Resolution on inquiry into the extent of the bombing of North Vietnam, December 17, 1972, through January 3, 1973 (Rept. No. 93–40). Referred to the House Calendar.

Mr. HÉBERT: Committee on Armed Services. House Resolution 143. Resolution on inquiry into the extent of the bombing of North Vietnam, December 17, 1972, through January 10, 1973 (Rept. No. 93–41). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ANDREWS of North Dakota:

H.R. 5016. A bill to amend the Internal Revenue Code of 1954, to allow Federal income tax returns to be inspected by a common tax auditing agent utilized by the States; to the Committee on Ways and Means.

By Mr. BAKER:

H.R. 5017. A bill to amend the Federal Aviation Act of 1958, in order to provide criminal penalties for kidnaping by seizing an aircraft and to provide for an air transportation security force; to the Committee on Interstate and Foreign Commerce.

By Mr. BENNETT:

H.R. 5018. A bill to amend chapter 73 of title 10, United States Code, in order to provide that no further reduction be made in the retired or retainer pay of any person who elects to provide annuities under the survivor benefit plan if all beneficiaries of the annuities predecease such person; to the Committee on Armed Services.

By Mr. BINGHAM:

H.R. 5019. A bill to amend the International Travel Act of 1961, to provide for Federal regulation of the travel agency industry; to the Committee on Interstate and Foreign Commerce.

By Mr. BLATNIK (for himself, Mr. KLUCZYNSKI, Mr. WRIGHT, Mr. GRAY, Mr. JOHNSON of California, Mr. DORN, Mr. HOWARD, Mr. ANDERSON of California, Mr. ROE, Mr. RONCALIO of Wyoming, Mr. MCCORMACK, Mr. JAMES V. STANTON, Ms. ABZUG, Mr. BREAUX, Mr. STUDDS, Mrs. BURKE of California, and Mr. GINN):

H.R. 5020. 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; to the Committee on Public Works.

By Mr. BROYHILL of North Carolina (for himself and Mr. MCCOLLISTER):

H.R. 5021. A bill to provide disclosure standards for written consumer product warranties against defect or malfunction and to define Federal content standards for such warranties; to the Committee on Interstate and Foreign Commerce.

By Mr. BURTON:

H.R. 5022. A bill to provide to members of the Armed Forces and Federal employees who were in a missing status for any period during the Vietnam conflict double credit for such period for retirement purposes and certain additional pay and allowances, to provide such members certain medical benefits, and for other purposes; to the Committee on Ways and Means.

By Mr. CEDERBERG:

H.R. 5023. A bill to amend title 5, United States Code, to improve the administration of the leave system for Federal employees; to the Committee on Post Office and Civil Serivce.

By Mr. CLANCY:

H.R. 5024. A bill to amend section 509 of the Internal Revenue Code of 1954, to exempt libraries from the definition of private foundations; to the Committee on Ways and Means.

By Mr. CLANCY (for himself and Mr. GUYER):

H.R. 5025. A bill to amend the Federal Trade Commission Act (15 U.S.C. 41) to provide that under certain circumstances exclusive territorial arrangements shall not be deemed unlawful; to the Committee on Interstate and Foreign Commerce.

By Mr. CONABLE:

H.R. 5026. A bill to exempt from duty certain aircraft components and materials installed in aircraft previously exported from the United States where the aircraft is returned without having been advanced in value or improved in condition while abroad; to the Committee on Ways and Means.

By Mr. DAVIS of South Carolina:

H.R. 5027. A bill to amend title 38 of the United States Code, to liberalize the provisions relating to payment of disability and death pension; to the Committee on Veterans' Affairs.

By Mr. DELANEY:

H.R. 5028. A bill to amend the Immigration and Nationality Act to make additional immigrant visas available for immigrants from certain foreign countries, and for other purposes; to the Committee on the Judiciary.

By Mr. DICKINSON:

H.R. 5029. A bill to amend the Food Stamp Act of 1964, to exclude from coverage by the act every household which has a member who is on strike, and for other purposes; to the Committee on Agriculture.

By Mr. DOMINICK V. DANIELS:

H.R. 5030. A bill to amend titles 39 and 5, United States Code, to eliminate certain restrictions on the rights of officers and employees of the Postal Service, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. DULSKI:

H.R. 5031. A bill to permit certain military service performed after December 1956, to be included in the aggregate period of service on which civil service retirement benefits are payable, even though the individual is, or would on proper application be entitled to social security benefits, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. EILBERG (for himself, Ms. ABZUG, Mr. BEVILL, Mr. BROWN of California, Mrs. BURKE of California, Mrs. CHISHOLM, Mr. CONYERS, Mr. DANIELSON, Mr. WILLIAM D. FORD, Mr. GUNTER, Mr. HARRINGTON, Mr. HECHLER of West Virginia, Mrs. HECKLER of Massachusetts, Mr. MCSPADDEN, Mr. MAZZOLI, Mr. METCALFE, Mrs. MINK, Mr. MITCHELL of Maryland, Mr. MOAKLEY, Mr. MOLLOHAN, Mr. PIKE, Mr. PODELL, Mr. ROSENTHAL, Mr. SARBANES, and Mr. STARK):

H.R. 5032. A bill to amend title XVIII of the Social Security Act to authorize payment under the supplementary medical insurance program for annual flu shots; to the Committee on Ways and Means.

By Mr. EILBERG (for himself, Mr. STUDDS, Mr. STUCKEY, Mr. WILLIAMS, Mr. WOLFF, Mr. WON PAT, and Mr. YATRON):

H.R. 5033. A bill to amend title XVIII of the Social Security Act to authorize payment under the supplementary medical insurance program for annual flu shots; to the Committee on Ways and Means.

By Mr. FISH:

H.R. 5034. A bill to repeal the bread tax on 1973 wheat crop; to the Committee on Agriculture.

By Mr. FOLEY:

H.R. 5035. A bill to amend Public Law 90–335 (82 Stat. 174) relating to the purchase, sale, and exchange of certain lands on the Spokane Indian Reservation; to the Committee on Interior and Insular Affairs.

H.R. 5036. A bill to amend the Public Works and Economic Development Act of 1965, to extend the authorizations for a 1-year period; to the Committee on Public Works.

H.R. 5037. A bill to amend title 38 of the United States Code, to liberalize the provisions relating to payment of disability and death pension; to the Committee on Veterans' Affairs.

By Mr. FULTON (for himself, Mr. BROYHILL of Virginia, Mr. STUCKEY, Mr. DORN, Mr. SHUSTER, Mr. THONE, Mr. HUBER, and Mr. MARAZITI):

H.R. 5038. A bill to amend the Social Security Act to provide for medical, hospital, and dental care through a system of voluntary health insurance including protection against the catastrophic expenses of illness, financed in whole for low-income groups through issuance of certificates, and in part for all other persons through allowance of tax credits; and to provide effective utilization of available financial resources, health manpower, and facilities; to the Committee on Ways and Means.

By Mr. FULTON (for himself, Mr. BROYHILL of Virginia, Mr. MOORHEAD of California, Mr. CAMP, Mr. RONCALLO of New York, Mr. HOGAN, Mr. STEIGER of Arizona, Mr. CHAPPELL, Mr. VEYSEY, Mr. CLANCY, Mr. YOUNG of Illinois, Mr. ICHORD, Mr. BURKE of Florida, Mr. LUJAN, Mr. PIKE, Mr. RUTH, Mr. GUNTER, Mr. WILLIAMS, Mr. MILFORD, Mr. MYERS, Mr. BROOMFIELD, Mr. HILLIS, Mr. ROONEY of Pennsylvania, Mr. HUDNUT, and Mr. ESHLEMAN):

H.R. 5039. A bill to amend the Social Security Act to provide for medical, hospital, and dental care through a system of voluntary health insurance including protection against the catastrophic expenses of illness, financed in whole for low-income groups through issuance of certificates, and in part for all other persons through allowance of tax credits; and to provide effective utilization of available financial resources, health, manpower, and facilities; to the Committee on Ways and Means.

By Mr. GREEN of Pennsylvania (for himself, Mr. BARRETT, Mr. EILBERG, Mr. NIX, Mr. WILLIAMS, Mr. COUGHLIN, Mr. WARE, and Mr. BIESTER):

H.R. 5040. A bill to amend the act of June 28, 1948, to provide for the addition of certain property in Philadelphia, Pa., to Independence National Historical Park; to the Committee on Interior and Insular Affairs.

By Mr. GUBSER:

H.R. 5041. A bill to amend the Internal Revenue Code of 1954, to allow an income tax credit for the costs of maintaining the exterior appearance and structural soundness of certain historic buildings and structures; to the Committee on Ways and Means.

By Mr. HANLEY:

H.R. 5042. A bill to provide for an equitable procedure for establishing congressional districts; to the Committee on the Judiciary.

H.R. 5043. A bill to amend title 5, United

States Code, to revise the pay structure for nonsupervisory positions of deputy U.S. marshal, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. HARRINGTON:

H.R. 5044. A bill to amend the Defense Production Act of 1950, to establish national defense petroleum reserves; to the Committee on Banking and Currency.

By Mr. HASTINGS:

H.R. 5045. A bill to amend the Communications Act of 1934, to provide permanent financing for the Corporation for Public Broadcasting; to the Committee on Interstate and Foreign Commerce.

H.R. 5046. A bill to amend the Public Works and Economic Development Act of 1965, to extend the authorizations for a 1-year period; to the Committee on Public Works.

By Mr. HELSTOSKI:

H.R. 5047. A bill to amend sections 101 and 902 of the Federal Aviation Act of 1958, to implement the Convention for the Suppression of Unlawful Seizure of Aircraft; to amend title XI of such act to authorize the President to suspend air service to any foreign nation which he determines is encouraging aircraft hijacking by acting in a manner inconsistent with the Convention for the Suppression of Unlawful Seizure of Aircraft; and to authorize the Secretary of Transportation to suspend the operating authority of foreign air carriers under certain circumstances; to the Committee on Interstate and Foreign Commerce.

H.R. 5048. A bill to amend section 403(b) of the Federal Aviation Act of 1958, to permit the continuation of youth fares; to the Committee on Interstate and Foreign Commerce.

By Mr. HENDERSON:

H.R. 5049. A bill to amend title 38 of the United States Code in order to provide mortgage protection life insurance to certain veterans unable to acquire commercial life insurance because of service-connected disabilities; to the Committee on Veterans' Affairs.

By Mr. MOSS (for himself, Mr. BROYHILL of North Carolina, Mr. STUCKEY, Mr. WARE, Mr. ECKHARDT, Mr. MCCOLLISTER, Mr. HELSTOSKI, Mr. YOUNG of Illinois, and Mr. BRECKINRIDGE):

H.R. 5050. A bill to amend the Securities Exchange Act of 1934, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. HILLIS:

H.R. 5051. A bill to establish improved nationwide standards of mail service, require annual authorization of public service appropriations to the U.S. Postal Service, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. HUBER:

H.R. 5052. A bill to establish a commission on medical malpractice awards; to the Committee on the Judiciary.

By Mr. KASTENMEIER (for himself, Mr. BROWN of California, Mr. DANIELSON, Mr. EDWARDS of California, and Mr. WALDIE):

H.R. 5053. A bill to provide for the creation of the Reclamation Lands Authority to carry out the congressional intent respecting the excess land provisions of the Federal Reclamation Act of June 17, 1902; to the Committee on Interior and Insular Affairs.

By Mr. KEATING:

H.R. 5054. A bill relating to withholding, for purposes of the income tax imposed by certain cities, on the compensation of Federal employees; to the Committee on Ways and Means.

By Mr. KOCH:

H.R. 5055. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968, to provide for grants to cities for improved street lighting; to the Committee on the Judiciary.

By Mr. McFALL:

H.R. 5056. A bill to provide for crediting service as an aviation midshipman for purposes of retirement for nonregular service under chapter 67 of title 10, United States Code, and for pay purposes under title 37, United States Code; to the Committee on Armed Services.

By Mr. McSPADDEN:

H.R. 5057. A bill to convey certain land of the United States to the Inter-Tribal Council, Inc., Miami, Okla.; to the Committee on Interior and Insular Affairs.

H.R. 5058. A bill to authorize the imposition of the death penalty for individuals convicted of certain crimes; to the Committee on the Judiciary.

By Mr. MARAZITI:

H.R. 5059. A bill to amend the Internal Revenue Code of 1954, to allow a deduction for expenses incurred by a taxpayer in making repairs and improvements to his residence, and to allow the owner of rental housing to amortize at an accelerated rate the cost of rehabilitating or restoring such housing; to the Committee on Ways and Means.

By Mr. MATSUNAGA:

H.R. 5060. A bill to protect confidential sources of news media, and for other purposes; to the Committee on the Judiciary.

By Mr. METCALFE (for himself, Mr. WOLFF, and Mr. STOKES):

H.R. 5061. A bill to assist in reducing crime by requiring speedy trials in cases of persons charged with violations of Federal criminal laws, to strengthen controls over dangerous defendants released prior to trial, to provide means for effective supervision and control of such defendants, and for other purposes; to the Committee on the Judiciary.

By Mr. METCALFE (for himself, Mrs. BURKE of California, Mr. STOKES, and Mr. HAWKINS):

H.R. 5062. A bill to provide for the compensation of innocent victims of violent crime in need; to make grants to States for the payment of such compensation; to authorize an insurance program and death and disability benefits for public safety officers; to provide civil remedies for victims of racketeering activity; and for other purposes; to the Committee on the Judiciary.

By Mr. METCALFE (for himself, Mr. STOKES, and Miss HOLTZMAN):

H.R. 5063. A bill to prohibit the importation, manufacture, sale, purchase, transfer, receipt, or transportation of handguns, in any manner affecting interstate or foreign commerce, except for or by members of the Armed Forces, law enforcement officials, and, as authorized by the Secretary of the Treasury, licensed importers, manufacturers, dealers, and pistol clubs; to the Committee on the Judiciary.

By Mr. MOSS (for himself, Mr. MCFALL, Mr. STUCKEY, Mr. HELSTOSKI, Mr. ECKHARDT, Mr. BRECKINRIDGE, and Mr. CARNEY of Ohio):

H.R. 5064. A bill making appropriations to carry out the provisions of the Motor Vehicle Information and Cost Savings Act for the fiscal year ending June 30, 1973; to the Committee on Appropriations.

By Mr. NIX:

H.R. 5065. 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; to the Committee on Veterans' Affairs.

By Mr. PEPPER:

H.R. 5066. A bill to amend the Federal Aviation Act of 1958, to provide a more effective program to prevent aircraft piracy, and for other purposes; to the Committee on Interstate and Foreign Commerce.

H.R. 5067. A bill to permit officers and employees of the Federal Government to elect coverage under the old-age, survivors, and disability insurance system; to the Committee on Ways and Means.

By Mr. QUIE:

H.R. 5068. A bill to establish a Department of Education and Manpower; to the Committee on Government Operations.

H.R. 5069. A bill to provide a civil penalty for persons owning any vehicles which are on Federal recreational properties without having any litter bags; to the Committee on Interior and Insular Affairs.

By Mr. RARICK (for himself, Mr. MATSUNAGA, Mr. WOLFF, Mr. BROWN of California, Mr. MURPHY of Illinois, Mr. WON PAT, Mr. BYRON, Mr. HELSTOSKI, Mr. RIEGLE, Mr. MICHEL, Mr. DUNCAN, Mr. KETCHUM, Mr. RAILSBACK, Mr. ZWACH, Mr. FOLEY, and Mr. KEMP):

H.R. 5070. A bill to amend the Internal Revenue Code of 1954, to allow a deduction from gross income for social agency, legal, and related expenses incurred in connection with the adoption of a child by the taxpayer; to the Committee on Ways and Means.

By Mr. RODINO:

H.R. 5071. A bill to designate the birthday of Martin Luther King, Jr., as a legal public holiday; to the Committee on the Judiciary.

By Mr. ROE:

H.R. 5072. A bill to establish a comprehensive program of insurance and reimbursement with respect to losses sustained by the fisheries trades as a result of environment disasters; to the Committee on Merchant Marine and Fisheries.

H.R. 5073. A bill to amend the act of August 13, 1946, to increase the Federal contribution to 90 percent of the cost of shore restoration and protection projects; to the Committee on Public Works.

By Mr. ROONEY of Pennsylvania (for himself, Mr. BROYHILL of North Carolina, Mr. ADDABBO, Mr. ANDERSON of Illinois, Mr. ANDREWS of North Dakota, Mr. BAFALIS, Mr. BLATNIK, Mr. BRASCO, Mr. BROOMFIELD, Mr. BROYHILL of Virginia, Mr. BUCHANAN, Mr. BURKE of Massachusetts, Mr. BURLESON of Texas, Mr. BUTLER, Mr. CHAPPELL, Mr. CLEVELAND, Mr. COUGHLIN, Mr. COCHRAN, Mr. CRONIN, Mr. DAVIS of Wisconsin, Mr. DAVIS of South Carolina, Mr. DENHOLM, Mr. DUNCAN, Mr. ESHLEMAN, and Mr. FINDLEY):

H.R. 5074. A bill to amend the Communications Act of 1934, to establish orderly procedures for the consideration of applications for renewal of broadcast licenses; to the Committee on Interstate and Foreign Commerce.

By Mr. ROONEY of Pennsylvania (for himself, Mr. BROYHILL of North Carolina, Mr. FISHER, Mr. FRENZEL, Mr. FROEHLICH, Mr. FULTON, Mr. FUQUA, Mr. GIAIMO, Mr. GUNTER, Mr. HANRAHAN, Mr. HENDERSON, Mr. HILLIS, Mr. HUBER, Mr. HUNGATE, Mr. HUTCHINSON, Mr. KEATING, Mr. KEMP, Mr. KETCHUM, Mr. LOTT, Mr. MCCORMACK, Mr. MCDADE, Mr. MALLARY, Mr. MARTIN of North Carolina, Mr. MATHIAS of California, and Mr. MILLER):

H.R. 5075. A bill to amend the Communications Act of 1934, to establish orderly procedures for the consideration of applications for renewal of broadcast licenses; to the Committee on Interstate and Foreign Commerce.

By Mr. ROONEY of Pennsylvania (for himself, Mr. BROYHILL of North Carolina, Mr. MITCHELL of New York,

Mr. MIZELL, Mr. MYERS, Mr. NICHOLS, Mr. O'BRIEN, Mr. PASSMAN, Mr. PEPPER, Mr. PODELL, Mr. RAILSBACK, Mr. RHODES, Mr. ROBINSON of Virginia, Mr. ROSE, Mr. ROUSH, Mr. ROUSSELOT, Mr. SARASIN, Mr. SCHNEEBELI, Mr. SIKES, Mr. SLACK, Mr. SPENCE, Mr. JAMES V. STANTON, and Mr. STEIGER of Arizona):

H.R. 5076. A bill to amend the Communications Act of 1934, to establish orderly procedures for the consideration of applications for renewal of broadcast licenses; to the Committee on Interstate and Foreign Commerce.

By Mr. ROONEY of Pennsylvania (for himself, Mr. BROYHILL of North Carolina, Mr. STEELMAN, Mr. STUBBLEFIELD, Mr. TREEN, Mr. WAGGONNER, Mr. WALSH, Mr. WAMPLER, and Mr. WILLIAMS):

H.R. 5077. A bill to amend the Communications Act of 1934, to establish orderly procedures for the consideration of applications for renewal of broadcast licenses; to the Committee on Interstate and Foreign Commerce.

By Mr. SAYLOR:

H.R. 5078. A bill to authorize appropriations for the Indian Claims Commission for fiscal year 1974, and for other purposes; to the Committee on Interior and Insular Affairs.

H.R. 5079. 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; to the Committee on Interior and Insular Affairs.

By Mr. SHOUP:

H.R. 5080. A bill to amend chapter 2 of title 16 of the United States Code (respecting national forests) to provide a share of timber receipts to States for schools and roads; to the Committee on Agriculture.

H.R. 5081. A bill to amend section 318 of the Communications Act of 1934; to the Committee on Interstate and Foreign Commerce.

By Mr. SISK:

H.R. 5082. A bill to amend section 1402(a) of title 10, United States Code, to revise the rule for recomputation of retired or retainer pay to reflect later active duty; to the Committee on Armed Services.

H.R. 5083. A bill to amend the Federal Food, Drug, and Cosmetic Act to include a definition of food supplements, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. STAGGERS:

H.R. 5084. A bill to designate certain lands as wilderness; to the Committee on Interior and Insular Affairs.

H.R. 5085. A bill to amend the Federal Aviation Act of 1958, with respect to the transportation of Government traffic by civil air carriers of the United States; to the Committee on Interstate and Foreign Commerce.

H.R. 5086. A bill to amend the tariff and trade laws of the United States to promote full employment and restore a diversified prduction base; to amend the Internal Revenue Code of 1954, to stem the outflow of U.S. capital, jobs, technology, and production, and for other purposes; to the Committee on Ways and Means.

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

H.R. 5087. A bill to regulate commerce to protect health and the environment against toxic chemical substances; to the Committee on Interstate and Foreign Commerce.

By Mr. J. WILLIAM STANTON:

H.R. 5088. A bill to deauthorize the Lake Erie-Ohio River Canal; to the Committee on Public Works.

By Mr. STEED (for himself, Mr. JARMAN, Mr. CAMP, Mr. JONES of Oklahoma, and Mr. MCSPADDEN):

H.R. 5089. A bill to determine the rights and interests of the Choctaw Nation, the Chickasaw Nation, and the Cherokee Nation in and to the bed of the Arkansas River below the Canadian fork and to the eastern boundary of Oklahoma; to the Committee on Interior and Insular Affairs.

By Mr. STEIGER of Wisconsin:

H.R. 5090. A bill concerning the allocation of water pollution funds among the States in fiscal 1973 and fiscal 1974; to the Committee on Public Works.

By Mrs. SULLIVAN (for herself, Mr. CLARK, Mr. MAILLIARD, Mr. DINGELL, Mr. MOSHER, Mr. LEGGETT, Mr. GOODLING, Mr. BIAGGI, Mr. MCCLOSKEY, Mr. ECKHARDT, Mr. FORSYTHE, Mr. SARBANES, Mr. GINN, and Mr. STUDDS):

H.R. 5091. A bill to amend the Marine Protection, Research, and Sanctuaries Act of 1972, and for other purposes; to the Committee on Merchant Marine and Fisheries.

By Mr. THOMPSON of New Jersey:

H.R. 5092. A bill to amend the Consumer Credit Protection Act to prohibit discrimination by creditors on the basis of sex or martial status in connection with any extension of credit; to the Committee on Banking and Currency.

By Mr. THONE:

H.R. 5093. A bill to authorize a White House Conference on Education; to the Committee on Education and Labor.

By Mr. UDALL (for himself, Mr. DULSKI, Mr. HENDERSON, Mr. NIX, Mr. HANLEY, Mr. WALDIE, Mr. WHITE, Mr. WILLIAM D. FORD, Mr. BRASCO, Mr. CLAY, Mr. MOAKLEY, Mr. LEHMAN, Mr. HOGAN, and Mr. HILLIS):

H.R. 5094. A bill to amend title 5, United States Code, to provide for the reclassification of positions of deputy U.S. marshal, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. ULLMAN (for himself, Mr. SCHNEEBELI, Mr. CORMAN, and Mr. GREEN of Pennsylvania):

H.R. 5095. A bill to amend the Internal Revenue Code of 1954, with respect to lobbying by certain types of exempt organizations; to the Committee on Ways and Means.

By Mr. WALSH:

H.R. 5096. A bill to require the use of U.S. materials and products in the construction, alteration, or repair of water, air, or noise pollution control facilities for which Federal assistance is provided; to the Committee on Public Works.

By Mr. WOLFF (for himself and Mr. COUGHLIN):

H.R. 5097. A bill to make additional immigrant visas available for immigrants from certain foreign countries, and for other purposes; to the Committee on the Judiciary.

By Mr. YATRON:

H.R. 5098. A bill to amend the Public Works and Economic Development Act of 1965 to extend the authorizations for a 1-year period; to the Committee on Public Works.

By Mr. MARAZITI (for himself, Mr. ARCHER, Mr. DOMINICK V. DANIELS, Mr. RARICK, Mr. BROWN of California, Mr. ALEXANDER, Mr. HANRAHAN, Mr. MOLLOHAN, Mr. HINSHAW, Mr. MAZZOLI, Mr. PREYER, Mr. BAFALIS, Mr. GUDE, Mr. BUCHANAN, Mr. FISHER, Mrs. HANSEN of Washington, Mr. RINALDO, Mr. MOAKLEY, Mr. YOUNG of Florida, Mr. HUDNUT, Mr. CAMP, Mr. FULTON, Mr. ROE, Mr. BUTLER, and Mr. ERLENBORN):

H.J. Res. 396. Joint resolution designating a "National Day of Recognition and Prayer" to honor those Americans killed in the Vietnam conflict; to the Committee on the Judiciary.

By Mr. MARAZITI (for himself, Mr. RONCALLO of New York, Mr. TREEN, Mrs. CHISHOLM, and Mr. RANDALL):

H.J. Res. 397. Joint resolution designating a "National Day of Recognition and Prayer" to honor those Americans killed in the Vietnam conflict; to the Committee on the Judiciary.

By Mr. PEYSER:

H.J. Res. 398. Joint resolution to authorize and request the President to proclaim April 29, 1973, as a day of observance of the 30th anniversary of the Warsaw ghetto uprising; to the Committee on the Judiciary.

By Mr. YATRON:

H.J. Res. 399. Joint resolution authorizing the President to proclaim the third Sunday in October of 1973, as "National Shut-In Day"; to the Committee on the Judiciary.

By Mr. PEPPER:

H. Con. Res. 135. Concurrent resolution expressing the sense of the Congress with respect to the treatment of Jews in Iraq and Syria; to the Committee on Foreign Affairs.

By Mr. DULSKI (for himself, Mr. GROSS, Mr. HENDERSON, Mr. HANLEY, Mr. CHARLES H. WILSON of California, Mr. WALDIE, and Mr. WHITE):

H. Res. 261. Resolution to provide funds for the expenses of the investigation and study authorized by House Resolution 180; to the Committee on House Administration.

By Mr. JAMES V. STANTON:

H. Res. 262. Resolution of inquiry with respect to a pending grand jury investigation in the northern district of Texas; to the Committee on the Judiciary.

By Mr. THOMPSON of New Jersey:

H. Res. 263. Resolution providing funds for the expenses of the Committee on Ways and Means; to the Committee on House Administration.

H. Res. 264. Resolution to provide for the expenses of investigations and studies to be conducted by the Committee on Armed Services pursuant to House Resolution 185; to the Committee on House Administration.

H. Res. 265. Resolution to provide funds for the Committee on the Judiciary; to the Committee on House Administration.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. BROWN of Michigan:

H.R. 5099. A bill for the relief of Jack Bradshaw, Jr.; to the Committee on the Judiciary.

H.R. 5100. A bill for the relief of Erving Fance, Jr.; to the Committee on the Judiciary.

By Mr. EILBERG:

H.R. 5101. A bill to incorporate in the District of Columbia the Catholic War Veterans of the United States of America; to the Committee on the District of Columbia.

By Mr. FOLEY:

H.R. 5102. A bill for the relief of Wilhelm J. R. Maly; to the Committee on the Judiciary.

By Mr. GREEN of Pennsylvania:

H.R. 5103. A bill for the relief of Helena Janina Kuropatwa; to the Committee on the Judiciary.

By Mr. HUNT:

H.R. 5104. A bill for the relief of Lt. Frederick R. Marlin, Jr., U.S. Navy; to the Committee on the Judiciary.

By Mr. ROONEY of Pennsylvania:

H.R. 5105. A bill for the relief of Lt. (jg.) Robert Jennings, U.S. Navy (Active); to the Committee on the Judiciary.

By Mr. VAN DEERLIN:

H.R. 5106. A bill for the relief of Flora Datiles Tabayo; to the Committee on the Judiciary.