



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 93<sup>d</sup> CONGRESS, SECOND SESSION

## SENATE—Wednesday, January 30, 1974

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

### PRAYER

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

O God of history, Ruler above all nations, may we this day reappraise the principles and purposes of our national existence. May it end with a rededication to the ways of righteousness and truth. Be with the President as he speaks and with all who listen. May the people hear with discrimination and respond with wisdom. Deliver us from all selfishness, pride, and arrogance. Anoint us with humility, charity, and the spirit of sacrificial service. Unite the people and their representatives in government so that they all may concert their best efforts for the spiritual and temporal well-being of the Nation. Grant that now and always we may live by the truth of Thy holy word:

*Fear God and keep His commandments: for this is the whole duty of man.—Ecclesiastes 12:3. Amen.*

### MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the Senate by Mr. Marks, one of his secretaries.

### EXECUTIVE MESSAGES REFERRED

As in executive session, the President pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

### THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, January 29, 1974, be dispensed with.

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

### COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees may be authorized to meet during the session of the Senate today.

CXX—83—Part 2

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

### THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Nos. 639 through 645.

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

### GRANT J. MERRITT AND MARY MERRITT BERGSON

The bill (S. 2606) for the relief of Grant J. Merritt and Mary Merritt Bergson, was considered, ordered to be engrossed for a third reading, read the third time, and passed as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, with the consent of Glen J. Merritt, Alice L. Merritt, Wallace A. Merritt, Thelma Herter Merritt, and Merna Jean Merritt (lessees on a lease entered into on August 26, 1938, between the aforementioned parties and the United States involving certain lands situated within the Isle Royale National Park), the Secretary of the Interior is authorized and directed to revise and reform such lease so as to include as additional lessees thereon the names of Grant J. Merritt and Mary Merritt Bergson.*

### ADDITIONAL TEMPORARY STAFF MEMBERS FOR COMMITTEE ON FINANCE

The resolution (S. Res. 238) continuing the authorization for two additional temporary professional staff members and two additional temporary clerical assistants for the Committee on Finance, was considered and agreed to, as follows:

*Resolved, That the Committee on Finance is authorized from March 1, 1974, through February 28, 1975, to employ two additional professional staff members and two additional clerical assistants, to be paid from the contingent fund of the Senate at rates of compensation to be fixed by the chairman in accordance with the provisions of section 105(e) of the Legislative Branch Appropriation Act, 1958, as amended.*

### ADDITIONAL EXPENDITURES BY THE COMMITTEE ON FINANCE

The resolution (S. Res. 239) authorizing additional expenditures by the Committee on Finance for routine purposes, was considered and agreed to, as follows:

*Resolved, That the Committee on Finance is authorized to expend from the contingent*

fund of the Senate, during the Ninety-third Congress, \$20,000 in addition to the amounts, and for the same purposes, specified in section 134(a) of the Legislative Reorganization Act of 1946, and in Senate Resolution 148, Ninety-third Congress, agreed to August 2, 1973.

### SUPPLEMENTAL EXPENDITURES BY THE SELECT COMMITTEE ON NUTRITION AND HUMAN NEEDS

The resolution (S. Res. 247) authorizing supplemental expenditures by the Select Committee on Nutrition and Human Needs for inquiries and investigations, was considered and agreed to, as follows:

*Resolved, That section 3 of S. Res. 50, Ninety-third Congress, agreed to February 22, 1973, be amended by striking out "\$255,000" and inserting in lieu thereof "\$275,000".*

### MARGARET G. COBEL

The resolution (S. Res. 251) to pay a gratuity to Margaret G. Cobel, was considered and agreed to, as follows:

*Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Margaret G. Cobel, widow of Jimmy J. Cobel, an employee of the Architect of the Capitol assigned to duty in the Senate Office Buildings at the time of his death, a sum equal to six months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.*

### RUTH W. MOSS

The resolution (S. Res. 252) to pay a gratuity to Ruth W. Moss, was considered and agreed to, as follows:

*Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Ruth W. Moss, mother of J. Rulon Moss, an employee of the Senate at the time of his death, a sum equal to four months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.*

### CONFIDENCE AND CONCERN: CITIZENS VIEW AMERICAN GOVERNMENT

The concurrent resolution (S. Con. Res. 61) authorizing the printing of additional copies of part I of the Senate hearings entitled "Confidence and Concern: Citizens View American Government—A Survey of Public Attitudes, was considered and agreed to, as follows:

1301

*Resolved by the Senate (the House of Representatives concurring), That there be printed for the use of the Senate Committee on Government Operations two thousand additional copies of part I of its committee print entitled "Confidence and Concern: Citizens View American Government—A Survey of Public Attitudes," dated December 3, 1973.*

The title was amended, so as to read: "Concurrent resolution authorizing the printing of additional copies of part I of the Senate committee print entitled "Confidence and Concern: Citizens View American Government—A Survey of Public Attitudes".

#### ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, for the information of the Senate, we will have a vote at 2 p.m. today, to be followed by a vote on cloture pertaining to S. 2686, Calendar No. 471, a bill to amend the Economic Opportunity Act of 1964 to provide for the transfer of the legal services program from the Office of Economic Opportunity to a Legal Services Corporation, and for other purposes.

I do not know how long debate will continue on this matter if cloture is or is not invoked, but I should like to put the Senate on notice that, depending on circumstances, it may very well be that the Senate will return to the consideration of Executive O, 81st Congress, First Session, the so-called Genocide Convention, later this afternoon.

Mr. HUGH SCOTT. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. HUGH SCOTT. Mr. President, I hope that we could avoid a lengthy session this afternoon, so that a number of Senators may arrange to meet between 4:15 and 5:15 at the White House.

Mr. MANSFIELD. The Senator can be assured that that will be the case.

For the information of the Senate, when the Senate recesses later this afternoon, it will, as the assistant majority leader has indicated, reconvene at the hour of 8:30 p.m. Senators will assemble in a body and leave the Chamber at 8:42 p.m. for the purpose of attending a joint session in the Hall of the House of Representatives to hear the President of the United States deliver his state of the Union message.

#### THE ADMINISTRATION'S HOUSING PROPOSAL

The PRESIDENT pro tempore. The minority leader is recognized.

Mr. HUGH SCOTT. Mr. President, last fall the administration announced its long-awaited housing proposals. Emphasis was placed on the inadequacy of the present subsidized housing program which restricts an individual's freedom of choice and mobility. The current program serves only 1 family out of 15 which are eligible for assistance and caters to those having annual incomes well above the poverty level of \$4,275. The net result of all this has been to identify the Federal Government itself as the Nation's worst slumlord.

The administration's new proposals would revolutionize Federal housing policy. Federal subsidies will be paid directly to eligible families instead of being passed through local housing authorities or builders engaged in the construction of public housing. This new policy of direct subsidy is a more rational and clear-sighted approach to our housing problems because of four actions to be taken concurrently by the Administration: first, expanding the supply of credit in the nonsubsidized housing market; second, making a \$2.5 billion loan commitment to savings and loan associations from the Federal Home Loan Bank Board; third, removing interest ceilings on government-issued mortgages; and fourth, authorizing Federal insurance to cover larger-sized mortgages than are currently permitted.

Amidst all of these positive steps, I am concerned that not enough attention is being paid to the special problems of substandard housing in rural areas. In one Pennsylvania county surveyed, 35 percent of the housing was found to be substandard. In another county, one village's housing was given a grade of D for severe deterioration and a lack of facilities. In still another county, 33 percent of the housing is unsound, and 25 percent have no indoor plumbing. In the same county, the total housing available declined by 12 percent from 1960 to 1970, and the supply of houses for rent at \$60 or less decreased by 30 percent. Although the county planning commission recommended in 1968 that 1,500 to 2,000 low-cost housing units be constructed, very few have been built. Another survey of a different county showed that 32 percent of the total number of housing units was found to be occupied by disadvantaged families, and 35 percent of these families lived in substandard units. Four years later, 19 percent of the county's housing units were found to be deteriorating, and 6.2 percent were dilapidated. The situation has been improving but not quickly enough.

Nationally, 96 percent of America's substandard housing is found in small towns, and in rural areas an estimated 1 million people are living in substandard housing. Furthermore, bad housing conditions in rural areas have undoubtedly contributed greatly to the massive out-migration that has been so prominent a feature of rural life over the last three decades.

In the past, Federal housing programs have been overwhelmingly urban oriented. Currently, 60 percent of the substandard housing in the United States is found in nonmetropolitan areas, but these areas only receive 25 percent of the total Federal housing resources, including mortgage interest tax reductions. Only 21 percent of the HUD-assisted units are found in rural America. The Farmers Home Administration, which has been authorized to act in the rural housing field for 25 years, is predominantly farm oriented, operates a dozen other programs in addition to housing, and does not have either the staff or the resources to deal with deteriorating rural housing conditions.

The Senate has taken one small step to meet the needs of rural housing by passing a bill to authorize loans from a newly created rural development insurance fund to private profit or nonprofit companies organized solely to purchase, service, sell or otherwise deal in loans made by private financial agencies for purposes for which can be made under the Consolidated Farm and Rural Development Act. I am hopeful that favorable House action will occur this year. The bills bring no additional cost to the Federal Government, yet it encourages the formation of private companies to provide the ongoing capital necessary to encourage the economic development, housing included, of rural America.

Pennsylvania's rural communities are eagerly awaiting further congressional action on proposals to enhance the livability in nonmetropolitan areas. Housing is the No. 1 priority. It must not be neglected any longer.

Some very thoughtful proposals in this regard have been advanced by Mr. Gordon Cavanaugh, executive director of the Housing Assistance Council, a national nonprofit agency providing technical help and loans to public and private groups and developing low-income housing in rural areas. I ask unanimous consent that this article be printed in the RECORD.

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

[From the Washington Post, Oct. 27, 1973]

#### FARMERS HOME LOANS DEFENDED BY CAVANAUGH

(By Gordon Cavanaugh)

The administration's recent diagnosis of the illness afflicting delivery of adequate housing to rural areas—a gap in credit availability—is a distressing oversimplification.

A recent article by Oliver H. Jones of the Mortgage Bankers Association accusing the Farmers Home Administration (FmHA) of driving private mortgage bankers out of the rural areas is equally distressing as a misreading of history.

To set this record straight, what follows is an historical view of the reasons behind a federal rural mortgage agency, and of equal importance, a look at the conditions of rural life which cause small towns and rural areas to suffer more than half of the nation's substandard housing.

What both parties—the administration and the Mortgage Bankers Association—overlook is that the Congress recognized the failure of normal credit institutions to meet rural needs in 1949 when it established the rural housing program of the Farmers Home Administration, enabling it to make available direct federal loans through a system of county agents.

At that time, the program was only for farmers "without sufficient resources to provide the necessary housing and buildings on (their) own amount" and "unable to secure the credit necessary . . . from other sources upon terms and conditions which (they) could reasonably be expected to fulfill."

All other rural residents remained dependent on the private mortgage credit market until 1961, when Congress expanded Farmers program to include them—a response to the obvious and continued failure of the private lenders to meet their needs.

Still, Farmers Home could not lend to residents of towns over 2,500 population. Pres-

sure from rural Congressmen whose constituents were unserved by private lenders raised Farmers Home's jurisdiction to 5,500 in 1965 and to the current 10,000 in 1970.

As recently as 1968, Farmers Home was enabled to serve those seeking to move to eligible small towns and rural areas.

During its first 16 years, Farmers Home was a relatively minor force in rural areas making an average 6,956 loans per year. In 1966, FmHA went from a limited direct loan program to a modified insured loan program, again in response to unmet needs for housing credit, so that in fiscal year 1973 it made 120,628 housing loans.

Great numbers of potential rural borrowers remained on the private mortgage credit market after the establishment of the Farmers Home program. Mortgage bankers had years to serve such borrowers. They didn't or couldn't. Therefore, gradually, Congress expanded Farmers Home's rural housing program to meet the needs of the people private enterprise was ignoring.

In 1968, Farmers Home deepened its subsidy with interest credits permitting even lower income families to have homes. The average family income served during FY 1972 was \$5,440—hardly the classic mortgage market prospect.

To avoid the very competition with private lenders that Oliver Jones attributes to FmHA, the statute has precluded FmHA from making loans where credit is available elsewhere. In a specific effort to attract private lenders to rural areas, Farmers Home initiated a series of conferences in 1970 and 1971, for which FmHA state offices contacted state mortgage lending associations with followup meetings of local lenders. Lack of private lender interest minimized the results.

During the past fiscal year, 51,563 FmHA applicants were referred to other credit sources, mainly private. Also, that same year, FmHA discouraged 136,230 obviously ineligible individuals from applying for assistance. Of that number, 77,140 were told they could afford to seek credit elsewhere.

The fact is, the private mortgage lenders either will not or cannot serve rural areas. Rural lenders traditionally do not lend in highly depressed areas, to minorities, to female heads of households, or to high-risk families with marginal incomes and debts—all commonplace problems in rural areas. For these, Farmers Home is the lender of last resort. Jones and the mortgage bankers seem to say that if they cannot have the rural business, no one should.

It is disingenuous of the MBA spokesman to attack the Farmers Home as "tax-exempt" and therefore, unfairly competitive. You will never hear this charge by the MBA against FmHA's urban cousin, the Federal Housing Administration, which insures the risk out of the profitable suburban mortgages which the MBA members love so well. It is also plainly misleading to say that "billions" of tax dollars can be saved by shifting to the private lenders. First of all, the FmHA mortgage are plans, not grants. Second, the billions to be saved the public might well lie in expanding direct federal mortgage loans to additional areas of the country, freeing strapped homebuyers from the discount points, service and placement fees, appraisal fees, etc. that private mortgage lending carries.

The Farmers Home program is useful and, for the most part, well managed. From FY 1960 to FY 1972, FmHA increased its total annual program production by 110 per cent. During the same period, staff increase was only 55.9 per cent. Farmers Home's extremely low foreclosure record and its virtual freedom from the alleged scandals and abuses besetting the Federal Housing Administration also attest to its soundness.

While Farmers Home has made valiant efforts to house rural people, it cannot do the job alone because the absence of adequate,

decent housing is the result of many inequitable deficiencies existing in rural areas of which credit is not the most significant.

Rural areas lack adequate housing because there is no system of public agencies, private entrepreneurial interests and support services which exist in urban and suburban areas for the development of housing. There are fewer jobs in rural areas, lower income, inadequate public services such as water and sewer facilities, no national rural policy and little planning for the future of rural areas.

What is needed is:

(1) The establishment—and funding—of regional or other broad-areas rural housing and development agencies—capable of developing houses for all markets unserved by the small rural homebuilding industry and capable of developing desperately needed water and sewer facilities.

(2) Making a more equitable share of the nation's housing and community development dollars available to non-metropolitan areas.

(3) Giving rural areas the same deep subsidy programs that cities get.

(4) Strengthening, rather than cutting the staff and services of the FmHA.

(5) Expanding the public housing subsidy programs.

(6) Adopting and pursuing a program of rational growth for rural areas, with programs for full employment and for adequate health, education and transportation services.

(7) Recognition of the deep poverty of rural communities, so that capital grants as well as low interest loans are provided for development.

(8) Settling upon and supporting roles for state government in rural housing and community development.

Only when the foregoing issues are dealt with can the rural housing problem be decently described as one of "credit availability."

(Gordon Cavanaugh is the executive director of the Housing Assistance Council, a national nonprofit agency providing technical help and loans to public and private groups, developing low income housing in rural areas. Cavanaugh is the former director of housing for the city of Philadelphia.)

#### ORDER OF BUSINESS

The PRESIDENT pro tempore. Under the previous order, the Senator from Michigan (Mr. GRIFFIN) is recognized for not to exceed 15 minutes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I be recognized at this time without prejudice to the distinguished Senator from Michigan.

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

#### REPEAL OF DAYLIGHT SAVING TIME IN WINTER MONTHS

Mr. ROBERT C. BYRD. Mr. President, I strongly support the repeal of daylight saving time as it applies to the winter months. When the question of adopting daylight saving time year-round was before the Senate in December, I voted against it, as did the distinguished majority leader (Mr. MANSFIELD). I did not think then, and I do not think now, that juggling clocks in the middle of winter can save any appreciable amount of energy. What may be gained at the end of the day seems to me to be lost at the beginning of the day.

Moreover, I feared for the safety of

children who, when the time is moved an hour ahead, have to go to school in darkness. I had received a considerable amount of correspondence from my constituents in the mountain and rural areas of West Virginia to that effect.

The worst fears on this score have been borne out. A number of children have been injured and killed on roadways in various parts of the country in the morning before it gets light. This is an intolerable situation. Overcast skies in the morning, rain, snow, sleet, and fog add immeasurably to the dangers that are faced by little children on their way to school.

There are other bad aspects of daylight time during the winter. For example, construction workers, workers in the housing industry, and others whose jobs are out of doors cannot see to do their work at 7 o'clock or 7:30 in the morning, when such work normally begins.

Congress acted in haste when it voted to adopt year-round daylight saving time. In my judgment, a mistake was made that Congress should promptly correct. The experiment, I think, is a failure, and Congress should put an end to it. I hope that we will return the country to standard time during the winter months as soon as possible.

Mr. President, I suggest the absence of a quorum, unless some Senator wishes to use some of my time. If not, I suggest the absence of a quorum, and I ask that the time be charged against the order entered in my behalf.

The PRESIDING OFFICER (Mr. NUNN). Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Does the Senator from Michigan (Mr. GRIFFIN) desire to be heard?

Mr. ROBERT C. BYRD. Mr. President, how much time remains under the order?

The PRESIDING OFFICER. The Senator from Michigan has 7 minutes under the previous order.

Mr. TAFT. Mr. President, I am glad to yield 3 minutes to the Senator from New Mexico on behalf of the Senator from Michigan. I ask unanimous consent to yield that time.

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

Mr. DOMENICI. I thank the Senator.

#### PUEBLO POTTERY MAKERS VISIT CAPITAL

Mr. DOMENICI. Mr. President, I, as a Senator from New Mexico, and the Senate are privileged today to have several visitors representing many Indian pueblos in the State of New Mexico. These wonderful New Mexicans are in Washington, many of them for the first time, to show and present examples of their unique pottery to Mrs. Nixon at the White House. I am indeed pleased that they have also found time to visit us in these Chambers.

The art form which these people have developed for hundreds of years has served them well—functionally as well as esthetically. Their pottery is original and distinctive. Over the centuries each pueblo developed its own designs. This, combined with the fact that each had its own clay source which caused differences in thickness of the pottery's walls, resulted in pottery styles unique to each pueblo. The pots are decorated only because of the desire of the individual artist for some means of self-expression. It has been said that the artist does his work "to warm the wintertimes of the heart."

I am pleased this art, and their creators, are being given such recognition. In this regard, much credit must be given to another friend of the pueblo people, Mrs. Nancy Winslow. A few years ago, Mrs. Winslow recognized the potential cultural and economic rewards of the pueblo pottery and has spent many hours and much of herself encouraging the recognition this art deserves. I am sure I am joined by all her many friends in thanking Mrs. Winslow in her efforts.

#### SENATOR DOMENICI SUPPORTS S. 2777, TO PROVIDE INCREASED INDIAN SELF-DETERMINATION

Mr. DOMENICI. Mr. President, the need for increased Indian self-determination of Indian affairs is, I believe, now a matter of universal agreement. Various methods of implementing a policy by which such self-determination can become a reality have been suggested but few have as much potential impact as S. 2777, a bill of which I am a cosponsor.

The specific language of S. 2777 provides that:

There shall be in the Department of the Interior, in addition to the Assistant Secretaries now provided for by law, one additional Assistant Secretary of the Interior for Indian Affairs, who shall be appointed by the President, by and with the advice and consent of the Senate, who shall be responsible for such duties as the Secretary of the Interior shall prescribe, with respect to the conduct of Indian affairs.

This legislation is of great importance in raising the area of Indian affairs to its proper role within the Department of the Interior. At the present time, the Commissioner of Indian Affairs is responsible to the Assistant Secretary of the Interior for Public Lands. This situation reduces the status of the Indian by creating an administrative structure seeming to place greater importance on land than on people. In a practical sense, moreover, this structure must inevitably hamper the flexibility and viability of an unfettered Indian affairs administration which occupies a secondary position in the Interior Department hierarchy.

With the creation of an Assistant Secretary for Indian Affairs, Indians will no longer be forced to compete with land and natural resources problems for attention, as they have had to do for so long—to their detriment. The interests of the Indian people will occupy a place of equal importance with other concerns

of the Interior Department, commensurate with the gravity of the problems which Indians face today.

The need for further action on the part of the Government to assist the Indian people realize their fullest potential is recognized by the present Secretary of the Interior, Rogers Morton. He has indicated his support for self-determination as opposed to the historic doctrine of termination as a course of action. "Self determination means Indian direction and management of Indian affairs. It means that the tribes themselves call the tune. But it does not mean that any tribe will be left floundering without leadership, direction, or its fair share of the allocated resources. It does mean, however, that the Indians, if and when they desire, can grow out of being a ward of the State into involvement and full participation.

Mr. President, I believe the major provisions of S. 2777 will initiate a long overdue change in government attitudes towards our Indian citizens, and I would urge my colleagues' support on its behalf. The enactment of S. 2777 is essential to the dignity, self-determination, and well being of the Indian people throughout our land.

#### ORDER OF BUSINESS

Mr. BARTLETT addressed the Chair.

Mr. TAFT. Does the Senator from Oklahoma desire time from the minority leader?

Mr. BARTLETT. Yes.

Mr. TAFT. Mr. President, the Senator from Michigan has 3 minutes remaining. I ask unanimous consent to yield the remaining 3 minutes to the Senator from Oklahoma.

The PRESIDING OFFICER (Mr. NUNN). The Senator from Oklahoma is recognized.

Mr. BARTLETT. I thank the Senator from Ohio and I express my appreciation to the Senator from Michigan.

#### YAMANI—A DOUBLE STANDARD

Mr. BARTLETT. Mr. President, I am very concerned that the Saudi Arabian Oil Minister, Prince Yamani, in his warning to Japan that the Japanese will be in "very serious trouble" if the forthcoming Washington meeting of oil consuming nations seeks to forge a common front against oil producing countries. It is interesting, indeed, that the leader of a producing country cartel would admonish anyone about the coordinated efforts of consuming nations seeking to find ways to satisfy their critical energy needs.

I favor no cartel of consuming countries. I favor no cartels at all and I am confident that President Nixon, in setting up the Conference of Consuming Nations on February 11 in Washington, was not advocating a cartel.

The cartel of producers has no right to object to consuming nations meeting to solve critical social and economic problems caused to a large extent by arbitrary cutoffs and very high prices of energy supplies, to those nations.

Initially, the producing country cartel used its economic weapon to bend foreign policy decisions in the Middle East.

Now, the producing country cartel is extending its economic influence to interfere with international efforts to deal with serious energy shortages.

The shortage of available energy supplies is a worldwide problem. It affects international economics.

I applaud Yamani's declaration that Saudi Arabia wants to reduce oil prices in the interest of international stability and economic health of both the developing and the developed nations. However, I observed, that a price reduction is inevitable if the world's economies, including the oil producing countries' economies, are not going to collapse.

I would hope that Sheikh Yamani and other leaders of the petroleum producing countries realize that oil productivity, oil supply, and the price of oil are all interrelated and the maximum efficiency for combining these three variables for the benefit of all the people on this Earth is to allow the free market to dictate a price for oil which will reflect its value.

Saudi Arabia can increase overnight its producing rate by 2 million barrels per day. And in addition to that, Saudi Arabian oil production could be boosted another 2 million barrels per day provided the American companies which produce oil in cooperation with Saudi Arabia have enough capital and equipment to expand their exploration, production, and development operations.

The United States has an important stake in the production of crude oil worldwide and, fortunately, American expertise is recognized worldwide.

Of primary concern should be the development of additional domestic energy sources, but running a close second in concern is the necessary development of worldwide supply of petroleum.

This country will not be self-sufficient for at least 15 years and probably longer. We must secure additional energy supplies from other sources worldwide. So we certainly have an interest in participating in the development of worldwide resources.

#### TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business for not to exceed 20 minutes with statements limited therein to 5 minutes.

#### ORDER FOR ADJOURNMENT TO 9:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until 9:30 a.m. tomorrow. I have been reminded by the distinguished Senator from Mississippi (Mr. STENNIS) that there will be a national prayer breakfast in the morning. Consequently the hour of convening will be delayed from 9 a.m. previously ordered until 9:30 a.m.

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

Mr. ROBERT C. BYRD. We also anticipate that there will be no votes in the morning until 10 a.m. or 10:30 a.m. I hope we will be able to make a more definite announcement later in the day, but this will give Senators, who desire to attend the national prayer breakfast, the opportunity to do so without having to miss a Senate vote.

#### RECESS UNTIL 1:30 P.M.

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate stand in recess until the hour of 1:30 p.m. today.

The motion was agreed to; and at 12:30 p.m. the Senate took a recess until 1:30 p.m.; whereupon the Senate reassembled when called to order by the Presiding Officer (Mr. CLARK).

#### COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

##### FINAL DETERMINATION OF CLAIM OF SAGINAW CHIPPEWA INDIANS

A letter from the Chairman of the Indian Claims Commission transmitting, pursuant to law, its report to the Congress of its final determination in respect to the claim of James Strong, et al (Saginaw Chippewa Indians) (with an accompanying report). Referred to the Committee on Appropriations.

##### PROPOSED LEGISLATION BY THE DEPARTMENT OF DEFENSE

A letter from the Acting General Counsel of the Department of Defense transmitting a draft of proposed legislation to amend titles 10, 32, and 37, United States Code, relating to the appointment, promotion, separation, and retirement of members of the Armed Forces, and for other purposes (with accompanying papers). Referred to the Committee on Armed Services.

##### REPORTS ON MILITARY CONSTRUCTION PROJECTS

A letter from the Deputy Assistant Secretary of Defense transmitting, pursuant to law, reports of military construction projects placed under contract in 1973 in which it was necessary to exceed amount authorized for the projects by the Congress by more than 25 percent (with accompanying papers). Referred to the Committee on Armed Services.

##### ARMY RESERVE OFFICERS' TRAINING CORPS FLIGHT INSTRUCTION PROGRAM

A letter from the Secretary of the Army transmitting, pursuant to law, a report of progress of the Army Reserve Officers' Training Corps flight instruction program for the calendar year 1973 (with an accompanying report). Referred to the Committee on Armed Services.

##### ACTIVITIES OF THE COMMUNITY RELATIONS SERVICE

A letter from the Director of the Community Relations Service transmitting, pursuant to law, a report of the activities of the Service for the fiscal year 1973 (with an accompanying report). Referred to the Committee on the Judiciary.

##### PROGRESS IN THE PREVENTION AND CONTROL OF AIR POLLUTION IN 1973

A letter from the Administrator of the Environmental Protection Agency transmitting, pursuant to law, the annual report on "Progress in the Prevention and Control of

Air Pollution in 1973" (with an accompanying report). Referred to the Committee on Public Works.

#### PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the PRESIDENT pro tempore:

A joint resolution of the Legislature of the State of Maine. Referred to the Committee on the Judiciary:

##### "JOINT RESOLUTION TO RATIFY THE EQUAL RIGHTS AMENDMENT TO THE FEDERAL CONSTITUTION"

"Whereas, the 92nd Congress of the United States of America at its second Session, in both Houses, by a Constitutional majority of two-thirds thereof, adopted the following proposition to amend the Constitution of the United States of America in the following words, to wit:

##### "JOINT RESOLUTION

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), that the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as a part of the Constitution when ratified by the Legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

##### "ARTICLE

"Section 1. Equality or rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

"Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

"Section 3. This Amendment shall take effect two years after the date of ratification now, therefore, be it

"Resolved: By the Members of the House of Representatives and the Senate of the 106th Legislature, that such proposed amendment to the Constitution of the United States of America be and the same is hereby ratified; and be it further

"Resolved: That certified copies of this Resolution be forwarded by the Secretary of State to the Administrator of General Services, Washington, D.C., and the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States."

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. SPARKMAN, from the Committee on Banking, Housing and Urban Affairs, without amendment:

S. Res. 240. A resolution authorizing additional expenditures by the Committee on Banking, Housing and Urban Affairs. Referred to the Committee on Rules and Administration.

By Mr. CANNON, from the Committee on Rules and Administration, without amendment:

S. Con. Res. 64. A concurrent resolution authorizing the printing of congressional eulogies and other tributes to the late J. Edgar Hoover as a Senate document. (Rept. No. 93-671).

#### EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

Mr. WILLIAMS. Mr. President, as in executive session, I report favorably sundry nominations in the Public Health Service which have previously appeared in the CONGRESSIONAL RECORD, and to save the expense of printing them on the Executive Calendar, I ask unanimous consent that they lie on the Secretary's desk for the information of Senators.

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

(The nominations ordered to lie on the Secretary's desk were printed in the CONGRESSIONAL RECORD of January 22, 1974.)

#### INTERNATIONAL CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE—RESERVATION AND AMENDMENTS

(Ordered to lie on the table and to be printed.)

Mr. CHURCH. Mr. President, as in executive session, on behalf of myself, the Senator from New York (Mr. JAVITS), and the Senator from Wisconsin (Mr. PROXMIRE) I submit a reservation and amendments, intended to be proposed by us, jointly, to the resolution of ratification of the International Convention on the Prevention and Punishment of the Crime of Genocide, adopted unanimously by the General Assembly of the United Nations in Paris on December 9, 1948, and signed on behalf of the United States on December 11, 1948. I ask unanimous consent that the reservation and amendments be printed in the RECORD.

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

##### RESERVATION AND AMENDMENTS

In the introductory matter preceding clause 1, strike out "and declaration" and insert in lieu thereof a comma and the following: "declaration, and reservation".

Strike out clause 3.

Strike out "4" and insert in lieu thereof "3".

At the end of the resolution, add the following:

4. That, subject to the reservation, which is hereby made a part and condition of the resolution of ratification,

(a) nothing in Article VI of the Convention shall affect the right of the United States to bring to trial before its own tribunals any of its nationals for acts committed outside the United States; and

(b) the Secretary of State, in negotiating extradition treaties or conventions shall reserve for the United States the right to refuse extradition of a United States national to a foreign country for any offense defined in this treaty when the offense has been committed outside the United States and

(1) where the United States is competent to prosecute before its own tribunals the person whose surrender is sought, and intends to exercise its jurisdiction; or

(2) where the person whose surrender is sought has already been or is at the time of the request being prosecuted for such an offense; or

(3) where the person whose surrender is sought would not be guaranteed all the basic rights of an accused under the United States Constitution.

### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. DOMENICI:

S. 2916. A bill to prevent the cancellation or termination of petroleum product sales franchises except upon due notice for cause; to provide remedies for wrongful cancellation or termination; to confer jurisdiction for such remedies; and for other purposes. Referred to the Committee on the Judiciary.

By Mr. JACKSON (for himself and Mr. FANNIN) (by request):

S. 2917. A bill to provide for the addition of certain lands in the State of Alaska to the National Park, National Wildlife Refuge, National Forest, and the Wild and Scenic Rivers Systems, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. JACKSON (by request):

S. 2918. A bill to designate certain public lands and waters in the State of Alaska for national conservation purposes to be administered as units of the National Park System, the National Wildlife Refuge System, National Wild and Scenic Rivers System, and the National Forest System. Referred to the Committee on Interior and Insular Affairs.

By Mr. BELLMON:

S. 2919. A bill to modify the method for computing military retirement benefits. Referred to the Committee on Armed Services.

By Mr. PERCY (for himself, Mr. Moss, and Mr. CLARK):

S. 2920. A bill to amend the Social Security Act to direct the Secretary of Health, Education, and Welfare to develop standards relating to the rights of patients in certain medical facilities. Referred to the Committee on Finance.

By Mr. STEVENS:

S. 2921. A bill to authorize construction of the Devil Canyon and Denali Units of the Upper Susitna River Basin project and related transmission facilities. Referred to the Committee on Interior and Insular Affairs.

### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOMENICI:

S. 2916. A bill to prevent the cancellation or termination of petroleum product sales franchises except upon due notice for cause; to provide remedies for wrongful cancellation or termination; to confer jurisdiction for such remedies; and for other purposes. Referred to the Committee on the Judiciary.

#### PROTECTION OF FRANCHISED DEALERS ACT OF 1974

Mr. DOMENICI. Mr. President, one person who has been most dramatically affected by the petroleum shortage and who has sometimes almost been forgotten in our deliberations is the man who most directly personifies this situation to Americans—the operator of the service station where they actually purchase their fuel.

This man is often a small, independent businessman with his lifetime savings invested in ownership of a retail outlet. Sometimes he is an employee of or a holder of a franchise with a giant petroleum company to operate a station for them.

In either instance, two things are true: He is usually small, while his supplier is usually large, and he is entirely dependent upon the supplier, both for his product and the promotion of its use under their brand name.

For too long, that small businessman has labored under a connection, essential to his continuance in business—and thus perhaps to the total economic health of himself, his own family, and the families of his employees—which could be snapped at will by a simple 30-day notice to him by his supplier.

The bill I introduce today would correct that unfair situation. The change it proposes is a substantial one: distributors and retailers would be given a minimum of 90 days' notice before any termination of their agreement with their supplier; and that agreement could only be terminated for cause if the supplier retires from active wholesale business across the entire country.

To some, this may seem a drastic move. To me, it appears only to redress a situation of inequity which has existed for too long. That situation favored suppliers at the expense of those who depended on them. The bill would attempt to strike a balance—and that balance is one I favor because of my strong support for distributors and retailers, men and women of truly independent character who operate, it seems to me, in the spirit of true free enterprise which has made America the world's most economically successful nation.

As drastic as our energy crisis is, Mr. President, it is not entirely bad if it leads us to redress an arrangement which for too long has offered great opportunity for injustice and which has long been a major cause for concern to one of the Nation's most outstanding groups of enterprising small businessmen.

I fully realize that there is a similar provision in S. 2589, the emergency energy bill. While it would normally be an unnecessary duplication to introduce this provision as a separate bill, I am concerned that S. 2589 faces an uncertain future in becoming the law of the land as illustrated by its recommittal to the conference committee yesterday. I am moving ahead then to place before this body a separate bill which will stand on its own merits and which should receive the unqualified support of all Members of this body.

By this process I hope to gain the attention of my colleagues regarding the plight of independent service station operators and dealers who are at such an unbelievable disadvantage in their business relations with their suppliers. If S. 2589 runs into the difficulties I expect, I will offer the provisions of this bill as an amendment to the first suitable legislation to be considered by the Senate.

Mr. President, I request unanimous consent that the full text of this bill be printed at this point in the RECORD.

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

S. 2916

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 "Protection of Franchised Dealers Act of 1974".

#### SEC. 2. Definitions.

(a) As used in this Act—

(1) The term "distributor" shall mean a person engaged in the sale, consignment, or distribution of petroleum products to wholesale or retail outlets whether or not it owns, leases, or in any way controls such outlets.

(2) The term "franchise" shall mean any agreement or contract between a refiner or a distributor and a retailer or between a refiner and a distributor, under which such retailer or distributor is granted authority to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or distributor, or any agreement or contract between such parties under which such retailer or distributor is granted authority to occupy premises owned, leased, or in any way controlled by a party to such agreement or contract, for the purpose of engaging in the distribution or sale of petroleum products for purposes other than resale.

(3) The term "good faith" shall mean the duty of each party to any franchise, and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: *Provided*, That recommendations, endorsement, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith.

(4) The term "commerce" shall mean commerce among the several States of the United States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

(5) The term "notice of intent" shall mean a written statement of the alleged facts which, if true, constitute a violation of subsection (b) of this Act.

(6) The term "petroleum product" means any liquid refined from oil and usable as a fuel.

(7) The term "refiner" shall mean a person engaged in the refining or importing of petroleum products.

(8) The term "retailer" shall mean a person engaged in the sale of any petroleum product for purposes other than resale within any State, either under a franchise or independent of any franchise or who was so engaged at any time after the start of the base period.

(b) (1) A refiner or distributor shall not cancel, fail to renew, or otherwise terminate a franchise unless he furnishes prior notification pursuant to each distributor or retailer affected thereby. Such notification shall be in writing and sent to such distributor or retailer by certified mail not less than ninety days prior to the date on which such franchise will be canceled, not renewed, or otherwise terminated. Such notification shall contain a statement of intention to cancel, not renew, or to terminate together with the reasons therefor, the date on which such action shall take effect, and a statement of the remedy or remedies available to such distributor or retailer under this Act together with a summary of the applicable provisions of this Act.

(2) A refiner or distributor shall not cancel, fail to renew, or otherwise terminate a franchise unless the retailer or distributor whose franchise is terminated failed to com-

ply substantially with any essential and reasonable requirement of such franchise or failed to act in good faith in carrying out the terms of such franchise, or unless such refiner or distributor withdraws entirely from the sale of petroleum products in commerce for sale other than resale in the United States.

(c) (1) If a refiner or distributor engages in conduct prohibited under subsection (b) of this Act, a retailer or a distributor may maintain a suit against such refiner or distributor. A retailer may maintain such suit against a distributor or a refiner whose actions affect commerce and whose products with respect to conduct prohibited under paragraph (1) or (2) of subsection (b) of this Act, he sells or has sold, directly or indirectly, under a franchise. A distributor may maintain such suit against a refiner whose actions affect commerce and whose products he purchases or has purchased or whose products he distributes or has distributed to retailers.

(2) The court shall grant such equitable relief as is necessary to remedy the effects of conduct prohibited under subsection (b) of this Act which it finds to exist including declaratory judgment and mandatory or prohibitive injunctive relief. The court may grant interim equitable relief, and actual punitive damages except for actions for a failure to renew where indicated, in suits under this Act and may, unless such suit is frivolous, direct that costs, including reasonable attorney and expert witness fees, be paid by the defendant. In the case of actions for a failure to renew damages shall be limited to actual damages including the value of the dealer's equity.

(3) A suit under this Act may be brought in the district court of the United States for any judicial district in which the distributor or the refiner against who such suit is maintained resides, is found, or is doing business, without regard to the amount in controversy. No such suit shall be maintained unless commenced within two years after the cancellation, failure to renew, or termination of such franchise or the modification thereof.

By Mr. JACKSON (for himself and Mr. FANNIN) (by request):

S. 2917. A bill to provide for the addition of certain lands in the State of Alaska to the National Park, National Wildlife Refuge, National Forest, and the Wild and Scenic Rivers Systems, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. JACKSON (by request):

S. 2918. A bill to designate certain public lands and waters in the State of Alaska for national conservation purposes to be administered as units of the National Park System, the National Wildlife Refuge System, National Wild and Scenic Rivers System, and the National Forest System. Referred to the Committee on Interior and Insular Affairs.

Mr. JACKSON. Mr. President, I am introducing for appropriate reference two measures dealing with one of the most important land-use issues ever to confront the American people—the proper use of millions of acres in Alaska of some of this country's finest public lands.

The Alaska Native Land Claims Settlement Act of 1971 was the result of extensive deliberations by the Senate Interior Committee during the 1960's and early 1970's. The act recognized that the set-

tlement of Native land claims must also consider the disposition of public lands in Alaska as a whole.

In order that the ultimate disposition of the public lands in Alaska might avoid the haphazard and ill-advised development evident in many other parts of this country, and in order to preserve those lands which possessed unique wildlife, wilderness, scenic, scientific, cultural, and historic values of national—even international significance, the act created a joint Federal-State Land Use Planning Commission and required the Secretary of the Interior to recommend additions to the National Park, National Wildlife Refuge, National Forest, and National Wild and Scenic Rivers Systems.

Under the national interest area provisions of the Native Land Claims Act, which amendment was primarily sponsored by my colleague, the distinguished Senator from Nevada (Mr. BIBLE), Congress directed the Secretary of the Interior to withdraw up to 80 million acres of unreserved public lands in Alaska for study as to their suitability for inclusion as potential additional units of four of our national conservation systems—national parks, wildlife refuges, wild and scenic rivers, and forests. We gave the Secretary 2 years to make his study and report back to us. He has done so and his legislative recommendations on these “four systems” lands, as they are called, represent the first of the two measures which I am introducing by request for myself and the senior Senator from Arizona (Mr. FANNIN), the ranking minority member of the Interior and Insular Affairs Committee.

The second measure represents the efforts of several conservation, environmental, and citizen public interest groups. I am introducing this second measure by request for several reasons. I believe that it is imperative that the Department of the Interior, the State of Alaska, and all interested citizens know which lands the Congress is considering for inclusion within the four systems. I am concerned that the constitutional prerogatives of the Congress, the duty and responsibility for the disposition of Federal lands, might be foreclosed by Executive action prior to congressional consideration during the 5-year period provided in the act.

Specifically, four types of areas are exposed to appropriation under the public land laws, and the very real possibility that ill-advised Executive action might permit lands with high potential for inclusion within the national system of parks, wildlife refuges, forests, and wild rivers to be transferred out of Federal ownership prompts the introduction of this legislation. The four types of areas subject to appropriation are:

First. Lands recommended by the Secretary for inclusion in any of the four systems which were not classified by the Secretary as “(d) (2) lands” thereby opening them to State or regional corporation selection.

Second. Lands classified by the Secretary as “(d) (2) lands” in September

1972, which the Secretary did not recommend for inclusion in any one of the four systems.

Third. Lands classified by the Secretary as “(d) (2) lands” in March 1972, which were not retained in this category in September 1972, as recommended for inclusion in the four systems by the Secretary.

Fourth. Other lands which Members of the Congress may propose for inclusion in any of the four systems.

On December 20, 1973, I wrote to Secretary Morton expressing my belief that the Congress will wish to have the subject matter of its deliberations kept as intact as possible during the next 5 years.

I recognize that the State of Alaska and the Native Regional Corporation should not be unfairly frustrated in exercising their selection rights under existing law. Given the large areas of land in Alaska, I hope that there will be few conflicts between proposals for transfer and establishment of national interest areas. To that end, I requested the Secretary to notify the Committee on Interior and Insular Affairs of both Houses of Congress and not to approve any proposal for transfer for at least 60 days after that notification.

I ask unanimous consent that a copy of my December 20, 1973, letter to Secretary Morton be printed at the conclusion of my remarks.

In fact, Mr. President, the Congress anticipated just such conflicts over the national interest lands in section 17(d) (2) (E) of the Alaska Native Claims Settlement Act. In that subsection we provided that both the State and the Native corporations could identify lands they desired to select from the national interest area withdrawals. These identifications would be duly recorded by the Secretary, he would include them in his formal legislative proposals to Congress, and then we would resolve them during deliberations on the legislation.

In that context, Mr. President, the conflicting boundaries of the proposals on the second measure with the State-identified and, in some cases, with the Native withdrawal boundaries, simply represent an indication of preferences by the parties involved. They have staked their claims, and now we are engaged in considering them.

In conclusion, it will be asserted by some that the proposed areas, totaling as they do some 106 million acres, go beyond the extent of Congress as expressed in the Claims Settlement Act. I assure you that this is not the case, Mr. President. The provision calling for the Secretary to withdraw up to, but not more than, 80 million acres, was at that time our best estimate of the amount required for the Secretary to undertake his 2-year study. By no means did the distinguished Senator from Nevada nor I intend this 80 million acres as a ceiling beyond which the Secretary was forbidden to go in his final recommendations, nor that it would be an absolute limitation on the Congress.

These two measures contain the views

of the administration as represented by the Secretary of the Interior and the recommendations of citizens' conservation organizations. I want to emphasize that the views and recommendations of others, such as the Federal-State Commission, will be considered by the Interior Committee when this legislation is scheduled for action. These proposals provide a basis for the Congress to pursue and fulfill its constitutional responsibilities over the disposition of Federal lands, and I would like to assure my colleagues that it is my intent to proceed expeditiously to consider them. It is important that such action be taken so that final State and regional corporation selections might commence.

Mr. President, due to the significant nature of these measures, I ask unanimous consent that the full text of these two measures together with the department letter of transmittal be printed at this point in the RECORD.

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

S. 2917

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, having reviewed the recommendations of the Secretary of the Interior made pursuant to sections 17(d)(1) and 17(d)(2) of the Alaska Native Claims Settlement Act (85 Stat. 688) for addition of certain lands in Alaska to the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems, the Congress designates and establishes new units and additions to existing units of those systems, subject to the provisions of the following titles.

SEC. 2. This Act may be cited as the "ALASKA CONSERVATION ACT OF 1974".

TITLE I—NATIONAL PARK SYSTEM

PART A—ADDITIONS TO EXISTING AREAS

SEC. 101. *Mount McKinley National Park.* (a) In order to include within Mount McKinley National Park (hereinafter referred to in this section as the "park") certain areas needed to provide a diversity of habitat, ensure the preservation of animal ecosystems, and protect and interpret associated scenic resources and glacial features, the boundary of the park is hereby revised to include, subject to valid existing rights, the lands, waters, and interests therein depicted as within the proposed boundary of the park on the map entitled "Mount McKinley National Park", numbered 126-90-001, and dated December 1973, which additional area comprises approximately 3,180,000 acres.

(b) Section 4 of the Act of February 26, 1917 (39 Stat. 938, 16 U.S.C. 350) is repealed. Section 2 of the Act of January 26, 1931 (46 Stat. 1043, 16 U.S.C. 350a) is revised to read as follows: "The Secretary of the Interior shall have authority to prescribe regulations for the surface use of any valid mining locations made within the boundaries of Mount McKinley National Park."

(c) Section 6 of the Act of February 26, 1917 (39 Stat. 939), as amended (16 U.S.C. 352) is further amended by changing the period at the end thereof to a comma, and adding the following: "or for subsistence uses in areas added to the park by the Alaska Conservation Act of 1974 pursuant to section 108 of that Act".

(d) In furtherance of the purposes set forth in subsection (a) of this section, the area adjacent to the south and east boundary of the park generally depicted on the map referred to in subsection (a) as "Cooperative Planning and Management Zone" is hereby designated as a zone within which resource

use and development are critical to the proper protection, management, and interpretation of the park. Not later than three years from the date of enactment of this title, the Secretary of the Interior (hereinafter referred to as the "Secretary") shall submit a report to the Congress as to whether land-use controls needed for the proper protection, management, and interpretation of the park have been instituted effectively with respect to the designated zone by the State of Alaska or an appropriate political subdivision thereof. The Secretary shall solicit the views of the Governor of the State of Alaska and of the Joint Federal-State Land Use Planning Commission for Alaska on his report, and he shall submit any such views to the Congress at the time the report is submitted.

SEC. 102. *Katmai National Park.* (a) In order to include therein certain areas needed for the protection of critical animal habitat, including a watershed necessary for the perpetuation of red salmon and a habitat to protect a population of brown bear, and for the interpretation and preservation of outstanding scenic and scientific values associated with such habitats, the boundary of Katmai National Monument, as established by Proclamation No. 1487 of September 24, 1918 (40 Stat. 1855), and revised by Proclamation No. 1949 of April 24, 1931 (47 Stat. 2453), No. 2564 of August 4, 1942 (56 Stat. 1972), and No. 3890 of January 20, 1969 (83 Stat. 926) is hereby revised to include, subject to valid existing rights, the lands, waters, and interests therein depicted as within the proposed boundary of the park on the map entitled "Katmai National Park", numbered 127-90-001, and dated December 1973, which additional area comprises approximately 1,870,000 acres.

(b) The Katmai National Monument is hereby redesignated as Katmai National Park.

PART B—ESTABLISHMENT OF NEW AREAS

SEC. 103. (a) In order to protect and interpret for the benefit, inspiration, and education of present and future generations the scenic, scientific, biological, archeological, and historical values associated therewith, there are hereby established, subject to valid existing rights:

(1) *Aniakchak Caldera National Monument,* the boundary of which shall include the lands, waters, and interests therein depicted as within the proposed boundary of the national monument on the map entitled "Aniakchak Caldera National Monument", numbered NM-AC-90,001, and dated December 1973, which area comprises approximately 440,000 acres;

(2) *Harding Ice Field-Kenai Fjords National Monument,* the boundary of which shall include the lands, waters, and interests therein depicted as within the proposed boundary of the national monument on the map entitled "Harding Ice Field-Kenai Fjords National Monument", numbered NM-HI/KF-90,001 and dated December 1973, which area comprises approximately 300,000 acres; *Provided,* That, the Secretary may revise the monument boundary to include any lands, waters, and interests therein depicted on such map as within the area marked "Potential additions" if such lands, waters, and interests therein are not selected by native corporations pursuant to the Alaska Native Claims Settlement Act;

(3) *Cape Krusenstern National Monument,* the boundary of which shall include the lands, waters, and interests therein depicted as within the proposed boundary of the national monument on the map entitled "Cape Krusenstern National Monument", numbered NM-CK-90,001, and dated December 1973, which area comprises approximately 350,000 acres;

(4) *Kobuk Valley National Monument,* the boundary of which shall include the lands, waters, and interests therein depicted as with-

in the proposed boundary of the national monument on the map entitled "Kobuk Valley National Monument", numbered NM-KV-90,001, and dated December 1973, which area comprises approximately 1,850,000 acres. *Provided,* That, any lands within the Onion Portage Archeological District, as depicted on such map, not selected by a native corporation pursuant to the Alaska Native Claims Settlement Act shall become part of the national monument;

(5) *Lake Clark National Park,* the boundary of which shall include the lands, waters, and interests therein depicted as within the proposed boundary of the national park on the map entitled "Lake Clark National Park", numbered NP-LC-90,001, and dated December 1973, which area comprises approximately 2,610,000 acres;

(6) *Wrangell-St. Elias National Park,* the boundary of which shall include the lands, waters, and interests therein depicted as within the proposed boundary of the national park on the map entitled "Wrangell-St. Elias National Park", numbered NP-WSE-90,001, and dated December 1973, which area comprises approximately 8,640,000 acres;

(7) *Gates of the Arctic National Park,* the boundaries of which shall include the lands, waters, and interests therein depicted as within the proposed boundaries of the park on the map entitled "Gates of the Arctic National Park", numbered NP-GA-90,001, and dated December 1973, which park comprises approximately 8,360,000 acres;

(8) *Yukon-Charley National Rivers,* the boundary of which shall include the lands, waters, and interests therein depicted as within the proposed boundary of the national rivers on the map entitled "Yukon-Charley National Rivers", numbered NR-YC-90,001, and dated December 1973, which area comprises approximately 1,970,000 acres;

(9) *Chukchi-Imuruk National Reserve,* the boundary of which shall include the lands, waters, and interests therein depicted as within the proposed boundary of the national reserve on the map entitled "Chukchi-Imuruk National Reserve", numbered NR-CI-90,001, and dated December 1973, which area comprises approximately 2,690,000 acres.

(b) The boundary maps referred to in part A of this title and this part shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior; the maps entitled "Chukchi-Imuruk National Reserve" and "Harding Ice Field-Kenai Fjords National Monument" shall also be on file at the Bureau of Sport Fisheries and Wildlife, Department of the Interior. In no event shall the boundary of any area added to existing areas or established by part A of this title or this part extend beyond the territorial sea.

PART C—GENERAL ADMINISTRATIVE PROVISIONS

SEC. 104. *Administration.* (a) The Secretary shall administer the lands, waters, and interests therein added to existing areas or established by the foregoing sections of this title as areas of the national park system, subject to the applicable provisions of this title and the Act of August 25, 1916 (39 Stat. 535 *et seq.*), as amended and supplemented (16 U.S.C. 1 *et seq.*).

(b) The Secretary of Agriculture and the Secretary of the Interior shall consult in the development of management plans for the Wrangell Mountains National Forest and the adjoining Wrangell-St. Elias National Park to achieve the fullest possible coordination and cooperation. In addition, the Secretary of Agriculture shall, in cooperation with the Secretary of the Interior, select and develop one or more areas along the Alaska Highway between the Canadian border and the village of Northway, Alaska, together with other interested public agencies, for public use, administration, interpretation, and other provision of facilities. Funds appropriated for purposes of this title shall be available for

the development and operation of such facilities.

Sec. 105. *Boundaries, Acquisition of Property.* Following reasonable notice in writing to the Committees on Interior and Insular Affairs of the Senate and House of Representatives, and after publication of notice in the *Federal Register*, the Secretary may make minor revisions in the boundaries of the areas added to existing areas or established by parts A and B of this title, including revisions to include within the boundaries such additional lands as are necessary for administrative sites but such administrative sites shall not exceed 80 acres for any one area added to existing areas or established by parts A and B. Within the boundaries of the areas added to existing units or established by parts A and B of this title, or as such boundaries may be revised pursuant to this section, the Secretary is authorized to acquire lands, waters, and interests therein by donation, purchase, or exchange, except that property owned by the State of Alaska or any political subdivision thereof may be acquired only by donation or exchange, and property owned by any native village or corporation may be acquired only with the concurrence of such owner.

Sec. 106. *Applicability of Mining and Mineral Leasing Laws.* (a) Except as provided in subsection (b) of this section, Federal lands within the boundaries of the areas added to existing units or established by parts A and B of this title, or as such boundaries may be revised pursuant to section 105 of this part, as well as Federal lands within the boundaries of Mount McKinley National Park as of the date of enactment of this title, are, subject to valid existing rights, hereby withdrawn from location, entry, and patent under the public land laws of the United States, including from all forms of appropriation under the United States mining laws, and from operation of the mineral leasing laws including, in both cases, amendments there- to.

Any mining claims located under the mining laws of the United States within the boundaries of those areas withdrawn pursuant to this subsection, must be recorded with the Secretary under regulations established by the Secretary within one year after the effective date of such regulations. Any mining claim not so recorded shall be conclusively presumed to be abandoned and shall be void. Such recordation will not render valid any claim which was not valid on the effective date of this title, or which becomes invalid thereafter. Any claim recorded pursuant to the regulations promulgated under this subsection, for which the claimant has not made application for a patent within three years from the date of recordation, shall be presumed to be invalid unless the claimant presents to the Secretary clear evidence of its validity.

(b) Lands outside the Charley River watershed which are within the Yukon-Charley National Rivers, are not withdrawn from operation of the mineral leasing laws, including amendments thereto, and the Mineral Leasing Act of February 25, 1920, as amended and supplemented, (30 U.S.C. 181-263) shall apply to them; *Provided*, That, the Secretary may administratively cancel any lease or prospecting permit for violations of the terms of the lease or permit or of regulations issued pursuant to the Mineral Leasing Act of February 25, 1920 without regard to the requirements of section 31 of such Act (30 U.S.C. 188), after 30 days notice to the lessee or permittee and failure of the lessee or permittee to correct the condition giving rise to the breach. With respect to mineral deposits located within such lands normally subject to location, entry, and patent under the mining laws and withdrawn pursuant to subsection (a) of this section, the Secretary may issue permits for the exploration and development of said deposits pursuant to regu-

lations establishing procedures, terms, and conditions under which such activity may be conducted, but with right of occupation and use of only so much of the surface of the land as is immediately and directly necessary to the exploration and development of said deposits.

Sec. 107. *Sport Hunting.* (a) Subject to subsection (b) of this section, and except as may otherwise be prohibited by Federal or State law, the Secretary shall permit sport hunting on lands and waters under his jurisdiction within the areas established by paragraphs (a) (1) and (a) (5)-(9) of section 103 of this title in accordance with such regulations as he shall prescribe. Such regulations may include the establishment of limits on the numbers and types of species that may be taken and the manner of taking, or prohibit takings. The Secretary may, however, designate zones where, and establish periods when, no sport hunting shall be permitted in any such area for reasons of public safety, administration, fish or wildlife management, or public use and enjoyment, and except in emergencies, any regulations of the Secretary pursuant to this section shall be put into effect only after consultation with the appropriate fish and game agency of the State of Alaska.

(b) With regard to the area referred to in section 103(a) (1) of this title, the Secretary shall permit sport hunting only in the townships described as follows:

SEWARD MERIDIAN—PROTRACTOR DESCRIPTION

[All fractional]

T. 38 S., R. 51 W.

T. 39 S., R. 51 W.

T. 39 S., R. 52 W.

T. 40 S., R. 52 W.

T. 40 S., R. 53 W.

T. 40 S., R. 54 W.

T. 41 S., R. 51 W.

T. 41 S., R. 52 W.

T. 41 S., R. 53 W.

T. 41 S., R. 54 W.

(c) Not later than ten years from the date of enactment of this title, and continuing at intervals of not more than five years after the submission of the first such report, the Secretary shall report to the Congress on the effect of all hunting, fishing, and trapping, including subsistence uses, on the flora and fauna within each area added to existing units or established by parts A and B of this title, and shall recommend whether any or all of such uses shall be continued.

Sec. 108. *Subsistence Uses.* Except as may otherwise be prohibited by Federal or State law, the Secretary shall permit the continuation of such subsistence uses of the fish, wildlife, and plant resources within the areas added to existing units or established by parts A and B of this title to the extent that such uses were in effect on the date of enactment of the Alaska Native Claims Settlement Act. Such uses shall continue unless the Secretary determines that particular uses are materially and negatively affecting the fish, wildlife, or plant resources of such areas, and provided that, for such reasons as public safety, administration, fish and wildlife management, or public use and enjoyment, the Secretary may, by regulation, prescribe conditions under which such subsistence uses shall be conducted including, but not limited to, prohibitions on takings, and the establishment of limits on the number and type of resources taken, and the season when and area within such areas where subsistence activities can be undertaken. Regulations promulgated pursuant to this section shall be put into effect only after consultation with the appropriate fish and game agency of the State of Alaska.

Sec. 109. *Cooperative Agreements.* (a) The Secretary is authorized to cooperate and seek agreements with the heads of other Federal agencies and the owners of lands and waters within, adjacent to, or related to each area added to existing units or established

by parts A and B of this title, including, without limitation, the State of Alaska or any political subdivision thereof, any native corporation, village, or group having traditional cultural or resource-based affinities for such areas, and, with the concurrence of the Secretary of State, the governments of foreign nations. Such agreements shall have as their purpose the assurance that resources will be used, managed and developed in such a manner as to be consistent with the preservation of the environmental quality of such areas. The agreements may also provide for access by visitors to the park system units to and across the lands which are the subject of the agreements.

(b) The head of any Federal agency, other than agencies that are parties to cooperative agreements pursuant to subsection (a) of this section, having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in the lands and waters within, adjacent to, or related to areas added to existing units or established by parts A and B of this title, and the head of any Federal Department or inter-departmental agency, other than parties to such agreements, having authority to license any undertaking in such lands and waters shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of an license, as the case may be, afford the Secretary a reasonable opportunity to comment with regard to such undertaking.

Sec. 110. *Wilderness Review.* Within three years from the date of enactment of this title, the Secretary shall report to the President, in accordance with subsections 3(c) and 3(d) of the Wilderness Act (78 Stat. 892; 16 U.S.C. 1132 (c) and (d)), his recommendations as to the suitability or unsuitability of any area added to existing units or established by parts A and B of this title for preservation as wilderness; any designation of any such area as wilderness shall be accomplished in accordance with said subsection of the Wilderness Act. Notwithstanding anything to the contrary in the Wilderness Act, the Secretary shall, with respect to Mount McKinley National Park, report to the President his recommendations as to the suitability of any area within the entire park within three years from the date of enactment of this title.

#### PART D—WILD AND SCENIC RIVERS

Sec. 111. *Designation.* Section 3(a) of the Wild and Scenic Rivers Act (82 Stat. 907), as amended (16 U.S.C. 1274(a)), is further amended by adding the following new paragraphs:

“—, ALATNA, ALASKA.—The 75-mile portion of the main stem within the Gates of the Arctic National Park; to be administered by the Secretary of the Interior.

“—, ANIAKCHAK, ALASKA.—The entire river, including its major tributaries, Hidden Creek, Mystery Creek, Albert Johnson Creek, and North Fork Aniakchak River, within the Aniakchak Caldera National Monument; to be administered by the Secretary of the Interior.

“—, CHARLEY, ALASKA.—The entire river, including its major tributaries, Copper Creek, Bonanza Creek, Horsford Creek, Derwent Creek, Flat-Orthmer Creek, Crescent Creek, and Moraine Creek, within the Yukon-Charley National Rivers; to be administered by the Secretary of the Interior.

“—, KILLIK, ALASKA.—The entire river, including its major tributary, Easter Creek, within the Gates of the Arctic National Park; to be administered by the Secretary of the Interior.

“—, NOATAK, ALASKA.—The 65-mile segment within the Gates of the Arctic National Park; to be administered by the Secretary of the Interior.

“—, SALMON, ALASKA.—The entire river within the Kobuk Valley National Monument; to be administered by the Secretary of the Interior.

—TINAYGUK, ALASKA.—The entire river, and the North Fork of the Koyukuk, within the Gates of the Arctic National Park; to be administered by the Secretary of the Interior."

SEC. 112. *Administrative Provisions.* (a) The river segments designated in section 111 of this title are hereby classified and designated, and shall be administered, as wild river areas pursuant to the Wild and Scenic Rivers Act.

(b) The provisions of subsection 3(b) and section 6 of the Wild and Scenic Rivers Act shall not apply to the river segments listed in section 111 of this title. The provisions of sections 107 and 108 of this title shall supersede those of section 13(a) of the Wild and Scenic Rivers Act, concerning fish and wildlife.

PART E—APPROPRIATION AUTHORIZATION

SEC. 113. There is hereby authorized to be appropriated such sums as may be necessary for the purposes of this title.

TITLE II—NATIONAL WILDLIFE REFUGE SYSTEM

PART A—ESTABLISHMENT OF REFUGES AND RANGES

SEC. 201. There are hereby established, subject to valid existing rights, twelve national wildlife refuges, (hereinafter referred to as the "refuges") one national arctic range and one national resource range (hereinafter referred to as the "ranges").

SEC. 202. (a) The boundary of each refuge and each range shall include the area generally depicted on the applicable map as herein described provided, however, that in no case shall the boundary of a refuge or range extend beyond the territorial sea. Such maps shall be on file and available for public inspection in the office of the Bureau of Sport Fisheries and Wildlife, Department of the Interior, and, with respect to the ranges, the maps shall also be available for public inspection in the office of the Bureau of Land Management:

(1) As herein established, the (A) Barren Islands National Wildlife Refuge, (B) Chukchi Sea National Wildlife Refuge, (C) Shumagin Islands National Wildlife Refuge, (D) additions to the Kodiak National Wildlife Refuge, and (E) additions to the Bering Sea National Wildlife Refuge, shall be comprised of approximately .07 million acres of lands, waters and interests therein within the area generally depicted as the "Proposed Boundary" on the maps entitled "*Alaska Coastal National Wildlife Refuges*," and dated December 1973. The Kodiak National Wildlife Refuge as designated in Executive Order No. 8857 of August 19, 1941 and modified by Public Land Order No. 1634 of May 9, 1958 and the additions designated in this subsection are hereby established as the "Kodiak National Wildlife Refuge"; and the Bering Sea National Wildlife Refuge as designated in Proclamation No. 2416 of July 15, 1940, amending Executive Order No. 1037 of February 27, 1909 and the additions designated in this subsection are hereby established as the "Bering Sea National Wildlife Refuge".

(2) The *Arctic National Wildlife Refuge* as herein established shall be comprised of approximately 3.76 million acres of lands, waters, and interests therein within the area generally depicted as the "Proposed Boundary" on the map entitled "*Arctic National Wildlife Refuge*", and dated December 1973, and the *Arctic National Wildlife Range*, established by Public Land Order No. 2214 of December 6, 1960, issued pursuant to Executive Order No. 10355 of May 26, 1952, is hereby redesignated as part of the *Arctic National Wildlife Refuge* and added to said refuge.

(3) The *Iliamna National Resource Range* as herein established shall be comprised of approximately 2.85 million acres of lands, waters, and interests therein within the area

generally depicted as the "Proposed Boundary" on the map entitled "*Iliamna National Resource Range*", and dated December 1973.

(4) The *Koyukuk National Wildlife Refuge* as herein established shall be comprised of approximately 4.43 million acres of lands, waters, and interests therein within the area generally depicted as the "Proposed Boundary" on the map entitled "*Koyukuk National Wildlife Refuge*", and dated December 1973.

(5) The *Noatak National Arctic Range* as herein established shall be comprised of approximately 7.59 million acres of lands, waters and interests therein within the area generally depicted as the "Proposed Boundary" on the map entitled "*Noatak National Arctic Range*", and dated December 1973.

(6) The *Selawik National Wildlife Refuge* as herein established shall be comprised of approximately 1.4 million acres of lands, waters, and interests therein within the area generally depicted as the "Proposed Boundary" on the map entitled "*Selawik National Wildlife Refuge*", and dated December 1973, and the *Chamisso National Wildlife Refuge*, established by Proclamation No. 2416 of July 15, 1940, amending Executive Order No. 1658 of December 7, 1912, is hereby redesignated as part of the *Selawik National Wildlife Refuge* and added to said refuge.

(7) The *Togiak National Wildlife Refuge* as herein established shall be comprised of approximately 2.74 million acres of lands, waters, and interests therein within the area generally depicted as the "Proposed Boundary" on the map entitled "*Togiak National Wildlife Refuge*", and dated December 1973, and the *Cape Newenham National Wildlife Refuge*, established by Public Land Order No. 4583 of January 20, 1969, is hereby redesignated as part of the *Togiak National Wildlife Refuge* and added to said refuge.

(8) The *Yukon Delta National Wildlife Refuge* as herein established shall be comprised of approximately 5.16 million acres of lands, waters, and interests therein within the area generally depicted as the "Proposed Boundary" on the map entitled "*Yukon Delta National Wildlife Refuge*", and dated December 1973, and the *Clarence Rhode National Wildlife Refuge*, established by Public Land Order No. 4581 of January 20, 1969, amending Public Land Order No. 2253 of January 23, 1961, amending Public Land Order No. 2213 of December 8, 1960, issued pursuant to Executive Order No. 10355, is hereby redesignated as a unit of the *Yukon Delta National Wildlife Refuge* to be administered as part of said refuge, and the *Hazen Bay National Wildlife Refuge*, as established by Proclamation No. 2416 of July 15, 1946, amending Executive Order No. 7770 of December 14, 1937, is hereby redesignated as part of the *Yukon Delta National Wildlife Refuge* and added to said refuge.

(9) The *Yukon Flats National Wildlife Refuge* as herein established shall be comprised of approximately 3.59 million acres of lands, waters, and interests therein within the area generally depicted as the "Proposed Boundary" on the map entitled "*Yukon Flats National Wildlife Refuge*", and dated December 1973.

(b) The Secretary of the Interior (hereinafter referred to as "the Secretary") may make minor revisions in the boundary of each refuge and each range by publication of a revised map or other boundary description in the *Federal Register*.

PART B—GENERAL ADMINISTRATIVE PROVISIONS

SEC. 203. *Acquisition of Property.* Within the boundary of each refuge and each range the Secretary is authorized to acquire by purchase, donation or exchange, lands, waters, and interests therein, except that lands, waters, and interests herein owned by the State of Alaska or any political subdivision hereof may be acquired only with agreement of the said State or political subdivision and property owned by any native village or

corporation may be acquired only with the concurrence of such owner.

SEC. 204. *Cooperative Agreements.* (a) The Secretary is authorized to cooperate and seek agreements with the heads of other Federal agencies and the owners of lands and waters within, adjacent to or related to each area added to existing units or established by Section 202 of this title, including, without limitation, the State of Alaska or any political subdivision thereof, any native corporation, village, or group having traditional cultural or resource-based affinities for such areas. Such agreements shall have as their purpose the assurance that resources will be used, managed and developed in such a manner as to be consistent with the preservation of the environmental quality of such areas.

(b) The head of any Federal agency, other than agencies that are parties to cooperative agreements pursuant to subsection (a) of this section, having direct or indirect jurisdiction over a proposed Federal or Federally assisted undertaking in the lands and waters within, adjacent to or related to areas added to existing units or established by Section 202 of this title, and the head of any Federal Department or interdepartmental agency, other than parties to such agreements, having authority to license any undertaking in such lands and waters shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, afford the Secretary a reasonable opportunity to comment with regard to such undertaking. Nothing in subsection (c) of this section shall be construed as superseding or limiting the authorities and responsibilities of the Secretary under the Fish and Wildlife Coordination Act, as amended (60 Stat. 1080; 16 U.S.C. 661-667e).

(c) The Secretary may seek, with the concurrence of the Secretary of State, and enter into bilateral or multilateral agreements with foreign countries in order to provide for the protection, preservation and enhancement of the fish and wildlife of international significance.

SEC. 205. *Administration.* (a) (1) The Secretary shall administer the refuges and the ranges pursuant to the provisions of the National Wildlife Refuge Administration Act of 1966, as amended (80 Stat. 927; 16 U.S.C. 668dd-668ee), and the provisions of this title, as part of the National Wildlife Refuge System. The Secretary may also utilize such additional authorities as may be available to him for the management and protection of the resources within, adjacent to or related to the refuges and the ranges, including but not limited to the preservation and enhancement of nationally and internationally significant fish and wildlife species, the development of fish and wildlife-oriented outdoor recreation opportunities, interpretive education programs and scientific research, the conservation, protection, restoration and propagation of endangered and threatened species, and the preservation of cultural, historical, and archeological resources.

(2) The *Iliamna National Resource Range* shall be administered as a unit of the National Wildlife Refuge System pursuant to paragraph (1) of this subsection and in accordance with plans, to be developed by the Secretary, which will permit activities, in accordance with the principles of multiple use and sustained yield, which the Secretary determines will not significantly impair the nationally and internationally significant fish and wildlife resources of the Range and Bristol Bay.

(3) The *Noatak National Arctic Range* shall be administered as a unit of the National Wildlife Refuge System pursuant to paragraph (1) of this subsection and in accordance with plans, to be developed by the Secretary, which will provide for the protection of the natural features of the range,

permit appropriate scientific research and other activities which will not significantly impair the environment. For a period of twenty years following the enactment of this title, any developmental activities or uses are subject to valid existing rights, prohibited on the range. The Secretary shall conduct a review and report to the Congress within twenty years of the date of enactment of this title his findings and recommendations for the future administration and management of the range.

(b) (1) The lands within the refuges and the Iliamna National Resource Range are, subject to valid existing rights, hereby withdrawn from location, entry, and patent under the public land laws of the United States, including all forms of appropriation under the United States mining laws, but not including the Mineral Leasing Act of February 25, 1920, as amended and supplemented (30 U.S.C. 181-263), except that, with respect to mineral deposits normally subject to location, entry, and patent pursuant to the mining laws, the Secretary may issue permits for the exploration and development of said deposits pursuant to regulations establishing procedures, terms, and conditions under which such activity may be conducted, but with right of occupation and use of only so much of the surface of the land as is immediately and directly necessary to the exploration and development of said deposits. Any mining claims located under the mining laws of the United States within the boundaries of those areas withdrawn pursuant to this subsection, must be recorded with the Secretary under regulations established by the Secretary within one year after the effective date of such regulations. Any mining claim not so recorded shall be conclusively presumed to be abandoned and shall be void. Such recordation will not render valid any claim which was not valid on the effective date of this title, or which becomes invalid thereafter. Any claim recorded pursuant to the regulations promulgated under this subsection, for which the claimant has not made application for a patent within three years from the date of recordation, shall be presumed to be invalid unless the claimant presents to the Secretary clear evidence of its validity.

(2) The Secretary may administratively cancel any lease or prospecting permit for violations of the terms of the lease or permit or of regulations issued pursuant to the Mineral Leasing Act of February 25, 1920, without regard to the requirements of section 31 of such Act (30 U.S.C. 188), after 30 days notice to the lessee or permittee and failure of the lessee or permittee to correct the condition giving rise to the breach.

(c) The lands within the Noatak National Arctic Range are, subject to valid existing rights, withdrawn from location, entry, and patent under the public land laws of the United States, including all forms of appropriation under the mining laws of the United States and from the operation of the Mineral Leasing Act of February 25, 1920, as amended and supplemented.

(d) Except as may otherwise be prohibited by Federal or State law, the Secretary shall permit the continuation of such subsistence uses of the fish, wildlife and plant resources within the refuges and the ranges to the extent that such uses were in effect on the date of enactment of the Alaska Native Claims Settlement Act. Such uses shall continue unless the Secretary determines that particular uses are materially and negatively affecting the fish, wildlife, or plant resources of the refuges and the ranges, and provided that, for such reasons as public safety, administration, fish and wildlife management, or public use and enjoyment, the Secretary may, by regulation prescribe conditions under which such subsistence uses shall be conducted including, but not limited to, prohibitions on taking, the establishment of

limits on the number and type of resources taken, and the season when and area within the refuges and the ranges where subsistence activities can be undertaken. Regulations promulgated pursuant to this section shall be put into effect only after consultation with the appropriate fish and game agency of the State of Alaska.

SEC. 206. *Wilderness Review.* (a) Within three years from the date of enactment of this title, the Secretary shall report to the President, in accordance with subsections 3(c) and 3(d) of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1132(c) and (d)), his recommendations as to the suitability or unsuitability of any area within the refuges and the Iliamna National Resource Range for preservation as wilderness, and any designation of any such areas as wilderness shall be accomplished in accordance with said subsections of the Wilderness Act, except that this section shall not apply to that portion of the Bering Sea National Wildlife Refuge designated as wilderness pursuant to the Act of October 23, 1970 (84 Stat. 1104; 16 U.S.C. 1132 note). Notwithstanding anything to the contrary in the Wilderness Act, the Secretary shall, with respect to any existing refuge added to the refuges herein established by paragraphs (1)(D), (2) and (8) of section 202(a) of this title, report to the President his recommendations as to the suitability of any area within the entire refuge within three years from the date of enactment of this title.

(b) With regard to the Noatak National Arctic Range such a wilderness report as is required in subsection (a) of this section shall be included in the Secretary's report to the Congress pursuant to section 205(a)(3) of this title.

#### PART C—WILD AND SCENIC RIVERS

SEC. 207. (a) Section 3(a) of the Wild and Scenic Rivers Act (82 Stat. 907) as amended (16 U.S.C. 1274(a)), is further amended by adding the following new paragraph.

— ALAGNAK, ALASKA—the entire river within the boundary of the Iliamna National Resource Range from a point approximately eight miles below its source, to a point twenty miles above the mouth, including the Nonvianuk River, to be administered by the Secretary of the Interior;

— ANREAFSKY, ALASKA—from its source, including all headwaters, downstream for two hundred forty miles, including the East Fork, all within the boundary of the Yukon Delta National Wildlife Refuge, to be administered by the Secretary of the Interior;

— IVISHAK, ALASKA—from its source, including all headwaters and an unnamed tributary to Porcupine Lake, downstream to a point near Flood Greek, all within the boundary of Arctic National Wildlife Refuge, to be administered by the Secretary of the Interior;

— KANEKTOK, ALASKA—the entire river within the boundary of Togiak National Wildlife Refuge, Kagat Lake to a point sixteen miles above the mouth, to be administered by the Secretary of the Interior;

— NOATAK, ALASKA—from the east boundary of the Noatak National Arctic Range to its confluence with the Kelly River, to be administered by the Secretary of the Interior; and

— WIND, ALASKA—from its source, including all headwaters and one unnamed tributary in Township T13S, downstream for sixty-five miles, within the boundaries of the Arctic National Wildlife Refuge, to be administered by the Secretary of the Interior.

(b) The river segments designated in subsection (a) of this section are hereby classified and designated and shall be administered as wild river areas.

(c) Notwithstanding any provisions to the contrary of the Wild and Scenic Rivers Act (82 Stat. 907; 16 U.S.C. 1271) the boundaries of the river segments referred to in subsection

(a) of this section may include an area extending up to two miles from the mean high water level on either side of the river segments. Notwithstanding the provisions of section 3(b) of such Act, the Secretary shall establish boundaries for the river segments referred to in subsection (a) of this section within three years after the date of enactment of this title.

(d) The provisions of section 6 of the Wild and Scenic Rivers Act shall not apply to the river segments referred to in subsection (a) of this section.

#### PART D—REGULATIONS

SEC. 208. (a) The Secretary may issue such rules and regulations as may be necessary to carry out the provisions of this title.

(b) Any regulations heretofore prescribed by the Secretary for any existing refuge added to the refuges herein established as referred to in paragraphs (1), (2), (6) (7) and (8) of section 202(a) of this title shall remain in effect until republished in total or in part by the Secretary.

#### PART E—APPROPRIATION AUTHORIZATION

SEC. 209. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

#### TITLE III—NATIONAL FOREST SYSTEM

SEC. 301. *NEW ALASKA NATIONAL FORESTS.*—For the purpose of providing for the protection, conservation, and management of the multiple resource values of certain public lands in the State of Alaska as part of the National Forest System, the areas described in subsections (a)–(c) of this section, as generally depicted on maps appropriately referenced, dated December 1973, and on file and available for public inspection in the Office of the Chief, Forest Service, Department of Agriculture, are hereby established as the Wrangell Mountains, Porcupine, and Yukon-Kuskokwim National Forests, respectively. The Wrangell Mountains, Porcupine, and Yukon-Kuskokwim National Forests shall, subject to valid existing rights, be administered by the Secretary of Agriculture in accordance with the laws, rules, and regulations applicable to the national forests.

(a) The Porcupine National Forest shall include the area generally depicted on a map entitled, "Proposed Porcupine National Forest", comprising approximately 5.5 million acres.

(b) The Wrangell Mountains National Forest shall include the area generally depicted on a map entitled, "Proposed Wrangell Mountains National Forest", comprising approximately 5.5 million acres.

(c) The Yukon-Kuskokwim National Forest shall include the area generally depicted on a map entitled, "Proposed Yukon-Kuskokwim National Forest", comprising approximately 7.3 million acres.

SEC. 302. *ADDITION TO CHUGACH NATIONAL FOREST.*—Within sixty days following enactment of this title, the Secretary of the Interior shall, by public land order, provide for addition to the Chugach National Forest of the area comprising approximately 500,000 acres generally depicted on a map entitled "Proposed Chugach National Forest Addition" which is on file and available for public inspection in the Office of the Chief, Forest Service, Department of Agriculture. Subject to valid existing rights, the Chugach National Forest Addition shall be administered as a part of the Chugach National Forest in accordance with the laws, rules, and regulations applicable to national forests.

SEC. 303. (a) *WILD AND SCENIC RIVERS WITHIN ALASKA NATIONAL FORESTS.*—Section 3(a) of the Wild and Scenic Rivers Act (82 Stat. 907, 16 U.S.C. 1274(a)), as amended is further amended by adding the following new paragraphs:

— BREMNER, ALASKA—The entire river, from its origin to its confluence with the

Copper River, to be administered by the Secretary of Agriculture.

— **NOWITNA, ALASKA.**—The segment from the point where the river crosses the west boundary of section 6, Township 17 South, Range 22 East, Fairbanks Principal Meridian, downstream to its confluence with the Yukon River, to be administered by the Secretary of Agriculture.

— **PORCUPINE, ALASKA.**—The segment from the Canadian border downstream to the point where the river crosses the north boundary of section 2, Township 23 North, Range 18 East, Fairbanks Principal Meridian, to be administered by the Secretary of Agriculture.

— **SHEENJEK, ALASKA.**—The segment from the point where the river crosses the north boundary of section 1, Township 32 North, Range 16 East, Fairbanks Principal Meridian, downstream to its confluence with the Porcupine River, to be administered by the Secretary of Agriculture.

(b) The Bremner and Sheenjek river segments designated in subsection (a) of this section are hereby classified and designated and shall be administered as wild river areas. The Porcupine and Nowitna river segments in subsection (a) of this section are hereby classified and designated and shall be administered as scenic river areas.

(c) Notwithstanding the provisions of subsection 3(b) of the Wild and Scenic Rivers Act (82 Stat. 907, 16 U.S.C. 1274(b)), the Secretary of Agriculture shall establish boundaries for the Wild and Scenic Rivers referred to in section 303 of this title within three years after the date of enactment of this title.

SEC. 304. The Secretary of Agriculture shall, as soon as practicable after the date of enactment of this title, publish in the *Federal Register* a detailed description and map showing the boundaries of the Wrangell Mountains, Porcupine, and Yukon-Kushkowi National Forests, and the addition to the Chugach National Forest.

SEC. 305. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

**TITLE IV—ADDITIONS TO NATIONAL WILD AND SCENIC RIVERS SYSTEM LOCATED OUTSIDE NATIONAL PARKS, NATIONAL WILDLIFE REFUGES, AND NATIONAL FORESTS**

SEC. 401. *Designation.* Section 3(a) of the Wild and Scenic Rivers Act (82 Stat. 907) as amended (16 U.S.C. 1274(a)), is further amended by adding the following new paragraphs.

— **BEAVER CREEK, ALASKA.**—The segment of the main stem from the vicinity of the downstream 135 miles to a point approximately 15 miles downstream from the mouth of Victoria Creek, the segment not to exceed 200,000 acres; to be administered by the Secretary of the Interior.

— **BIRCH CREEK, ALASKA.**—The segment of the main stem from the vicinity of the confluence of North Fork downstream 135 miles to the vicinity of Jumpoff Creek, the segment not to exceed 200,000 acres; to be administered by the Secretary of the Interior.

— **FORTYMILE, ALASKA.**—The main stem within the State of Alaska; O'Brien Creek; South Fork; Napoleon Creek; Franklin Creek; Uhler Creek; Walker Fork downstream from the confluence of Liberty Creek; Wade Creek; Mosquito Fork downstream from the vicinity of Kechumstuk; West Fork Dennison Fork downstream from the confluence of Logging Cabin Creek; Dennison Fork downstream from the confluence of West Fork Dennison Fork; Logging Cabin Creek; North Fork; Hutchinson Creek; Champion Creek; the Middle Fork downstream from the confluence of Joseph Creek; and Joseph Creek, the segments not to exceed 320,000 acres; to be administered by the Secretary of the Interior.

— **UNALAKLEET, ALASKA.**—The segment of the main stem beginning at 159°21'06.156" west longitude approximately 6 miles from the headwaters extending downstream 60 miles to 160°19'15.031" west longitude in the vicinity of confluence of the Chroskey River, the segment not to exceed 104,000 acres; to be administered by the Secretary of the Interior.

SEC. 402. *Administrative Provisions.* (a) The Beaver Creek, Birch Creek, and Unalakleet components, as well as Mosquito Fork downstream from the vicinity of Kechumstuk to Ingle Creek, North Fork, Champion Creek, Middle Fork downstream from the confluence of Joseph Creek, and Joseph Creek units of the Fortymile component, designated in section 401 of this title, are hereby classified and designated and shall be administered as wild river areas pursuant to the Wild and Scenic Rivers Act. The Wade Creek unit of the Fortymile component is classified and designated and shall be administered as a recreational river area pursuant to such Act. The remaining units of the Fortymile component are classified and designated and shall be administered as scenic river areas, pursuant to such Act. The classification as wild river areas of certain segments of the Fortymile by this subsection shall not preclude such access across those river segments as the Secretary of the Interior determines to be necessary to permit commercial development of asbestos deposits in the North Fork drainage.

(b) The Secretary of the Interior shall take such action as is provided for under section 3(b) of the Wild and Scenic Rivers Act to establish detailed boundaries and formulate detailed development and management plans within three years after the date of enactment of this title with respect to the Beaver Creek component, within two years with respect to the Birch Creek component, within one year with respect to the Fortymile component, and within four years with respect to the Unalakleet component.

(c) The provisions of section 401 of this title specifying maximum permissible acreages for individual components shall supersede any provisions to the contrary of the Wild and Scenic Rivers Act.

(d) Notwithstanding the provisions of section 9(a)(11) of the Wild and Scenic Rivers Act, the minerals in all Federal lands included in any component or part of a component designated by this section as a wild river area are hereby withdrawn, subject to valid existing rights, from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto.

SEC. 403. *Appropriation Authorization.* There is hereby authorized to be appropriated such sums as may be necessary for the purposes of this title.

S. 2918

*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 "National Interest Lands Reservation Act" (a) In order to preserve for the benefit, use, and inspiration of present and future generations certain federal wildlands and rivers in the State of Alaska that contain nationally significant natural, scenic, historic, geological, scientific, wilderness, cultural, recreational, and wildlife values, the areas described in section 2 are, subject to valid existing rights, hereby declared to be units of the National Wildlife Refuge System; the areas described in section 3 are, subject to valid existing rights, hereby declared to be units of the National Park System; the areas described in section 4 are, subject to valid existing rights, hereby declared to be units of the National Wild and Scenic River System; and the areas described in section 5 are, subject to valid exist-

ing rights, hereby declared to be units of the National Forest System: *Provided*, however, that notwithstanding the foregoing, nothing herein shall interfere with native villages in making selections to which they are entitled within these or other areas under the terms of the Alaska Native Claims Settlement Act;

(b) It is the intent of Congress in this Act to provide for the maintenance of sound populations of and habitat for resident and nonresident wildlife species of inestimable value to the citizens of Alaska and the Nation, including those species dependent on vast undeveloped areas; to preserve in their natural state extensive unaltered arctic and subarctic ecosystems; to protect and preserve archaeological and other cultural values of indigenous peoples; to protect and preserve historic sites, rivers, and lands; to provide wilderness recreational opportunities within large arctic and subarctic wildlands and on free flowing rivers; to preserve unrivalled scenic and geological values associated with natural landscapes; and to maintain opportunities for scientific research on undisturbed ecosystems. (C) (1) Areas described in Sections 2, 3, 4, and 5, of this Act shall be comprised of the lands generally depicted on the maps bearing the following designations:

NWR— Alaska, dated \_\_\_\_\_, for those lands in Sec. 2.

NPS— Alaska, dated \_\_\_\_\_, for those lands in Sec. 3.

NWSR— Alaska, dated \_\_\_\_\_, for those lands in Sec. 4.

NF— Alaska, dated \_\_\_\_\_, for those lands in Sec. 5.

(2) The maps described in paragraph (1) shall be on file and available for public inspection in the office of the Secretary of the Interior (hereafter referred to as the Secretary).

SEC. 2. (a) The following areas are hereby established as units of the National Wildlife Refuge System and shall be administered by the Secretary under the laws governing the administration of such lands and under the provisions of this Act:

(1) Alaska Peninsula National Brown Bear Range of approximately 4.9 million acres, including all adjacent salt water surface area for a distance of three miles seaward of the shoreline, subject to valid existing rights;

(2) Yukon Delta National Wildlife Range of approximately 5.4 million acres;

(3) Koyukuk National Wildlife Range of approximately 8.2 million acres;

(4) Selawik National Wildlife Range of approximately 2.1 million acres, including all adjacent salt water surface area for a distance of three miles seaward of the shoreline, subject to valid existing rights;

(5) Coastal National Wildlife Refuge of approximately 1 million acres, including all adjacent salt water surface area for a distance of three miles seaward of the shoreline, subject to valid existing rights;

(6) Yukon Flats National Wildlife Range of approximately 12.3 million acres;

(7) Iliamna National Wildlife Range of approximately 1.6 million acres; and

(8) Togiak National Wildlife Range of approximately 3.0 million acres, including all adjacent salt water surface area for a distance of three miles seaward of the shoreline, subject to valid existing rights.

(b) The following unit of the National Wildlife Refuge System is hereby expanded:

(1) Arctic National Wildlife Range by the addition of approximately 5.6 million acres.

SEC. 3. (a) The following areas are hereby established as units of the National Park System and shall be administered by the Secretary under the laws governing the administration of such lands and under the provisions of this Act:

(1) Gates of the Arctic National Park of approximately 12.2 million acres; provided, that with the concurrence of appropriate

Native corporations, the Secretary may include within the Park approximately 1.1 million acres of Native-owned land.

(2) Yukon-Charley Rivers National Park of approximately 2.0 million acres.

(3) Kobuk Valley National Monument of approximately 1.9 million acres;

(4) Cape Krusenstern National Monument of approximately 0.3 million acres, including all adjacent salt water surface area for a distance of three miles seaward of the shoreline, subject to valid existing rights;

(5) Wrangells National Park of approximately 18.1 million acres, including all adjacent salt water surface area for a distance of three miles seaward of the shoreline, subject to valid existing rights;

(6) Lake Clark National Park of approximately 5.8 million acres;

(7) Aniakchak Caldera National Monument of approximately 0.7 million acres, including all adjacent salt water surface area for a distance of three miles seaward of the shoreline, subject to valid existing rights.

(b) The following units of the National Park System are hereby expanded:

(1) Mount McKinley National Park by the addition of approximately 4.2 million acres; and

(2) Katmai National Monument by the addition of approximately 2.6 million acres, including all adjacent salt water surface area for a distance of three miles seaward of the shoreline, subject to valid existing rights: *Provided, however*, That the Secretary is authorized to identify 230,000 acres of Federal land elsewhere that is suitable for use as replacement for habitat lost to Native selection in the Kodiak National Wildlife Refuge and to so classify it and manage for that purpose.

(c) The following areas are hereby established as National Ecological Reserves in the National Park System and shall be administered by the Secretary under the laws governing the administration of National Park System lands and under the provisions of this Act: *Provided*, That the Bureau of Sports Fisheries and Wildlife of the Fish and Wildlife Service shall advise the National Park Service with respect to all questions of wildlife management within such areas and shall provide such services as may be required to implement the advice it provides.

(1) Noatak National Ecological Reserve of approximately 7.6 million acres;

(2) Chuckchi-Imuruk National Ecological Reserve of approximately 4.0 million acres, including all adjacent salt water surface area for a distance of three miles seaward of the shoreline, subject to valid existing rights; and

(3) Kenai Flords National Ecological Reserve of approximately 0.3 million acres, including all adjacent salt water surface area for a distance of three miles seaward of the shoreline, subject to valid existing rights.

Sec. 4. (a) The following rivers, and contiguous lands extending in a band averaging approximately one mile wide on each side of the rivers for their length, are hereby established as Wild and Scenic Rivers in the National Wild and Scenic Rivers System and shall be administered by the Secretary under the laws governing the administration of such rivers and lands; and under the provisions of this Act: *Provided, however*, that wherever major portions of such rivers lie within National Forests, administration of such portions shall be by the Secretary of Agriculture:

(1) Susitna National Wild River of approximately 165,000 acres;

(2) Birch Creek National Wild River of approximately 200,000 acres;

(3) Nowitna National Wild River of approximately 80,000 acres;

(4) Mulchatna National Wild River of approximately 102,000 acres;

(5) Unalakleet National Wild River of approximately 52,000 acres;

(6) Holitna National Wild River of approximately 100,000 acres;

(7) Hoholtna National Wild River of approximately 128,000 acres;

(8) Nelchina National Wild River of approximately 40,000 acres; and

(9) Tazilna National Wild River comprised of the lands not selected by the Native village corporation;

(10) Melozitna National Wild River of approximately 200,000 acres;

(11) Fortymile National Scenic River of approximately 320,000 acres;

(12) Delta National Scenic River of approximately 77,000 acres; and

(13) Gulkana National Scenic River of approximately 130,000 acres.

Sec. 4. (b) The following rivers within units of the National Park System and National Wildlife Refuge System as established herein are hereby designated as components of the National Wild and Scenic Rivers System, to be administered by the Secretary as wild rivers and as part of the units within which they are located.

Alagnak (Katmai)

Alatna (Gates of the Arctic)

Alesek (Wrangells)

Andreafsky (Yukon Delta)

Black, including all tributaries (Yukon Flats)

Beaver Creek (Yukon Flats)

Bremner (Wrangells)

Charley (Yukon-Charley)

Chitina (Wrangells)

Copper (Wrangells)

Ivishak (Arctic)

Kanetok (Togiak)

Killik, including Easter Creek (Gates of the Arctic)

Kobuk (Gates of the Arctic)

Kuzitrin (Chukchi-Imuruk)

Noatak, including Culter, Aniuk, Kugururuk, and Kelly (Gates of the Arctic and Noatak)

North Fork Koyukuk, including Tinayguk (Gates of the Arctic)

Mulchatna, including Chilikadrotna (Lake Clark)

Porcupine (Yukon Flats)

Salmon (Kobuk Valley)

Shenjek (Arctic and Yukon Flats)

Squirrel (Noatak)

Togiak (Togiak)

Wind (Arctic)

Nowitna (Koyukuk)

Sec. 5. The following areas are hereby added to existing units of the National Forest System and shall be administered by the Secretary of Agriculture under the laws governing the administration of such lands and under the provisions of this Act:

(1) Tongass National Forest additions of approximately 0.9 million acres;

(2) Chugach National Forest additions of approximately 0.7 million acres.

Sec. 6. As soon as practicable after this Act takes effect, a map and legal description of each unit established by this Act in the four national conservation systems shall be published in the Federal Register and filed in the office of the Secretary, and such description shall have the same force and effect as if included in this Act; except that correction of clerical and typographical errors in such legal descriptions and maps may be made. Wherever possible, descriptions shall be based on Bureau of Land Management cadastral surveys, and boundaries shall follow hydrographic divides where feasible.

Sec. 7. (a) Within areas withdrawn pursuant to section 11(a) (1) and (3) of the Alaska Native Claims Settlement Act, those lands not selected by the village and regional corporations (and including State selections pending lands of the State of Alaska) shall be withdrawn by the Secretary from all forms

of appropriation under the public land laws, including the mining and mineral leasing laws, and from selection, tentative approval, or patenting to the State under the Statehood Act for a period of two years following completion of village and regional corporation selections. Within two years following completion of village and regional corporation selections, the Secretary shall determine which of the withdrawn lands qualify for inclusion as additions to the units of the four national conservation systems established by this Act and shall add these qualified lands to the appropriate units.

(b) All lands which are within the exterior boundaries of the areas added to the four systems under sections 2, 3, 4, and 5 of this Act, which are subject to selection by village and regional corporations under the terms of the Alaska Native Claims Settlement Act, and which are not selected by those corporations under the terms of that Act are hereby added to and incorporated within the appropriate area, to be administered under the terms of this Act, at such time as the relinquishment of native rights becomes final.

(c) Under his existing authority, the Secretary shall make available to the State of Alaska other public lands of approximately equal acreage for those lands selected by, tentatively approved to, but not patented to the State of Alaska which are added to units of the four national conservation systems pursuant to subsection (a) above: *Provided*, That such other public lands shall not be taken from lands within the boundaries of areas described in sections 2, 3, and 4 of this Act.

(d) Any lands withdrawn pursuant to subsection (a) not added to the units of the four national conservation systems established by this Act shall be made available for selection by the State under the Statehood Act, and for classification by the Secretary under his existing authority and that granted him by section 17(d) (1) of the Settlement Act.

Sec. 8. (a) All lands established at national parks, national wildlife refuges, national ecological reserves, or as wild or scenic rivers, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws.

(b) All lands established as national forests are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws: *Provided, however*, That the Secretary is authorized to issue permits for metalliferous mining, and leases for minerals that are leasable under the Mineral Leasing Act, wherever he finds that the minerals sought are required to meet critical national needs, that other sources are not reasonably available, and that the values for which the area is established will not be permanently impaired.

Sec. 9. (a) Within the boundaries of the national park system units described in section 3 (a) and (b) of this Act, the Secretary shall designate zones where subsistence uses shall be permitted wherever he finds that such activities are consistent with maintaining or increasing the biological productivity of the area, providing for public safety, use, and enjoyment, and with the establishment of adequate control areas for scientific research.

(b) Wherever the Secretary finds that the biological productivity of the native species will not be impaired, he may permit hunting, trapping, and fishing, including subsistence uses, within the boundaries of the National Wildlife Refuge System units described in section 2(a) and section 2(b) and in units of the national park system described in Section 3(c), and with the boundaries of the Wild and Scenic Rivers described in Section 4 of this Act, except that the Secretary may designate zones where no hunting, fishing or

trapping, including for subsistence purposes, shall be permitted for reasons of maintaining or increasing the biological productivity of certain species, providing for public safety, use and enjoyment, or in order to establish control areas for scientific research.

(c) As used in this section, the term "subsistence uses" means activities such as hunting, fishing, trapping, or the gathering of natural organic products of the land by which any person regularly derives a portion of diet, clothing, shelter, tools, or transportation.

Sec. 10. Within the boundaries of the units of the national interest areas established by this Act, the Secretaries of Interior and Agriculture may acquire lands and interests in lands within areas placed under their respective jurisdictions by donation, purchase, exchange, or otherwise.

Sec. 11. The Secretaries of Interior and Agriculture shall study all lands and waters within the boundaries of the areas within their respective jurisdictions that are described in sections 2, 3, 4, and 5, as to their suitability for inclusion as units of the National Wilderness Preservation Systems, and shall submit their recommendations to Congress with ten years of the date of the enactment of this Act: *Provided*, That the Secretary shall permit no activities to take place which would impair the suitability of such lands for designation as units of the National Wilderness Preservation System until Congress has made a determination about such suitability.

Sec. 12. (a) The Secretary may establish administrative sites or visitor facilities outside of the boundaries of any area established under this Act, or protect any significant archaeological sites outside the boundaries of the area described in Sec. 3(a)(3), Sec. 3(a)(4), and Sec. 3(c)(2). For these purposes he may establish on federal lands or acquire other lands not to exceed 1,000 acres for administrative and visitor facilities, and no more than 7,500 acres for archaeological sites outside the boundaries of each of the areas referred to herein.

(b) The Secretary shall, wherever possible, in locating administrative sites and visitor facilities to serve any area established under this Act, give preference to such location to sites located on any lands under the jurisdiction of any native corporation which are reasonably adjacent to such areas.

Sec. 13. Sec. 4 of the Act of February 26, 1917 (39 stat. 938), is repealed, and Sec. 2 of the Act of January 26, 1931 (46 stat. 1043), is repealed: *Provided*, That this repealer shall not affect any regulations heretofore prescribed by the Secretary for the surface use of any mineral land locations pursuant to said Sec. 2 of the Act of January 26, 1931.

Sec. 14. There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

DECEMBER 20, 1973.

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

DEAR MR. SECRETARY: The transmittal of your recommendations for new national parks, natural wildlife refuges, national forests, and wild rivers in Alaska now shifts the focus of effort to the Congress. We welcome the opportunity to begin to deliberate on these recommendations.

However, we wish to be assured that our options in this regard will not be unnecessarily foreclosed or restricted.

I am concerned about the possibility that lands with high potential for inclusion in the national system may be transferred out of Federal ownership during the five-year period that the Congress is considering legislation. I refer specifically to four types of areas that are exposed to appropriation under the public land laws.

(1) Lands which you have recommended for inclusion in any one of the four systems which were not classified by you as "(d)(2) lands" are open to State or Regional Corporation selection.

(2) Lands classified by you as "(d)(2) lands" in September, 1972 which you have not recommended for inclusion in any one of the four systems.

(3) Lands classified by you as "(d)(2) lands" in March, 1972 which were not retained in this category in September, 1972 nor recommended by you now for inclusion in the four systems.

(4) Other lands which members of the Congress may propose for inclusion in any of the four systems.

I believe that Congress will wish to have the subject matter of its deliberations kept as intact as possible during the next five years.

At the same time, I recognize that the State of Alaska and the Native Regional Corporation should not be unfairly frustrated in exercising their selection rights under existing law. Given the large areas of land in Alaska, I hope that there will be few conflicts between proposals for transfer and establishment of national interest areas. However, if any transfers of title are contemplated, I request that you notify the Committee on Interior and Insular Affairs of both Houses of Congress and not approve any such proposal for at least 60 days after that notification.

I appreciate your cooperation very much.

Sincerely yours,

HENRY M. JACKSON, *Chairman*.

U.S. DEPARTMENT  
OF THE INTERIOR,

Washington, D.C., December 17, 1973.

HON. GERALD R. FORD,  
President of the Senate,  
Washington, D.C.

DEAR MR. PRESIDENT: Transmitted herewith is a bill, "To provide for the addition of certain lands in the State of Alaska to the National Park, National Wildlife Refuge, National Forest, and the Wild and Scenic Rivers Systems, and for other purposes."

We recommend that this bill be referred to the appropriate Committee and that it be enacted.

On December 18, 1971, President Nixon signed into law the historic Alaska Native Claims Settlement Act (ANCSA) (P.L. 92-203). This legislation extinguished all aboriginal claims to land in Alaska and in return provided the Natives with a land settlement of 40 million acres and a monetary settlement of nearly a billion dollars.

In addition, section 17(d)(1) of the Act authorized the Secretary of the Interior (hereinafter referred to as the "Secretary") to withdraw such public domain lands as he thought advisable to ensure that the public interest in them is properly protected.

Section 17(d)(2) of the Act authorized the Secretary to withdraw up to 80 million acres of land to be studied for possible addition to the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems. Section 17(d)(2) also required all legislative proposals coming from such studies to be submitted to the Congress within two years, by December 18, 1973, and provided that Congress would have five years to act following receipt of the legislation. During this period land in those proposals withdrawn under 17(d)(2) would not be subject to appropriation under the public land laws. The bill transmitted with this letter constitutes the legislative proposals pursuant to that authority.

The process of developing the proposals began in January of 1972 with the Bureau of Sports Fisheries and Wildlife and the National Park Service concentrating on the identification of their "areas of interest" in Alaska without regard to management jurisdiction.

During February 1972 these two agencies screened the "areas of interest" to identify the specific areas that warranted detailed on-the-ground study for possible addition to the National Wildlife Refuge and Park Systems. These particular areas were then reviewed within the Department to determine the lands to be withdrawn in March of 1972 under the 17(d)(1) and 17(d)(2) provisions of the Act. The March withdrawal also recognized certain river areas that warranted study for possible addition to the Wild and Scenic Rivers System. In addition, additional acreage from which the Natives were to select some of the land to which they were entitled was withdrawn.

During the summer of 1972 the National Park Service, Bureau of Outdoor Recreation, Bureau of Sports Fisheries and Wildlife and Forest Service conducted detailed studies of the withdrawn lands.

In August of 1972, the Joint Federal-State Land Use Planning Commission, a commission created by the ANCSA to advise the Federal and State governments, provided its recommendations for the final 17(d)(2) withdrawals to be made in September. On September 17 the final 17(d)(2) withdrawals of 79.3 million acres were made. The withdrawals reflected negotiations with certain of the Native Regional Corporations. Subsequent adjustments have also been made in native deficiency withdrawals, after consultation with the Natives.

During the remainder of 1972 and early 1973 the agencies refined their studies on the D-2 and the related D-1 lands.

During May and June of 1973 the Joint Federal-State Land Use Planning Commission held over 30 hearings in Alaska and four hearings in the other 48 States to obtain comments from the public concerning use potentials for the 17(d)(2) lands. The testimony from these hearings, as well as specific recommendations submitted by the Commission regarding 17(d)(2) withdrawals, were all considered in developing final recommendations.

The decisions on additions to the National Park, Refuge, Forest and Wild and Scenic Rivers Systems have not been easy to make. Alaska is a vast land with a great variety of resource values, many of which are of national and international importance. It contains great mineral, oil, and forest resources, a wide variety of ecosystems, outstanding archeological artifacts, and some of the most magnificent scenery in the world. It is the only place in the United States where Native people are living on the land on a subsistence basis.

In the proposed legislation, we have taken into account the special characteristics of Alaska and we have used several new approaches which we believe are particularly suited to Alaska. For example, we are proposing joint management of resources by two or more federal bureaus in several instances, because the resources of the areas seem to require this joint approach. The Chukchi-Imuruk National Reserve and the two southern units of the Harding Ice Field-Kenal Fjords National Monument, which have both park-quality resources and high fish and wildlife values, will be administered jointly by the National Park Service and Bureau of Sport Fisheries and Wildlife. Iliamna National Resource Range will be administered as a unit of the National Wildlife Refuge System and will also be administered to permit multiple-use activities compatible with the Bristol Bay fishery resource. The Noatak National Arctic Range will be jointly managed by the Bureau of Sport Fisheries and Wildlife and the Bureau of Land Management to provide for protection of the natural features of the area and for scientific research.

We intend to negotiate cooperative agreements where possible with the owners of adjacent lands including federal agencies, state

and local governments, and private persons, including native corporations, as well as foreign nations, provided the Secretary of State concurs. The agreements would have as their purpose assuring that these adjacent areas will be managed, insofar as possible, in a manner consistent with preservation of the park system and refuge system units. The maps referred to in the proposed legislation show certain areas adjacent to park and refuge units designated as "areas of ecological concern"; we will make particular efforts to conclude cooperative agreements with respect to these areas. Government agencies licensing, funding, or carrying out undertakings on adjacent lands, unless they are parties to a cooperative agreement, would be required by our proposal to offer the Secretary a reasonable opportunity to comment on their undertakings.

We have also provided for subsistence use of fish, wildlife and plant resources in recognition of the established subsistence hunting practices in Alaska, on both national park and refuge system areas. The need for a subsistence use provision is unique to Alaska, where members of the Native population are living on a subsistence basis.

We recognize in submitting these proposals to the Congress that further information is needed before decisions can be reached on some issues. As Alaska continues to develop, there will be a need for rights of way and corridors to adequately accommodate transportation and utility requirements. However, the information on these needs is not fully developed at this time and therefore decisions cannot be made before the December 18, 1973 deadline for submitting 17(d)(2) legislative proposals to Congress. We plan to work with the Congress and the State of Alaska in determining what these needs are and how they can be met. We plan to keep our proposals and their resources under continuing study to determine if any subsequent changes in boundaries or uses are necessary. If such changes are determined to be necessary, they will be referred to the Congress for appropriate action.

The following pages deal with specific proposals in detail. The legislation has been divided into four titles: 1) National Park System, 2) National Wildlife Refuge System, 3) National Forest System, and 4) Wild and Scenic Rivers System additions which are not located in any of the above three systems. Wild and Scenic Rivers System proposals are also found in the first three titles, in cases in which the river runs through a national park, refuge, or forest system area.

We are proposing to add acreage to two existing national park system areas, and to create nine new park areas, as follows:

(In million acres)

New areas:	
Mt. McKinley National Park (additions) .....	3.18
Katmai National Park (additions) ..	1.87
Aniakchak Caldera National Monument .....	.44
Harding Ice Field-Kenal Fjords National Monument .....	.30
Cape Krusenstern National Monument .....	.35
Kobuk Valley National Monument ..	1.85
Lake Clark National Park .....	2.61
Wrangell-St. Elias National Park .....	8.64
Gates of the Arctic National Park .....	8.36
Yukon-Charley National Rivers .....	1.97
Chukchi-Imuruk National Reserve ..	2.69
Subtotal .....	32.26

We are proposing nine new additions to the National Wildlife Refuge System:

[In million acres]

Alaska Coastal National Wildlife Refuges .....	0.07
Arctic National Wildlife Refuge .....	2.76
Iliamna National Resource Range .....	2.85
Koyukuk National Wildlife Refuge .....	4.43

Noatak National Arctic Range .....	7.59
Selawik National Wildlife Refuge .....	1.40
Togiak National Wildlife Refuge .....	2.74
Yukon Delta National Wildlife Refuge ..	5.16
Yukon Flats National Refuge .....	3.59
Subtotal .....	31.59

We are proposing establishment of three new national forest system areas, and additions to a fourth existing area:

[In million acres]

Porcupine National Forest .....	5.50
Wrangell Mountains National Forest ..	5.50
Yukon-Kuskokwim National Forest .....	7.30
Chugach National Forest (additions) ..	.50
Subtotal .....	18.80

We are proposing six additions to the wild and scenic rivers system which are located entirely within park system areas, five located entirely within refuge system areas, one which flows through both a park and a refuge system area, and four located entirely within forest system areas. In addition, we are proposing four components not located on park, refuge or forest system lands:

[In million acres]

Beaver Creek .....	0.20
Birch Creek .....	.32
Fortymile .....	.20
Unalakleet .....	.10
Subtotal .....	.82

The total acreage added is 83.47 million acres.

NATIONAL PARK SYSTEM

Administration

Title I of the proposed legislation would add additional acreage to two existing parks and monuments and create nine new units of the National Park System. Administration of these areas will be under the authority of Act of August 25, 1916 (39 Stat. 535 *et seq.*) as amended and supplemented (16 U.S.C., *et seq.*). Chukchi-Imuruk National Reserve and the two southern units of Harding Ice Field-Kenal Fjords National Monument will be managed jointly by the National Park Service and the Bureau of Sport Fisheries and Wildlife pursuant to a cooperative agreement. The other areas will be managed entirely by the National Park Service. Lands within the boundaries of the added and new areas may be acquired by purchase, donation, or exchange; except that lands owned by the State or political subdivisions of the State may be acquired only by donation or exchange, and property owned by a native village or corporation may be acquired only with the concurrence of the owner. Minor boundary changes may be made, after notice requirements are met, including notice to the Interior and Insular Affairs Committees. Administrative sites located outside the park system area boundaries may be added to the areas and included within the boundaries after notice requirements are met, but the sites may not exceed 80 acres for any one park system area.

Mining and mineral leasing

The Federal lands within the boundaries of the areas added to existing units or established by the title are withdrawn, subject to valid existing rights, from location, entry and patent under the public lands laws, including from all forms of appropriation under the United States mining laws, and from operation of the mineral leasing laws. This withdrawal also applies to areas presently within Mount McKinley National Park. Since lands within the existing Katmai National Monument are already withdrawn, no reference is made to them in the legislation. A one year limit is established during which all mining claims must be recorded; an application for patent must be made within three years of recordation, or the claim will be presumed invalid.

An exception to these withdrawals is made to allow mineral leasing in the Yukon River watershed of the Yukon-Charley National River, other than the Charley River; these lands are not withdrawn from operation of the mineral leasing laws and are specifically made subject to the Mineral Leasing Act of 1920, except that provision is made for administrative canceling of leases and permits for violations of the terms of leases and permits or regulations. These lands are withdrawn from appropriation under the mining laws by subsection 106(a), but minerals of the types subject to the mining laws may be removed under a permit system provided for in subsection 106(b).

Sport hunting

Sport hunting will be permitted in specified townships of Aniakchak Caldera National Monument and in Lake Clark National Park, Wrangell-St. Elias National Park, the Gates of the Arctic National Park, Chukchi-Imuruk National Reserves, and Yukon-Charley National Rivers, in accordance with regulations prescribed by the Secretary. Sport hunting may not take place, however, if prohibited by state or federal law. The Secretary may establish limits on numbers and types of species taken and manner of taking, and may prohibit taking; he may also designate zones where, and periods when, no sport hunting will be permitted for reasons of public safety, administration, fish and wildlife management, or public use or enjoyment. Regulations except in emergencies, are to be put into effect only after consultation with the appropriate fish and game agency of the State of Alaska.

The proposal requires a report to the Congress at specified intervals on the effect of all hunting, fishing and trapping, including subsistence uses, on the flora and fauna of the areas added to existing units or established by the title.

Subsistence uses

Except as otherwise prohibited by state or federal law, subsistence uses of fish, wildlife and plant resources will continue within the areas added to existing park system units or established as new units, to the extent that such uses were in effect on the date of enactment of ANCSA, unless the Secretary finds that such uses would materially and negatively affect the fish, wildlife or plant resources of such areas. The Secretary may prescribe conditions under which subsistence uses shall be conducted, and may prohibit takings altogether. Regulations on subsistence uses are to be promulgated after consultation with the appropriate fish and game agency of the state.

Cooperative agreements

The Secretary is specifically authorized to enter into cooperative agreements with federal agency heads and owners of land within, adjacent to, or related to the park system areas added to existing units or established by the title.

The agreements may be made, for example, with Federal agencies, State or local governments, Native corporations, villages or groups, and foreign governments, with the concurrence of the Secretary of State. The agreements would be drafted to insure management of the areas subject to the agreement in a manner consistent with preservation of the park system areas. They could also provide for access by the park visitors to and across the lands. A provision similar to section 106 of the Historic Preservation Act of 1966 is included in the legislation, requiring agencies licensing, funding or carrying out projects or other undertakings in the areas within, related to or adjacent to park system areas to give the Secretary opportunity to comment on such undertakings; Federal agencies which are parties to cooperative agreements with respect to the particular park system area are exempted from this requirement since such reporting requirements could be included in the agreement.

*Wilderness review*

With respect to the areas added to existing units or established by the title, the Secretary has 3 years from the date of enactment to report his recommendations for wilderness designation, in accordance with subsections 3(c) and 3(d) of the Wilderness Act. The wilderness recommendation for the existing Mount McKinley National Park must also be made within 3 years, from date of enactment.

*Wild and Scenic Rivers System Components*

Seven river components—Alatna, Aniakchak, Charley, Killik, Noatak, Salmon, and Tinayguk—are added to the Wild and Scenic Rivers System by title I. Studies of these rivers have been completed which are the equivalent of the studies carried out on rivers designated under section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)). We are therefore recommending addition of these rivers directly to the system, rather than inclusion on the 5(a) study list. All seven rivers are classified as wild rivers and are to be administered as wild rivers pursuant to the Wild and Scenic Rivers Act. The rivers are exempted from the requirements of 3(b) of establishing detailed boundaries, preparing development plans, and classifying as wild, scenic or recreational rivers. They are also exempted from the duplicative and potential conflicting acquisition provisions of section 6 of the Act and fish and wildlife provisions of section 13(a) of the Act.

*Specific areas*

Descriptions of specific areas and specific legislative provisions applying to these areas follow:

1. *Mount McKinley National Park Additions.* Mount McKinley National Park was established in 1917. This proposal will add approximately 3.18 million acres to the present park, which now includes about 2 million acres. About half of the additions are to the north of the existing park, and constitute critical wolf, sheep, moose and caribou range necessary to ensure the continued viability of the ecosystem of the Mount McKinley area. The area also has important waterfowl values. The remaining half of the added acreage is to the south of the park. It includes part of the Mount McKinley massif not now within the park, spectacular glacial systems, and the intricately dissected, awesomely beautiful Cathedral Spires. Lowland areas in the southern portion will provide ecologic diversity for the park and opportunity for recreational use and access. The added areas will be managed as natural areas with the primary objectives of preserving the large mammal ecosystem and the scenic beauty of the area; development will be minimal, with emphasis on the recreation portion of the area in its natural condition. Headquarters will be relocated from its present site north of the Alaska Range to the south side of the range.

A cooperative planning and management zone, adjacent to the south and east boundaries of the expanded park, has been designated on the maps referred to in the legislation. This area encompasses the threshold lands to Mount McKinley. Within 3 years from the date of enactment of the title, the Secretary will be required to submit a report to the Congress on whether land-use controls needed for proper protection of the park have been instituted by the State and local governments with respect to this zone. Comments of the Governor and the Joint Federal-State Land Use Planning Commission will be solicited and submitted to Congress as well.

2. *Katmai National Park.* Katmai National Monument was established in 1918 by Presidential Proclamation, and subsequently enlarged to about 2.8 million acres. The legislation would add 1.87 million acres to the monument and redesignate it as a national

park. The national monument, which is located on the upper Alaska Peninsula, was originally established to preserve a scenic region containing an area devastated in 1912 by volcanic eruption and ash deposition.

The proposed expanded park will include the headwaters of all watersheds draining through the present monument. Inclusion of the headwaters will help assure preservation of the sockeye (red) salmon spawning and nursery waters in these headwaters. The park would also include a protected area sufficiently large to include an unhunted, self-perpetuating population of the giant Alaskan brown bear. The southern portion of the park will include a representative portion of the Bristol Bay lowland tundra, the only representative of this landform type in the national park system. Katmai will continue to be managed as a natural category area with the primary objective of insuring maximum retention of land and wildlife in as near as possible to their natural state. Hunting, trapping, and commercial fishing will not be allowed.

3. *Aniakchak Caldera National Monument.* The proposed Aniakchak Caldera National Monument, which will include approximately 440,000 acres, lies on the Alaska Peninsula approximately 350 air miles south of Anchorage. The 30-square mile Aniakchak Caldera is one of the world's greatest dry volcanic caldera (craters), and contains many examples of volcanic activity, including lava flows, cinder cones, a lava plug, warm springs, explosion pits, and layers of volcanic and sedimentary rocks exposed by volcanic action. A rift running through the caldera has created portals in the caldera wall; the eastern portal is a spectacular 2,000-foot gash through which the Aniakchak River flows. Also included in the national monument are ash fields surrounding the caldera, tundra-covered lowlands, and portions of the Aleutian Mountain Range, and the Aniakchak River. The Aniakchak River is proposed by the legislation for designation as a component of the wild and scenic rivers system and classification as a wild river, pursuant to the Wild and Scenic Rivers Act.

The rivers and streams within the monument support abundant salmon, trout and many other fish. Brown bear and moose are found almost throughout the area. The coastal portion of the monument, including cliffs and off-shore islands, harbor sea lions, sea otters, seals, and sea birds.

4. *Harding Ice Field-Kenai Fjords National Monument.* The proposed Harding Ice Field-Kenai Fjords National Monument, consisting of about 300,000 acres, encompasses two major elements of the Alaska scene: a 700-square mile icecap, with outflowing glaciers, and a series of coastal fjords with abundant bird and marine life. It is located south of Anchorage, on the Kenai Peninsula, about 2½ hours by car. The monument consists of three units and provision is made for including a central area between the three units in the monument, as well, if all or part of this area is not selected by native corporations pursuant to the Alaska Native Claims Settlement Act. The two southern units of the monument will be administered jointly by the National Park Service and the Bureau of Sport Fisheries and Wildlife, pursuant to a cooperative agreement.

The high point of Harding Ice Field is 5,270 feet. Numerous glaciers flow outward from the icefield, some reaching the sea, others ending in large lakes, or on bare ground. Cirques, horns, moraines, nunataks, and other glacial features can be seen. Of the 4 major icefields in the United States, Harding has the most expansive central area which is not broken by mountains and crevasses. The icecap-like appearance is awesome, providing the visitor a unique experience.

Glaciers from the icefield have cut deep

fjords into the mountainous coast. Dense, rain forest-type vegetation cloaks the cliffs and mountains. Marine mammals and sea birds abound on these cliffs and in the fjords.

5. *Cape Krusenstern National Monument.* The proposed Cape Krusenstern National Monument, situated north of the Arctic Circle in northwestern Alaska, will protect an internationally significant series of archeological sites. The area proposed for the national monument, comprising approximately 350,000 acres, includes a level coastal plain dotted with sizable lagoons, which on the east meets an ancient sea cliff and low rolling monument and redesignate it as a national stratigraphy of beach ridges that is unique in size and scope, every known cultural period in arctic Alaska; this succession of 114 gravel beaches extends from 1½ to 3 miles inland. The area, which was ice-free in the late Pleistocene, may reveal information on the peopling of the Americas across the thousand-mile wide Bering Land Bridge. The land bridge is now partially under water.

The national monument, in addition to its archeological significance, will provide a representative segment of arctic coastal tundra, a type of ecosystem not now represented in the National Park System. The long term stability of the coast also makes the area significant for studies of sea level and coastal currents.

Management of the area will be to preserve evidence of prehistoric man and his environment for study by scientists and for other visitors. Developments will be minimal to preserve the overall scene and prevent damage to the fragile ecosystems.

6. *Kobuk Valley National Monument.* The proposed Kobuk Valley National Monument, comprising about 1,850,000 acres, is located above the Arctic Circle in the central Kobuk Valley in northwestern Alaska. It is bounded on the north by the crest of the Baird Mountains and on the south by the Waring Mountains. It includes the Kobuk River, with its myriad meander sloughs and oxbow lakes, the Great Kokuk Sand Dunes, covering more than 20 square miles that are the relics of a prehistoric dune area covering over 300 square miles, and the Salmon River. The Salmon River is proposed for inclusion in the wild and scenic rivers system, and classification as a wild river. The monument is representative of both the Western Interior Alaska and Brooks Range physiographic province, and includes the northwestern limits of boreal forest. The northern portion of the winter range of the Arctic caribou herd and several important migration routes lie within the proposal. Moose, black and grizzly bear, and wolves are indigenous.

Provision is made in the legislation for inclusion of those parts of the Onion Portage area that are not selected by native corporations pursuant to ANCSA as part of the monument; Onion Portage is one of the most important archeological sites in arctic North America, with over 30 cultural horizons.

The portion of the Kobuk Valley included in the monument has an appeal as a "friendly" place, which is rare for the arctic. Boating is safe and easy, and there is excellent hiking on the dunes and in the Waring Mountains. The Baird Mountains offer excellent mountaineering opportunities.

7. *Lake Clark National Park.* The proposed Lake Clark National Park, of approximately 2,610,000 acres, is located north of the existing Katmai National Monument on the Cook Inlet. It straddles the Alaska and Aleutian Mountain ranges, and includes a series of glacier-created lakes on the west. The National Park Service has been studying the area for possible addition to the park system since the late 1950's.

In the areas proposed for a national park, numerous valleys weave through a jumble

of mountains. There is a maze of natural hiking routes, which permit surprisingly easy entrance to a spectacular mountain environment. The park encompasses still-smoking volcanoes, spectacular spires, and glaciers.

The park includes a portion of the Cook Inlet coastline, which ranges from gentle alluvial shapes in the north to deeply incised, spruce-covered coastal hills in the south.

Waterfowl, seabirds, trout, bear, moose, sheep and marine mammals can be found in the park. Plant communities range from coastal spruce and marsh to alpine meadows and lichen growth at high elevations.

We have had discussions with the Cook Inlet Regional Corporation regarding the possibility of exchanging at some future date land in the Kenai National Moose Range for land which they are entitled to select near the proposed Lake Clark National Park. Presently, the Bureau of Sport Fisheries and Wildlife and the Federal-State Commission are conducting studies of the Range to determine whether some of the land is no longer needed for the purposes of the Range.

Developments in the park will be located to maintain the ecological and scenic integrity of the area. The area will be managed as a natural area with the objective of preserving its scenic beauty, wilderness attributes, areas of scientific interest and plant and animal life.

8. *Wrangell-St. Elias National Park.* The proposed Wrangell-St. Elias National Park, including approximately 8,640,000 acres, is located in south-central Alaska, and stretches 160 miles north from the Gulf of Alaska. Much of the Wrangell-St. Elias and Chugach mountain ranges will be included in the park, including 18,000-foot Mount St. Elias 16,000-foot Mount Blackburn and the largest glacier system in the United States, including Malaspina and Bering glaciers and Bagley Ice Field. The park includes spectacular ice-sculptured valleys, rolling interior foothills, and a small sample of coastal plain. Abundant land and sea mammal and fish species include moose; wolf; wolverine; black, glacier and brown-grizzly bear; caribou; Dall sheep; sea lions; otters; seals; killerwhales; salmon; trout; and grayling. A number of historic sites from the early mining era in Alaska are located in the river valleys within and in the vicinity of the park.

The proposed legislation provides that the Secretary of Agriculture and the Secretary of the Interior shall consult in the development of management plans for the Wrangell Mountains National Forest and the adjoining Wrangell-St. Elias National Park to achieve the fullest possible coordination and cooperation.

The park would be managed to ensure maximum retention of the landscapes and lifeforms in a natural state.

9. *Gates of the Arctic National Park.* The proposed Gates of the Arctic National Park, comprising approximately 8,360,000 acres, is located in the central Brooks Range, 200 air miles northwest of Fairbanks, and a similar distance southeast of Barrow on the Arctic Ocean coast. The park will protect Alaska's most complete and varied array of arctic scenic and biologic resources. The area's scenic values derive from the gaunt grandeur of the tundra environment and the vast open valleys and sweeps of mountains.

Mount Igikpak, a spectacular turreted peak which is the highest in the central and western Brooks Range, (8,510 feet) is included in the western portion of the park, as are the Arrigetch Peaks, among America's most precipitous mountains, and Walker Lake, an exceptional geological and ecological area. Several other large lakes on the southern flank of the range are in the proposed park, as are two on the Arctic Slope. The eastern part of the park includes the striking mountain and valley formation called the Gates of the

Arctic and other mountains and wilderness made famous in the writings of Bob Marshall. We are proposing four rivers within the park for inclusion in the wild and scenic rivers system, and classification as wild rivers—the Alatna, the Killik, the Noatak, and the Tinayguk.

Wildlife includes migrants from the huge arctic caribou herd as well as grizzly bear, Dall sheep, moose, wolves, raptors, and Arctic char, lake trout, northern pike and grayling.

Limited recreation development in keeping with the primitive character of the area appears to be appropriate for the central portion of the park. No developments except for those necessary for management purposes are planned for the eastern and western portions.

10. *Yukon-Charley National Rivers.* The proposed Yukon-Charley National Rivers, which comprises approximately 1,970,000 acres, is located in east-central Alaska, its eastern boundary the United States-Canadian border. It includes a part of the Yukon River, and the Charley River drainage in its entirety. The Charley River empties into the Yukon between the towns of Eagle and Circle, and this confluence is within the national rivers. The Yukon River area is rich in history. The town of Eagle, which is near the park boundary, has well-preserved buildings dating back to the gold-rush era, and there are a number of remains of buildings along the banks of the Yukon within the national rivers. There are also wildlife resources, including the highest known concentration of nesting peregrine falcons. Geologic features include an uninterrupted visible cross-section of rock strata dating from Upper Cambrian times (500 million years ago) to the present.

The Charley River basin is significant because of its undisturbed nature and its fine cross-section of interior Alaska flora and fauna. There is high potential for recreational boating on the Charley and for camping and hiking through the Charley River basin. The Charley River is recommended by the legislation for inclusion in the wild and scenic rivers systems, and for classification as a wild river.

The proposed Yukon-Charley National Rivers will be managed as a recreation category area. Management will provide for protection of and use of recreational, historic and natural values. Along the Yukon River, mineral leasing under 1920 Mineral Leasing Act will be permitted, subject to certain special provisions and minerals normally subject to the mining laws may be removed pursuant to a permit system in the legislation.

11. *Chukchi-Imuruk National Reserve.* The proposed Chukchi-Imuruk National Reserve, comprising approximately 2,690,000 acres, is located on the Seward Peninsula in northwestern Alaska. The area is a relic of the much larger area which constituted the Bering Land Bridge. It is a superb representation of a great diversity of tundra communities. Wildlife values of the area are internationally significant; the wildlife are found in the wetlands, cliffs and estuaries, and offshore areas of the proposal. The area is also of interest because of the volcanic processes represented. Lava flows cover large areas in the southern part of the proposal. Ash explosion, unknown elsewhere in the Arctic, have left deep crater lakes in the northern portion and buried, in near total preservation, a prehistoric ecosystem. The area will be managed jointly by the National Park Service and the Bureau of Sport Fisheries and Wildlife, pursuant to a joint management plan.

#### NATIONAL WILDLIFE REFUGE SYSTEM

The proposed additions to the National Wildlife Refuge System are the results of investigations by the Bureau of Sport Fisheries and Wildlife. Enactment of these proposals would result in adding approximately 32 million acres to the National Wildlife Refuge System, presently estimated at 31

million acres. The areas would be administered as integral units of the National Wildlife Refuge System pursuant to the National Wildlife Refuge Administration Act of 1966 as amended (80 Stat. 927; 16 U.S.C. 668dd-ee), and would afford protection and preservation of nationally and internationally significant fish and wildlife populations and their habitats. Special emphasis is provided in these proposals to critical habitat areas of migratory birds, seabirds, endangered species, anadromous fish and marine mammals.

Within the framework of Federal and State laws, subsistence would be a recognized use of the fish, wildlife and plant resources in the refuges and the ranges. Refuge designation of proposed lands would not change laws applicable to existing subsistence, and authorized uses would be continued until it is demonstrated that they are no longer necessary for human survival. Hunting, fishing and trapping will be allowed on the areas subject to applicable Federal and State laws. The Secretary of the Interior would be authorized, however, to regulate subsistence uses for such reasons as public safety and to prevent depletion of the resources and thereby insure sustained benefits for all Americans. Subject to valid existing rights, no use of the refuges and the ranges under United States mining and mineral leasing laws will be allowed without the express approval of the Secretary.

All areas, except the proposed "Noatak National Arctic Range, would be studied for possible inclusion in the National Wilderness Preservation System in accordance with subsections 3(c) and 3(d) of the Wilderness Act. A report would be made to the President and Congress within three years after establishment concerning their suitability or non-suitability for classification as wilderness. Certain rivers within the proposed refuges and ranges which have been studied and found to be suitable would be designated for protection under the provisions of the Wild and Scenic Rivers Act (82 Stat. 906; 16 U.S.C. 1271-1287).

Special efforts will be made to coordinate management of fish and wildlife resources on the refuges and ranges with that of native and State-owned lands and other Federal lands within, adjacent to and related to the refuges and the ranges.

#### Alaska Coastal National Wildlife Refuges

This proposal to add approximately 65,000 acres to the National Wildlife Refuge System includes several hundred rock islands, spires and cliffs located along 1,500 miles of Alaskan coast. Two of the proposed refuges will be additions to existing refuges—the Bering Sea National Wildlife Refuge and the Kodiak National Wildlife Refuge—and the rest will go into three new refuges—Chukchi Sea, Shumagin Islands, and Barren Islands, National Wildlife Refuges.

It is estimated that the nesting sites of four to six million seabirds are included within the land areas of this proposal. In addition to seabird nesting, all the units are important to one or more species of marine mammals including sea lions, walrus, sea otters and polar bears.

Commercial fisheries are of prime economic importance in the area below the Alaska Peninsula. Convention agreements permit international fishing zones to be located adjacent to the Shumagin Islands, Kodiak, and Barren Islands units. Zones permitting loading and unloading of fish, fuel, and supplies are also located adjacent to the Shumagin Islands and Barren Islands units.

#### Arctic National Wildlife Refuge

Located in the northeast corner of Alaska, extending along the Canadian border from the Yukon basin to the Arctic Ocean, this proposal would establish a 3.76 million acre Arctic National Wildlife Refuge, and the existing 8.9 million acre Arctic National Wild-

life Range withdrawn in 1960 by Public Land Order No. 2214 would be added to the refuge.

The magnitude and diversity of habitats account for the variety of fish and wildlife resources within the area. Nearly 130 species of migratory birds use these habitats. Also, 44 species of mammals depend upon the land base for their existence. Thirty-one species of waterfowl frequent tundra wetlands and adjacent coastal waters.

The area is a major migratory route for a variety of shorebirds and waterfowl. Birds from all four continental flyways follow inland routes and the Arctic coastal route to winter ranges around the world. Thousands of snow geese forage inland on the tundra in late summer and early fall during their annual migration. Of special interest are the endangered peregrine falcon, and possibly the Eskimo curlew which many fear is extinct.

The calving grounds of the Porcupine caribou herd (as many as 150,000 animals) are entirely within the existing Arctic National Wildlife Range and are of international importance.

Sixteen species of fish occur within the proposal including arctic grayling, anadromous and landlocked populations of arctic char, lake trout, chum salmon, northern pike, burbot and whitefish. Though no commercial fisheries exist, all species are important for subsistence use.

#### *Iliamna National Resource Range*

The proposed Iliamna National Resource Range includes approximately 2.85 million acres of land and water located on the northern end of the Alaska Peninsula between Cook Inlet and Bristol Bay.

The terrain is diversified and includes heavily glaciated mountains, alpine-like meadows, coastal bays, and numerous ponds and lakes. Lake Iliamna, in the heart of the region, is the seventh largest freshwater lake in the United States.

The Kvichak River system contains the greatest red salmon spawning grounds in the world and sustains a world-renowned freshwater trophy sport fishery. Kvichak River, which flows from Lake Iliamna to Bristol Bay has a watershed of 8,000 square miles, is 68 miles long, and has an estimated flow of 18,000 cubic feet per second. During the period 1960 through 1969, the Kvichak drainage contributed 55 percent of the red (sockeye) salmon caught in Bristol Bay, 33 percent of entire U.S. catch, and 16 percent of the world catch. The whole sale value of this commercial sockeye salmon fishery has averaged more than \$12,000,000 per year over the past ten years. In addition to the red salmon, pink, chum, king, and coho are also found within the proposal boundaries. The area supports a trophy sport fishery for grayling, arctic char, Dolly Varden, lake trout, rainbow trout, and pike. The fishery is the main economic resource of the area, supporting extensive subsistence fishing, 4,000 licensed commercial fishermen, 4,000 to 6,000 support workers for the fishermen, 23 canning lines, several salteries and freezing facilities, and an array of small businesses supported by the sport fishery—guiding operations, lodges and transportation services.

More than 100 species of birds inhabit the area. Predatory birds include the bald eagle, peregrine falcon, osprey, and gyrfalcon, and Bristol Bay is the staging area for the entire world population of emperor geese and Pacific black brant.

The area would be added to the National Wildlife Refuge System and managed jointly by the Bureau of Sport Fisheries and Wildlife and the Bureau of Land Management of this Department pursuant to a cooperative management plan which will permit only such multiple use activities as are compatible with the protection and management of the nationally and internationally significant fish and wildlife resources of the range.

#### *Koyukuk National Wildlife Refuge*

Two units of land in the Koyukuk-Innoko area of Alaska are recommended to be set aside as the Koyukuk National Wildlife Refuge.

The area produces an annual fall flight averaging over 80,000 ducks and geese, and is an important staging area for other migratory birds. One hundred and forty bird species are common in the area. In addition, the many lakes and streams make the area prime habitats for furbearing animals, as well as moose, and salmon.

The Beaver Mountains caribou herd, made up of 3,000 animals, winters in the Innoko Unit. Black bear, grizzly bear, and moose inhabit both units. Forty percent of the entire Alaskan beaver catch is harvested in the Koyukuk-Innoko region, with approximately 80 percent of this catch from the Innoko Unit.

#### *Noatak National Arctic Range*

The Noatak National Arctic Range is proposed for addition to the National Wildlife Refuge System in northwestern Alaska for the protection of two major Arctic valley ecosystems, now virtually unaffected by civilization.

Two river basins are proposed for inclusion in the Range, the Noatak and the Squirrel. The Noatak River rises in the central Brooks Range and flows westward for 450 miles to the sea at Kotzebue Sound. The Squirrel, 57 miles long and draining the Baird Mountains adjacent to the Noatak on the South, is the largest tributary of the Kobuk River.

Wildlife in the proposed range include the more than 200,000 migrants from the Arctic caribou herd (Alaska's largest), the barren-ground grizzly bear, Dall sheep, moose, wolves, wolverines, and migratory birds, including waterfowl, raptors, and several Asian species. The Noatak supports the most northerly major chum salmon run in Alaska and is noted also for arctic char.

The area will be added to the National Wildlife Refuge System and managed jointly pursuant to a cooperative management plan by the two Bureaus. In addition, the National Park Service will perform certain advisory functions. The management plan will provide for the protection of the natural features of the area, for scientific research, enhancement of aboriginal cultural uses and primitive types of low density outdoor recreation. Our proposal calls for a report to Congress on future administration and management of the area within twenty years of its establishment.

#### *Selawik National Wildlife Refuge*

Approximately 1.4 million acres in the Selawik Lake area of Alaska is recommended for designation as the Selawik National Wildlife Refuge. The Chamisso National Wildlife Refuge, established in 1940 by Proclamation No. 2416 will be redesignated as part of the Selawik National Wildlife Refuge and added to the refuge.

The proposal, located on the Arctic Circle, is 200 miles west-northwest of Fairbanks. The Selawik River is the main water course within the proposal. The many forms of wildlife, especially migratory waterfowl of international significance are perhaps the region's greatest natural resource. The proposed refuge produces about a third of the waterfowl within the region; a majority of the remainder, including all the black brant, cackling Canada geese, emperor geese and eiders, are produced in the adjacent areas. The Eskimo curlew, thought to be extinct or nearly so, was formerly an abundant nester in this region and may yet be found in the area.

Mammals include black and grizzly bear, wolves, wolverine, moose, and arctic fox; more than 50 species are represented. A large part of the 240,000 caribou of the Arctic herd winters along the Selawik drainage. Marine

mammals, including whales, seals, and walrus, are found in the coastal waters adjacent to the refuge.

Fish species present in the area include whitefish, cisco, grayling, Dolly Varden, and lake trout. Anadromous species include silver, chum, king, and pink salmon.

#### *Togiak National Wildlife Refuge*

A 2.74 million acre area of coastal mountains between Bristol Bay and Kuskokwim Bay in southwestern Alaska is proposed for designation as the Togiak National Wildlife Refuge. The area is 400 miles west of Anchorage and is adjacent to the precipitous rock cliffs of Cape Newenham National Wildlife Refuge, one of the most important nesting areas for seabirds in Alaska. This 247,700 acre refuge will be added to the Togiak National Wildlife Refuge.

The area is the crossroads for waterfowl and shorebirds coming from wintering areas through the Pacific Ocean. Birds from the Asiatic route, mid-Pacific route, and the North American Pacific Flyway funnel through the area. The coastal zone is the breeding ground for all types of migrating waterbirds.

The proposed refuge has one of the most diverse mammalian faunas of any area in the State with 32 species of land mammals. In addition, walrus, sea lions, and 4 species of seals occur in the adjacent coastal waters and occasionally haul out on the shores of the proposed refuge.

The many rivers and lakes in the proposed refuge contain abundant stocks of anadromous and resident fishes. Anadromous fish of interest include whitefish, steelhead, and king, sockeye, coho, pink, and chum salmon. Resident species include rainbow, Dolly Varden, and lake trout, arctic grayling, and arctic char.

#### *Yukon Delta National Wildlife Refuge*

The alluvial deposits of the Yukon and Kuskokwim Rivers have, through the centuries, formed a vast river delta stretching 250 miles north to south and 200 miles east to west. This flat and nearly treeless delta contain typical arctic tundra in which have formed thousands of ponds and lakes varying in size from less than an acre to many thousands of acres. Approximately 5.16 million acres of the Yukon-Kuskokwim River Delta area of Alaska, including the 2.8 million acre Clarence Rhode National Wildlife Refuge, are recommended for designation as a National Wildlife Refuge.

The Delta produces about 80 percent of the swans and nearly all of the white-fronted geese utilizing the Pacific Flyway; also more than half of the continental population of black brant, 80 percent of the emperor geese, and nearly all of the cackling geese are produced in this area. No other area of similar size is known to be as critical to so many species.

Most of the mammals common in Alaska, except the high mountain species, are represented. Forty-three species have been noted, though populations are not great. Marine species historically have been a major element in the subsistence economy of residents in the coastal villages.

The large fishery resource of the Delta is the primary factor which permitted development of the large aboriginal population in the region; subsistence and commercial fisheries are major elements in the present economy of the area. The 1972 commercial catch totalled 6.5 million pounds of king, chum, sockeye, pink and silver salmon, and migrating smelt.

#### *Yukon Flats National Wildlife Refuge*

Approximately 3.59 million acres of the Yukon River Valley in east central Alaska, are recommended for designation as a National Wildlife Refuge. The unit, a level flood plain bisected by the Yukon River and ringed with highlands, occupies the

western half of the largest of Alaska's interior valleys.

Water is the dominant natural feature of the Yukon Flats region which contains more than 25,000 miles of streams and approximately 40,000 small lakes and ponds encompassing over 800,000 acres. One hundred and thirty species of birds have been identified on the Yukon Flats. Twenty species of the waterfowl nest on the proposed refuge and contribute about 720 thousand birds each year to Canada, the United States, and Mexico. The density of nesting ducks is estimated at 99 per square mile, greater than any other large area in Alaska.

Fish resources include both anadromous and resident species. Little commercial use is made of the fishery resource as far upstream as the Yukon Flats. The fish habitat of the area is essential to anadromous species harvested commercially in the lower reaches of the river and to the Bering Sea salmon fishery.

#### NATIONAL FOREST SYSTEM

Title III of this proposal would designate three new National Forest units—the Porcupine (5.5 million acres), the Yukon-Kuskokwim (7.3 million acres), and the Wrangell Mountains (5.5 million acres). In addition, the draft legislation would provide for addition of 500,000 acres of the existing Chugach National Forest to consolidate the Forest boundaries.

The proposed legislation would also designate, within the above units, all or portions of the Bremner, Porcupine, Nowitna and Sheenjek Rivers as components of the National Wild and Scenic Rivers System.

The areas recommended for inclusion in the National Forest System are those withdrawn areas which have (1) nationally significant values that should be retained in public ownership to assure permanency of protection and continuity of management and (2) the resources offer a balance of uses that would be better managed under multiple use principles than under a dominant or more limited combination of uses. In addition, it was deemed necessary that the areas be in manageable units such as those delineated by drainages, ecological relationships, or existing or proposed transportation systems.

The 1960 Multiple Use-Sustained Yield Act is the basic mandate for administration and management of the National Forests. The Act directs that the National Forests are established and are to be administered for outdoor recreation, range, timber, watershed and fish and wildlife purposes.

The establishment and maintenance of areas of wilderness are consistent with the purposes of the Multiple Use-Sustained Yield Act. The Forest Service intends to consider wilderness along with other resources in its multiple use planning process. It expects to propose and identify wilderness study areas within three years after the establishment of the proposed National Forests.

In accordance with the general mining laws, exploration and development of "locatable" minerals would be permitted. These laws allow individuals to prospect, locate, mine and remove minerals and to obtain patents to valid claims. These authorized activities are subject to National Forest rules and regulations containing appropriate environmental safeguards.

#### Chugach National Forest

Two isolated areas, formerly in public domain but adjacent to the Chugach National Forest are proposed as additions to the National Forest System. These areas were formerly public domain isolated by the Forest Reserve proclamations of the early 1900's because of their lack of commodity resources.

The College Flord is 161 thousand acres in Prince William Sound. Any icy and mountain-

ous hinterland rising from sea level to over 10,000 feet, it is mostly rock and ice with 17 glaciers. Rainfall varies from 150 to 300 inches annually. Scant vegetation consists of a near sea level fringe of sitka spruce, cottonwood and mountain hemlock grading upward through alder thickets to alpine mats and heath.

The Sargent Ice Field or Nellie Juan unit is a 276 thousand acre block on the Kenai Peninsula northeast of Seward. Principally ice and mountain tops, glaciers feed the Nellie Juan river which flows through a glacier-carved valley into Prince William Sound at King's Harbor. The area's vegetation is alpine tundra except for scattered riparian growth in the river flood plains and occasional mountain hemlock.

#### Porcupine National Forest

This 5.5 million acre proposal for the Porcupine National Forest is located in the east-central part of the Alaska Interior. A combination of broad river flats and low-lying hills, the area is endowed with many lakes and waterways. North America's fourth longest river, the Yukon, is joined by the Porcupine flowing west from Canada. Out of the Brooks Range to the north, spring the Rapid, Sheenjek and Coleen while the Black and Little Black meander through, draining the southeast portion of the unit. The area is characterized by extreme seasonal variations in climate. The northern half, above the Arctic Circle, experiences the summer's midnight sun and winter's prolonged darkness. Seventy percent forested, many of the area's seven ecosystems result from succession following riverbottom changes and forest fires.

The Porcupine proposal contains the eastern extension of the Yukon Flats, a major waterfowl breeding area. Upland wildlife, big game and important fisheries habitat exist. Sportfishing, hunting and river and lake oriented activities could provide the greatest recreation experiences in this area.

The densely forested area includes 750 million board feet of commercially valuable sawtimber as well as being highly valued for wildlife habitat and watershed protection. Old Indian sites and the rich history of the Hudson's Bay company lend romance to the area. These sites will be protected and archeological studies encouraged.

#### Wrangell Mountain National Forest

The proposed Wrangell Mountains National Forest, an area of 5.5 million acres, is located in southeastern interior Alaska. With some of the most spectacular mountain country in North America, it includes parts of the Wrangell Mountains, the coastal Chugach Mountains and the eastern tip of the Alaska Range. Rugged peaks rise to 16,000 feet in elevation and large ice fields feed massive glaciers. The Copper River courses south through a portion of the unit and drains most of the central and southern parts. The Chitina and Bremner Rivers are important tributaries. The climate is a typically subarctic continental with long cold winters, short warm summers, and precipitation which is low in the valleys and high in the mountains. Ten ecosystems and related vegetation types are represented. These range from the coastal coniferous forests to the high alpine tundra. Most of the area exhibits effects of glaciation, and permafrost is common. The Wrangell's unit is one of the more road accessible areas in Alaska. Light planes are also a major means of access.

Forests cover about 30 percent of the area and are chiefly valued for watershed protection, wildlife habitat, and recreational opportunities. Major stream and river systems stemming from the vast mountain-glacier complex of the Wrangell and Chugach Ranges provide many water-based resource values. Of exceptional importance are habitat for wildlife and fish, water oriented recreation.

#### Yukon-Kuskokwim National Forest

Spanning the middle Yukon and Kuskokwim River Valleys, this 7.3 million acre area is proposed as the Yukon-Kuskokwim National Forest. Lying across the Kuskokwim Mountains on the north and flanked by the Alaska Range on the south, the area contains extensive forests, shrub thickets, bogs and marshes and other ecosystems of the subarctic. Characterized by winters of extended subzero temperatures and summers in the mid 70's or above, this area experiences a brief, but productive growth cycle. Summer drought contributes to a pattern of frequent wildfire.

Over three-fourths of this area is forested, and commercial timber stands occur on more than one million acres. Providing up to two billion board feet of timber, this area, combined with surrounding ownerships could support a major forest products industry.

#### WILD AND SCENIC RIVERS LOCATED OUTSIDE OF UNITS OF THE NATIONAL PARK, REFUGE AND FOREST SYSTEMS

Title IV of the enclosed legislation proposes four river segments for addition to the wild and scenic rivers system that are not located within units of the park, refuge and forest systems. These four river segments are on public domain lands and will be administered by the Bureau of Land Management.

The river components are as follows:

1. Beaver Creek—a 135-mile segment, totalling 200,000 acres, to be classified as a wild river. The river is located 50 miles north of Fairbanks, between Fairbanks and Circle. The river is excellent canoeing water and provides good fishing and hunting opportunities. The limestone peaks of the White Mountains form an almost continuous scenic background. Large mammals abound.

2. Birch Creek—a 135-mile segment, totalling 200,000 acres, to be classified as a wild river. The river is located approximately 65 miles northeast of Fairbanks, between Fairbanks and Circle. There are numerous sites for camping and the river is an excellent family canoeing stream throughout. Good fishing and hunting opportunities are present. The river flows through a wide valley with moderately steep forested slopes. As Birch Creek flows into the Yukon flats, it becomes a slow, meandering river.

3. Fortymile—approximately 375 miles, including tributaries, totalling 320,000 acres, to be classified variously as wild, scenic and recreational. The river segment is located in east-central Alaska and runs up to the Canadian border. The river and tributaries vary in the headwaters from small, shallow, swift streams, to meandering muskeg and become large, canyon-bound streams with numerous rapids in the middle and lower portions. Portions show evidence of placer gold mining and early settlements. Recreational gold mining can be tried with some probability of success. Hunting, fishing and canoeing are good. Hiking and camping opportunities abound.

4. Unalakleet—approximately 60 miles, totalling 104,000 acres, to be classified as a wild river. The river is located south of the Seward Peninsula and empties into Norton Sound; the downstream river segment boundary is approximately 24 miles above the mouth. The Unalakleet Valley is generally four to five miles wide. Bluffs characterize some 20 miles of the Unalakleet before it widens to 500 feet near its mouth. Dense stands of white spruce along the shore screen the view of adjacent areas. The river is renowned for its sport fishing. King, chum, and pink salmon; grayling; and arctic char are excellent. There is also hunting, primarily for moose, with some caribou and bear, along the river. The Kaltag Trail passes along the south side of the river; it is a link in the historic 1000 mile Iditarod Gold Rush Trail

between Nome and Anchorage; the existing trail will be preserved.

The legislation provides that the Secretary shall take action required under section 3(b)—designating exact boundaries and preparing development plans—within three years after date of enactment for the Beaver Creek component, within two years for Birch Creek, within one year for Fortymile and within four years for Unalakleet. It also provides that the total acreage figures for specific components specified in the bill will supersede the acreage limitations contained in the Wild and Scenic Rivers Act. All of the acreage of the wild river components is withdrawn, subject to valid existing rights, from all forms of appropriation under the mining laws and from operation of the mineral leasing laws. Existing law limits these withdrawals to one-fourth mile from the bank of the river. Specific provision is made for such access across the Fortymile as the Secretary determines to be necessary to permit development of asbestos deposits in the North Fork drainage.

The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

Sincerely yours,

ROGERS C. B. MORTON,  
Secretary of the Interior.

By Mr. BELLMON:

S. 2919. A bill to modify the method for computing military retirement benefits. Referred to the Committee on Armed Services.

Mr. BELLMON. Mr. President, today I

introduce a bill concerning an urgent matter which is familiar to my colleagues and which is all too well understood by military retirees. The need for military recomputation has been well documented. Back in 1968 President Nixon said that the action of Congress in first suspending and then repealing the statutory provision for recomputation in 1958 was "a breach of faith for those hundreds of thousands of American patriots who have devoted a career of service to their country and who, when they entered the service, relied upon the laws in sharing equal retirement benefits." It is also important to remember that all three Presidential candidates in 1968: Mr. Nixon, Mr. HUMPHREY, and Mr. Wallace, pledged at that time to fight for military recomputation. In 1971 and 1972 the President sent proposals similar to this bill to the Congress, and an amendment by the distinguished Senator from Indiana (Mr. HARTKE), passed the Senate by a vote of 71 to 14 on September 25, 1973. It contained the same basic compromise between those who would favor full recomputation and those who would prefer to have no military recomputation. The time is running out for the many elderly retirees who have been denied their earned benefits for the past 15 years. We can no longer afford inaction on military recomputation.

The issues are well drawn, and the arguments have been made in this Chamber time and time again, so I will not go into great detail here this afternoon.

Basically this bill provides for a one-time recomputation of retired pay based on the January 1, 1972, basic pay scales, at age 60 for nondisability retirees and for those disability retirees of less than 30 percent. Those retirees with disability of 30 percent or greater would be allowed to recompute immediately. As estimated, the first year costs of this amendment would be roughly \$300 million. The President, in the fiscal year 1974 budget request, included an amount of \$360 million for the fiscal year 1974 cost. Due to the inaction by the House on this proposal last year, the President's money has gone unspent. And although the President's fiscal year 1975 budget has not been submitted to the Congress, I am sure that we can find money to fund this modest proposal. The table below shows representative examples of how various pay grades would be affected under this amendment. I ask unanimous consent that this table be printed in the RECORD showing these pay grades.

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

Grade and date retired (before)	Length of service	Current retired pay	Under bill			Annual retired pay	Grade and date retired (before)	Length of service	Current retired pay	Under bill			Annual retired pay
			Under bill	Monthly increase	Annual increase					Under bill	Monthly increase	Annual increase	
<b>Major, O-4:</b>													
June 1, 1958	20	\$499.93	\$706.78	\$206.85	\$2,482.20	\$8,481.36							
Jan. 1, 1965	20	582.02	706.78	124.76	1,497.12	8,481.36							
July 1, 1970	20	679.06	706.78	27.72	332.64	8,381.36							
<b>Sergeant major, E-9:</b>													
June 1, 1958	30	( <sup>1</sup> )	840.04	148.46	1,781.52	10,080.48							
Jan. 1, 1965	30	691.58	840.04	148.46	1,781.52	10,080.48							
July 1, 1970	30	807.15	840.04	32.89	394.68	10,080.48							
<b>Master sergeant, E-8:</b>													
June 1, 1958	30	( <sup>1</sup> )	750.34	132.70	1,592.40	\$9,004.08							
Jan. 1, 1965	30	\$617.64	750.34	132.70	1,592.40	9,004.08							
July 1, 1970	30	720.86	750.34	30.08	360.96	9,004.08							
<b>Sergeant 1st class, E-7:</b>													
June 1, 1958	24	333.29	480.10	146.81	1,761.72	5,761.20							
Jan. 1, 1965	24	395.34	480.10	84.76	1,017.12	5,761.20							
July 1, 1970	24	461.35	480.10	18.75	225.00	5,761.20							
<b>Staff sergeant, E-6:</b>													
June 1, 1958	20	230.13	330.00	99.87	1,198.44	3,960.00							
Jan. 1, 1965	20	271.90	330.00	58.10	697.20	3,960.00							
July 1, 1970	20	317.11	330.00	12.89	154.68	3,960.00							

<sup>1</sup> Pay grades E-9 and E-8 were established June 1, 1958. Accordingly, there were no retirees in those grades before that date.

Mr. BELLMON. Mr. President, the effect of this amendment would be to continue the cost-of-living method for increasing retirement benefits and in addition authorize a one-shot recomputation for those reaching age 60 based on the January 1, 1972 rates, or, in other words, the effect of the amendment would impose a one-time recomputation for all of those reaching age 60.

Recomputation was generally a feature of the military retirement system prior to 1958, when the recomputation law was changed. At that time and for many years previously, the law had provided for retirees to share proportionately in raises given to the active duty forces.

Since 1958, the pay for Armed Forces personnel has risen sharply. This creates great disparity between retirement benefits of comparable grades of service personnel. Further compounding the problem is the fact that in the last decade we have witnessed unprecedented inflation. Not only because of the economics involved but because of the simple equities of the situation. People who

entered the service while the old law was in effect had every right to expect that they would continue to be compensated under that system after retirement. However, Congress acted in complete disregard for the rights of those military personnel and deleted the recomputation method from the military retirement system. Because of this oversight, people who retired from the same rank at different times received unequal payment not based on their ability or their service but rather because of the date of retirement.

What we are really telling them is, as my distinguished colleague from South Carolina, Mr. THURMOND, once said:

Just because you are old, and lived at a time when wages were lower, you as individuals are going to suffer and pay for the expenses of people today.

Unless we are willing to recompute their retirement benefits, we are saying "if you are old and do not have long to fight the battle and have made your contribution to society and the defense of this Nation, you are supposed to bear all the penalties of our inflationary spiral

when you have done nothing to cause it." Clearly, this is not fair. As we look down the road to the all-volunteer army concept and as we look back in the direction of those who have already served their country, we must realize that certain commitments were and will be made to these men and women who have served their country. It seems that the equities involved should tip the scale in favor of this bill. Mr. President, I ask you, why should earlier retirees be discriminated against so severely? In some cases, a later retiree gets nearly 150 percent of the pay that his colleague of the same grade and length of service who retired prior to 1958. If anyone needs this higher retired pay, it is precisely the older retiree.

The arguments have been made well in the past, and they are no different today. Basically, there are three issues we must deal with:

One, are we going to equalize the pay of all retired military people?

Two, the Government broke faith with the retirees and potential retirees

in 1958. Are we going to live up to our responsibility by restoring their faith?

Three, when we ask people, particularly in the all-volunteer army situation, to lay their lives on the line for this country, shouldn't we try to make military service as attractive as possible, to at least confine ourselves to the bounds of equity?

For these reasons, I urge quick and favorable action on this bill.

I ask unanimous consent that the bill be printed in full in the RECORD.

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

S. 2919

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any other provision of law, a member or former member of a uniformed service (1) who is sixty years of age or older on the date of enactment of this Act or becomes sixty years of age after such date, is retired for reasons other than physical disability, and is entitled to retired pay computed under the rates of basic pay in effect before January 1, 1972, or (2) who is entitled to retired pay for physical disability under title IV of the Career Compensation Act of 1949 (63 Stat. 816-825), as amended, or chapter 61 of title 10, United States Code, whose disability was finally determined to be of permanent nature and at least 30 per centum under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of that determination, and whose retired pay is computed under rates of basic pay in effect after October 11, 1949, and before January 1, 1972, is entitled to have that pay recomputed upon the rates of basic pay in effect on January 1, 1972.*

*A member or former member of a uniformed service who retired by reason of physical disability and who is entitled, in accordance with section 411 of the Career Compensation Act of 1949 (63 Stat. 823), to retired pay computed under provisions of law in effect on the day preceding the date of enactment of that Act, may elect within the one-year period following the date of enactment of this Act to receive disability retirement pay computed under provisions of law in effect on January 1, 1972, in lieu of the retired pay to which he is otherwise entitled.*

*(a) A member or former member of a uniformed service who is sixty years of age or older on the date of enactment of this Act and is entitled to have his retired pay recomputed under the first section of this title shall be entitled to retired pay based upon such recomputation effective on the first day of the first calendar month following the month in which this Act is enacted.*

*(b) A member or former member of a uniformed service who becomes sixty years of age after the date of enactment of this Act and is eligible to have his retired pay recomputed under the first section of this title shall be entitled to retired pay based upon such recomputation effective on the first day of the first calendar month following the month in which he becomes sixty years of age.*

*(c) A member or former member of a uniformed service who is entitled to make an election under section 21 of this Act and elects to have his retired pay recomputed as authorized in such section shall be entitled to retired pay based upon such recomputation effective on the first day of the first calendar month following the month in which he makes such election.*

*The enactment of any sections of this Act does not reduce the monthly retired pay to which a member or former member of a uni-*

*formed service was entitled on the day before the effective date of this Act. A member or former member of a uniformed service whose retired or retainer pay is recomputed under this Act is entitled to have that pay increased by any applicable adjustments in the pay under section 1401a of title 10, United States Code, which occur or have occurred after January 1, 1972.*

*As used in this title (1) the term "uniformed services" has the same meaning ascribed to such term by section 101(3) of title 37, United States Code, and (2) the term "retired pay" means retired pay or retainer pay, as the case may be.*

By Mr. PERCY (for himself, Mr. Moss, and Mr. CLARK):

S. 2920. A bill to amend the Social Security Act to direct the Secretary of Health, Education, and Welfare to develop standards relating to the rights of patients in certain medical facilities. Referred to the Committee on Finance.

NURSING HOME BILL OF RIGHTS

Mr. PERCY. Mr. President, I am introducing today on behalf of the Senator from Utah (Mr. MOSS) and the Senator from Iowa (Mr. CLARK) and myself an amendment to the Social Security Act which directs the Secretary of Health, Education, and Welfare to require long-term care facilities to adopt and publish a statement of the rights and responsibilities of nursing home residents and patients.

The amendment sets out what can most accurately be called a bill of rights for the institutionalized elderly, those one million or so senior citizens who reside in long-term care facilities.

I want to commend the author of the nursing home bill of rights, Congressman WILLIAM S. COHEN, Republican of Maine, for his initiative in drafting this legislation and in introducing it, together with 18 cosponsors, in the House of Representatives. He is a legislative leader who time after time has demonstrated his sound practical judgment as well as his compassionate understanding of the needs of others. I am pleased to be its chief sponsor in the Senate.

I want to take note at this point that the Department of Health, Education, and Welfare has promised to issue proposed regulations for what would be in effect a bill of rights for nursing home residents. I welcome the Department's recognition of the need for such a statement of rights.

The bill of rights seeks to guarantee a patient's basic civil and religious liberties and to assure him the necessary information, independence, and privacy to maintain control over his own fate and fortune while a nursing home resident. Moreover, the bill sets certain minimum standards of care which every resident or patient can anticipate as his right: courteous, fair, and equal treatment by the staff free of physical and mental abuse or physical and chemical restraints. The patient, on the other hand, is expected to obey the institution's regulations and to respect the rights of other residents.

The amendment requires that the facility make the statement available to a patient—or his guardian—prior to ad-

mission and to the staff of the facility. The staff, in addition, is to be specially trained to carry out the letter and the spirit of the bill of rights.

No one will take issue with guaranteeing these basic rights to our senior citizens who are confined to long-term care facilities. Many persons may wonder why it is necessary to reiterate some very obvious truths in this context.

Those who might question the need for a bill of rights for nursing home residents have not sat through the many hours of hearings by the Subcommittee on Long-Term Care of the Senate Special Committee on Aging which the distinguished Senator from Utah (Mr. MOSS) and I have chaired over the past several years. They have not visited countless nursing homes—both good and bad—over the years as I have. And they have not received the hundred pieces of mail from the friends and relations of residents which I have.

I am certain on the basis of personal experience that all too often the rights of nursing home patients are ignored or violated. I believe the adoption and implementation of this bill of rights will be a step toward changing their situation and thereby improving the quality of life for the elderly and infirm in long-term care facilities.

Mr. President, I do not pretend that the bill of rights is some kind of panacea which will revolutionize care for the elderly. I do not pretend that it is necessarily an exhaustive rendering of all possible rights and responsibilities which should enjoy the force of law.

What we do have here is an uncomplicated and enforceable statement of certain basic rights which was wisely framed by Congressman COHEN in consultation with representatives of the nursing home industry as well as consumer groups. I think the bill will enjoy widespread support in the Congress. I urge prompt consideration and approval. Once again I commend my distinguished colleague in the House, Congressman WILLIAM COHEN, for his leadership.

By Mr. STEVENS (for himself and Mr. GRAVEL):

S. 2921. A bill to authorize construction of the Devil Canyon and Denali Units of the Upper Susitna River Basin Project and related transmission facilities. Referred to the Committee on Interior and Insular Affairs.

DEVIL CANYON AUTHORIZATION ACT

Mr. STEVENS. Mr. President, I am today introducing a bill that would authorize construction of the Devil Canyon and Denali Units of the Upper Susitna River Basin hydroelectric project and related transmission facilities.

The Susitna River Basin hydroelectric project is situated midway between Anchorage and Fairbanks; Alaska's two major population centers. It will entail the construction of four dams on the Susitna River in several stages. Devil Canyon Dam and Denali Dam are seen as a logical first stage development for the project, with possible future additions of two more dams, identified by the 1961 U.S. Bureau of Reclamation project

feasibility study as the Vee and Watona projects.

The major features of the Devil Canyon project include the Devil Canyon Dam and Powerplant, with installed generating capacity of 600 megawatts; the upstream Denali Dam which is needed primarily for storage; and electric power transmission facilities to Fairbanks, Anchorage and other Railbelt Centers.

Geographically, the Devil Canyon Dam would be located at mile 134 on the Susitna River, approximately 14.5 miles upstream from the Gold Creek Station on the Alaska Railroad. The Denali Dam would be located at river mile 249, a few miles downstream from the Denali Highway crossing of the Susitna River.

Mr. President, it is imperative that construction of this project be initiated as soon as possible. At present, most of the power in the rail belt area is generated by fossil fuels. With the immense potential for hydroelectric power in Alaska, this is an unnecessary use of critically short fossil fuels.

The Devil Canyon project has the best potential for hydro development, and would maximize benefits for the bulk of the population of the State of Alaska. It does not have the serious detrimental environmental-ecological problems as associated with fossil fuel plants or other potential hydro projects. The project is designed for stage development in substantial increments beneficial to total energy marketing. It is designed to be wholly utilized between the interior south-central regions. Access to the site and interconnecting facilities is provided by both road and railroad. Projected delivered costs to the interior would allow present fossil fuel stations to go on reserve-standby basis. This would allow the fuel currently used for power generation to be used in areas where fossil fuels are the only feasible forms of fuel.

In addition to saving fossil fuels which would be otherwise used for electrical generation, the Devil Canyon project would provide power for the possible electrification of the trans-Alaskan pipeline pumping stations as well as the Alaska railroad. This would result in additional savings of petroleum.

Not only will the Devil Canyon Project represent a substantial savings in fossil fuels, it is critical if the future needs of Alaska's railbelt are going to be met. The regional studies for the Alaska power survey indicates 1972 railbelt energy requirements of about 2 billion kilowatt hours. This amounts to approximately 77 percent of Alaska's energy requirements for 1972, including utility, national defense, and industrial loads. Midrange estimates from the power survey indicate annual requirements of 5 billion kilowatt hours by 1980, and nearly 10 billion kilowatt hours by 1990. The Devil Canyon project would provide 2.9 billion kilowatt hours per year, and the completed Upper Susitna River System would provide 7 billion kilowatt hours per year—or nearly all the 1990 projected railbelt requirement.

The benefits to Alaska include improved access to the river area, new recreation opportunities, plus environmental benefits at the load centers. There has

been much public support voiced for the project in Alaska.

Mr. President, the language of this bill is fairly simple and includes straightforward assignments of construction authority to the Corps of Engineers and assignment of operation, maintenance, and power marketing responsibilities to the Department of the Interior.

Section 1 of the bill states its purpose, makes assignment of the responsibilities, describes the features of the project, and asks the Secretary of the Interior to make a determination on necessary and feasible transmission facilities.

Sections 2 and 3 relate to power marketing authorization, and the general authorizations to the two Departments to insure capability to complete the project.

Section 4 is added to indicate the need to complete an environmental impact statement and to finalize transmission plans prior to the actual start of construction.

Mr. President, I urge quick action on this bill. The Devil Canyon project including the Denali storage portion could probably be completed before 1985, and full development of the Upper Susitna project could be accomplished by 1990. The sooner the project is started, the sooner we are going to realize the savings in fossil fuels that this project will bring.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD following my remarks.

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

#### S. 2921

*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 "Devil Canyon Authorization Act".*

SECTION 1. In order to provide essential power and a backbone transmission grid for the South central and Interior Alaska, and to develop and utilize available renewable energy resources to assist in meeting long range national objectives for conservation of petroleum and natural gas supplies, and for other purposes, the Secretary of the Army, acting through the Chief of Engineers is authorized to construct and the Secretary of the Interior is authorized to operate and maintain the Devil Canyon and Denali Units of the Upper Susitna River Basin Project, substantially in accordance with the plans presented in the March 1961 project report of the Commissioner of Reclamation. Project works shall consist of the Devil Canyon Dam, Reservoir, and Powerplant, the Denali Dam and Reservoir, and related facilities, and transmission facilities which are determined by the Secretary of the Interior to be necessary and feasible to distribute and market project power to the Anchorage and Fairbanks areas and other power market areas of Southcentral and Interior Alaska. Federal investment in these facilities is estimated at \$750 million on the basis of January 1973 price levels.

SEC. 2. Electric power and energy generated at the Upper Susitna River Basin project except that portion required for project operation, shall be disposed of by the Secretary of the Interior in such a manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles. Rate schedules shall be drawn having regard to the recovery of the costs of producing and transmitting the power and energy, including the amortization of the

capital investment over a reasonable period of years, with interest at the average rate (which rate shall be certified by the Secretary of the Treasury) paid by the United States on its marketable long-term securities outstanding on the date of this Act and adjusted to the nearest one-eighth of 1 per centum. In the sale of such power and energy, preference shall be given to Federal agencies, public bodies, and cooperatives. It shall be a condition of every contract made under this Act for the sale of power and energy that the purchaser, if it be a purchaser for resale, will deliver power and energy to Federal agencies or facilities thereof within its transmission facilities. All receipts from the transmission and sale of electric power and energy generated at said division shall be covered into the Treasury of the United States to the credit of miscellaneous receipts.

SEC. 3. The appropriate Secretary is authorized to perform any and all acts and enter into such agreements as may be appropriate for the purpose of carrying the provisions of this Act into full force and effect, including the acquisition of rights and property, and the Secretary of the Army, when an appropriation shall have been made for the commencement of construction or the Secretary of the Interior in the case of operation and maintenance of said division, may, in connection with the construction or operation and maintenance of such division, enter into contracts for miscellaneous services for materials and supplies, as well as for construction, which may cover such periods of time as the appropriate Secretary may consider necessary but in which the liability of the United States shall be contingent upon appropriations being made therefor.

SEC. 4. The Secretary of the Army is directed to proceed with preparation of project designs and an environmental impact statement in accordance with the National Environmental Policy Act, and the Secretary of the Interior is directed to proceed with a determination of necessary and feasible electric power transmission facilities and power marketing studies. The environmental impact statement and the determination of necessary electric power transmission facilities are to be completed within not more than two years of the date of this Act and transmitted to the Congress prior to appropriation of funds for construction of project works. The sum of \$1 million is authorized to be appropriated for the environmental and other studies required by this section.

#### ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

##### S. 44

At the request of Mr. DOLE, the Senator from Maine (Mr. HATHAWAY) was added as a cosponsor of S. 44, a bill to amend the Small Business Act to increase the availability of management counseling to small business concerns.

##### S. 2368

At the request of Mr. KENNEDY, the Senator from Iowa (Mr. HUGHES) and the Senator from New York (Mr. JAVITS) were added as cosponsors of S. 2368, a bill to protect the public health by amending the Federal Food, Drug, and Cosmetic Act to assure the safety and effectiveness of medical devices.

##### S. 2822

At the request of Mr. MATHIAS, the Senator from Maryland (Mr. BEALL), the Senator from Alaska (Mr. STEVENS), and the Senator from Illinois (Mr. STEVENSON) were added as cosponsors of S. 2822, a bill to encourage the preservation of

open lands in or near urban areas by amending the Internal Revenue Code of 1954 to provide that real property which is farmland, woodland, or open scenic land and forms part of an estate shall be valued, for estate tax purposes, at its value as farmland, woodland, or open scenic land—rather than at its fair market value—if it continues to be used as such for at least 5 years after the date on which the estate tax return is filed.

At the request of Mr. CRANSTON, the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Oklahoma (Mr. BELLMON), the Senator from Hawaii (Mr. FONG), the Senator from Delaware (Mr. ROTH), and the Senator from Alaska (Mr. STEVENS) were added as cosponsors of S. 2854, a bill to amend the Public Health Service Act to expand the authority of the National Institute of Arthritis, Metabolism, and Digestive Diseases in order to advance a national attack on arthritis.

S. 2890

Mr. BEALL. Mr. President, on January 24, 1974, I introduced S. 2890, which would amend the General Education Provisions Act to provide that funds appropriated for applicable programs for fiscal year 1974 shall remain available during the succeeding fiscal year and that such funds for fiscal year 1973 shall remain available during fiscal years 1974 and 1975.

This bill is of critical importance to school districts across the country. I ask unanimous consent that at the next printing of the bill that Senator JAVITS and Senator DOMENICI be added as cosponsors of this bill.

The PRESIDING OFFICER. Without objection, it is ordered.

S. 2896

At his own request, the Senator from South Dakota (Mr. ABOUREZK) was added as a cosponsor of S. 2896, a bill to terminate the Emergency Daylight Saving Time Energy Conservation Act of 1973.

At the request of Mr. CLARK, the Senator from Iowa (Mr. HUGHES), the Senator from Georgia (Mr. TALMADGE), the Senator from Mississippi (Mr. STENNIS), the Senator from Nebraska (Mr. CURTIS), and the Senator from Arkansas (Mr. McCLELLAN) were added as cosponsors of S. 2896, *supra*.

#### SENATE RESOLUTION 255—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON THE JUDICIARY

(Referred to the Committee on Rules and Administration.)

Mr. EASTLAND, from the Committee on the Judiciary, reported the following resolutions:

S. RES. 255

Resolution authorizing additional expenditures by the Committee on the Judiciary for inquiries and investigations

Resolved, That in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, and in accordance with its jurisdiction under rule XXV of the Standing

Rules of the Senate so far as applicable, the Committee on the Judiciary, or any subcommittee thereof, is authorized from March 1, 1974, through February 28, 1975, for the purposes stated and within the limitations imposed by the following sections, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services or personnel of any such department or agency.

Sec. 2. The Committee on the Judiciary, or any subcommittee thereof, is authorized from March 1, 1974, through February 28, 1975, to expend not to exceed \$4,778,200 to examine, investigate, and make a complete study of any and all matters pertaining to each of the subjects set forth below in succeeding sections of this resolution, said funds to be allocated to the respective specific inquiries and to the procurement of the services of individual consultants or organizations thereof (as authorized by section 202 (1) of the Legislative Reorganization Act of 1946, as amended) in accordance with succeeding sections of this resolution.

Sec. 3. Not to exceed \$453,000 shall be available for a study or investigation of administrative practice and procedure, of which amount not to exceed \$5,000 may be expended for the procurement of individual consultants or organizations thereof.

Sec. 4. Not to exceed \$797,600 shall be available for a study or investigation of anti-trust and monopoly, of which amount not to exceed \$10,000 may be expended for the procurement of individual consultants or organizations thereof.

Sec. 5. Not to exceed \$291,000 shall be available for a study or investigation of constitutional amendments, of which amount not to exceed \$12,000 may be expended for the procurement of individual consultants or organizations thereof.

Sec. 6. Not to exceed \$345,000 shall be available for a study or investigation of constitutional rights of which amount not to exceed \$10,000 may be expended for the procurement of individual consultants or organizations thereof.

Sec. 7. Not to exceed \$245,000 shall be available for a study or investigation of criminal laws and procedures, of which amount not to exceed \$5,000 may be expended for the procurement of individual consultants or organizations thereof.

Sec. 8. Not to exceed \$16,500 shall be available for a study or investigation of Federal charters, holidays, and celebrations.

Sec. 9. Not to exceed \$205,000 shall be available for a study or investigation of immigration and naturalization.

Sec. 10. Not to exceed \$255,500 shall be available for a study or investigation of improvements in judicial machinery, of which amount not to exceed \$10,000 may be expended for the procurement of individual consultants or organizations thereof.

Sec. 11. Not to exceed \$663,000 shall be available for a complete and continuing study and investigation of (1) the administration, operation, and enforcement of the Internal Security Act of 1950, as amended, (2) the administration, operation, and enforcement of other laws relating to espionage, sabotage, and the protection of the internal security of the United States, and (3) the extent, nature, and effect of subversive activities in the United States, its territories and possessions, including, but not limited to, espionage, sabotage, and infiltration by persons who are or may be under the domination of the foreign government or organization controlling the world Communist movement or any other movement seeking to overthrow the Government of the United States by force and violence or otherwise

threatening the internal security of the United States.

Sec. 12. Not to exceed \$393,400 shall be available for a study or investigation of juvenile delinquency, of which amount not to exceed \$14,000 may be expended for the procurement of individual consultants or organizations thereof.

Sec. 13. Not to exceed \$188,000 shall be available for a study or investigation of patents, trademarks, and copyrights.

Sec. 14. Not to exceed \$88,000 shall be available for a study or investigation of national penitentiaries, of which amount not to exceed \$500 may be expended for the procurement of individual consultants or organizations thereof.

Sec. 15. Not to exceed \$245,000 shall be available for a study or investigation of refugees and escapees, of which amount not to exceed \$2,000 may be expended for the procurement of individual consultants or organizations thereof.

Sec. 16. Not to exceed \$64,800 shall be available for a study or investigation of revision and codification.

Sec. 17. Not to exceed \$315,000 shall be available for a study or investigation of separation of powers between the executive, judicial, and legislative branches of Government, of which amount not to exceed \$12,000 may be expended for the procurement of individual consultants or organizations thereof.

Sec. 18. Not to exceed \$192,100 shall be available for a study or investigation of citizens' interests, of which amount not to exceed \$5,000 may be expended for the procurement of individual consultants or organizations thereof.

Sec. 19. Not to exceed \$20,000 shall be available for a study or investigation of F.B.I. Oversight.

Sec. 20. The committee shall report its findings, together with such recommendations for legislation as it deems advisable with respect to each study or investigation for which expenditure is authorized by this resolution, to the Senate at the earliest practicable date, but not later than February 28, 1975.

Sec. 21. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

#### SENATE RESOLUTION 256—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON THE DISTRICT OF COLUMBIA

(Referred to the Committee on Rules and Administration.)

Mr. EAGLETON, from the Committee on the District of Columbia, reported the following resolution:

S. RES. 256

Resolution authorizing additional expenditures by the Committee on the District of Columbia for inquiries and investigations

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on the District of Columbia, or any subcommittee thereof, is authorized from March 1, 1974, through February 28, 1975, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed \$175,000.00, of which amount (1) not to exceed \$1,500.00 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(1) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed \$500.00 may be expended for the training of the professional staff of such committee, or any subcommittee thereof (under procedures specified by section 202 (j) of such Act).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1975.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

#### SENATE RESOLUTION 257—SUBMISSION OF A RESOLUTION RELATING TO GERMANENESS OF AMENDMENTS

(Referred to the Committee on Rules and Administration.)

Mr. PASTORE. Mr. President, some few months ago the Senator from Texas, LLOYD BENTSEN, and I, discussed the problem of expediting the business of the Senate. We were concerned that it has become the rule rather than the exception that our sessions run from January through December and yet with our work still unfinished.

As a result of these discussions, we decided that much of the trouble lies with the matter of germaneness. We have no intention of circumscribing in any way the right of debate, but we feel that non-germane floor amendments which, in many instances, take days and weeks to consider and yet are brushed aside in a matter of moments in conference could somehow be handled in a more judicious manner.

The purpose of this resolution is to make it possible to prohibit the introduction of nongermane amendments only and if two-thirds of those present and voting so decide. This motion would be nondebateable and nonrenewable whether decided one way or the other.

If the Senate, by two-thirds vote of those present and voting, decided that no nongermane amendments would be in order, thereafter no nongermane amendments could be offered for the remainder of the consideration of the pending business.

On the other hand, if such motion failed, then nongermane amendments would be in order for the remainder of the pending business.

Neither the Senator from Texas nor myself are wedded to this particular plan and we would hope that the Rules Committee, to which in all probability this resolution will be referred, will give this matter serious consideration.

If a better way is found to expedite the business of the Senate, the Senator from Texas and I will be only too glad to support it.

But there can be no question that our duties have become more complex, that our work has become more burdensome, and some way has to be found which will

make the legislative process more effective.

I, therefore, send to the desk this resolution, ask that it be properly referred, and I ask unanimous consent that its text be printed in the RECORD, at this point.

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

S. RES. 257

*Resolved*, That rule XVIII of the Standing Rules of the Senate is amended—

(1) by inserting after "QUESTION" in the caption a semicolon and the following: "GERMANENESS".

(2) by inserting "1." before "If"; and

(3) by adding at the end thereof the following new paragraph:

"2. (a) At any time during the consideration of a bill or resolution it shall be in order to move that no amendment which is not germane or relevant to the subject matter of the bill or resolution, or to the subject matter of an amendment proposed by the committee which reported the bill or resolution, shall thereafter be in order. Such a motion shall be highly privileged and shall be decided without debate.

"(b) If a motion made under subparagraph (a) is agreed to by an affirmative vote of two-thirds of the Senators present and voting, then an amendment thereafter proposed (except amendments proposed by the committee which reported such bill or resolution) which is not germane or relevant to the subject matter of such bill or resolution, or to the subject matter of an amendment proposed by the committee which reported such bill or resolution, shall not be in order. A motion to reconsider the vote by which such motion was so agreed to or was not so agreed to shall not be in order, and, if such motion was not so agreed to, it shall not be in order to make a second motion under subparagraph (a) with respect to such bill or resolution.

"(c) When a motion made under subparagraph (a) has been agreed to as provided in subparagraph (b) with respect to a bill or resolution, all points of order with respect to questions of germaneness or relevancy of amendments shall be decided without debate, except that the Presiding Officer may, prior to ruling on any such point of order, entertain such debate as he considers necessary in order to determine how he shall rule on such point of order. Appeals from the decision of the Presiding Officer on such points of order shall be decided without debate.

"(d) The provisions of this paragraph shall not apply to amendments subject to the rules of germaneness and relevancy contained in paragraph 4 of rule XVI and paragraph 2 of rule XXII."

#### SENATE RESOLUTION 258—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON AERONAUTICAL AND SPACE SCIENCES

(Referred to the Committee on Rules and Administration.)

Mr. MOSS, from the Committee on Aeronautical and Space Sciences, reported the following resolutions:

S. RES. 258

Resolution authorizing additional expenditures by the Committee on Aeronautical and Space Sciences for inquiries and investigations

*Resolved*, That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and

136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Aeronautical and Space Sciences, or any subcommittee thereof, is authorized from March 1, 1974, through February 28, 1975, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed \$52,000, of which amount—not to exceed \$1,000 shall be available for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(1) of the Legislative Reorganization Act of 1946, as amended).

SEC. 3. The committee shall report its findings together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1975.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

#### SENATE RESOLUTION 259—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON LABOR AND PUBLIC WELFARE

(Referred to the Committee on Rules and Administration.)

Mr. WILLIAMS, from the Committee on Labor and Public Welfare, reported the following original resolution:

S. RES. 259

Resolution authorizing additional expenditures by the Committee on Labor and Public Welfare for inquiries and investigations

*Resolved*, That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Labor and Public Welfare, or any subcommittee thereof, is authorized from March 1, 1974, through February 28, 1975, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed \$1,700,000, of which amount (1) not to exceed \$140,000 shall be available for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(1) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed \$1,000 may be expended for the training of the professional staff of such committee, or any subcommittee thereof (under procedures specified by section 202(j) of such Act).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable to the Senate at the earliest practicable date, but not later than February 28, 1975.

SEC. 4. Expenses of the committee under this resolution shall be paid from the con-

tingent fund of the Senate upon vouchers approved by the chairman of the committee.

#### LEGAL SERVICES CORPORATION ACT—AMENDMENT

AMENDMENT NO. 951

(Ordered to be printed and to lie on the table.)

Mr. CURTIS (for himself and Mr. BUCKLEY) submitted an amendment intended to be proposed by them jointly to the bill (S. 2686) to amend the Economic Opportunity Act of 1964 to provide for the transfer of the legal services program from the Office of Economic Opportunity to a Legal Services Corporation, and for other purposes.

AMENDMENT NO. 952

(Ordered to be printed and to lie on the table.)

Mr. TAFT submitted an amendment intended to be proposed by him to the bill (S. 2686), supra.

AMENDMENTS NOS. 953, 954, AND 955

(Ordered to be printed and to lie on the table.)

Mr. HELMS submitted three amendments intended to be proposed by him to the bill (S. 2686), supra.

AMENDMENTS NOS. 956, 957, AND 958

(Ordered to be printed and to lie on the table.)

Mr. BROCK submitted three amendments intended to be proposed by him to the bill (S. 2686), supra.

AMENDMENT NO. 959

(Ordered to be printed and to lie on the table.)

Mr. BELLMON submitted an amendment intended to be proposed by him to the bill (S. 2686), supra.

#### NOTICE CONCERNING NOMINA- TIONS BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. EASTLAND. Mr. President, the following nominations have been referred to and are now pending before the Committee on the Judiciary:

Duane K. Craske, of Guam, to be U.S. Attorney for the District of Guam for the term of 4 years (reappointment).

J. Keith Gary, of Texas, to be U.S. Marshal for the Eastern District of Texas for the term of 4 years (reappointment).

Lee R. Owen, of Arkansas, to be U.S. Marshal for the Western District of Arkansas for the term of 4 years (reappointment).

Wayman G. Sherrer, of Alabama, to be U.S. Attorney for the Northern District of Alabama for the term of 4 years (reappointment).

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in these nominations to file with the committee, in writing, on or before Wednesday, February 6, 1974, any representations or objections they may wish to present concerning the above nominations, with a further statement whether it is their intention to appear at any hearing which may be scheduled.

#### ANNOUNCEMENT OF HEARINGS RELATING TO THE PHARMACEU- TICAL INDUSTRY

Mr. KENNEDY. Mr. President, on Friday, February 1 at 10 a.m., in room 4232 the Health Subcommittee will resume its legislative and oversight hearings into the pharmaceutical industry. This hearing will be the first to use an experimental hearing format announced yesterday. Witnesses will include the Department of Health, Education, and Welfare Assistant Secretary for Health Charles Edwards, Dr. Joseph Stetler, Pharmaceutical Manufacturers Association, and Dr. William Apple, American Pharmaceutical Association.

On Monday, February 4, the Health Subcommittee will look into physicians' prescribing habits and adverse drug reactions. Witnesses will include the Department of Health, Education, and Welfare Assistant Secretary for Health Charles Edwards, Dr. James A. Visconti, Ohio State University, Dr. Kenneth Melmon, American Federation for Clinical Research, and Dr. Sidney Wolfe, Health Research Association.

#### HEARINGS TO BE HELD ON THE ROCKY MOUNTAIN NATIONAL PARK

Mr. JACKSON. Mr. President, I wish to announce for the information of the Members of the Senate and other interested persons that the Subcommittee on Parks and Recreation has scheduled hearings on S. 2394, a bill authorizing the acquisition of certain lands for addition to the Rocky Mountain National Park, Colo.

The hearing on this and other measures will commence at 10 a.m., in the Interior Committee hearing room, 3106 Dirksen Senate Office Building on February 7.

#### SOLAR ENERGY HEARINGS SCHEDULED

Mr. MOSS. Mr. President, I announce that the Committee on Aeronautical and Space Sciences will hold a hearing February 25 on S. 2658, the "Solar Heating and Cooling Demonstration Act of 1973." The bill, which I introduced in November of last year, with the cosponsorship of Senator WEICKER, directs NASA, in cooperation with other Federal agencies, to provide for the early commercial demonstration of the technology of solar heating and for the early development and commercial demonstration of technology for combined solar heating and cooling.

#### ANNOUNCEMENT OF AN EXPERI- MENTAL HEARING FORMAT

Mr. KENNEDY. Mr. President, during the past year, the ability of the Congress to adequately gather information to help it resolve complex public policy issues has become a matter of great concern.

Part of this problem stems from the shortcomings of the existing "hearing" mechanism. It is commonplace to re-

ceive directly contradictory testimony on important issues—and it is often difficult to sort out differing facts from differing interpretation of agreed upon facts. Such confusion can be a natural outcome of contradictory testimony of "expert" witnesses. Sometimes that confusion is deliberately created by the expert who recognizes his technical expertise and uses it to blur distinctions between fact and interpretation.

Because the hearing process is one of the major determinants of public policy formulation, this inherent shortcoming in the process can have a direct and detrimental effect on the quality of whatever policy or legislation emerges from the Congress.

On Friday, February 1, the Health Subcommittee will use an experimental hearing format in an effort to resolve conflicting testimony on the wisdom of the Department of Health, Education, and Welfare's revolutionary new proposal to reimburse only for the lowest cost, equally effective version of a prescription drug.

The announcement of this policy at a previous health subcommittee hearing on December 19 has touched off widespread controversy in the medical and pharmaceutical communities. At that same hearing, Dr. Joseph Stetler, on behalf of the Pharmaceutical Manufacturers Association questioned the scientific bases of the new DHEW policy and predicted dire consequences for the health of the American people if it were to be implemented. He called it a shocking piece of testimony. Subsequently, the Nation's pharmacists, as represented by the American Pharmaceutical Association, supported DHEW and opposed the position taken by the pharmaceutical manufacturers.

The policy rests on the scientific premise that the activity of a drug manufactured by several companies can be guaranteed to be equivalent to each other, as long as manufacturing standards are adhered to.

The validity of this assumption to the health care industry and the American people is of crucial importance, particularly in light of the impending consideration of national health insurance, which will certainly include a drug benefit. What is at stake is the quality of the drugs to be prescribed and their cost, as well as the future of the pharmaceutical industry.

The experimental hearing format is designed to more precisely define the area and nature of differences, and to stimulate the development of a process to, wherever possible, make it possible for the committee to better reconcile those differences.

The format will work as follows:

Assistant Secretary for Health Charles Edwards will present the administration's position, will respond to questions, and will then remain in the hearing room. The Pharmaceutical Manufacturers Association, on behalf of the drug industry, and in opposition to the DHEW policy, will come to the witness table at the same time as the American Pharma-

ceutical Association on behalf of the Nation's pharmacists, and in support of the DHEW policy. After opening statements, questions will be asked alternately and each will have a chance to comment on the other's answers. Each will then be given an opportunity to directly question the other. When this is complete, Assistant Secretary Edwards will return to the witness table to respond to questions submitted by the other witnesses, and to points raised in the course of their debate.

The hearings will provide the committee with an opportunity to hear differing sides of an issue in one session, and will allow for immediate rebuttal of expert testimony. Hopefully, in this fashion, differences will be pinpointed and the committee will be better able to understand and legislate on this question.

The hearing will be held in room 4232, Dirksen Office Building at 10 a.m., on February 1.

I am hopeful that this format will be successful in helping to resolve some of the complex issues currently confronting the Congress and that resultant legislation will reflect increased understanding.

#### ADDITIONAL STATEMENTS

##### FARM CREDIT ADMINISTRATION FORECAST FOR 1974

Mr. CLARK. Mr. President, over the years we, and our predecessors, in the Congress have initiated many programs to help the American farmer in his battle to provide us with the food and fiber we need. I thought today we should take a look at one of our greatest success stories.

The Farm Credit System, which today provides a significant portion of the country's agricultural credit, had its roots in the Federal Farm Loan Act which Congress enacted in 1916. The system initially was capitalized by the U.S. Government, but that capital has been entirely repaid and all units of the system are completely owned by their borrower-stockholders—totaling nearly 1 million individuals and 4,000 cooperatives, who now have invested \$1.6 billion in the system's capital stock. The system today is self-sustaining and self-supporting.

The most important aspect of this system, of course, is that it has continued to provide adequate credit at a reasonable cost to our farmers. In my State of Iowa alone the 16 Production Credit Associations made loans in 1973 in the amount of \$785,280,117 which included \$141,309 in loans to farm related businesses—while the 24 Federal Land Bank Associations loaned \$106,451,300, of which \$1,021,925 was for rural homes.

I ask unanimous consent that the text of the December 30, 1973, year-end press release of the Farm Credit Administration be printed in the RECORD. In this article, E. A. Jaenke, governor of the Farm Credit Administration, forecasts 1974 farm income and credit availability.

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

##### FARM CREDIT HEAD PREDICTS GOOD FARM INCOME, CREDIT AVAILABILITY

WASHINGTON, D.C.—Farmers will continue to be squeezed in the cost-price spiral as they ponder 1974 farm income prospects, but they can look forward to another good year of earnings, and credit availability should be no problem.

That is the year-end assessment of E. A. Jaenke, Governor of the Farm Credit Administration, the agency which supervises the \$21 billion borrower-owned Farm Credit System.

Citing the good 1972 and 1973 farm income levels, Jaenke predicted that farm income will be better than average in 1974, but will not reach record 1973 levels because of rising production expenses, moderating farm prices and slower expansion of exports.

"We are genuinely optimistic that adequate credit will be available through the Farm Credit System," Jaenke said, "but because of the higher cost of money and inflationary pressure, the price may be higher."

Borrowers in the Farm Credit System—The Federal Land Banks and Associations, Federal Intermediate Credit Banks and Production Credit Associations, and Banks for Cooperatives—were doubly rewarded during 1973 by the record farm income levels and improvement in overall loan quality, Jaenke noted in his year-end report. Because of the strengthening of farmers' financial positions, the number of loan foreclosures, delinquencies and problem loans declined.

The Farm Credit Administration Governor said that as farmers and their cooperatives remain optimistic about future farm income and continue to incur rising levels of debt to expand their operations, the Farm Credit System has reached new milestones of service to the people of American agriculture.

"During calendar year 1973, we served more than 433,000 farmers and ranchers, and about 2,900 farmer cooperatives. Taken in the aggregate, these are record levels for the Farm Credit System," Jaenke reported.

Since reporting record lending levels at mid-year, Jaenke noted an upsurge in Federal Land Bank and Production Credit Association borrowing activity in the past six months with loans outstanding exceeding figures for last year by approximately one-third. Since June 30, Banks for Cooperatives loans made have exceeded year ago levels by nearly 81 percent.

During the 12 months ending November 30, Jaenke reported that the Farm Credit System had 731,033 loans outstanding. Loans made during this period totaled \$20.9 billion, up 42 per cent over last year. Net loans outstanding on November 30 amounted to \$21.1 billion, up 19 per cent over the comparable 1972 figures.

Jaenke took note of the unavoidable disruption in the farm economy caused by the energy shortage.

"The immediate impact is in price—costs of fuel and energy in all forms are rising and will go higher," he said. "The banks and associations in the Farm Credit System will need to carefully review with their borrowers the effect of increased production expenses and the resulting squeeze on farm profits."

New money estimates for calendar year 1974 are projected at \$3.3 billion, about the same as for 1973, Jaenke revealed. Interest rates charged farmers by the Farm Credit banks and associations will rise a little further in the first half of 1974, even if the cost of marketing debt declines. This will occur because low cost debt will be returned and replaced by securities of higher values.

#### THE PRESIDENT'S ACHIEVEMENTS

Mr. FANNIN. Mr. President, this evening the President of the United States,

Richard Nixon, will present his state of the Union message to the Congress. I am confident that he will present a challenging program to move our Nation forward.

In the glare of headlines and the glare of television in America today, it is easy to forget the firm leadership that President Nixon has provided not only to this Nation but to the world during very difficult times.

The very fact that we are at peace today is one of the greatest testaments to his leadership.

He has many other accomplishments. It may be more fashionable to moan over our problems rather than to count our blessings, but I believe that we should give credit where it is due and offer thanks to those who have helped achieve good ends.

Recently, the Governor of Arizona, Jack Williams, gave an off-the-cuff speech in which he recalled some of the achievements of President Nixon. In reading over the transcript of his speech, the Governor noted that he had failed to mention President Nixon's success in strengthening the dollar.

Mr. President, although this talk was given to a politically partisan group, I believe the message transcends party lines. I believe that on this day of the President's state of the Union address, it might be well for all of us to dwell on some of his accomplishments. I ask that Governor Williams' talk be printed in the RECORD.

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

##### THE PRESIDENT'S ACHIEVEMENTS

In the common confession of my church (and I am a Catholic that flunked Latin) we say together "we have done those things which we should not have done and we have left undone those things which we should have done and there is no help in us."

All of us are guilty of common frailties and none of us can be sure he is without some fault.

But now let us look at some of the things that have been done affirmatively by our great President and his administration.

On the domestic scene, is it not true that the campuses are quiet and the streets are not filled with mobs as they were during the 60's? Who can deny that the draft has been abolished for the first time in the memory of many of the younger men attending this meeting.

Also on the domestic scene we have the highest employment ever in the history of this nation and at the highest salaries in the entire world.

We also have the lowest record of inflation of any industrial nation.

It is true with the energy crunch—which no one could foresee as acutely as it has developed, we may have some economic dislocations—but, the record has already been written of achievement and now comes the time for handling the newest crisis.

Even in this area domestically the President has his plans. The decentralization of government from the federal bureaucracy of Washington into the hands of local elected officials could be one of the greatest marks in favor of our President.

If not that, I would have you then consider the revamping of the Supreme Court to a more conservative stance which in effect

has already demonstrated that the criminal is not going to have more advantages than his victim.

These are achievements which cannot be questioned and which history will demonstrate have been achievements of a great President.

Let's look at the foreign area.

Five hundred thousand men were taken off the beach at Saigon, a record that could not have been accomplished had not the Cambodian sanctuaries been bombed and the threat of an emasculation of that entire force of men been removed.

Not only have five hundred thousand men been returned to the United States, but the prisoners of war spent last Christmas at home, those of them who were not missing in action.

Ask them how they feel about the handling of the North Vietnamese truculence.

So on the record books let's put down the ending to the longest and most miserable war this nation has ever entered into.

Let us also put down on the record books that there is a possibility that World War III was averted.

It is almost common knowledge now that the Russians sent the most arrogant and brutal note in modern diplomatic history to the United States giving this nation a six hour ultimatum or they would move Russian troops into the area of conflict.

Kissinger had not replied for ten hours and the President put the B-52's in the air and the Russians backed down.

The Russians always back down when they are faced with force.

They backed down when Kennedy faced them, when Eisenhower faced them, when Johnson faced them.

But they have to know that the force is real.

This is no time to fail to remember the great accomplishments of a man who has a record of achievement which may well be unsurpassed in modern times.

One of our greatest Presidents since whom I revere and who stands head and shoulders above most of our past Chief Executives, Abraham Lincoln, ended just one war—the Civil War.

Yet, of course, he saved the Union.

This is no time for any of the Republicans in this room not to have a sense of pride in the accomplishments, in the things that have been done by Richard Milhous Nixon. It is true he is under attack at the present time and it is also obvious that someone has to carry the message to the people of this nation.

The best way to carry it is not in flaming manifestoes, not in great advertisements, not in mailings by a political party—the best way to carry it is man to man, neighbor to neighbor, friend to friend. The building of a political party is a grass-roots activity.

If each of you will recall the things that I have said in the nature of accomplishments and carry this message to those who are close around you in business, on the golf course, in your neighborhood, you could well be doing the best thing you could for the party and for the President. There is much that has been done and that is well worth recording and who but you can be the messengers.

#### OLDER AMERICANS AND THE INCOME TAX

Mr. EAGLETON. Mr. President, it is income tax time again. Sometime before April 15, most Americans must once again come to grips with form 1040 and the often baffling set of instructions for completing it.

For the affluent, this task is less onerous because they can afford the counsel and

assistance of persons versed in the intricacies of the tax code.

But other Americans who cannot afford such help may overlook the deductions, exemptions, and credits that are available to them. This is especially true for those persons aged 65 and over for whom there are special provisions in the tax code. Hearings conducted by the Senate Special Committee on Aging have provided evidence that large numbers of older Americans overpay their taxes each year.

The committee has now put together a check list of itemized deductions and a description of provisions of the tax code applicable to older Americans which I believe many people will find helpful.

Mr. President, I ask unanimous consent that these documents be printed in the RECORD.

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

#### CHECKLIST OF ITEMIZED DEDUCTIONS FOR SCHEDULE A (FORM 1040)

##### MEDICAL AND DENTAL EXPENSES

Medical and dental expenses are deductible to the extent that they exceed 3% of a taxpayer's adjusted gross income (line 15, Form 1040).

##### INSURANCE PREMIUMS

One-half of medical, hospital or health insurance premiums are deductible (up to \$150) without regard to the 3% limitation for other medical expenses. The remainder of these premiums can be deducted, but is subject to the 3% rule.

##### DRUGS AND MEDICINES

Included in medical expenses (subject to 3% rule) but only to extent exceeding 1% of adjusted gross income (line 15, Form 1040).

##### OTHER MEDICAL EXPENSES

Other allowable medical and dental expense (subject to 3% limitation):

Abdominal supports, ambulance hire, anesthesiologist, arch supports, artificial limbs and teeth, back supports, and braces.

Capital expenditures for medical purposes (e.g., elevator for persons with a heart ailment)—deductible to the extent that the cost of the capital expenditure exceeds the increase in value to your home because of the capital expenditure. Taxpayer should have an independent appraisal made to reflect clearly the increase in value.

Cardiographs, chiropodist, chiropractor, Christian Science practitioner, authorized; convalescent home (for medical treatment only); crutches, dental services (e.g., cleaning teeth, X-rays, filling teeth); dentures, dermatologist, eyeglasses, gynecologist, hearing aids and batteries; and hospital expenses.

Insulin treatment, invalid chair, lab tests, lip reading lessons (designed to overcome a handicap); neurologist, nursing services (for medical care); ophthalmologist, optician, optometrist, oral surgery, osteopath, licensed, pediatrician, and physical examinations.

Physician, physiotherapist, podiatrist, psychiatrist, psychoanalyst, psychologist, psychotherapy, radium therapy, sacroiliac belt, seeing-eye dog and maintenance, and splints. Supplementary medical insurance (Part B) under medicare.

##### Surgeon.

Transportation expenses for medical purposes (6¢ per mile plus parking and tolls or actual fares for taxi, buses, etc.)

##### Vaccines.

Vitamins prescribed by a doctor (but not taken as a food supplement or to preserve general health).

Wheelchairs, whirlpool baths for medical purposes; and X-rays.

#### TAXES

Real estate, State and local gasoline, general sales, State and local income, and personal property.

If sales tax tables are used in arriving at your deduction, you may add to the amount shown in the tax tables only the sales tax paid on the purchase of 5 classes of items: automobiles, airplanes, boats, mobile homes and materials used to build a new home when you are your own contractor.

When using the sales tax tables, add to your adjusted gross income any nontaxable income (e.g., Social Security or Railroad Retirement Annuities).

#### CONTRIBUTIONS

In general, contributions may be deducted up to 50 percent of your adjusted gross income (line 15, Form 1040). However, contributions to certain private nonprofit foundations, veterans organizations, or fraternal societies are limited to 20 percent of adjusted gross income.

Cash contributions to qualified organizations for (1) religious, charitable, scientific, literary or educational purposes, (2) prevention of cruelty to children or animals, or (3) Federal, state or local governmental units (tuition for children attending parochial schools is not deductible). Fair market value of property (e.g. clothing, books, equipment, furniture) for charitable purposes. (For gifts of appreciated property, special rules apply. Contact local IRS office.)

Travel expenses (actual or 6¢ per mile plus parking and tolls) for charitable purposes (may not deduct insurance or depreciation in either case).

Cost and upkeep of uniforms used in charitable activities (e.g., scoutmaster).

Purchase of goods or tickets from charitable organizations (excess of amount paid over the fair market value of the goods or services).

Out-of-pocket expenses (e.g. postage, stationery, phone calls) while rendering services for charitable organizations.

Care of unrelated student in taxpayer's home under a written agreement with a qualifying organization (deduction is limited to \$50 per month).

#### INTEREST

Home mortgage, auto loan, and installment purchases (television, washer, dryer, etc.).

Bank credit card—can deduct the finance charge as interest if no part is for service charges or loan fees, credit investigation reports. If classified as service charge, may still deduct 6 percent of the average monthly balance (average monthly balance equals the total of the unpaid balances for all 12 months, divided by 12) limited to the portion of the total fee or service charge allocable to the year.

Points—deductible as interest by buyer where financing agreement provides that they are to be paid for use of lender's money. Not deductible if points represent charges for services rendered by the lending institution (e.g. VA loan points are service charges and are not deductible as interest). Not deductible if paid by seller (are treated as selling expenses and represent a reduction of amount realized).

Penalty for prepayment of a mortgage—deductible as interest.

Revolving charge accounts—may deduct the "finance charge" if the charges are based on your unpaid balance and computed monthly.

#### CASUALTY OR THEFT LOSSES

Casualty (e.g. tornado, flood, storm, fire, or auto accident provided not caused by a willful act or willful negligence) or theft losses to nonbusiness property—the amount of your casualty loss deduction is generally the lesser

of (1) the decrease in fair market value of the property as a result of the casualty, or (2) your adjusted basis in the property. This amount must be further reduced by any insurance or other recovery, and, in the case of property held for personal use, by the \$100 limitation. You may use Form 4684 for computing your personal casualty loss.

#### CHILD AND DISABLED DEPENDENT CARE EXPENSES

The deduction for child dependent care expenses for employment related purposes has been expanded substantially. Now a taxpayer who maintains a household may claim a deduction for employment-related expenses incurred in obtaining care for a (1) dependent who is under 15, (2) physically or mentally disabled dependent, or (3) disabled spouse. The maximum allowable deduction is \$400 a month (\$4,800 a year). As a general rule, employment-related expenses are deductible only if incurred for services for a qualifying individual in the taxpayer's household. However, an exception exists for child care expenses (as distinguished from a disabled dependent or a disabled spouse). In this case, expenses outside the household (e.g., day care expenditures) are deductible, but the maximum deduction is \$200 per month for one child, \$300 per month for 2 children, and \$400 per month for 3 or more children.

When a taxpayer's adjusted gross income (line 15, Form 1040) exceeds \$18,000, his deduction is reduced by \$1 for each \$2 of income above this amount. For further information about child and dependent care deductions, see Publication 503, Child Care and Disabled Dependent Care, available free at Internal Revenue offices.

#### MISCELLANEOUS

Alimony and separate maintenance (periodic payments).

Appraisal fees for casualty loss or to determine the fair market value of charitable contributions.

Campaign contributions (up to \$100 for joint returns and \$50 for single persons).

Union dues.

Cost of preparation of income tax return.

Cost of tools for employee (depreciated over the useful life of the tools).

Dues for Chamber of Commerce (if as a business expense).

Rental cost of a safe-deposit box for income producing property.

Fees paid to investment counselors.

Subscriptions to business publications.

Telephone and postage in connection with investments.

Uniforms required for employment and not generally wearable off the job.

Maintenance of uniforms required for employment.

Special safety apparel (e.g., steel toe safety shoes or helmets worn by construction workers; special masks worn by welders).

Business entertainment expenses.

Business gift expenses not exceeding \$25 per recipient.

Employment agency fees for securing employment.

Cost of a periodic physical examination if required by employer.

Cost of installation and maintenance of a telephone required by the taxpayer's employment (deduction based on business use).

Cost of bond if required for employment. Expenses of an office in your home if employment requires it.

Payments made by a teacher to a substitute.

Educational expenses required by your employer to maintain your position or for maintaining or sharpening your skills for your employment.

**Political Campaign Contributions:** Taxpayers may now claim either a deduction (line 33, Schedule A, Form 1040) or a credit (line 52, Form 1040), for campaign contributions to an individual who is a candidate

for nomination or election to any Federal, State or local office in any primary, general or special election. The deduction or credit is also applicable for any (1) committee supporting a candidate for Federal, State, or local elective public office, (2) national committee of a national political party, (3) state committee of a national political party, or (4) local committee of a national political party. The maximum deduction is \$50 (\$100 for couples filing jointly). The amount of the tax credit is one-half of the political contribution, with a \$12.50 ceiling (\$25 for couples filing jointly).

**Presidential Election Campaign Fund:** Additionally, taxpayers may voluntarily earmark \$1 of their taxes (\$2 on joint returns) to help defray the costs of the 1976 presidential election campaign. If you failed to earmark \$1 of your 1972 taxes (\$2 on joint returns) to help defray the cost of the 1976 presidential election campaign, you may do so in the space provided above the signature line on your 1973 tax return.

For any questions concerning any of these items, contact your local IRS office. You may also obtain helpful publications and additional forms by contacting your local IRS office.

#### OTHER TAX RELIEF MEASURES FOR OLDER AMERICANS

Filing status	Required to file a tax return if gross income is at least
Single (under age 65)-----	\$2,050
Single (age 65 or older)-----	2,800
Married couple (both spouses under 65) filing jointly-----	2,800
Married couple (1 spouse 65 or older) filing jointly-----	3,550
Married couple (both spouses 65 or older) filing jointly-----	4,300
Married filing separately-----	750

**Additional Personal Exemption for Age:** In addition to the regular \$750 exemption allowed a taxpayer, a husband and wife who are 65 or older on the last day of the taxable year are each entitled to an additional exemption of \$750 because of age. You are considered 65 on the day before your 65th birthday. Thus, if your 65th birthday is on January 1, 1974, you will be entitled to the additional \$750 personal exemption because of age for your 1973 Federal income tax return.

**Multiple Support Agreement:** In general, a person may be claimed as a dependent of another taxpayer, provided five tests are met: (1) Support, (2) Gross Income, (3) Member of Household or Relationship, (4) Citizenship, and (5) Separate Return. But in some cases, two or more individuals provide support for an individual, and no one has contributed more than half the person's support.

However, it still may be possible for one of the individuals to be entitled to a \$750 dependency deduction if the following requirements are met for multiple support:

1. Two or more persons—any one of whom could claim the person as a dependent if it were not for the support test—together contribute more than half of the dependent's support.

2. Any one of those who individually contribute more than 10 percent of the mutual dependent's support, but only one of them, may claim the dependency deduction.

3. Each of the others must file a written statement that he will not claim the dependency deduction for that year. The statement must be filed with the income tax return of the person who claims the dependency deduction. Form 2120 (Multiple Support Declaration) may be used for this purpose.

**Sale of Personal Residence by Elderly Taxpayers:** A taxpayer may elect to exclude from gross income part, or, under certain circumstances, all of the gain from the sale of his personal residence, provided:

1. He was 65 or older before the date of the sale, and

2. He owned and occupied the property as his personal residence for a period totaling at least five years within the eight-year period ending on the date of the sale.

Taxpayers meeting these two requirements may elect to exclude the entire gain from gross income if the adjusted sales price of their residence is \$20,000 or less. (This election can only be made once during a taxpayer's lifetime.) If the adjusted sales price exceeds \$20,000, an election may be made to exclude part of the gain based on a ratio of \$20,000 over the adjusted sales price of the residence. Form 2119 (Sale or Exchange of Personal Residence) is helpful in determining what gain, if any, may be excluded by an elderly taxpayer when he sells his home.

Additionally, a taxpayer may elect to defer reporting the gain on the sale of his personal residence if within one year before or one year after the sale he buys and occupies another residence, the cost of which equals or exceeds the adjusted sales price of the old residence. Additional time is allowed if (1) you construct the new residence or (2) you were on active duty in the U.S. Armed Forces. Publication 523 (Tax Information on Selling Your Home) may also be helpful.

**Retirement Income Credit:** To qualify for the retirement income credit, you must (a) be a U.S. citizen or resident, (b) have received earned income in excess of \$600 in each of any 10 calendar years before 1973, and (c) have certain types of qualifying "retirement income". Five types of income—pensions, annuities, interest, and dividends included on line 15, form 1040, and gross rents from Schedule E, Part II, column (b)—qualify for the retirement income credit.

The credit is 15 percent of the lesser of:

1. A taxpayer's qualifying retirement income, or

2. \$1,524 (\$2,286 for a joint return where both taxpayers are 65 or older) minus the total of nontaxable pensions (such as Social Security benefits or Railroad Retirement annuities) and earned income (depending upon the taxpayer's age and the amount of any earnings he may have).

If the taxpayer is under 62, he must reduce the \$1,524 figure by the amount of earned income in excess of \$900. For persons at least 62 years old but less than 72, this amount is reduced by one-half of the earned income in excess of \$1,200 up to \$1,700, plus the total amount over \$1,700. Persons 72 and over are not subject to the earned income limitation.

Schedule R is used for taxpayers who claim the retirement income credit.

The Internal Revenue Service will also compute the retirement income credit for a taxpayer if he has requested that IRS compute his tax and he answers the questions for Columns A and B and completes lines 2 and 5 on Schedule R—relating to the amount of his Social Security benefits, Railroad Retirement annuities, earned income, and qualifying retirement income (pensions, annuities, interest, dividends, and rents). The taxpayer should also write "RIC" on line 17, Form 1040.

#### SPEECH OF HON. HAMILTON FISH

Mr. CURTIS. Mr. President, in dealing with current problems it is important that we are mindful of the teachings of history. The Honorable Hamilton Fish,

a distinguished former Member of the House of Representatives and political leader, in a speech delivered on January 11 of this year calls our attention to some facts of history which the Congress and American people can well heed.

Mr. President, I ask unanimous consent to print Mr. Fish's remarks in the RECORD.

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

SPEECH OF HON. HAMILTON FISH AT NEW YORK CITY, JANUARY 11, 1974

Speaking here on the spot where George Washington was inaugurated as President of the United States on April 30th, 1789, we stand on hallowed ground, and should unite to insure tranquility at home and peace throughout the world.

George Washington—first in war, first in peace and first in the hearts of his countrymen, gave to the Presidency, a lasting renown and an aura that has endured in the hearts of the American people ever since. President Washington was subjected to bitter, spectacular and inflammatory attacks by the press during his Administration. Of course there was no television or radio at that time. He repeatedly warned the American people that if the press continued its "disregard for truth and fairness, it might become impossible to govern the country." He even wrote a letter to Thomas Jefferson threatening to resign, calling the journalists attack on his person, his motives and his policies, "outrageous against decency."

Presidents John Adams and Thomas Jefferson were also brutally attacked and accused of immoral and unethical conduct in office. Jackson was denounced as a heartless despot. "He governs by means of corruption and the immoral practices, to his shame and confusion." Lincoln was called all kinds of names "an ugly baboon and a bloody monster who liked to see innocent people die in war and a drooling idiot."

Grover Cleveland, Theodore Roosevelt, Woodrow Wilson and Herbert Hoover all suffered violent and gross abuse from the press.

The extreme left wing, radicals, Marxists and partisan Democrats opposed to Republicans, have ganged up in a conspiracy to destroy Nixon and if possible, the Republican Party and our free enterprise system.

These are the same people who were badly defeated in the Presidential campaign of 1972. The Republican national platform in that campaign of 1972 rightly stated that the "Democratic party has been seized by a radical clique which scorns our nation's past and would blight her future." The platform likewise endorsed President Nixon's policies in Vietnam and at home and as a result of which 30 percent of the Democrats in the North and 40 percent in the South, voted for his re-election. Now a small group of extreme leftists, radicals and partisan Democrats want to disfranchise 45 million Americans who voted for President Nixon without one iota of evidence that would stand up in any court.

I served in Congress many years ago, during the Teapot Dome scandal and said then that a public office is a public trust and a Republican corruptionist is just as bad as a Democratic corruptionist and denounced the Secretary of Interior Albert Fall, a Republican, from taking a \$200,000 bribe from oil interests. Fall was convicted and sent to jail. My position is exactly the same today as I told my son who is a Member of the Judiciary Committee in the House of Representatives, unless there is proven evidence of corruption, bribery or treason and there has not even been any charges of such a nature against Richard Nixon, he should not be crucified without conclusive and definitive

evidence on a cross of falsehoods, lies and slander.

New York City is a center of the opposition to President Nixon. It went by a quarter of a million against him in the election, whereas Upstate New York went a million and a half for him. We in New York, live in a polluted atmosphere from the automobile and industrial fumes. But for the last year the newspapers, magazines, televisions and radios have poisoned the atmosphere by twisting and torturing the truth and succeeded for a time in brainwashing the American people. The Watergate Committee started off with blaring trumpets and massive, spectacular and inflammatory propaganda against Nixon to such an extent that the people believed that he was the instigator and the leader in the Watergate raid which had been built up into monstrous proportions.

After almost a year of investigations, it has been definitely proven that President Nixon had no knowledge, no connection and nothing to do with the Watergate raid but such was the atrocious propaganda that many people still believe he did. In the entire investigation there has not been any valid evidence by any committee to implicate President Nixon in the Watergate raid or scandal. Charges were made that he spent excessive funds for security of his residence at San Clemente, all of which were approved by the Government. Besides the President has given that property to the United States. He wrote off \$400,000 for his Vice Presidential papers. Senator Hubert Humphrey who served only four years as Vice President wrote off \$200,000, Governor Brown of California wrote off \$100,000, Governor Williams of Michigan wrote off \$100,000 but they were Democrats and therefore immune to adverse publicity. The Nixon haters expected an investigation of his finances to find a secret fund of one million dollars, just another political myth.

Congressman Otto Passman, a Democrat who served for 26 years in the House of Representatives and is now one of its leaders, wrote a four page defense of President Nixon stating that the misdeeds, illegalities and encroachment of power were far more serious under the Democratic Administrations of Roosevelt, Johnson and Kennedy. But they were all protected by large Democratic majorities in the Congress for 40 years. The Republicans have only been in power for four years in the House by a small majority since 1930.

Of the four Democratic members on the Watergate Senatorial Committee, three of them voted seven times against investigation of Bobby Baker, the crooked Democratic Secretary of the Senate, and the right arm of Lyndon Johnson and yet these same partisans are now trying to find some evidence to pin on the President of the United States. No wonder the rank and file of the Republican Party are getting more disgusted and madder every day.

They constitute the large silent majority and if any Republican members of Congress should vote for impeachment without complete and total evidence of corruption, bribery or treason, those Republicans will be committing political suicide and rightly so, and it applies equally to middle of the road Democrats.

The American people believe in the Presidency of the United States. No elected President has ever been impeached. I am positive that President Nixon will not be impeached, by either the House or the Senate. But let us assume that he might be. If that ever should happen, streets would not run with blood but they would run with partisan hatred and animosity. Unity would cease to exist and be replaced by dissension and political enmity. Families would be divided and political chaos would dominate through-

out the Nation. This must not happen as it would be playing into the hands of our enemies at home and abroad.

The Constitution still stands as our guardian angel and provides for three separate and independent departments of government. The Communists, the Marxists, the radicals, extreme leftists and America haters will tell you the Constitution is out-moded, useless and a reactionary scrap of paper. Let me tell you as one who served in the Congress for 25 years, that the Constitution is the greatest charter of human liberty ever devised by the mind of man. It makes for your rights and liberties as free, sovereign American citizens. As Al Smith said, it is the civil Bible of all Americans, and represents the rights and liberties of the racial and religious minorities. We Americans, Democrats, Republicans and Independents, do not propose to yield one iota of our freedom for any foreign form of government—Fascism, Nazism, totalitarianism, Socialism or Communism. Ours is the freest and greatest Nation on Earth. If we let down our emigration barriers and Soviet Russia tore down its Iron Curtain, half her population would try to get into the United States right now to enjoy its freedom and equal opportunity. No party has a monopoly on virtue or patriotism. Let us bind up our political wounds and conflicts and unite all Americans in restoring unity, tranquility, prosperity and peace in the United States.

Before I am a Republican, I am an American who believes in our traditional policy that no American is guilty of wrong-doing until indicted and convicted by a court of justice or by impeachment. The Watergate hysteria has amounted to a political lynching and inquisition by the press and other media. I deplore the stupidity of the entire Watergate folly as much as anyone. Such stupidity was a blunder worse than a crime. President Nixon was elected by a 17 million majority, the largest in our history. The hate campaign of the radical press and leftist politicians that has so far produced not a single shred of evidence, cannot and will not succeed in disfranchising 45 million Americans, 90 percent of whom support the President's foreign policies and believe in his integrity, courage and that he will emerge in the next few years as one of our better Presidents. The polls showed Truman with only 23 percent which is much lower than any poll against Nixon, who now stands at 34 percent, as a good President and another 30 percent as a fair President. And I predict that Nixon's comeback will be, on his record for the next three years, the same as that of President Truman, who ranks well up on the list of our Presidents.

The Communist dictatorship in Moscow may be able to brainwash the Russian people but the Watergate Committee or any other partisan Committee cannot disfranchise the American people without creating a widespread spirit of revenge and political chaos.

Members of the Senate and the House will not and must not thrust down on the head of the President of the United States, a crown of thorns composed of innuendoes, insinuations, hearsay evidence, false allegations and partisan prejudice and hatred, thereby disfranchising a large majority of the American people and causing dissension at home and a loss of prestige throughout the world.

American families prefer not to wash their dirty linen in public whether it has to do with narcotics, income taxes, assault, robbery, corruption, bribery and many other violations of the law. As Christ said, let him who is without sin cast the first stone.

In my time in Congress, President Roosevelt always maintained he had the right to determine what was in the public interest. What was sauce for the Democratic goose should be sauce for a Republican President.

If a heavily Democratic Congress with insufficient and invalid evidence impeaches the President of the United States just because they do not like him personally or his policies, it will create political chaos in the United States and loss of prestige throughout the world. Blood will not run in the streets but hatred and venom will dominate the politics of this country for a generation. Families will be divided, confidence in the government destroyed, many members of Congress, both Republicans and Democrats who vote for impeachment will be denounced, opposed and buried politically. This issue of impeachment is far greater than any partisanship as it affects the security, the tranquility and the very existence of our own Constitutional government, and our leadership in the free world.

#### SHOCKING INCREASE IN WHOLESALE COST OF PROPANE

Mr. ALLEN. Mr. President, all of us are aware, of course, that the Federal Energy Office is in the process of obtaining information on the wholesale cost of propane gas and the reasons for the extraordinary increase in cost of this product with the view of exploring alternative approaches to a solution to this problem.

Mr. President, Mr. Claude F. Allison, executive director of the Alabama Liquefied Petroleum Gas Association, has written me a letter which sets out in clear and concise language the magnitude of the increase in the wholesale cost of propane gas and has translated this increase into human terms by pointing out the adverse effects of the increases on social security beneficiaries and welfare recipients in particular and others who depend upon propane gas for space heating. The adverse effects on agricultural enterprises such as the broiler industry have been called to the attention of Senators in previous remarks.

Mr. President, it is information of this nature which compels us to devote our utmost energies to the task of finding an equitable solution to this problem. I ask unanimous consent that Mr. Allison's letter be printed in the RECORD.

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

ALABAMA LIQUEFIED  
PETROLEUM GAS ASSOCIATION,  
Montgomery, Ala., January 22, 1974.

Senator JAMES B. ALLEN,  
New Senate Office Building,  
Washington, D.C.

DEAR SENATOR ALLEN: Propane dealers in the State of Alabama have suddenly begun to face a problem that has never before faced us in over 40 years of operation.

The wholesale cost of propane has increased up to 350% to most dealers in the state. The selling price has in most cases more than doubled.

This, to us and to our customers, is grossly unfair and ridiculous. Propane, being a small part of the oil industry, is expected to increase in price to some extent, but only in proportion to other products of the industry.

Apparently increased cost of crude is being loaded on propane and not on gasoline, diesel or fuel oil. This is especially peculiar as 65% of propane is refined from natural gas which has had a relatively small increase in price. Only 35% of propane comes from crude and most of this is from domestic crude which has not increased too much either.

From information we are able to gather, gasoline, diesel and fuel oil have only increased from 40% to 55%.

We, as an industry, serve over 300,000 customer locations in Alabama. We can only surmise how many people use propane, but I would guess about one million people in some way use this fuel.

So many of these are rural fixed income people. Many are social security and welfare recipients and a great many are farmers and farm related industries such as chicken producers.

The Federal Energy Office and the oil companies have seemingly ignored our plight.

We only want fair treatment and hope you can help us.

Sincerely,

CLAUDE F. ALLISON,  
Executive Director.

#### VOTE ON RECOMMITTAL OF S. 2589

Mr. DOMENICI. Mr. President, I feel it incumbent upon me to explain my reasons for voting against recommitment of the emergency energy bill, S. 2589. As you know, this was a very complex and comprehensive bill, which was the product of hundreds of hours of work by committees in both Houses and by Senators on the floor and by the conference committee. Consequently, I think it is highly unlikely that any better treatment of such complex issues could be achieved by simply returning it to the conference committee.

This bill contained what I consider to be an excellent compromise regarding modifications of the Clean Air Act for both stationary sources and automobile emission standards required to address the energy crisis. In addition, there is a superb section providing for the protection of franchise gasoline wholesalers, retail dealers, and service station operators. This is a provision which is long overdue and very necessary for the protection of these independent businessmen in their business relations with their suppliers.

The bill also contains a section which would prevent discrimination against any category or class of user of petroleum products in Government energy conservation programs. We have found in our recent experience with gasoline allocation regulations and their treatment of general aviation that this is an extremely essential provision to insure fair and equitable treatment for all users of petroleum products.

Finally, this bill provides authority and guidance the executive branch must have to deal adequately with the energy shortages we are now experiencing. It contains real authority and guidance for energy conservation programs such as mandatory allocations and provides the authority and framework for development of gasoline rationing if that drastic step should become necessary.

Regarding the provision generally referred to as the windfall profits tax of oil industry activities, I fully realize that this section is vague and uncertain and leaves a great deal to be desired. However, I am convinced that this provision will be reworked immediately and that if this bill is enacted, the windfall profits situation will receive as much attention as

quickly as it would have by any other means. In fact, I think there will be greater impetus to move quickly with this bill on the books than without it. We have been advised by the chairmen of both operative committees, Senator Long and Congressman MILLS, that they have already scheduled hearings to produce a comprehensive package which is truly a tax on windfall profits and which promotes and insures research, development, and exploration of energy sources.

For these important reasons, Mr. President, I voted against recommitment in what was one of the toughest decisions I have yet had to make as a U.S. Senator.

#### PHARMACISTS LAUNCH OVER-THE-COUNTER DRUG EDUCATION PROGRAM

Mr. HUMPHREY. Mr. President, not too many years ago, it was common practice for someone with a minor physical complaint to drop in on the community pharmacist and ask "What have you got for . . ." and name a symptom like an upset stomach, headache, or cold. The pharmacist knew most of his clientele pretty well and he knew what medicines they were taking. After a few questions he would produce a remedy or suggest consultation with a physician.

As this past week was National Pharmacy Week, I think that it is a good time to commend the efforts of the American Pharmaceutical Association to bring back that traditional role.

There are hundreds of thousands of nonprescription drugs on the market today and there is not enough room on the label to tell everything a patient needs to know before selecting a particular remedy. Many of the drugs obtained over the counter do exactly what they claim they will do for a majority of people if used properly. Aspirin stops or reduces headache pain and antacids work to reduce an "upset stomach."

But all nonprescription drugs are not indicated for everyone. Some can interact with prescription drugs in a harmful way. For example, certain antacids, harmless by themselves, can block the action of certain antibiotics and seriously reduce their effectiveness in fighting infection. Aspirin causes a minute loss of blood from the stomach lining.

For the majority of people, that is not a problem. For an ulcer patient aspirin or products containing aspirin can be harmful. Certain antihistamine containing cold remedies can create severe drowsiness when taken by someone using prescription tranquilizers.

Now APhA chose this past week, National Pharmacy Week, to launch a major public education program to help limit this kind of occurrence by encouraging people to consult their pharmacist when selecting nonprescription drugs.

The theme of the education program, "Over-the-Counter Intelligence, Your Pharmacist Has It," makes good sense. The pharmacist is a trained health professional and an expert on drugs. He also considers it his professional obligation to advise on the use of medications, prescription or nonprescription.

I wish the APhA the best of luck in getting this message to the country. It can go a long way towards cutting down on unnecessary, improper and sometimes even dangerous self-medication.

#### GIFTED AND TALENTED CHILDREN—THE MOST NEGLECTED MINORITY

Mr. JAVITS. Mr. President, gifted and talented children are the most neglected minority in American education today. The odds are 1 in 20 that such a child will be recognized readily and will be extended the special educational opportunities commensurate with his needs.

The Congress is now preparing to face up to this issue. The comprehensive education bill, S. 1539, reported from subcommittee on December 19, contains provisions for the gifted and talented which are patterned after S. 874 which I introduced last year together with a bipartisan group of 18 cosponsors and which was cosponsored in the House by Representative DOMINICK DANIELS, of New Jersey, a member of the Committee on Education and Labor.

Section 405 of S. 1539 authorizes grants to State and local educational agencies for educational programs for gifted and talented children through the high school level, establishes an administrative unit within the Office of Education to administer and coordinate gifted and talented education programs, establishes a National Clearinghouse on Gifted and Talented Children and establishes research and demonstration projects for the education of gifted and talented children within the recently created National Institute of Education.

Section 507 of S. 1539 defines gifted and talented children as those—

Who, in accordance with objective criteria established by the Commissioner by regulation, have outstanding intellectual ability or creative talent, the development of which requires special educational activities or services not ordinarily provided by local educational agencies.

Two articles recently on the subject of the gifted and talented have come to my attention, "Gifted Children in a Bind," by Verna Tomasson, which appeared in the December 24, 1973 issue of *The Nation*, and "The Other Minority" by Dr. Harold C. Lyon, Jr., which appeared in the January 1974 issue of *Learning*. I ask unanimous consent that these articles be printed as part of my remarks.

There being no objection, the articles were ordered to be printed in the *Record*, as follows:

#### GIFTED CHILDREN IN A BIND (By Verna Tomasson)

Contrary to the belief that "genius will out" and that smart kids get by on their own, the Office of Education reported to Congress in 1971 that more than 2 million above-average minds are languishing from want of attention in the country's elementary and high schools. The study found that services for the gifted and talented enjoy very low priority at the federal, state and most local levels of government and educational administration, that one-third or more of the known gifted receive no special instruction and that, as a result, these high-

potential youngsters perform far below their capacity. The report says:

Gifted and talented children are, in fact, deprived and can suffer psychological damage and permanent impairment of their abilities to function well which is equal to or greater than similar deprivation suffered by other population with special needs.

Although almost every child can be regarded as gifted at something, studies made for the 1971 report show that by conservative estimate 3 to 5 per cent of our schoolchildren exhibit outstanding abilities at an early age. These, singly or in combination, may appear as general intellectual ability, special academic aptitude, creative or productive thinking, leadership ability, talent in the visual or performing arts, or psychomotor ability. Such traits are found in individuals from all backgrounds and levels of society: rich and poor, urban and rural, black, white, yellow and red.

Research done in the last fifty years indicates that the gifted have their own educational needs. Lewis Terman, a pioneer in the field, observed that the gifted can condense school requirements and cover them faster, with superior performance. They are advanced in their ability to deal with abstractions and symbols. State surveys show that more than half of the gifted children taught themselves to read before they entered school, some at the age of 2, more by the time they were 4. Their essays, as studied by Leta Hollingsworth and others, suggest that they are more interested than other children of like age in social and ethical problems. They require less drill and can handle independent projects with less supervision. In short, expecting the gifted and the average to profit from the same curriculum is like requiring a race horse and a dray horse to eat the same food.

Gifted youths do not necessarily have an easy or satisfying life. Bored by the slow pace and intellectual confinement of a standardized curriculum, they often become troublemakers in the classroom, or join the drop-out population. Mrs. Doris Burns of Dallas, Tex., is one of the parents who testified at the 1970 regional hearings on the gifted and talented. The story of frustration and conflict which she told is repeated again and again by other desperate parents throughout the country:

"Before first grade [Marian] was exuberant over the thought of going to school and learning with the other kids. After the first grade, her opposition to the entire school idea grew steadily. By the third grade, she turned to out-and-out tears of despair each day....

"By the sixth grade, she had simply stopped performing altogether in school. I was told that she was retarded, brain damaged, abused, had emotional problems and that I had caused all those evils by some nameless mistake, or that I was pushing her too hard and keeping her from adjusting to her peers."

A visit to a psychiatrist showed that the child exhibited a Stanford-Binet intelligence test score "in the top half of the top bracket." The doctor also said she was highly creative and retreated to a fantasy world when thwarted and confused. The school refused to accept the psychiatrist's findings, being more impressed by the fact that Marian was failing 7th grade math, rather than by the fact that she delighted in working compound trigonometry fractions and was attempting to write her own math textbook. Caught in the conflict between home and school, the child developed a psychosomatic illness and had to be hospitalized for several weeks. At that point, Mr. and Mrs. Burns began to wonder if they were alone in their dilemma. The president of the Texas Association for the Mentally Retarded told them that it frequently finds extremely gifted in-

dividuals among its children—which is understandable, since one of the techniques the gifted child uses to rebel against courses it considers silly, is to pretend not to understand.

Ralph and Marjorie Lynn, who live on a farm outside West Des Moines, Iowa, are pushing for a regional school for the gifted because of problems they encountered with their four children. Their son coasted easily through elementary and high school with comparatively high grades. His guidance counselor suggested that he major in engineering at college. The work at college, however, proved more difficult than he expected; he failed math, and had to change his major. He is still not sure what field to pursue.

In order to prevent this from happening to their three daughters, the Lynns made tremendous personal sacrifices. They paid tuition in private school for the oldest daughter, because the country school had strict age regulations and would not take her when she was ready. At one point husband and wife had to live apart so that their middle daughter could go to high school in the city. Although she had an I.Q. of 156, she had been doing "C" work in the country school and the teacher complained that she was biting her nails and daydreaming. The Lynns are now pouring money into extra-curricular lessons for their youngest daughter, because the West Des Moines schools offer no enrichment program.

Children not fortunate enough to have parents who recognize their abilities and persist in finding them appropriate educational facilities often suffer tragically. Because of their extreme sensitivity, many of these youngsters, made to feel that they are "different," develop emotional problems. The girls, especially, divert their abundant energies into disguising their talents, in order to be popular. Some, from disadvantaged environments, turn to drugs and other anti-social activities.

Although adults tend to seek out people who share their experiences and interests, most schools group children heterogeneously, expecting them to befriend everybody. In practice, however, the gifted choose to spend their work and play time with their mental peers.

Dr. Philip E. Kraus, who teaches a graduate course in "Psychology and Education of the Gifted" at Hunter College (and who once headed the now-abandoned IGC Project in New York City) maintains that heterogeneous grouping has not been correctly evaluated, since only math and reading tests are used and these are not good indicators of individual differences. He cites Elizabeth Drews' paper, "Creativity and Self Concepts," which shows children to be far more creative in homogeneous groups—and more modest. "A child who is at the top of his class without working hard, has an unreal idea of what he can really do," Dr. Kraus said. "He should be able to read a poem to his class without either being laughed at or called a genius."

Teachers of exceptionally bright children do not have to be unusually gifted themselves, but they must be able to respect those who are. Only twelve colleges throughout the United States offer graduate programs in Education of the Gifted. Untrained teachers cannot spot gifted students and would be unable to provide them with challenge and stimulation if they did.

The overwhelming majority of parents who testified at the 1970 regional hearings reported that most teachers were openly hostile to and fearful of outstanding pupils and set themselves up in power struggles with the gifted child. No program, however innovative, can succeed with teachers who are willing to accept the retarded but who put "gifted" in quotes, unable to admit that extraordinary intelligence even exists.

In a speech he gave last spring before the First International Conference on the Gifted and Talented, Harold C. Lyons, director of the H.E.W. Office of the Gifted and Talented, pointed out the need for guidance—both psychological and vocational.

Many schools feel that a program of generally high intellectual quality fulfills the needs of bright youngsters, but cognitive learning, Dr. Lyons said, must be integrated with emotional experience. Although to outsiders, many gifted children appear "haughty," their self-imposed standards often give them feelings of deep inferiority. They must learn to cope, too, with the open hostility of schoolmates and teachers. Career training for the gifted is also important, Dr. Lyons emphasized, because these many-faceted youngsters are often confused and discouraged by an excess of choices.

The Fleischmann Commission (New York State) report in 1972 recommended an early identification of gifted youngsters, so that they could be channeled into enriched programs. This has not yet been implemented. In addition to the will, we need the way. The observations of teachers and school personnel cannot be depended on. When asked by the U.S. Office of Education to give the number of gifted and talented children in their schools, more than half the schools reported none, a statistical impossibility. Nor are I.Q. tests reliable, since they do not identify the creative child or the disadvantaged child whose skills are nonverbal.

Paul Torrance at the University of Georgia is working on ways to identify gifted black youngsters. He finds that a sense of humor is a good indication of intelligence, and also that youngsters can usually identify the gifted among them, when asked such questions as "Who would you choose to be the leader of your group," or "If you had a hard problem to figure out, who would you ask for help?" The federal Office of Education has awarded a grant for a study of methods of identifying gifted Chicano youngsters.

Roger Ming, consultant on the gifted for New York State, calls the prevailing reluctance to be concerned for the gifted child "a misapplication of democratic theory." Although we grant that Mark Spitz swims better than most, and that Lew Alcindor plays better basketball, few will admit that some people are smarter than others or have special mental abilities. There is fear, Mr. Ming says, that we will develop an intellectual elite.

After Russia sent up the first Sputnik in 1957, there was a flurry of interest in programs for the gifted, stimulated by Admiral Rickover who felt that our military superiority was at stake. Most of these programs were geared to the applied sciences, with the focus not on what the government could do for the gifted but what the gifted could do for the government.

Then the civil rights battles of the 1960s changed our priorities, and the educational spotlight turned on the "disadvantaged." Minorities looked at "tracking" in the schools and saw they were not represented at the highest levels. Instead of asking why, they attacked ability-group segregation, and tracking became a dirty word.

Judging from the subject matter in the professional literature, the current educational emphasis is placed on helping the physically handicapped and the mentally retarded. No one begrudges them their due, but fewer articles are written today about what Harold C. Lyons has called "the other minority," those with superior skills, than were found ten years ago or even in the 1930s and 1940s. Perhaps with our national pride hurt by wars and scandals, it is more soothing to take pity rather than to give respect.

Many people assume that education for the gifted means a return to a caste system,

but experimental programs have proved this assumption unwarranted. Some of the patterns which were found successful in working with the gifted include: acceleration (grade skipping or early entrance to kindergarten or 1st grade); ability grouping (children spend most of the time with their age group, but are placed in some classes such as reading and math according to ability level. They are allowed to move from one "step" to the next as they progress. This is now being done in many schools in New York State); individualized instruction (study hall or recess period is replaced by special tutoring); enrichment (field trips and extra cultural experiences); acceleration of content (4th graders given 6th-grade materials). The Talcott Mountain Science Center in Connecticut, and the workshops run by the Gifted Child Society of New Jersey, use an apprenticeship system, whereby outstanding children study with experts in their fields of interest.

America is a Scrooge when it comes to spending money on its future leaders and professionals. Twenty-one states have legislation on the books authorizing programs for the gifted and talented, but in most cases this is no more than an expression of intent. In only four states—California, Connecticut, Georgia and Illinois—are programs in actual operation. The federal role is almost nonexistent: in Region 2, which covers New York State, New Jersey, Puerto Rico and the Virgin Islands, federal allocations for the gifted for fiscal 1974 are coming out of the budget for the handicapped.

Whenever the education budget is cut (and Mr. Nixon recommends slashing it again by \$400 million), the first "frills" to go are music, art, drama, science—the very programs the gifted need to pursue their special interests. Private agencies have had difficulty raising money for this cause. At least ten nationwide volunteer organizations raise money for the handicapped and mentally retarded. Dr. Norman J. Mirman, who heads what is trying to be the National Association for the Gifted and Talented, says that the response he gets is, "What, you want me to cry over a bunch of geniuses?"

There is, however, some evidence of a new interest. Carol Wolverton, a New York City teacher who two years ago helped organize the Gifted Children Research Institute, says that one of the greatest problems has been lack of communication among people working in the field. She mentions a group of concerned parents in California who wrote to her for information, totally unaware that less than 30 miles from them a similar parent group had been in operation for ten years.

One big advance has been the establishment this year, under a grant from the Office of Education, of a National Clearinghouse for the Gifted and Talented as part of the Council for Exceptional Children. The Clearinghouse will respond to requests for information (so far, it has been receiving about thirty-five a day) and will help to provide curriculum materials. It is preparing a list of existing programs and courses.

The newly created Office of the Gifted and Talented (H.E.W.), which advocates but cannot allocate, recently sponsored a National State Leadership Training Institute at Squaw Valley, Calif. Educators met there with representatives of eighteen states to encourage and direct the formation of programs. Dr. Irving Sato, director of the institute, called the meeting a "great success" and said that the plan is to hold such conferences annually, so that eventually all the states can be reached.

Hearings were held at the end of June on a bill introduced by Sen. Jacob Javits (R., N.Y.) which would provide federal assistance in four areas:

(1) Support for the National Clearinghouse.

(2) Funding though state programs for the gifted and talented, in public schools from elementary through high school.

(3) Training of teachers and personnel.

(4) Research and demonstration projects.

Similar legislation has been introduced by Dominick Daniels (D., N.J.) in the House. In his introductory remarks, Javits said: "To provide what our nation's gifted and talented children and youth need, when they need it, and in the manner they need it, is an investment in human resources that will benefit not only the gifted but our society for decades to come."

Educators are concerned that new programs for the gifted should not become just another educational fad, but rather an ongoing concept based on respect for the individual needs of every person in our society.

"Many people feel that when you give to one group, you have to take away from another," observed Gina Ginsberg, executive director of The Gifted Child Society in New Jersey. "But why should that be so? We don't want to take away from anybody. We just feel that, now our country has met its quantitative goal—every child who should be in school is in school—we should concentrate on the quality of education. There cannot be equal education for all, since everyone is different. But there can be appropriate education for all."

One major step toward appropriate education has been the introduction of open classroom teaching. When several activities are going on simultaneously in a classroom, children will choose what interests them, and good teachers can use the situation for individualized instruction. Good teams can make such instruction even better.

Hunter, Antioch and other colleges are experimenting with independent study programs, the students earning credit by pursuing their own projects. High schools and primary schools may want to offer independent study to boys and girls who complete the required work swiftly. If it does not become synonymous with solitary confinement, but includes guidance and encouragement, independent study can be an important way to meet special educational needs within the comprehensive school system.

The question is not whether we should put the education of the gifted above and against others with severe needs. The mere fact that this suggestion arises shows how well Americans have adjusted to the divide-and-conquer psychology. The real question is: shall we encourage every student, swift or slow, to reach full potential?

#### THE OTHER MINORITY

(By Harold C. Lyon, Jr.)

The U.S. educational system, in one form or another, has existed for as long as the nation. Yet it was not until the last ten years that the system committed itself to improving instruction for millions of previously neglected children.

There are three groups of such children. The largest, and the first to get attention, is comprised of the "disadvantaged"—youngsters whose learning potentials have been stifled by poverty, family and neighborhood surroundings, or lack of access to mental, emotional and physical stimulation.

More recently the system turned its attention to the second group, the handicapped. These are youngsters impaired in their learning facilities—the deaf, the blind, the emotionally and mentally disturbed. Without special attention, they are almost certain to lead lives of social uselessness and personal despair.

The third group, smallest of the three minorities but still numbering in the millions, is the last to have received special attention from the educational system. These

children are denoted not by race, socio-economic background, ethnic origin or impaired facilities, but by their exceptional ability. They come from all levels of society, from all races and national origins, and are equally distributed between the sexes.

Such youngsters have an unusual endowment of talent. It may be intellectual. It may be aesthetic. It may be creative in an artistic or scientific or social way, or even in ways which neither the schools nor society yet understand. But whatever their talent, from their ranks will come that small percentage of humans who are truly great, not just capable. Whether in the sciences, the arts or the professions, these are the extraordinary few who will leave their disciplines, their societies and perhaps even humankind different because of their work. These are the future Beethovens, the Newtons, the Jeffersons, the Picassos, the Baldwins, the Ernestos Galarzas and the Martin Luther Kings.

These are gifted children—and, like the other minorities, they need help.

It may be difficult to grasp why children with the potential to achieve eminence should require special attention. The explanation is that for every Einstein or Martin Luther King who emerges, a dozen or so more do not. Though it is impossible to offer conclusive proof of this hypothesis—biographers, after all, do not study average men and women—available evidence from the lives of great men and women, as well as studies of school-age children, bolster this conclusion from a 1968 study of the gifted: "We would even go so far as to say that, to a very considerable extent, those individuals who constitute that 'creative minority' in our society (or in any society) . . . have achieved their eminence in spite of, rather than because of, our school system."

Thomas Edison's mother withdrew him from school after three months in the first grade because, his teacher said, he was "unable." Gregor Mendel, founder of the science of genetics, flunked his teacher's examination four times and gave up trying. Newton, considered a poor student in grammar school, left at 14, was sent back at 19 because he read so much, and graduated from Cambridge without any distinction whatever. Winston Churchill was last in his class at Harrow. Charles Darwin dropped out of medical school. Shelley was expelled from Oxford. James Whistler and Edgar Allan Poe from West Point. Gibbon considered his education a waste of time. Einstein found grammar school boring; it was his uncle, showing the boy tricks with numbers, who stimulated his interests in mathematics.

In short, traditional academic programs are sometimes poorly suited to humans of extraordinary potential. One is left to wonder how many Churchills, how many Whistlers, did not survive educational disaster.

Why should children with unusual ability experience trouble with ordinary school curricula?

Precisely because the curricula are ordinary. Education is a mass enterprise, geared by economic necessity as well as politics to the abilities of the majority, just as a child of less-than-average mental ability frequently has trouble keeping up with his classmates, so a child of above-average ability has trouble staying behind with them. Prevented from moving ahead by the rigidity of normal school procedures, assigned to a class with others of the same age, expected to devote the same attention to the same textbooks, required to be present for the same number of hours in the same seat, the gifted youngster typically takes one of three tacks: (1) he drifts into a state of lethargy and complete apathy; (2) he conceals his ability, anxious not to embarrass others or draw their ridicule by superior performance; or (3) not understanding his frustration, he becomes a discipline problem.

Nor is uniformity of curriculum the only difficulty under which gifted children must work. Others include:

Failure to be identified. The president of one state association for the handicapped reported that his staff members find "extremely gifted children among their target group frequently." Another state found that a significant percentage of its school dropouts had IQs of 120 or higher. Of schools surveyed by the U.S. Office of Education during the 1969-70 school year, 57.5 percent reported that they had no gifted pupils, an indication that teachers and other staff simply did not know how to identify them.

Hostility of school staff. For quite human reasons, including an impatience with the "unusual" child and an assumption that the gifted are a favored elite who deserve even less than normal consideration, some educational personnel actually resent them.

Lack of attention to the gifted. In only ten state departments of education is there a professional assigned full-time responsibility for education of the gifted and talented; fewer than 4 percent of the nation's gifted students have access to special programs. Of these, the great majority are in the aforementioned ten states.

Lack of trained teachers. Only 12 American universities offer graduate programs concerned with educating the gifted and talented.

It is time for us to recognize that unusual ability can prove a barrier to achievement, and that it is in our national interest to assure the development of children who have the potential to make extraordinary contributions to our common life.

Which children are we talking about, and how many of them are there? The Office of Education in 1969-70 surveyed 239 experts in the field to arrive at a common definition of giftedness. This was the result:

Gifted and talented children are those, identified by professionally qualified persons, who by virtue of outstanding abilities are capable of high performance. These are children who require differentiated educational programs and/or services beyond those normally provided by the regular school program in order to realize their contribution to self and society. "High performance" might be manifested in any or a combination of these areas: (1) general intellectual ability; (2) specific academic aptitude; (3) creative or productive thinking; (4) leadership ability; (5) visual and performing arts; and (6) psychomotor ability.

Using that definition as a criterion, the experts estimated that "a minimum of 3 to 5 percent of the school population" can be termed "gifted and talented." The 1970-71 school population was about 51.6 million; we are talking, then, about 1.5 to 2.5 million children.

Special programs always cost money. In this era of tightening budgets and national economic uncertainty, the advocates of special programs for the gifted must exercise particular prudence. Fortunately, a great deal can be done with presently available facilities, funds, personnel and materials.

For example, nongraded schools, flexible grouping and team teaching—all "innovations" that have been around for some time—can assure that each child will be placed in a challenging educational situation. Clusters of schools can pool their gifted children regularly for special enrichment programs that would be beyond an individual school's resources. Community "mentors" who lack teaching credentials but have demonstrated expertise in some area—art, design, photography, journalism, creative writing, the performing arts, industrial research—are often happy to help talented youngsters explore a career possibility.

The key to educating the gifted is no different than that for other youngsters: Individualize their learning programs so that

each will find daily stimulation in his school experience. One caution here. If the gifted are fortunate enough to have anything special done for them, they are likely to be forced down the purely cognitive track. The danger is that they will then join the ranks of "one-dimensional half-men," brilliantly developed intellectually but stunted emotionally. We need to encourage the development of a gifted child's capacity for love, empathy, awareness and communication with fellow human beings. This means we need to train teachers who can accept themselves as human beings by taking off their rank, status and roles to share with colleagues in a learning experience rather than lecturing "down" at a group of "inferiors" whom they try to "fill" up with their superior knowledge.

No matter how imaginative school administrators and staffs are in their use of existing resources, however, there is no question that special efforts above and beyond state and local resources are necessary. The first requirement is a long-term federal commitment to the special education of the gifted and talented.

The U.S. Office of Education has made such a commitment. Its Office of Education for the Gifted and Talented has the goal of providing every gifted and talented child in the United States the opportunity to maximize his potential through education appropriate to his needs. More specifically, the office's objective is to double, by June 30, 1977, the number of gifted and talented children now being served—from the present 80,000 to 160,000.

With no major new federal funds in sight, however, the office is limited in what it can accomplish on its own. It must depend on existing federal and state resources to accomplish its mission. To that end, it seeks to keep states and local school systems informed of opportunities for making better use of federal-aid possibilities. Both Titles III and V of the Elementary and Secondary Education Act, for example, and the teacher fellowship provisions of the Higher Education Act, can be used to support projects that will benefit the gifted and the talented. The new Emergency School Assistance program, designed to reduce racial isolation, specifically includes gifted children as eligible for remedial services. By designing special high-challenge programs for the gifted, local school systems could develop "magnet schools" that would simultaneously serve the needs of the gifted and the segregated.

Meanwhile, the OEGT is playing a catalyst's role in a variety of other projects having to do with the problems of the gifted. The National/State Leadership Training Institute for the Gifted and Talented conducted a summer workshop for educators from 17 states in Squaw Valley, California, last summer, and the participants are now feeding back into their own school systems insights they gained at the conference. To be repeated in 1974 is the Competitive Exploration Scholarship Program, which in the summer of 1973 sent 100 children, including 49 gifted minority youngsters from inner-city schools, out on learning adventures ranging from the study of volcanology in the Congo and Iceland to participating in archaeological expeditions in Israel. Accompanying and counseling the children were some of the world's leading scientists.

In Arlington, Virginia, at the Council for Exceptional Children, a clearinghouse for national information about the gifted and talented has been established at OEGT's initiative. And in an effort to build bridges between states with strong programs for the gifted and those with less effective approaches, ten regional "action teams" are being formed to facilitate communication and provide technical assistance.

The U.S. government has been interested in gifted and talented youth before. The

launching of Sputnik in 1957 triggered a national concern over the Soviet Union's apparent superiority in space technology and science education. The uproar produced the National Defense Education Act of 1958, a massive federal aid-to-education program originally designed to help the schools improve instruction in chemistry, physics, mathematics, biology and economics. In later years, subjects eligible for support were expanded to include virtually every subject in the curriculum. One fact, however, remained clear: The NDEA was aimed mainly at our most able students.

During the 1960s, when we matched and later exceeded the Soviets in space exploration, the national panic about the caliber of our "best" schools ebbed, and other concerns took over the educational spotlight—most notably, the civil rights movement. American educational priorities shifted from the most able students to the least fortunate, and the interest in educating the gifted and talented waned. Promising programs vanished, and even the number of articles on the subject in professional education journals dropped sharply.

The American temper tends to impatience, to quick enthusiasm and to a readiness to drop projects that do not show fast results or solve immediate crises. Unlike some other clients of education, the gifted and talented have never had a large lobby.

Probably they never will, for they are a minority, not much more than 1 in 20. They are burdened with the seemingly antidemocratic stigma of elitism and hampered by false assumptions such as the inaccurate belief that brilliant people will make their own way and need no special encouragement.

They do need encouragement—and society needs them. In human terms, the average child is no less precious or wonderful than his gifted classmate. But in social terms, undemocratic or unpopular as it may be to say so, the gifted and talented youngster—white, black, male, female, charming or irritating—offers much more than the usual amount of human possibility, and promises to make much more than the average contribution to our common life. It is in our national interest to take special humanistic pains with him.

### THE OIL CRISIS

Mr. HART. Mr. President, last summer, long before the energy crisis became a national concern, James Steele and Donald Barlett, two reporters for the Philadelphia Inquirer, wrote a series of articles which sounded an early warning on the oil crisis. That series, entitled "Oil—the Created Crisis," has now been followed by a second, titled "Oil: The Crisis and the Facts." I recommend it as a particularly informative and comprehensive survey of the oil problem, and ask unanimous consent to have it printed in the RECORD.

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

PHILADELPHIA INQUIRER,  
Philadelphia, Pa.

I would like to call your attention to the accompanying articles, a series of special investigative reports concerning the nation's energy crisis that The Philadelphia Inquirer has published over the last two months.

The articles are based on an exhaustive examination of records in more than a half-dozen states and several foreign countries and were prepared by James B. Steele and Donald L. Barlett, an investigative reporting team. They were assisted by Susan Q. Stranahan, The Inquirer's federal court reporter, who coordinated research and reported from Washington and New England.

These articles follow a 12,000 word, three-part series published by The Philadelphia Inquirer last July on "Oil—The Created Crisis," which traced the underlying reasons for the nation's oil shortage.

GENE ROBERTS.

### OIL: THE CRISIS AND THE FACTS

(By Donald L. Barlett and James B. Steele)

Despite an outpouring of proposed legislation and Presidential proclamations on energy matters, neither Congress nor the Nixon administration has come to grips with the two underlying problems that brought on the present oil shortage.

They are:

A serious lack of refinery capacity. With demand for petroleum products running about 17 million barrels a day (there are 42 gallons in a barrel), refineries in the United States can process fewer than 13 million barrels—a refinery capacity shortage of four million barrels a day.

A leveling off in production of crude oil in the United States and a decline in exploration activities. This despite the existence of huge oilfields still to be tapped, largely in offshore areas, Alaska and the Arctic region.

Only one major new refinery has been built in the United States since the late 1960s and plans for the construction of additional refineries, announced just several months ago by a number of oil companies, already have been shelved or construction dates pushed back.

But, at the same time that America's largest oil companies are suspending their refinery expansion projects in the United States because of alleged uncertainties in the world oil market, an independent New York oilman is forging ahead with a three-quarter billion dollar refinery-building program in Canada.

The oilman is John M. Shaheen, a onetime publicity director for the Illinois Republican Party who heads a closely held New York company called Shaheen Natural Resources Company.

Seven weeks ago, a new Shaheen refinery was dedicated in Newfoundland. Two weeks ago, Shaheen signed contracts for the construction of a second refinery in Nova Scotia. And site clearance has begun for a third refinery, also to be located in Newfoundland.

The three refineries have a planned total capacity of 600,000 barrels a day. When the second and third refineries are completed, Shaheen personally will have built more refineries in Canada than all the major American oil companies combined have built in the United States in the last five years.

Interestingly, during his negotiations with Canadian politicians in the 1960s, negotiations which ultimately led to the ambitious refinery construction projects, Shaheen was represented by Richard M. Nixon, then a Wall Street lawyer.

While the Federal Government has failed to tackle the issue of lagging refinery construction in this country, an Inquirer investigation has turned up some curious patterns in the Nixon administration's approach to dealing with the energy crunch.

Item. A mandatory fuel allocation program, to take effect Dec. 27, will come down hardest on those persons who already use a very small percentage of the petroleum products consumed daily—families who heat their homes with fuel oil.

Demand for petroleum products last year amounted to 16,354,000 barrels a day, according to the United States Bureau of Mines. Of that figure, 1,248,000 barrels a day—or 8 percent of total demand—consisted of the No. 2 heating oil used for residential heating.

Item. While the allocation program provides that families who use heating oil must turn back their thermostats or risk running out of oil (the elderly have been advised

to take aspirin if affected by the chill), there is no provision requiring refineries to increase heating oil production.

Perhaps coincidentally, heating oil is one of the oil industry's least profitable products in the United States, a condition attributed by the oil companies to the administration's wage and price controls and other government policies such as the regulation of natural gas prices.

Item. Statistics maintained by the Bureau of Mines show that during four of the first eight months of this year—the latest period for which figures are available—the nation's oil companies produced a smaller percentage of distillate fuel oil, which include home heating oil, than during the same months in the preceding three years.

Last April, for example, as the nation was emerging from a season of spot fuel oil shortages, especially in the upper Midwest, distillate fuel oil consisted of 20.7 percent of the total products produced by refineries. During the same month in 1972, the percentage was 22.2. In 1971, it was 23.1 percent and in 1970 it was 22.3 percent.

Item. Statistics published by the American Petroleum Institute, the oil industry trade organization, show that this pattern in refinery production continued well into the fall despite clear signs of an impending shortage.

An API refinery report for Sept. 21, 1973, shows distillate production was at 21.4 percent, down from 22.3 percent a year earlier. A refinery report dated Oct. 5, 1973, lists distillate production at 21.9 percent, down from 22.3 percent the previous year.

Item. Jet fuel, another small volume product, also was placed under the administration's mandatory allocation program. Airlines are scheduled to receive 15 percent less fuel than they used last year.

### SIX PERCENT OF TOTAL

Bureau of Mines data show that jet-fuel demand in 1972 amounted to 1,045,000 barrels a day—or 6 percent of total demand for petroleum products.

Item. While families must cut back fuel oil consumption by 15 percent and commercial users by 25 percent, the proposed reduction for gasoline is 10 percent below 1972 demand.

Gasoline, of course, is the single largest volume product turned out by the nation's refineries. Last year, demand for gasoline was 6,376,000 barrels a day—or 39 percent of total product demand of 16,354,000 barrels.

Item. There is some reason to be suspicious of all the oil shortage statistics floating out of Washington. That is not to suggest there is no shortage. There is. But there is some question as to the severity of the shortage.

For example, a fact sheet distributed by the White House last Sunday, when President Nixon delivered a nationwide address announcing the mandatory fuel allocation program, lists the current demand for petroleum products at 18.6 million barrels a day, rising to 19.7 million barrels in the first quarter of next year.

That means the Nixon administration has planned for a larger increase in demand during the coming months than at any comparable time in the past three years.

For—while demand for petroleum products runs stronger during the first and fourth quarter—the 19,700,000 figure represents a jump in demand of 8 percent from the same quarter of this year.

Demand for the first quarter of 1973, for example, was up 5 percent over 1972, and 1972 first quarter demand increased 6 percent over 1971.

In an article published last July 30, the Oil and Gas Journal, the industry trade publication, estimated that 1973 demand would average 17,355,000 barrels a day—a 6.1 percent increase over 1972.

An Inquirer analysis of Bureau of Mines

date produced just about the same figures as those arrived at by the Oil and Gas Journal.

During the first six months of 1973, demand was running at an average of 17,286,000 barrels a day, compared with 16,304,000 barrels during the same period in 1972—an increase of 6 percent.

The demand figure (19,700,000 barrels) as set by the Nixon administration's oil policy experts is important because it is the figure used to calculate desired cutbacks in consumption.

Thus, the planned reductions in home heating oil, and fuel oil for commercial and industrial use, as well as jet fuel, all are tied to this demand figure.

But statistics on supply and demand, like all oil statistics used by the federal government, have but one certainty: Each and every figure is derived from a single source—the American oil industry.

And therein rests still another disturbing aspect of the current energy crisis. There is no government agency that either verifies data furnished by the oil industry, or collects the information independently.

This means the mandatory allocation program now being put into effect, and the gasoline rationing expected to follow, are based on information supplied by the oil industry itself—without any verification.

In fact, the oil industry has even discouraged attempts by the Bureau of Labor Statistics to collect some of the same kinds of statistics the agency gathers from other businesses and industries.

The significance of the government's failure to collect oil industry data was spelled out in a three-part, 12,000-word series of articles published by *The Inquirer* last July, entitled "Oil—The Created Crisis."

Based on a two-month, nationwide investigation, and the assembling of a wide range of statistical material from a variety of sources, *The Inquirer* established that the energy shortage was brought on by long-term policy decisions made by the oil companies and a series of administrative blunders beginning in the Eisenhower administration and continuing through the Kennedy, Johnson and Nixon administrations.

In a report released last month a Congressional investigating committee published essentially the same findings documented by *The Inquirer*.

These findings run contrary to the claims of both the oil industry and the Nixon administration that an energy-guzzling American public is to blame for the oil shortage.

#### UNITED STATES OUTSTRIPPED

Indeed, *The Inquirer* survey found that the percentage growth in energy consumption in Europe and Asia has far outstripped that in the United States over the last two decades.

And to meet that growing demand, the five, major multinational American oil companies, over the last 20 years, have been concentrating their operations overseas, drilling and producing oil abroad, constructing their refineries around the world.

As a result, the United States is just another market—and not necessarily the largest—for these five companies—Exxon Corp., Mobil Oil Corp., Texaco Inc., Gulf Oil Corp. and Standard Oil Company of California.

Last year, for every barrel of oil these five companies sold in the United States, they sold nearly two barrels in other countries. Twenty years ago, the bulk of the sales of the five companies was in the United States.

For example, Exxon Corp., the world's largest oil company, sold 5,701,000 barrels of petroleum products every day last year.

Of that total, just 1,730,000 barrels—or 30 percent—were sold in the United States. The remaining 70 percent, or 3,971,000 barrels, were sold in foreign countries.

Mobil Oil Corp. sold 2,409,000 barrels of petroleum products daily last year. Sales in the United States amounted to 1,004,000—

or 42 percent of total sales—while sales outside the United States were 1,405,000 or 58 percent.

This trend, which has been developing over the last two decades, is especially important now, and not just because of oil shortages in the United States.

Because prices for petroleum products are running two to three times higher in Europe and Asia than in the United States, it is more profitable to sell overseas.

To keep their supply sources close to the expanding markets, the five companies not only drilled for oil overseas but built their refineries across Europe and Asia.

Last year, the five companies processed 31 percent of their crude oil at refineries in the United States, 69 percent in other countries.

With worldwide refinery runs of 5,146,000 barrels a day, Exxon Corp. processed 1,029,000 barrels—or 20 percent—in the United States. The remaining 80 percent (4,117,000 barrels) was refined outside this country.

Although a lack of refinery capacity is one of the root causes of the energy crisis in the United States, this winter's fuel oil shortage has been aggravated by refinery operating practices and an indifferent federal government.

Europe and Asia, which have sufficient refinery capacity but little crude oil of their own are more affected by the Arab oil embargo than the United States, which last year obtained only 2 percent of its crude oil from the Mideast.

#### VARIETY OF PRODUCTS

A refinery converts a barrel of crude oil into a variety of products—from home heating oil and residual fuel to gasoline and kerosene and asphalt. Set percentages of each product are turned out from a barrel of crude oil.

The refinery revises these percentages of the seasons, and demand economic conditions change, producing more heating oil in the winter months, more gasoline in the summer months, all the time trying to keep a sufficient reserve of all products.

While there was abundant evidence last summer that there would be fuel oil problems this winter, refineries produced record volumes of gasoline at the expense of fuel oil.

Last June, on the eve of what was billed as the great gasoline shortage of 1973, gasoline represented 48.4 percent of the total products being turned out by refineries. This compared with a production rate of 45.8 percent a year earlier.

While the summer days slipped by, early prophecies of motorists stranded on turnpikes and interstate highways, unable to buy gasoline, went unfulfilled as refineries churned out more and more gasoline.

The record production prompted *The Wall Street Journal* on July 2, in an article headlined "The gasoline shortage eases as U.S. refiners step up their output," to observe that:

"Refiners are demonstrating that, barring breakdowns or an interruption in the flow of crude, they can handle the demand."

The *Journal* added: "Because they can sell every drop they can make, few refiners are likely to be in any hurry to begin reducing gasoline production."

And that is what happened. With gasoline selling at a more profitable level, refineries continued turning out gasoline rather than heating oils.

A few percentage points may seem like a slight difference, but over a year's time, a change of a single percentage point can represent an increase or decrease of more than 43,000,000 barrels of a particular product.

While all this gasoline was being produced last summer, federal officials were sitting by, hoping for warm weather this winter and insisting that a mandatory fuel allocation program was unnecessary.

In September, former Colorado Governor John A. Love, the White House energy chief, noted that "the situation for this winter is very tight, although it is difficult to forecast because of the variables."

During the same month, President Nixon discounted any talk of an energy crisis. Said the President: "We have heard a lot about a crisis. I do not use that term because we do not face a crisis in that sense of the word."

"I would simply say that in the short term, we face a problem with regard to energy, heating for example, this winter, just as we thought we faced a problem of gasoline this summer, and the possibility of brownouts."

#### POLITICIANS ASSURED

Meanwhile, Love was assuring New England politicians that there would be adequate supplies of fuel oil for the coming winter, as long as the weather didn't turn especially cold.

In August, Love suggested that it might be a good idea if refiners increased their output of heating oils—a proposal largely ignored—and in the weeks that followed he continued to insist that a mandatory allocation program was not needed, a position the administration adopted early in the year. Said Love:

"(The administration is) extremely wary of the ramifications and potential risks of a mandatory petroleum allocation system and (did) not believe that the current supply situation or other industry problems warrant use of such a system as a remedy at this time."

The administration was still clinging to this position in October, when Stephen A. Wakefield, an assistant Department of the Interior secretary predicted there could be heating oil shortages with some resultant hardships.

Explaining what he considered a hardship to be, Wakefield said:

"I am talking about men without jobs, homes without heat, children without schools. That is what I mean by hardship."

More weeks went by until finally last Sunday President Nixon reversed positions and announced his mandatory allocation program, a Washington term for rationing.

The fuel oil allocation program has been pictured by Washington officials as the lesser of two evils—a choice between personal inconvenience and discomfort rather than industry shutdowns and job losses. But the choice really isn't quite that clear.

Thomas F. Field, a former attorney-adviser in the Treasury Department's Office of Tax Legislative Counsel, and now executive director of Tax Analysts and Advocates, a public interest law firm in Washington, put it this way:

"No matter how much within reason we restrict home heating oil consumption, we will restrict some industrial consumption this winter."

"There clearly is going to be a downward effect on industrial activity. Anybody who says turning down thermostats is going to prevent a downturn in industrial activity is just whistling Dixie."

#### "THE OPTIMUM WAY"

Field believes, as do many other economists, that the energy shortage is not going to be resolved until prices are allowed to rise substantially. "The only thing that's going to reduce consumption is an increase in price," he said.

"The price of home heating oil ought to rise. That's the optimum way to solve the problem. The reason we're producing more gasoline is that it is more profitable."

"If the home heating oil prices goes up," says Field, "production will go up. 'If No. 2 oil is unprofitable, you can't expect oil companies to produce it.'"

*The Inquirer*, in its series last July, pointed

out that fuel oil shortages could be expected this winter and gasoline shortages again next summer.

That pattern probably will continue for the next several years, until refinery capacity is expanded and oil production is increased in the United States and the Western Hemisphere generally.

To show that the industry is beginning to catch up on the refinery construction lag, the Office of Oil and Gas of the United States Department of the Interior has compiled an impressive chart showing the location of proposed refineries and the dates they will be completed.

The four-page chart, which breaks down construction by different sections of the country, lists a total of 18 new refineries with a capacity of 2,440,000 barrels a day as well as refinery expansion programs.

There is a footnote cautioning that 10 of 18 refineries (capacity 1,330,000 barrels) are "projects which are uncertain or in very early stages of planning."

And how did the Office of Oil and Gas come by these statistics?

"This is information we picked up from various sources," said an Interior Department official, "from trade journals (of the oil industry) and from some of the companies themselves."

How is construction going with some of the eight refineries that are shared to be in operation sometime between 1974 and 1977?

The Interior Department reports that a Shell Oil Company refinery with a capacity of 150,000 barrels a day will be in operation in Paulsboro, N.J., sometime in 1977.

A Shell Oil Company public relations official, asked when the refinery would be operational, said:

"I wish I could tell you. We're still trying to get permits. There's no definite time for completion." He said that it will take about four years to build the refinery so even a 1978 or 1979 completion date is optimistic. "We don't have any permits," he added, "and the environmental impact statement hasn't even come through yet."

#### OFFICIALS UNDECIDED

In another case, the Interior Department reports that a Pennzoil Company refinery with a capacity of 150,000 barrels a day will be in operation in Pascagoula, Miss., sometime in 1976.

A Pennzoil Co. official, asked when the refinery would be operational, said:

"About a year (ago) we had obtained option on land in Pascagoula as a possible plant site. But we have looked at land in Louisiana as well as land in Mississippi and frankly have not made up our minds as to what the best location would be.

"We're torn between Pascagoula and a site on the Mississippi and we are giving some thought to the Gulf Coast in Texas. Needless to say, the Mideastern war has raised serious questions about our ability to continue with this project."

That's the way it goes with government statistics on the oil industry. The situation is not new.

A Congressional investigating committee once urged that a government agency be empowered to collect data "so that any time the exact condition of the industry can be ascertained." That was back in 1923.

Last June 4, 50 years later, Sen. Henry Jackson (D., Washington), made a similar recommendation, telling his Senate colleagues that Congress needed to have "objective facts" on the oil industry:

"I hope we will have something introduced shortly, probably giving this authority to collect the data to the General Accounting Office, to marshal all the facts and the information so that we can get it on the basis of sound data, objective facts," Jackson said.

Now, with many of the essential statistics lacking, the federal government, or more par-

ticularly the Office of Petroleum Allocation (OPA), is getting ready to administer a fuel oil allocation program.

Last week the OPA staff was just getting settled into its new office in the Winder Building in Washington, the former headquarters of the Office of Emergency Preparedness.

It was from this building in the fall of 1972 that OEP conducted a survey of the nation's energy needs and announced that there would be no fuel oil problems and that the oil industry was capable of meeting demand.

A few months later, fuel oil shortages developed in New England and the upper Midwest, forcing school closings and the tanking of fuel oil from Canada down into Minnesota.

Taped to the wall in the office of a petroleum allocation official, there are, appropriately, two Exxon Corp. advertisements from the Wall Street Journal.

#### NO IMMEDIATE RELIEF

The advertisements read in part: "What you do to save energy is what counts now. This country's energy problems have gotten worse. And there's no immediate relief in sight."

The OPA official, working in shirtsleeves, is explaining and how the program will be administered and how the agency will keep tabs on supplies:

"Every month they will have to submit forms to us saying how much fuel they have on hand and things like that. The forms are supposed to be coming in right now."

And who are "they"?

"Basically, the major oil companies and the independent oil companies."

And just how will the program work for the average family which heats its house with fuel oil?

"There's a mandatory reduction on the inside temperature of six degrees. The wholesale distributor is really responsible for this.

"He takes the current daily temperature and according to his records he should be able to figure out how much his customers should be using based on the six-degree reduction and then he supplies the customer accordingly.

"So in other words, if the thermostat is set at 72 degrees, it has to be turned back to 66 degrees," says the official, adding "which reminds me, before I catch cold I'm going to put my jacket on."

But how does the fuel oil dealer calculate a six-degree reduction?

"I don't know how these things work," says the OPA official. "Don't use my name. Just quote a department spokesman. But the distributor knows he delivered 1,000 gallons last winter and by reducing the temperature six degrees he subtracts X number of gallons from that."

Up in Ellsworth, Maine, in a state heavily dependent on fuel oil, Jack Gledhill of the Hancock Oil Company, doesn't share the OPA official's confidence in his ability to convert six degrees on a thermostat into a reduced fuel oil delivery.

"Geez, that's a job alright," says Gledhill.

Gledhill and Basil Simpson of the Webber Oil Co. in Bangor, Maine, told Inquirer reporter Susan Q. Stranahan that they try to provide every customer with a 75-gallon emergency reserve in the event future deliveries are delayed because of snow or reduced oil supplies.

It will be from that 75-gallon reserve, Simpson and Gledhill said, that the 15 percent reduction in home-heating oil will be made.

John Carlisle, manager of Webber Tanks Inc., an independent fuel oil distributor of Bucksport, Maine, is pinning his hopes on continued mild-weather.

"If the weather continues as it is, we've got a chance to squeak through," said Carlisle.

In Machiasport, Maine, Gilbert E. Hanson, the retired Machiasport postmaster, is philosophical about the fuel shortage.

"You hear that chain saw?" he asks a reporter. "That's the oil shortage. He's got seven cords cut already and he plans to cut a lot more. He won't be cold."

#### SELECTED IN 1960

It was back in the late 1960s that Machiasport was selected as the site for a 300,000-barrel-a-day refinery by the Occidental Petroleum Corp., then considered somewhat of a maverick in the oil industry.

Occidental planned to process foreign crude oil in the refinery, but, because of the mandatory import controls in effect at the time, needed a special exemption from the Federal government.

The other major oil companies opposed the refinery, saying it would give Occidental an unfair competitive advantage, and the project subsequently was scrapped by the Nixon administration.

Hanson is philosophical about that, too. "It's been blamed on several people high up in politics—high cabinet people in the Johnson and Nixon administrations. Oil has played a big part in the last four administrations."

A Colorado politician was one of those who journeyed to Washington in the Fall of 1968 to testify at hearings being held to determine whether the Machiasport refinery should be built.

He vigorously opposed the refinery because it would, he said, delay the development of huge oil shale deposits in his home state.

That Colorado politician was John A. Love, now President Nixon's energy czar. As for the shale oil deposits, they remain to be developed.

#### U.S. FIRMS EXAGGERATE EFFECTS

(By Donald L. Barlett and James B. Steele)

Key officials in the Nixon Administration—aided by the major oil companies—are exaggerating American dependence on Arab oil and the effects of the Middle East oil embargo.

The exaggerations have tended to obscure the fact the United States would be experiencing an energy crisis even without the Arab oil boycott.

Contrary to a barrage of publicity from federal officials, the United States receives only a small percentage of its petroleum supplies from Arab nations.

In fact, the very same fuel oil shortages that exist today would have existed even if Arab oil was flowing without any restrictions. The same is true of the gasoline shortages that will follow next year.

Just how little this country depends on Arab oil is reflected in a variety of statistics compiled by The Inquirer from data prepared by the United States Bureau of Mines and the British Petroleum Co., Ltd.

During 1972, for example, the United States received an average of 562,000 barrels a day of crude oil and refined petroleum products directly from Arab countries—or 3 percent of the nation's daily demand of 16,354,000 barrels. A barrel contains 42 gallons.

Additional Arab oil was refined in other countries and the products ultimately shipped into the United States. This was especially true of the Caribbean area and such countries in Europe as Italy and Belgium.

There are no precise figures on the amount of Arab oil used in these products, but a reasonable and liberal estimate, based on available refinery data, would place the total at about 368,000 barrels a day.

That would bring the overall volume of imports of Arab crude oil, as well as petroleum products made from Arab crude oil, to 930,000 barrels a day—or 6 percent of the nation's daily demand.

Even though Arab oil imports rose steeply during the first six months of this year, that increase, projected for the year, still would

leave Arab oil accounting for only 7 percent of the nation's petroleum needs.

When viewing the statistics from the Arab standpoint, there is an even sharper focus on the distribution of Middle East oil.

Last year, the Arab countries produced about 12,325,000 barrels a day, of which 930,000 barrels—or less than 8 percent—came into the United States.

The remaining 92 percent of Arab oil went largely into Europe and Asia, and that is why countries like the Netherlands and Japan are especially hard hit by the Arab production cutbacks.

These figures contrast sharply with those being tossed out by key federal oil policy officials in Washington and even President Nixon himself.

In a nationwide television address on Nov. 25, when he announced implementation of a mandatory fuel-oil-allocation program, President Nixon said shortages "could run as high as 17 percent." That would be about 3,000,000 barrels a day.

Speaking of the effects of the Arab oil embargo, the President declared:

"When I spoke to you earlier (in November), I indicated that the sudden cutoff of oil from the Middle East had turned the serious energy shortages we expected this winter into a major energy crisis."

But such is not the case, according to findings documented by The Inquirer during a continuing investigation into the underlying reasons for the oil shortage and the way both the federal government and the industry are handling the problem.

As The Inquirer disclosed last summer in a three part, 12,000-word series on "Oil—The Created Crisis," the present petroleum product shortages in this country can be traced to a hefty lack in refinery capacity.

The failure to build new refineries—the shortage in refinery capacity now is running upward of 4,000,000 barrels a day—was accompanied by a general decline in the domestic oil industry.

In recent years, the difference between the country's demand and available refinery capacity has been made up largely of imports of finished petroleum products from Canada and the Caribbean area.

The industry's present inability to meet the countries needs stems directly from policy decisions made by the federal government and the major oil companies, which have been concentrating their producing and refining and marketing operations in foreign countries over the last two decades.

#### CONFLICT OF INTEREST

Why, then, all the emphasis on the Arab oil shutoff by the Nixon administration and the oil industry when the United States receives only about 7 percent of its petroleum supplies from the Arab countries?

One possible explanation is that there exists a potentially serious conflict of interest between the petroleum needs of the United States and the financial security of at least several large American oil companies.

The reason is this: The five largest multinational oil companies have invested billions of dollars in their oil operations in Arab countries. These companies are Exxon Corp., Mobil Oil Corp., Texaco Inc., Gulf Oil Corp. and Standard Oil Co. of California.

In addition to their direct investments in the Arab countries, these same five companies have spent more billions building refining and marketing systems throughout Europe and Asia to sell product made from Arab crude oil.

Thus, while the United States is not dependent on Arab oil, European and Asian countries are. And so are the multinational American oil companies that rely on Arab oil to supply their markets in those countries.

That is why several of the large American oil companies, beginning last summer, urged the United States government to bring pres-

sure on Israel to reach a Middle East peace agreement and keep the Arab oil flowing.

Consider just a few of the statistics: Gulf Oil Corp., the nation's fourth largest oil company, has about 79 percent of its worldwide crude oil reserves located in the tiny (pop. 830,000) Arab state of Kuwait on the Persian Gulf. The company produced 1,569,100 barrels of oil daily last year in Kuwait, 786,600 barrels in both North and South America.

Exxon Corp. has investments of \$4.8 billion in the eastern hemisphere, much of it in property, plants and equipment either in Arab states or in countries dependent on Arab crude oil. Of the 5,701,000 barrels of petroleum products sold daily last year by the world's largest oil company, 2,950,000 or 52 percent, were sold in Europe, Asia and Africa.

Texaco Inc. has crude oil reserves totaling about 30 billion barrels in the Middle East, or 80 percent of its worldwide reserves. The third largest oil company processed 1,314,000 barrels of crude oil a day—the bulk of it from Arab countries—in refineries across Europe and Asia. In the United States, the company refined 1,012,000 barrels a day.

Standard Oil Co. of California produced 2,555,306 barrels of crude oil a day last year in the eastern hemisphere, again much of it in Arab countries. The figure represents 81 percent of the company's total daily crude oil production of 3,159,530 barrels. The company, the fifth largest in the country, has an interest in more than three dozen refineries in the eastern hemisphere which rely heavily on Arab oil.

Mobil Oil Corp., the country's second largest oil company, produced 1,911,000 barrels of crude oil daily last year. Of that amount, 791,000 barrels, or 41 percent, were produced in Arab countries. The company sold 1,291,000 barrels of petroleum products daily across Europe, Asia and Africa, or 54 percent of the company's total worldwide daily sales of 2,409,000 barrels.

It should be emphasized that it has been a long-standing policy of the international oil companies to sell most crude oil produced in the Arab states, as well as elsewhere in the eastern hemisphere, in Europe, Asia and Africa—not the United States.

That means that most Arab oil was never intended for the United States—embargo or not.

That policy was spelled out way back in September 1947, when then Standard Oil Company of New Jersey (now Exxon) entered into a secret agreement with the Anglo-Iranian Oil Co. (now British Petroleum Co. Ltd.)

The agreement, one of several signed during the late 1940s by the major international oil companies, effectively carved up the markets and staked out territorial rights in the eastern hemisphere for these companies.

The Standard Oil Company of New Jersey (Exxon) contract carried a clause that stated:

"It is, however, buyer's (Standard) intention in entering into this agreement to use oil receivable by buyer here under in supplying buyer's business in Europe (including the British Isles), North Africa (including the whole of Egypt), and West Africa."

During negotiations with the British oil company, a Jersey Standard official stated: "I told Basil (B. R. Jackson of Anglo-Iranian) that so far as crude oil deliverable by pipeline was concerned, it was for the purpose of helping to supply the requirements of our total business in the European and North African countries."

More than two decades later, on May 22, 1969, this policy of foreign oil for foreign markets was affirmed by another Standard Oil Co. of New Jersey official, M. A. Wright, now chairman and chief executive officer of Exxon Co., U.S.A.

In an appearance before the Senate Anti-trust and Monopoly Subcommittee, Wright declared:

"I think the important thing to you gentlemen is that, in a company like Jersey, the foreign production that is developed is primarily for the purposes of supplying foreign markets.

"We do not develop crude on the outside of the United States primarily to supply markets inside the United States. Now, this I think is something that many people do not quite understand."

#### UNITED STATES PAID OFF SHEIKS

There are several interesting footnotes to the multibillion dollar investments by the international oil companies, not only in Arab countries but throughout Europe, Asia and Africa.

The American taxpayer over the years has subsidized the foreign operations of the oil companies through a variety of tax allowances and benefits. For example, the oil industry deducts from its United States taxable income the same 22 percent depletion allowance for oil produced in Arab countries that it deducts for oil produced in the United States—even though the Arab oil is intended for sale abroad.

Even more beneficial was a private ruling issued by the Internal Revenue Service (IRS) in the early 1950s which had the practical effect of enabling the oil companies to convert royalty payments to Arab rulers into foreign taxes, allowing a foreign tax writeoff, dollar for dollar, against income taxes they owed in this country.

During 1970, the latest year for which complete figures are available, the depletion allowance—for oil produced in this country and abroad—provided deductions totaling \$2.9 billion for the oil industry, the foreign tax credit allowed writeoffs of \$1.3 billion. With spiraling prices on Arab and other oil, as a result of increased taxes and royalties, these writeoffs will climb sharply next year.

Even with all these tax benefits and a private IRS ruling not available to other businesses and industries operating abroad, several of the international oil companies, The Inquirer has established, substantially under-reported the federal income taxes they owed during the 1960s.

An intensive IRS audit, which was to become known as the Persian Gulf audit within IRS and the Treasury Department, resulted in what has been described as the largest deficiency assessment ever levied by IRS.

The audit, as is the case with all IRS audits, was carried out in secrecy. And after lengthy and secret negotiations during the late 1960s, a settlement was reached in which the oil companies agreed to pay a percentage of the back taxes that the IRS said were owed.

#### FIRST AND LAST AUDIT

Because of the secrecy surrounding the audit, the exact figures are unknown. But a former Treasury Department official told The Inquirer the IRS assessment was for about a half-billion dollars and the oil companies finally paid approximately \$300 million.

One of the irregularities the audit turned up, the former Treasury Department official said, was an oil industry practice of using an inflated figure as the cost for producing a barrel of crude oil, thus increasing the value of the depletion allowance, which is calculated on that per barrel.

Curiously, the Persian Gulf audit was the first and last audit of its kind ever made involving the business practices of American oil companies operating abroad.

One reason for this, put forth by the former Treasury Department official, is that the oil industry is so complex, and the overall rate at which oil companies pay taxes so low, that the additional taxes collected are not worth the manpower needed to make an exhaustive audit that may take several years to complete.

In any case, one of the problems encountered by the IRS auditors, according to a government official familiar with the case, was a lack of basic data relating to oil industry costs. There is similar lack of information concerning other phases of the oil industry.

As The Inquirer has disclosed previously, there is no government agency authorized to collect and verify data concerning the operations of oil companies—a condition which has aggravated the nation's energy problems and precluded the formation of any meaningful national energy policy.

As has been the case since the first oil well was drilled, all government oil policies—including the current mandatory fuel-oil-allocation programs—are based solely on unverifiable data furnished by the oil companies.

To further compound the problem, an assortment of governmental agencies with no particular expertise in oil matters—from the Treasury Department to the State Department—are churning out their own sets of statistics in response to the energy crisis.

That explains in some measure the conflicting figures federal oil policy officials toss out concerning not only the extent of the oil shortage but the effects of the Arab oil embargo.

Speaking on United States dependence on Arab oil, Duke R. Ligon, director of the Office of Oil and Gas in the Interior Department, told a United States House subcommittee on the merchant marine last Oct. 10:

"There will be an increasing reliance on Middle East oil. In 1970 we imported only 185,000 barrels a day from that source or only 1 percent of our consumption. We project that by 1975 we will be importing over 2,000,000 barrels a day from the Middle East."

#### HOW FIGURE VARIES

Less than two weeks later, on Oct. 22, figures released by Stephen A. Wakefield, another Interior Department official, showed that the United States had just about reached the 2,000,000 barrel a day of imports projected for 1975.

Wakefield, assistant secretary for energy and minerals in the Interior Department, told the annual meeting of the Independent Petroleum Association of America in Houston:

"When you include our purchases of refined products made from crudes originating in these areas (Middle East and North Africa) we are now importing 1,750,000 barrels a day of oil from this region."

A little more than two weeks later, a third government agency, the new Energy Policy Office, reported imports of 1,200,000 barrels a day—a decline of 550,000 barrels from the figures released Oct. 22.

In an environmental-impact statement published Nov. 7, the Energy Policy Office—created specifically by the White House to solve the energy crisis—reported:

"Last year America imported about 400,000 barrels of Middle Eastern oil a day. Data from the Bureau of Mines reports indicate that this figure has jumped 200 percent this year to 1,200,000 barrels a day."

But two weeks later, on Nov. 14, another government official, Julius L. Katz, was again putting Arab oil imports at 1,700,000 barrels.

Katz, deputy assistant secretary of state for international resources and food policy, told a House Committee on Interstate and Foreign Commerce:

"Prior to the imposition of the Arab boycott, the United States was importing about 6,300,000 barrels per day, of which the Arab producers furnished 1,700,000 in direct shipments of crude oil and products refined from Arab oil in third countries."

By Nov. 29, the loss of crude oil imports as a result of the Arab boycott had soared to between 2,500,000 and 3,000,000 barrels a day, at least according to the calculations of George M. Benschky, another State Department official.

Testifying before a House Foreign Affairs subcommittee, Benschky, director of the Office of Fuels and Energy in the State Department, reported:

"Taken altogether the Arab oil boycott will deprive the United States of between 2,500,000 and 3,000,000 barrels a day of oil this winter or up to 17 percent of our estimated winter demand of 18,500,000 barrels a day."

What with all the apparent confusion among those federal officials responsible for resolving the energy shortage, it is little wonder the problem has spawned a wave of near-hysteria stories on television and radio and in the newspapers and newsmagazines ranging from how much oil can be saved by turning out Christmas tree lights to a war against the Arabs.

#### PREMATURE WORRIES

In Philadelphia, a radio talk show host invited his listeners to voice their opinions as to whether the United States should mount an invasion against the Arabs if they persisted in maintaining the boycott.

Even Time Magazine, in its Dec. 3 issue, raised the question of military intervention, stating:

"Unhappily, the one countermeasure that would be effective would be invasion and occupation of the Arab oil-fields. The United States could easily defeat the Arab armies, and though the Arabs would probably blow up the wells, the technology of oil production in the desert is so simple that the United States could get some oil flowing again."

And Newsweek magazine, in its issue on the same date, observed:

"Secretary of State Henry Kissinger spoke openly but vaguely of possible retaliation against the boycotting Arab states. Most people thought he meant economic countermeasures, but some people spoke wildly of military action."

Shortly after the Arab boycott was announced in mid-October, Time magazine forecast the possibility of dire consequences for the United States, Europe and Japan. Time wrote:

"That oil squeeze could easily lead to cold homes, hospitals and schools, shuttered factories, slower travel, brownouts, consumer rationing, aggravated inflation and even worsened air pollution."

While all of this may come about in Europe and Japan—which rely heavily on imports from Arab states—the boycott itself never would have brought on all those calamities in this country.

#### UNITED STATES DOESN'T KNOW

The popular predictions of assorted national disasters brought on by the Arab shut-off seem to grow naturally out of the inflated statistics tossed around casually by the federal government's oil policy authorities.

While it is possible to come up with reasonable estimates of the amount of crude oil imported into the United States directly from Arab states, such is not the case when it comes to computing the volume of products refined in other countries from Arab crude oil and then shipped here.

The federal government never has been much interested in charting the flow of international oil and, indeed, the Bureau of Mines has had only one minerals specialist assigned to the task.

As for the data available from foreign countries, it is even more sketchy than that for the United States. And naturally the information is not subject to independent checks.

Then, too, refineries may receive crude oil from a half-dozen different countries. The oil is pooled for refinery runs and the gasoline, home heating oil and other products turned out actually are derived from both Arab and non-Arab oil.

How then does the Interior Department come by its refinery statistics?

Largely from the oil companies themselves, an Interior Department official acknowledged, adding: "We try to pick up statistics wherever we can. But you can guess to a degree."

And that is still another reason for all those conflicting figures coming out of Washington.

Although the Bureau of Mines maintains data on the source of crude oil going into refinery centers in the Caribbean area—which accounts for a sizable volume of United States imports—the information from elsewhere around the world is vague.

In some countries, like Israel and South Africa, oil statistical material is considered secret. Countries like Iran, a major oil producer, do not publish information showing the final destination of all of their exports.

There are reasons for all this secrecy. Iran, for example, which borders the Arab state of Iraq, for years has been sending oil around Arab lands into Israel. Neither government wants to acknowledge the shipments.

But the figures the Bureau of Mines has pulled together for the Caribbean area—the single largest foreign supplier of finished petroleum products to the United States—at least offer some indication of the amount of Arab oil included in refined products that are imported.

During 1971, the most recent year for which figures are available, a refining complex in the Netherlands Antilles received 751,000 barrels of crude oil daily from at least six different sources.

The largest supplier was Venezuela, which shipped in 613,000 barrels a day, or 81 percent of the refinery center's total input.

Other crude oil came from Brazil, Gabon and Nigeria. And there were 33,000 barrels a day that came from some unaccounted-for source.

Only 5,000 barrels a day, or 1 percent of the oil the refinery complex received daily, was shipped from an Arab country, in this case Libya.

#### WHAT COULD BE DONE

At another Caribbean refinery center, this one in Trinidad, the shipments of Arab crude oil were much higher. The center received 293,000 barrels of crude oil daily, of which 154,000 barrels, or 53 percent, originated in Saudi Arabia and Libya.

The remaining 139,000 barrels a day came from eight different countries—Venezuela, Iran, Angola, Gabon, Indonesia, Brazil, Colombia and Nigeria.

But while Arab crude oil accounted for 53 percent of the crude oil sent to the refinery center, the United States imported only 217,000 barrels of petroleum products a day, or 54 percent of the refinery's total production.

And therein rests another fascinating aspect of the Arab boycott: The multinational American oil companies play a major role in policing the oil embargo for the Arabs.

For in theory, at least, the Trinidad refinery center could take the non-Arab crude oil, refine it and export the finished products to the United States.

It then could take the Arab oil, process it and ship the refined products elsewhere around the world, to those countries not under the Arab embargo.

There is, though, another way in which the international oil companies control the worldwide flow of oil, and that is through their huge tanker fleets.

If the companies were so disposed, and if the Arab cutoff had created truly serious problems, then tankers carrying Arab oil could be directed to those refining centers producing petroleum products for countries not under the embargo.

Similarly, tankers carrying non-Arab oil could be steered to refining centers processing crude oil for distribution in the United States.

But the trading off of oil shipments can work both ways. If the multinational oil

companies wanted to emphasize American dependence on Arab oil, then tankers carrying Arab oil could be directed to refining complexes that normally would use non-Arab oil.

Last year, the largest exporter of crude oil and petroleum products to the United States was Canada. The second largest exporter was Venezuela.

In fact, these two countries accounted for imports of 2,068,000 barrels daily—or well over twice as much as the United States received from Arab countries.

But such is not the case with America's five largest international oil companies, which last year produced well over 6,000,000 barrels of crude oil daily in Arab countries.

A Bureau of Mines official told The Inquirer that although the figures for the Caribbean refineries are for 1971, and the volume of oil processed has changed, there is no reason to believe that the percentages of distribution have changed.

He said a survey of the 1972 operations of a Virgin Islands refinery complex showed about the same percentage of crude oil imports by country as in 1971.

#### REASON FOR SITUATION

With all of the talk about American dependence on Arab oil, it is important, perhaps, to keep a few other statistics in mind.

The growing bind the American oil companies now face in the Arab world is the result of some two decades of multibillion dollar expansion of the Middle East oil reserves.

It was during the early 1920s, when the United States once before feared it was exhausting its domestic oil reserves, that the federal government urged major oil companies to obtain oil reserves in foreign countries, including the Middle East.

A worried Herbert Hoover, then Secretary of Commerce, met with oil industry leaders on August 16, 1921, in Washington and stressed the need to obtain secure sources of foreign oil under the control of American companies.

"Unless our nationals reinforce and increase their holdings abroad," Hoover said, "we shall be dependent upon other nations for the supply of this vital commodity within a measurable number of years . . . We must go into foreign fields in a big way."

Aided by the United States State Department, the oil companies had soon done just that.

The department conducted extensive negotiations with the British, who already had a foothold in Iran where oil was discovered in 1908, to open the door for American companies to explore for oil around the Persian Gulf.

Even so, a glut of oil discoveries in the United States in the 1920s and 1930s dampened interest in the Middle East as American companies were hard-pressed to sell all the oil they had found back home.

American companies reported major oil discoveries in Kuwait and Saudi Arabia in 1938, but it was not until after World War II that production began to rise dramatically, from roughly 700,000 barrels daily then to 12,300,000 daily by 1973.

Once again, in the 1940s as it had in the 1920s, the State Department played an active role in encouraging the multinational oil companies to secure more foreign oil holdings.

After the war, the oil companies made a fundamental shift in their worldwide distribution system of crude oil due to rising production in the Middle East. Increasingly, they shifted that oil into Europe, a market that previously was served by oil from the United States and Venezuela.

Since then, of course, Arab oil has played an even greater role in the economies and life of European nations, with the oil companies investing billions of dollars to supply

their growing market there and in Asia. Much of the development has come at the expense of the United States.

In the case of Exxon Corp., for example, the company increased its already sizable reserves in the Middle East and Africa, mostly in Arab states, from 4 billion barrels in 1963 to 34 billion barrels in 1972.

At the same time, Exxon's United States reserves increased only slightly from 5.1 billion barrels to 5.5 billion. Such figures help explain America's slide from self-sufficiency.

But the explanation as to why the multinational oil companies have continued to explore and develop the oil reserves of Arab states while ignoring other regions is found in the nature of the oil industry itself.

The oil industry has a herd instinct, not unlike the 19th century gold rushers who flocked to the Yukon and California in search of a quick fortune.

"It's not really a very sophisticated industry," said Donald L. Campbell, a vice president of J. C. Sproule and Associates of Calgary, Canada, a geological consulting firm. "It has a follow-the-leader psychology."

Campbell said substantial exploration was under way in Canada's lower Mackenzie Valley above the Arctic Circle in the late 1950s. Then oil was discovered off the coast of southern Alaska and in the North Sea. The oil rigs soon disappeared from the desolate north and were on their way to the new strikes, he said.

Not only is exploration easier in countries around the Persian Gulf than in less accessible regions, but the oil wells in the Middle East flow with incredible force. Thus, production costs are much cheaper than in places such as Texas.

That powerful economic attraction of Middle Eastern oil development in the past has created the mistaken impression that the Middle East is the only place left in the world with sizable oil deposits. Such is not the case.

In the United States alone, roughly only one-third of the oil that has been found in the country's history has ever been produced. The rest is still in the ground. The oil industry has always maintained that it is uneconomic, in most cases, to extract more than one-third of a reservoir's oil.

But that does not mean the oil cannot be produced. In fact, the Quaker State Oil Refining Corp. of Oil City, Pa., has been conducting tests for several years to increase the amount of oil recovered from oil reservoirs.

A company official said most oil eventually can be recovered. "It's really just a matter of economics," he said. "The trick is to get the price down far enough to equal the price of crude."

Or put another way, as the prices of petroleum products rise, the companies will begin extracting the oil that is more expensive to reach and the nation's reserves figures will go up once again.

Indeed, even if there were no more oil discoveries in Alaska or elsewhere in the United States, there remains enough oil in the ground to keep the country well into the next century.

And that does not include the substantial offshore oil deposits—which are at least five times greater than the present proved reserves of the country. Nor does it include the huge reserves in the Arctic, nor the more exotic sources such as shale oil and tar sands. Nor does it include the massive coal supplies which can be converted into gas.

Computing all these sources together, there are sufficient supplies of petroleum to keep the country running for centuries.

With their interests tied so closely to the Middle East's future, it is not surprising that some of the oil companies publicly urged the United States this summer to give the Arabs more support in working out a peace settlement with Israel.

"There must be understanding on our part of the aspirations of the Arab people and more positive support of their efforts toward peace in the Middle East," Otto N. Miller, California Standard's president, wrote to stockholders and employees in July.

#### OIL: FUTURE CRISES BRED BY PIPELINE (By Donald L. Barlett and James B. Steele)

At a time when Americans are being asked by their government to lower thermostats and turn off lights, the Nixon administration is actively pursuing policies that threaten to deprive the nation of sizable quantities of crude oil and natural gas in the years ahead.

A continuing Inquirer investigation into the nation's energy crisis, and the federal policies and oil industry actions that helped create it, has established that:

Item. A decision made by the Nixon administration back in 1969 to support the construction of a trans-Alaskan pipeline, rather than a pipeline through Canada, severely dampened oil exploration in Canada and limited the supply of American money needed to develop new oil fields.

For years, Canada has been the leading foreign supplier of oil to the United States. The country's potential oil reserves are placed at 118 billion barrels—enough to double exports to the United States and meet its own needs for another century.

Item. There are strong indications the Nixon administration is getting ready to make the same kind of decision once again—this time involving a proposal by El Paso Natural Gas Co. to build a gas line parallel to the Alaskan oil line rather than through Canada.

That would mean the natural gas would have to be liquefied and shipped to this country by tanker, resulting in inflated prices. It also would mean delayed development of the huge natural gas reserves in northern Canada.

Item. The administration already is dropping hints that it will push for a second Alaskan oil line instead of a Canadian pipeline, as many Congressmen and Senators had hoped, paving the way for the possible exporting of oil to Japan.

If built, a second pipeline across Alaska would result in an oversupply of crude oil on the West Coast and do little to relieve mounting energy shortages in the East and Middle West where demands are greater.

Item. In turning its back on Canada immediately after taking office, the Nixon administration retarded the development of Canadian oil and gas reserves which one day would be needed to help meet American energy needs. Most recently, the State Department distorted the Canadian government's position on joint energy matters.

This despite the fact that from January 1970 through June of this year the United States imported more than a billion barrels of oil from Canada—double the imports that were received from Arab countries in the Middle East where the State Department now is applying pressure on Israel to sign a peace agreement with the Arabs in order to get the Arab oil embargo lifted.

These Federal policies, coupled with President Nixon's stated goal of making the country self-sufficient in energy by 1980—by developing everything from shale oil to more nuclear reactors—are having yet another effect:

They are driving prices up sharply—crude oil prices in this country are expected to soon triple 1972 prices and gasoline prices to more than double—forcing individuals and industry alike to pay inflated prices for their supplies.

Says Dr. Arthur W. Wright, an assistant professor of economics at the University of Massachusetts, who has made extensive studies of the oil industry:

"What we are doing is laying the ground-

work for a lot of expensive fuel projects. We could go from a period of underpricing in energy to a period of over-pricing. One thing you don't do is make a lot of bad policy in a hurry.

"Crash programs are terribly expensive things. There is no one inveighing against these people in Washington who are running around like they've had their heads cut off."

There is nothing especially new about the United States short-sighted behavior toward Canada, which last year exported 1,108,000 barrels of crude oil and petroleum products every day to this country. There are 42 gallons in a barrel of oil.

As The Inquirer disclosed last summer in a 12,000-word series, "Oil—The Created Crisis," the Administration's policies toward Canada aggravated this year's energy crisis.

In 1970, President Nixon slapped restrictions on the amount of oil coming into the United States from Canada at the very time the Canadian oil industry was seeking a larger market in the United States for its products.

Denied greater access to the United States market, the Canadian oil industry's growth faltered. There is no doubt that had it been guaranteed a market for its production as recently as 1970, Canadian oilmen told The Inquirer, it would have grown at a faster pace and been able to supply the United States with thousands of more barrels than it did this year.

As for constructing an oil line through Canada to bring Alaskan oil to the lower 48 States, the Administration was never really interested in pursuing the Canadian alternative to the Alaska line, largely because the large oil companies opposed it.

Instead, the Administration lobbied against the Canadian pipeline, citing the fact it would be longer than the Alaskan route, would take longer to construct and would travel through a foreign country.

Now, many of the same arguments are beginning to surface quietly against a long-planned natural gas pipeline through Canada to transport Alaskan and Canadian gas to the United States.

The Administration is reportedly looking favorably on a more recent proposal of the El Paso Natural Gas Co. to build a gas transmission line along the right-of-way of the oil pipeline to Valdez, Alaska, where the gas would be liquefied and shipped by tanker to the West Coast.

In addition to higher costs for liquefaction and some loss of the gas itself due to the liquefaction process, the chief disadvantage of the route is that the gas would come into the West Coast instead of the energy-starved Middle West which could have been supplied by the Canadian line.

The El Paso Company has been in and out of Federal courts for more than a decade, accused of violating antitrust laws, monopoly practices and over-charging consumers.

During the 1960s, the company was represented by the Wall Street law firm of Nixon, Mudge, Rose, Guthrie, Alexander and Mitchell.

That was the law firm of President Nixon and former Attorney General John N. Mitchell, now under Federal indictment in connection with his handling of campaign funds in the 1972 Presidential election.

From the mid-1960s through last year, the former Nixon law firm collected more than \$1 million in legal fees from El Paso—a company which has benefited directly from a variety of Nixon administration decisions.

Records of the Federal Power Commission show that from 1966 to 1968, the earliest period for which records are currently available, El Paso paid the Nixon law firm \$345,899 for legal services.

From January 1969, when President Nixon was inaugurated, through last year, the law firm received about three-quarters of a million dollars in legal fees.

The decision to build the Alaska oil pipeline, a decision made privately by the oil industry and then supported by the administration, also illustrates how oil companies sometimes determine public policy.

And in making that policy, the oil companies are reaching decisions that may well be in the best interests of their stockholders, but not necessarily in the best interests of the American consumer or, more particularly, the long-range energy needs of the country.

The decision to build the trans-Alaska pipeline was made quickly and quietly by three oil companies—Standard Oil Co. of New Jersey (now Exxon), Atlantic Richfield Co. and the British Petroleum Co. Ltd.

The major Alaskan oil strike was made after a joint exploratory operation by an Exxon subsidiary and Atlantic Richfield on the North Slope in January 1968. A second strike followed in June seven miles from the first.

Just eight months later, at a joint news conference in New York City on Feb. 10, 1969, Exxon, Atlantic Richfield and British Petroleum announced plans to build an 800-mile, 48-inch pipeline from the North Slope south past Fairbanks and on to the port of Valdez on the Gulf of Alaska.

There were, at the time, two major options open to the oil companies.

Run the pipeline to Valdez and then transport the crude oil by tankers to refinery centers on the West Coast and possibly to the Far East for sale in Japan.

Build the pipeline south through Canada and into Chicago, where the crude oil could be refined and the products distributed throughout the Midwest and into markets on both the East and West Coasts.

Why did the companies and the Administration decide on the Alaskan route?

The Administration seems to have wanted the line mainly because the oil companies preferred it. And the oil companies preferred the line, it seems, because it was in their best financial interests. In the end, Congress approved the Alaskan line because of the Administration's support.

While a Canadian route would open up the Canadian north for more exploration, the trans-Alaska line, which will discharge oil into tankers on Alaska's south coast, would mean oil could be shipped to Japan and other nations, should the companies decide that was in their best interests.

Economists and oil industry authorities interviewed by The Inquirer agree the decision was purely a "private one" to build the Alaska line.

In fact, a spokesman for Atlantic Richfield said the Canadian route was never seriously considered. "I don't think it was even a factor in 1968 or 1969," he said.

The reason was this:

When the pipeline project was announced in 1969, there was a huge surplus of crude oil, not only in the United States but throughout the world.

Crude oil and petroleum product prices in this country were generally depressed. The big oil states were holding down production in order to keep supply more in balance with demand.

During the month of March 1969, oil wells in the state of Louisiana were producing at 42 percent of their capacity. In the oil fields of Texas, production during August was at 53 percent of capacity.

A Mobile Oil Corp. official, explaining in July 1969 why the company wanted to cut back production at its Texas wells, told a state regulatory agency:

"(Mobile has made) substantial cuts in Texas and all other states where we purchase because our crude oil inventories are reaching an all-time high and we are attempting to reduce them."

At the same time state agencies were holding down oil production, the nation's

chief sources of foreign oil—Canada and Venezuela—were apprehensive that the United States was going to slash the amount of oil bought from them.

Venezuela complained that the United States Department of the Interior—which supervised the import program limiting the amount of oil that could be brought into the country—was encouraging American refiners in the Caribbean to use lower-priced Middle East oil.

And in Canada, a top-level meeting was called between senior government officials from both Canada and the United States to discuss ways of reducing the imports of cheaper Canadian crude oil into this country.

It was during this period of overabundance of oil that Atlantic Richfield and Exxon and British Petroleum were pushing ahead with plans to develop the North Slope, the largest oil field ever discovered in the United States.

The field contained, according to the estimates of independent geologists, from five to 10 billion barrels of oil.

Those, of course, were the conservative figures for the lone field. As for the entire North Slope, the more liberal estimates ranged up to 100 billion barrels—or nearly triple the country's present reserves.

It was against this background that the two American oil companies and British Petroleum announced their plans to build a trans-Alaskan pipeline—a decision distinguished by the fact it would not disrupt existing markets and drive down the price of petroleum products.

Although it seldom is discussed publicly, the one overriding fear in the oil industry is not that the world is running out of oil, but rather that overproduction will produce an oil glut and depress prices.

So it was, then, that the last thing the oil industry needed in 1969 was a pipeline running through Canada and into Chicago—pouring two million barrels of crude oil a day into the middle of a country that couldn't use all the crude oil it already was producing.

Coincidentally, the last time that happened was in the 1930s following the discovery of the huge East Texas field—the largest find until Alaska's North Slope. Then prices plunged from about \$1.30 a barrel to a dime.

As Business Week magazine put it in its Feb. 1, 1969, issue:

"The West Coast market (can't) absorb all the oil that even a comparatively moderate Alaskan field can produce. And that's what leads to the big marketing problems that oil analysts foresee. The first of these problems is whether the present structure of crude prices can withstand the onslaught of cheap Arctic crude."

"No one—certainly not the major oil companies that will determine the pace of Alaskan oil development—wants a repetition of what happened after the East Texas find of the 1930s."

Interestingly, while there was a conflict between the short-term financial interests of the oil companies and the long-term energy needs of the country, there was a similar conflict between the two companies that drilled the North Slope well.

Exxon Corp., the world's largest oil company, with vast reserves in the Middle East, was not in any hurry to rush development of the North Slope.

Atlantic Richfield, on the other hand, was very much in need of the new-found oil.

Just two years earlier, the old Atlantic Refining Co., located along the East Coast, had merged with the Richfield Company, based on the West Coast, and a new supply was needed for the Western markets.

Soon after the size of the Alaskan discovery was established, Atlantic Richfield began counting on moving the oil into its marketing system by 1972.

Forecasting a glowing future for the company, Thornton F. Bradshaw, president of Atlantic Richfield, reported in 1969:

"We anticipate early in 1972 a big business in cash flow and profits, and they will increase on an ascending scale as growing needs make room for Alaskan oil."

As everyone now well knows, construction of the pipeline will not even start until next year and the earliest possible completion date is sometime in 1977-78.

The project has been delayed not only by the objections of environmentalists, who are usually blamed, but a general lack of enthusiasm within the oil industry itself.

But if the oil companies and the Federal Government were cool to the idea of developing oil in Alaska and northern Canada in the late 1960s, such was not the case with the Canadian government.

Within months of the big Alaskan oil strike in 1968, the National Energy Board of Canada suggested a Canadian route to bring the North Slope oil to market. The Canadian government has consistently supported the route.

Energy Minister J. J. Greene tried to assure the United States government and the oil companies in March 1971 that "there will be no unnecessary roadblocks at the Canadian end and the Canadian government side" to construction of such an oil pipeline.

A year later a new energy minister, Donald Macdonald, who still holds that cabinet post, pointed out the virtues of the Mackenzie valley line to Canada in a May 1972 letter to Rogers C. B. Morton, Interior Secretary.

"The Mackenzie route would, of course, be advantageous to Canada in that it would give access to our potential oil resources in the northern Yukon and Mackenzie river areas," Macdonald wrote.

Not only did Canada favor the Mackenzie line, but so did many environmentalists, economists and lawmakers in the United States.

Environmentalists, for example, considered the Mackenzie line far superior to the trans-Alaska line because it would avoid earthquake prone regions in Alaska and eliminate the danger of oil spills from huge tankers carrying Alaskan oil to the United States past the west coast of Canada.

The chief advantage of the Mackenzie line, advanced particularly by economists and congressmen and senators from the Middle West, is that it would have delivered the Alaskan oil to the Middle West and East where it was needed more than in the West.

"By the early 1980s, close to two million barrels of crude oil a day will be available for transport to the lower 48," Sen. Adlai Stevenson III of Illinois testified in May. Where will that oil be most needed by the 1980s?

Already prices in crude oil per barrel are 20 percent higher in the Mid-west than on the West Coast, 25 percent higher in New York than in Los Angeles.

Even though Canada consistently voiced support for the Mackenzie line, the Nixon Administration and particularly the State Department conveyed the impression to Congress that the Canadians were not really interested in building such a line.

On June 14, the Canadian government delivered documents to the State Department spelling out the Trudeau government's position on several points relating to the Mackenzie line.

In brief, Canada said that remaining unresolved problems such as the settlement of native claims could be solved and would not interfere with construction of a Mackenzie oil line.

Eight days later, the state department, in a letter to Rep. John Melcher (D., Mont.) signed by Julius Katz, a deputy assistant secretary of state, said flatly:

"Negotiation by the United States of the pipeline agreement with Canada does not appear possible at this time."

Katz was later questioned by senators who were angry with his interpretation of the Canadian government's position. When asked

how he could have interpreted the favorable responses of the Trudeau government to mean that pipeline negotiations are not possible, he answered:

"What we meant by that was at the time and within an acceptable time frame, and this was based on our evaluations of all the hurdles that would have to be met before application could be presented to the Canadian government and considered by the Canadian government."

In the final analysis, there were never any negotiations over the line.

"This government and the Canadian government have never engaged in serious discussions of such issues, despite repeated expressions of interest by the Canadian government," John F. Dieneit, a lawyer representing several environmental groups, told a Senate committee in May.

The one time there were any discussions at all by any of the parties, the oil companies made it clear to the Canadian government they did not favor the Canadian route, according to a Canadian oil publication.

"When they visited Ottawa in 1971," the magazine *Oilweek* reported on August 6, 1973, "the presidents of the companies participating in (Alaska) made it quite clear they had given such a project (the Mackenzie line) but scant attention."

"Atlantic Richfield said a Canadian line would bring the economic policies of the two countries in direct conflict because Canada would insist on the line being available to move its own northern crude."

What the United States wanted, the magazine said, was a right of way across Canada for an oil pipeline that would not be subject to Canadian control. "In other words," *Oilweek* said, "it wanted another Panama Canal zone."

Not surprisingly, the Canadians did not look favorably on such a one-sided proposal. But the argument against the Canadian line raised by the oil companies would be used again and again: the fact it passed through a foreign country.

Time and again, opponents of the trans-Canadian line used with some success the fact the Mackenzie line would not be under the direct control of the United States.

The implication, apparently, was that Canada could shut off the United States' oil, if the two nations should ever find themselves in a bitter dispute.

Such a theory overlooks the leverage the United States already has over Canadian energy supplies. Today, hundreds of miles of Canadian oil and natural gas lines pass through the United States feeding crude oil and gas to the metropolitan areas of Toronto and Montreal.

But it was the State Department's handling of diplomatic cables from the Trudeau government last summer that best demonstrates the extent to which the Nixon Administration went to misrepresent the Canadian government's stand on the Mackenzie line.

Perhaps the most crucial question regarding the Mackenzie alternative was whether Canada would require 51 percent Canadian ownership of such a line, a point the Americans saw as a possible stumbling block to construction. Until mid-summer, Canada indicated it favored majority ownership.

On July 5, the Canadian government conveyed information to the State Department in Ottawa clarifying the government's position on the ownership question. The two governments agreed to release the information the next day.

But in a subsequent conversation between Canadian and United States diplomats, it was discovered that for some unexplained reason the two countries had opposing answers to the Canadian government's position on pipeline ownership.

Documents of the Canadian government stated that majority ownership of the line

would not be required. Documents of the American government stated that the Canadians insisted on majority ownership.

Whatever the cause of the mixup, Canada immediately issued a clarification and sent it to the American embassy in Ottawa where it arrived on July 11. The cable made it clear that Canada would not insist on 51 percent Canadian ownership, although it added that Canada would like the opportunity to acquire majority ownership.

That was six days before the Senate was scheduled to vote on an amendment to clear the way for construction of the Alaska pipeline. But the State Department did not get the revised answer to the Senate until about two hours before the final vote was taken.

How could such a development have occurred?

"Well, I suppose basically human error," Rufus Z. Smith, a deputy assistant secretary of state, explained to the Senate in July.

"It was promptly mailed from the embassy in Ottawa to the State Department (referring to Canada's clarification). It should have been cabled or telephoned. There is no question about that."

As the senators soon found out, the only reason the Senators even got a clarification on Canada's position was due to the Canadian government, not the State Department.

Smith said he found out about the slipup when an official of the Canadian embassy called him the day before the Senate vote and asked why the State Department had failed to make public the Canadian position on pipeline ownership.

Sen. Walter Mondale (D., Minn.) summed up the affair by saying, "We have treated an old and valuable ally rather shabbily in this matter."

"While all of those debates were going on, we now know that for some days . . . that the State Department had in its possession the cable . . . which settled most of those issues in favor of Canadian interest in the line."

A trans-Canadian oil pipeline, Canadian oilmen say, would have spurred much more exploration in the Canadian north because the line would have made it possible to get the oil reserve to market.

Congress wrote into the Alaska pipeline bill a provision that the oil cannot be sold to foreign nations without federal approval, but, there are some loopholes and some senators are skeptical about the companies' motives.

"Our thought is that when some of this (Alaskan) oil is delivered to the West Coast," Sen. Mondale said in July, "that oil from Ecuador and Indonesia (now imported into the West Coast) would then end up in Japan."

The recent suggestion by the President's new energy czar, William E. Simon, that possibly a second oil pipeline should be built through Alaska will probably only fan Congressional fears that some of the Alaskan oil is earmarked for markets other than the United States.

Indeed, the suggestion is just another example of the Federal Government's inability to develop a long-range energy policy for the country—a failure The Inquirer disclosed last summer that had helped create the present oil shortages.

As recently as two weeks ago, energy boss Simon was quoted by the Washington Post as saying that the United States will not build a pipeline through Canada, at least at the present time, because the country cannot afford to share its oil with Canada.

Arguments that were so successful in killing any interest in the Canadian pipeline are now beginning to gain ground in the Administration against a long-proposed natural gas pipeline through Canada to bring vast Alaskan and Canadian natural gas reserves to the United States.

A consortium composed of Canadian and American pipeline, natural gas and oil companies called Canadian Arctic Gas Study

Limited has spent upward of \$70 million in recent years studying the proposed gas pipeline route, also down the Mackenzie River valley.

In December 1972, the El Paso Natural Gas Co., the nation's largest natural gas transmission company, announced plans to study an alternate route along the right of way of the Alaskan oil pipeline to Valdez where the gas would be liquefied and shipped by tanker to the West Coast.

Neither El Paso nor Canadian Arctic has applied for a permit to build a gas pipeline with either the Canadian or the United States governments, but an application is expected to be filed soon by the Canadian Arctic group.

No one took the El Paso proposal very seriously a year ago since liquefaction is generally thought to be an unnecessary and costly step if a land route is available to transport the gas.

But recently, Canadians who favor the Mackenzie route have grown increasingly concerned that the Nixon Administration, in pursuit of a goal of national self-sufficiency in energy, will opt for the El Paso proposal.

El Paso has already engineered several liquefied natural gas deals around the world and has received Federal Power Commission (FPC) approval to market the gas in this country.

Further, El Paso and Occidental Petroleum Corp. announced on June 8 that they had signed an agreement with the Soviet Union on a \$10 billion project to bring Siberian natural gas to the West Coast of the United States.

El Paso seemingly had enjoyed a good working relationship with federal agencies. An article published in the April 16, 1970, issue of the "Oil and Gas Journal," an industry trade publication, stated that:

"El Paso Natural Gas Co. is so confident it can shove through its largest liquefied natural gas supply deal in history that it is ordering two of the world's largest cryogenic tankers.

"The company revealed last week that it has placed an order with a French shipbuilder for construction of two 750,000-barrel LNG tankers. The vessels will be built at a cost of about \$100 million."

That, again, was back in April 1970—two years before the Federal Power Commission approved an El Paso plan to import one billion cubic feet of liquefied natural gas daily from Algeria into Maryland and Georgia. A request to import another one billion cubic feet daily into New Jersey, Maryland and Georgia is pending.

In September 1972, according to documents filed with the United States Securities and Exchange Commission, El Paso entered into a contract with another shipbuilder for the construction of three more cryogenic tankers at a cost of some \$300 million.

This time the federal government agreed not only to pay one-fourth of the cost of the ships, or about \$77.5 million, but also to "make United States government guarantees available for the financing of 75 percent of the remaining cost of these three tankers."

Still, Canadian oilmen believe the Mackenzie line is far superior to the El Paso proposal and believe it could be built if Canada and the United States simply agreed to it.

"We further believe that this will have a tendency to retard exploration in the Canadian north."

El Paso's 1972 annual report mentions the Alaskan study only briefly, although it is expected to cost the company millions of dollars.

But El Paso did emphasize that its proposed line would be an all-American project that would not pass through a foreign country.

As to drawbacks in the El Paso proposal, compared to the Mackenzie valley gas pipe-

line, Canadian oil and gas men interviewed by The Inquirer in Toronto, Calgary and Edmonton generally agreed on the following:

Gas delivered to the lower 48 states by way of the El Paso plan would result in inflated charges to the American consumer because of excess charges for liquefaction.

A certain percentage of the natural gas is lost in the process of converting the gas to a liquefied state.

The United States energy market would be deprived of trillions of feet of natural gas reserves in northern Canada because there would be no way to get the reserves to market.

Gas exploration efforts would slow down dramatically in the Canadian north.

But such considerations may be secondary to El Paso in trying to win approval of its pipeline plan. For as several economists interviewed by The Inquirer pointed out, conversion of Alaskan North Slope gas reserves to a liquefied state may benefit El Paso more than the American public.

"It's more expensive than deregulating the price of natural gas and running a pipeline down the Mackenzie Valley," said Dr. Edward W. Erickson, an economics professor at North Carolina State University. "But no one in Washington seems to be groping with the sensible thing to do."

What are the disadvantages of the Canadian line?

"If you have a pipeline through Canada," Dr. Erickson said, "you can't move gas to Japan. If you have a liquefaction plant, you can look at several different markets, including Japan."

There is more to that possibility than idle speculation.

Although most Americans probably do not know about it, the Phillips Petroleum Co. and Marathon Oil Co. have been selling liquefied natural gas from Cook inlet in Southern Alaska to Tokyo since 1969.

#### WANTED: IMMUNITY FOR OIL EXECES

(By Donald L. Barlett and James B. Steele)

During a time of soaring prices and profits in the oil industry, the Nixon Administration has been quietly trying to exempt oil companies and their executives from prosecution under the antitrust and conflict of interest laws.

The exemptions—which would pave the way for oil company executives to manage the administration's rationing programs for petroleum products—are being sought through legislation and by private agreement with the Justice Department.

The administration has maintained that the oil company officials are needed because they have the expertise to deal with supply and distribution problems.

But such joint action by executives of competing companies could normally violate both antitrust and conflict of interest laws.

The new exemptions would be in addition to an antitrust exemption the oil companies already have, which enables them to work together in arranging the distribution and sale of crude oil produced outside the United States and earmarked for sale in this country and abroad.

Martin Lobel, a former oil specialist on the staff of Sen. William Proxmire (D., Wisconsin) and now a member of the Washington law firm of Lobel, Novins and Lamont, believes the existing antitrust exemption already means higher profits for the multinational oil companies next year.

"The increased profits come through efficiency of supply distribution," says Lobel, because the companies are able to pool their oil sources and reduce transportation costs at the same time petroleum product prices are going up.

Key federal oil policy officials have been

working to arrange immunity for the oil industry at a time when:

Item. During the first nine months of this year, the profits of the country's five largest international oil companies totaled \$4.1 billion—an increase of 48 percent over the same period last year.

Item. From last January until the first week in December, the retail price of gasoline was up an average 19 percent nationwide. Price increases approved by the federal government in the last two weeks will boost this increase to about 30 percent.

Item. In some sections of the country, the wholesale price of home heating oil has shot upwards of 100 percent since January, going from 10 cents to 21 cents a gallon in the Gulf Coast area.

Item. The price increases already approved by the Nixon administration will cost the American consumer an additional \$7 billion next year for gasoline alone. Each one cent increase in the price of gasoline costs the consumer \$1 billion over a year.

Meanwhile, a little-known group called the Emergency Petroleum Supply Committee (EPSC)—made up of representatives of 23 oil companies—has been at work for some six weeks now, assembling data relating to the worldwide crude oil supplies of each company.

The 23 companies already enjoy antitrust immunity covering their actions as committee members. The immunity was granted by the United States Attorney General's Office under provisions of the Defense Production Act.

The committee, which has broad powers, may determine the rate of oil production, the volume of petroleum products turned out by refineries, how much oil will be imported into the United States and whether oil produced in this country will be shipped to other nations.

Information gathered by the committee and its recommendations ultimately may be used by the federal government to determine how much fuel oil a homeowner or industry receives, how much gasoline will be allocated to motorists, how much diesel fuel will be distributed to truckers.

As The Inquirer disclosed last summer, virtually all the government's information on oil supplies and reserves—information on which national energy decisions are based—comes from the oil companies and is not subject to independent verification.

The far-reaching implications of the EPSC's authority notwithstanding, all of its meetings are conducted behind closed doors at the U.S. Department of the Interior. And documents compiled by the committee are considered secret.

Robert L. Presley, an official of the Interior Department's Office of Oil and Gas and a government representative on the Emergency Petroleum Supply Committee, explained the need for secrecy this way to The Inquirer:

"The meetings are closed in order to get free expression from individual people. They will be more constrained if members of the press are there.

"We get very free exchanges about the problems they have. I haven't heard anything said, however, that would harm them."

#### LOOK AT DATA BARREL

Presley refused to allow Inquirer reporters to examine the data pulled together so far by the committee, contending the committee's functions had nothing to do with the nation's current energy crisis.

"The committee's not going to do one thing to solve the oil shortage," declared Presley. "We hope to get an idea how serious the shortage is in the world. We (the committee) have only authorizations to act on the international movement of oil."

But John Lamont, a former Justice Department attorney and another member of the Washington law firm of Lobel, Novins

and Lamont, said it is not possible to separate the international movement of oil and oil needs of the United States.

"When this committee is dealing with the international movement of crude oil," Lamont said, "and the United States receives 25 percent of its supply from other countries, how can its decisions fail to affect the United States?"

Clearly, the committee's decisions will have a direct impact on government oil rationing and allocation programs because it will determine exactly how much oil is available for importing into the United States.

The Inquirer has disclosed in previous articles that one of the underlying reasons for the energy crunch is a decision made some years ago by America's multinational oil companies to expand their production, refining and marketing facilities in foreign countries.

As a result, the five largest oil companies now sell nearly two barrels of petroleum products in other countries for every barrel they sell in this country, making the United States just one more market. (A barrel contains 42 gallons.)

These five companies—Exxon Corp., Mobil Oil Corp., Texaco Inc., Gulf Oil Corp. and Standard Oil Company of California—also are members of the Emergency Petroleum Supply Committee, helping to make decisions on the worldwide distribution of oil.

#### U.S. OIL FOR OTHERS

Indeed, the EPSC could recommend diverting to other countries oil originally intended for sale in the United States.

The Interior Department's Presley, in an interview with Inquirer reporter Susan Q. Stranahan, said of the EPSC's studies to date:

"There is a possibility that if the situation (worldwide oil shortage) becomes serious enough, the United States may reduce its own supply to supply other nations. The real purpose is, to provide help to friendly foreign countries."

Presley's remarks are the first indication the federal government, or at least the oil industry's Emergency Petroleum Supply Committee, is considering the possibility of shipping oil to European and Asian nations reeling from the effects of the Arab oil embargo and production cutbacks.

This comes at a time when the Nixon administration has requested thermostats turned back in private homes and business establishments in the United States, cut fuel oil deliveries to industry and reduced jet fuel supplies, bringing about the layoff of thousands of workers.

While the Emergency Petroleum Supply Committee has immunity from antitrust law prosecutions, this immunity covers only the international movement of oil and does not apply to distribution within the United States.

It was to cover this latter situation that the Nixon Administration asked both Congress and the Justice Department for additional oil industry exemptions from antitrust and conflict of interest statutes.

The expanded immunity coverage was needed after the White House decided to draft oil industry executives to manage the programs allocating fuel oil and other petroleum products.

In an article headlined, "United States to draft industry experts," the Oil and Gas Journal, an oil industry trade publication, reported in its Dec. 3 issue:

"Industry executives with special transportation and distribution skills will soon be 'invited' by the government to help solve allocation problems during the oil shortage.

"They will be drafted as 'special government employees', early this month for service in the Office of Oil and Gas and the Office of Petroleum Allocation."

The administration received its first setback when then Acting Attorney General Robert H. Bork refused to provide the blanket protection sought by the White House and the oil industry.

#### IMMUNITY NOT CERTAIN

In a three-page letter, Bork told Interior Secretary Rogers C. B. Morton that the antitrust laws do not prohibit the hiring of oil industry personnel, but that immunity could not be guaranteed.

Bork wrote: "The antitrust laws do not prohibit the use of industry personnel as advisers within your department. Having said the foregoing, we are obliged to point out that this is different from saying that such personnel will be free of any possible threat of liability from antitrust prosecution.

"No opinion which I could render could immunize any activities of such employees from treble damage actions brought by private plaintiffs . . .

"It is not possible to say that such personnel do not run the risk of being charged with antitrust violations, since a determination of this question would depend upon knowledge of all relevant facts."

Bork's letter was dated Nov. 21. On Dec. 14, Duke R. Ligon, director of the Interior Department's Office of Oil and Gas, issued a memorandum stating that the plan to draft oil industry executives "has been postponed indefinitely due to the conflict of interest problems."

There is nothing especially new in the Nixon Administration's bid to exempt oil companies and their employees from antitrust law prosecutions.

Back in 1970, the international oil companies operating in the Persian Gulf asked the administration for the same kind of immunity and it was granted—privately.

At that time, the oil companies sought the protection in connection with negotiations they were entering with the Arab oil-producing states and other members of the Organization of Petroleum Exporting Countries (OPEC).

In a secret business review letter issued in January 1971, the federal government assured the oil companies that no criminal actions would be filed for any violations of the antitrust laws.

#### ORDERED BY MITCHELL

The letter was issued by the Justice Department on orders of former Attorney General John N. Mitchell, now under federal indictment in connection with his handling of campaign funds in the 1972 presidential election.

An Inquirer request made last Wednesday to examine the business review letter was rejected by the Justice Department, Richard Saylor, a special assistant in the department, said:

"We have consistently stated that the materials will be made available when we hear from the State Department that publication will not be detrimental to national security.

"The State Department continues to advise us that publication of the materials would be detrimental to national security."

Stephen Schwebel of the State Department's international law section, was asked about making public the business review letters. He replied:

"These letters have not been released. They are classified. I doubt if they'll be released in this current delicate situation with the Arab negotiations."

But a former federal official familiar with the letters dismissed an argument put forth by the State and Justice Departments for keeping the letters secret.

He cited possible government embarrassment—rather than national security—as the reason for withholding the information, say-

ing that the "Justice and State Departments aren't particularly proud of those letters."

The immunity granted the oil companies by the Justice Department went far beyond permission to engage in joint negotiations over the price of crude oil.

#### SHARING OF CRUDE OIL

One of the provisions of the Justice Department agreement, a former federal official told The Inquirer, covered the sharing of crude oil and tanker space by the companies.

Thus, if an OPEC country shut down the operations of one company, the remaining companies could supply that company with crude oil from a common pool.

The Justice Department not only has refused to make public the details of the immunity agreements, it has even declined to say whether the agreements are still in effect. The Justice Department also has denied Congress any information about the agreements.

At the time the Justice Department gave the companies approval to bargain together with the oil-producing countries in 1971, Sen. Philip Hart (D., Mich.) chairman of the Senate's Antitrust and Monopoly subcommittee, asked for a full report on the talks.

Subcommittee staff aides told The Inquirer that the State Department and antitrust division of the Justice Department declined to provide the information during the negotiations, contending that any disclosure during the talks might jeopardize the sensitive nature of the discussions.

But the two departments did agree to supply Hart with a full report after the 1971 negotiations were completed. That was nearly three years ago and Hart, despite repeated, renewed requests, is still waiting for a report on the 1971 negotiations.

The House of Representatives has fared no better than the Senate in its attempts to obtain some of the same information.

At a House subcommittee hearing held July 12, 1971, Silvio O. Conte (R., Mass.), had the following exchange with Walker B. Comegys, then acting assistant attorney general in the antitrust division of the Justice Department:

Conte—"I wonder if you could provide the committee with a copy of your Jan. 15 letter, giving immunity to the majors, to let them bargain as a cartel with the Persian Gulf nations and with Libya?"

Comegys—"Mr. Conte, I cannot comment on any of the statements that you have made, because I am under the injunction that it is not in the national interest for me to do so."

Comegys also argued that the business review letter did not constitute a grant of immunity from prosecution. But when Conte asked exactly what the letter provided, the Justice Department lawyer replied:

"I cannot go into that, sir, at this point. We have been under strict injunction from the Department of State . . . I cannot comment in the context of this Middle East oil situation."

#### INTENT OF LETTER

The Justice Department has long contended that a business review letter only sets forth the intentions of the department.

That is, the Justice Department advises a company that, given a special set of circumstances, the department will or will not initiate legal action.

But from a practical standpoint, former Justice Department attorneys told The Inquirer, the issuance of a letter means the department will not file criminal charges under most any circumstances, although it may at some later date bring a civil lawsuit. But even civil cases are seldom filed once a letter is issued.

Sen. Hart now is preparing to call Secretary of State Henry Kissinger or another high State Department official before his

subcommittee to testify in executive session about the agreements made by the Justice Department with the oil companies.

At the time of the oil company negotiations with the Organization of Petroleum Exporting Countries (OPEC), President Nixon dispatched a top State Department official to meet with Arab leaders and assist in the oil talks.

When negotiations with the oil-producing countries finally were completed, everyone—the international oil companies, the State Department and the Justice Department—expressed their satisfaction with the outcome.

The State Department hailed the oil companies new pact with OPEC as bringing "stability" to the "turbulent international oil situation."

The oil companies declared the "agreement established security of supply and stability in financial arrangements for the five-year period 1971-75 . . ."

And the Justice Department, the industry's Oil and Gas Journal reported, said the department's decision to allow the oil companies to negotiate jointly "will help to minimize price hikes to consumers."

Of course, the oil companies-OPEC agreement produced nothing of the sort.

#### DIDN'T BRING STABILITY

It failed to bring stability to the Arab oil situation. It failed to assure a secure source of supply for even two years, let alone five years. It failed to minimize price hikes.

Indeed, what has happened since the Nixon Administration injected the State Department and the Justice Department into the oil company talks now is a matter of history. For example:

The price of crude oil in some Arab states, and in other oil-producing countries, has soared more than 500 percent and is still climbing. In the last few weeks, Middle East and African oil has been selling for more than \$17 a barrel.

It should be pointed out that labor and production costs have no connection whatsoever with the selling price of foreign oil. It costs about 20 cents to produce a barrel of Arab oil—less than a half-penny a gallon—now selling for more than \$17.

The ink was no sooner dry on the 1971 agreement than the Arab nations were insisting on—and getting—participation agreements through which they obtained an interest in the oil companies operating in their countries.

The consumer prices for petroleum products have spiraled throughout Europe and Asia as well as the United States. And prices will continue to climb in the coming months.

Last October, the Arab nations shut off the supply of oil to the United States and the Netherlands and began a series of systematic cutbacks in oil shipments to other European countries and Japan, forcing massive layoffs, industry shutdowns and rationing.

But there was one favorable aspect to the 1971 agreement: The oil industry, especially the multinational companies, reported substantially increased earnings for the year.

Observed the Oil and Gas Journal on Feb. 7, 1972:

"Oil industry profits took their first solid step forward in 1971, since their last good year in 1968.

"All of the top five international majors continued to make good earnings showings for the year, with most up at least 10 percent over 1970."

M. A. Adelman, an economist at the Massachusetts Institute of Technology and a long-time authority on the oil industry, maintains that OPEC and the Arab states could not have been welded into an effective international petroleum cartel had it not been for bungling by the State Department.

In a paper published earlier this year in Foreign Policy magazine, Adelman said the State Department caved in to the threat of a boycott in 1971 rather than resisting the demands of the OPEC cartel.

#### BLAMED FOR CRISIS

As the Inquirer disclosed last summer in a series of articles on "Oil—The Created Crisis," the nation's present energy crisis stems directly from policy decisions made by major oil companies and one administrative blunder after another by the Federal government.

At the same time that the Nixon Administration has been trying to extend antitrust immunity to oil industry executives, it had been attempting to undermine or discredit antitrust enforcement efforts against the oil industry by the Federal Trade Commission (FTC).

The FTC issued a complaint last July 18 against the nation's eight largest oil companies, charging them with a variety of anti-competitive practices, including limiting the supply of crude oil to independent refiners.

The FTC investigation has centered on practices of the major oil companies the commission believes weakened oil industry competition and helped drive independent refiners and marketers out of business.

The companies named in the FTC complaint are Exxon, Mobil, Texaco, Gulf, Standard Oil Company of California, Standard Oil Co. of Indiana, Shell and Atlantic-Richfield.

On July 30, William E. Simon, chairman of the Oil Policy Committee and now the President's chief energy administrator, wrote to FTC chairman Lewis Engman saying that statements by FTC staff members about possible breakup of the large oil companies were causing him a "great deal of concern."

Simon went on to say that FTC statements urging that major oil companies be required to sell their refining operations as a way to loosen their control of the industry have given some companies "second thoughts" about building badly-needed refineries.

#### REPORT CHALLENGED

On August 27, Simon, a former Wall Street securities dealer, expanded on those themes in a 63-page report prepared by his staff rebutting many of the conclusions and facts of an FTC staff report on the oil industry.

Among the conclusions about the FTC report made by Simon's staff analysis:

"Many of the facts in the FTC report are inaccurate. Consequently, the resulting conclusions are questionable . . . the FTC report is biased against the largest integrated oil companies. . . . As a result of this bias, the FTC's final conclusions are incorrect or misleading at best. . . . The FTC should reconsider its action and withdraw the complaint issued against the eight largest oil companies."

The Simon staff analysis in effect exonerated the oil industry for the present oil shortage and said the crisis was caused by a variety of factors, "mostly governmental laws and policies."

Despite Administration pressure, the FTC is going forward with a full inquiry into the operations of the eight oil companies.

As for the inquiry itself, however, crucial prehearing conferences where attorneys for both sides argue the merits of the complaint will be held in secret because the oil companies object to opening the sessions to the public.

Under FTC rules, such conferences can be opened to the public if both sides agree to it.

In a motion filed Nov. 5, Robert E. Liedquist, FTC complaint counsel, requested that the prehearing conferences be opened to the public. He wrote:

"The prehearing conferences in a case of this size and complexity will obviously be a very important and significant phase of the litigation.

"The simplification and clarification of the issues' which can be expected to result from the conferences will no doubt shape the whole course of the proceeding.

"We do not believe that matters as serious

as this should be dealt with outside of public scrutiny. Public interest in this case is very great. It has been stimulated not only by the gasoline shortage of this summer and the expected heating fuel shortage this winter but also by the respondents' (oil companies) own massive advertising and public relations campaign concerning the energy issue.

"In this context we believe that it would be most unwise for the prehearing conferences to be conducted in secret, and we therefore urge the respondents to join with us in asking that they be made public."

#### REJECT OPEN HEARINGS

Within 11 days, seven of the eight companies named in the complaint flatly rejected the idea of opening the hearings. Typical of the companies' answers was this response from Mobil:

"Mobil Oil Corporation does not agree to public prehearing conferences in this matter."

This position contrasts sharply with a Mobil Oil Corp. advertisement published in the New York Times last July 10, in the form of a letter addressed to New York's two senators and 12 Congressmen.

"We are publishing this letter in your hometown newspaper, and in those of the other members of Congress, because we want you and your constituents to have the facts about the gasoline shortage as we see them" the advertisement stated.

"We are doing this because many people are being misled by the absolute nonsense, totally unsupported charges, and outright lies being spread around by a variety of people."

At the same time the Nixon administration was trying to get the Justice Department to grant antitrust and conflict of interest immunity to oil company executives, White House aides were at work on Capitol Hill attempting to arrange the same kind of protection through legislation.

When the Energy Emergency Act legislation was being considered by separate committees in the House and Senate, Sen. Hart's antitrust and monopoly subcommittee drafted proposed language for the antitrust section and submitted it to House and Senate committees.

Most parties agreed that such a section was needed to permit the government to appoint or seek the advice of oil industry personnel in carrying out the emergency petroleum allocation program.

The section submitted by Senator Hart's staff sought to closely define activities that would be included in the antitrust immunity and wrote into the legislation safeguards against abuses.

Hart's version provided for public participation in all meetings and verbatim transcripts, set a specific date for termination of the immunity and required Justice Department officials to prevent any monopolistic practices.

However, most of these or similar limiting provisions were bargained away by the Senate Interior Committee, headed by Sen. Henry Jackson (D., Wash.) in negotiations with the administration.

By the time the bill reached the Senate floor and was finally approved, most of the safeguards had been eliminated or weakened.

But in the House of Representatives, a Congressional aide told The Inquirer, the administration failed to make a major effort to get its bill approved.

As a result, many of the anti-trust safeguards proposed by Hart's subcommittee, along with other provisions imposing controls over the administration's handling of the energy crisis, were retained in the Emergency Energy Act passed by the House on Dec. 14.

As for how the administration finally will deal with the antitrust issue, James E. Merna, a public information officer in the Federal Energy Office, reported:

"We are kind of hazy on that. We should find out."

While both the Senate and the House failed to tackle the problem of excess profits in the oil industry during a time of shortages and rationing, President Nixon announced his own plan last week for what he described as a "windfall profits" tax.

What the President was labeling a windfall profits tax, though actually was an excise tax that would fall hardest on small independent oil producers and refiners.

The President's proposal—calling for a graduated tax on the selling price of a barrel of crude oil—would have little effect on the major oil companies and especially those operating abroad like the five largest international oil companies.

#### CAN SHIFT PROFITS

That is because these companies are fully integrated, that is they engage in all phases of the petroleum business—from production of crude oil to refining and marketing.

With this kind of flexibility, a large company can shift its profits from one segment of its operations to another, avoiding the impact of the administration's proposed tax.

But an independent producer or refiner, whose income is derived solely from production or refining of crude oil, would be especially hard hit by the tax.

If any of this activity over antitrust immunity for oil companies in times of crisis, amidst rising prices and profits, sounds familiar, that's because it has all happened before.

During the blockade of the Suez Canal in 1956-57, when oil shipments from the Middle East to Europe were disrupted, the Justice Department speedily granted antitrust immunity to major oil companies, allowing them to pool their oil sources and work together in supplying oil to Europe.

In a Senate hearing in 1957, the late Sen. Estes Kefauver of Tennessee questioned an Interior Department official about the huge profits the companies would make by pooling their efforts during the crisis.

Interior Official—"We have nothing to do sir, with the profits of any of the oil companies."

Sen. Kefauver—"You are going to stand by and let them make any exorbitant amount of profit out of this voluntary arrangement that you sponsored."

Interior Official—"As I said before, senator, we have nothing to do with prices."

Sen. Kefauver—"I must say that it is unbelievable that you take this attitude, I just can't conceive of a man heading up this organization . . . making an arrangement that these companies have taken advantage of to make an enormously large profit at the expense of the American consumer, and you do nothing about it and express no interest in it. It is inconceivable to me."

#### U.S. FUEL OIL SUPPLIES BULGING—RESERVES UP 23 PERCENT IN A YEAR

(By Donald L. Barlett and James B. Steele)

The oil industry has stockpiled enough oil to get the country almost through February—even if all refineries were shut down tomorrow and if homeowners and business would not turn back their thermostats.

As of Dec. 21, the supply of home heating oil, kerosene and other distillate fuels stored by oil companies totaled 203 million barrels—up 23 percent over the 165 million barrels on hand one year earlier.

That is enough fuel oil to last for 58 days (or to Feb. 17), according to estimates made by the American Petroleum Institute (API), an industry trade organization. The estimates are based on demand figures calculated by the U.S. Bureau of Mines.

For this time of year, the 203 million-barrel supply (there are 42 gallons in a barrel) represents, in terms of volume, one of the largest stockpiles of distillate fuel oil in the nation's history.

This is the situation in the wake of a series of statements by the Federal government urging homeowners and businesses alike to turn back their thermostats or else risk living and working in homes and offices without heat.

In a nationwide television address last Nov. 25, President Nixon first stressed the need for allocating fuel oil, saying the government planned to reduce supplies to industry by 10 percent, to homeowners by 15 percent and to commercial establishments by 25 percent.

"For the average American family," the President said, "this cutback in heating oil does not mean severe discomfort for anyone, but it will mean that everyone should lower the thermostat . . . by six degrees below its normal setting."

The goal was to achieve a national daytime average of 68 degrees. The President warned "Those who fail to adopt such a cutback risk running out of fuel before the winter is over."

A fact sheet, distributed by the White House before that speech, estimated that the shortage of distillate fuel oil would average about 900,000 barrels a day during the coming winter months.

That was an increase of 100 percent over the projected shortage reported a little more than two weeks earlier in another White House fact sheet, when the shortage was placed at 450,000 barrels a day.

At the time Mr. Nixon announced his fuel oil allocation program, the administration's oil policy experts predicted that the overall shortage in petroleum supplies (for gas, oil and all other needs) would average 3.5 million barrels a day during the first quarter of this year.

As The Inquirer first disclosed last Dec. 2—in one of a series of special investigative reports on the nation's energy crisis—there was substantial evidence to suggest that the Federal government had exaggerated the oil shortage.

Since then, the new Federal Energy Office has substantially revised its estimates of the oil deficit—lowering the original projection from 3.5 million barrels to 3.3 million, and finally last week to 2.7 million a day.

There is some reason to believe that even the last figure is too high.

On Wednesday, the Conference Board, an economic research group based in New York, estimated that the difference between supply and demand would run between 2.2 million and 2.4 million barrels a day.

The Conference Board criticized the Nixon Administration for overstating the petroleum shortage, declaring:

"If an allocation program is based on an estimate of the shortfall that is too large, plants may be forced to close unnecessarily. If the estimate is too small, we may run short late in the winter and be forced to make Draconian cutbacks in use."

Interestingly, the American Petroleum Institute report showing the high level of fuel oil stocks was issued just as refineries—acting on orders of the Nixon Administration—were preparing to increase fuel oil production still further and cut back gasoline production.

William E. Simon, administrator of the Federal Energy Office, has ordered refineries to reduce gasoline production by about 900,000 barrels a day and increase the distillate fuel oil and other products.

When a spokesman for Simon's office was asked about the size of the fuel oil stockpile and the reason for the proposed rationing program, he told The Inquirer:

"It's a matter of being safe and not sorry. It's a matter of keeping the homes heated and people working. They (the figures) look truly like the conservation programs are working."

Actually, the conservation programs appear to have had little or no effect on the stock-

pile of distillate fuel oil, at least up to the time the API report was released.

For on the week the projected fuel oil rationing program was announced, the supply stood at 205 million barrels, according to API statistics.

With businesses and home-owners turning back thermostats, there is reason to believe the demand figure has decreased while the supply has remained relatively constant. This picture indicates that the current stocks probably would last more than 58 days at present usage.

A spokesman for the American Petroleum Institute discounted any comparison of this year's supplies with those available last year.

"Last year was an abnormally poor year," said Earl Ross, an API public relations official. "There was cold, wet weather early in the year and the stocks were drawn down."

"Also, you've had a very mild winter so far this year, so the demand has been less than anticipated."

Ross said a more meaningful comparison would be with 1971, when on the same date fuel oil stocks totaled 196 million barrels, or a 66-day supply (based on the smaller demand of that year).

In Philadelphia, interviews with fuel oil dealers indicate they are receiving anywhere from 68 to 100 percent of last year's supply from major oil companies.

Some less-established dealers, either newcomers to the business or small independents, have been cut off altogether and have gone out of business.

#### OIL FIRMS HOARDING BIG JET-FUEL SUPPLY

(By Donald L. Barlett and James B. Steele)

While the nation's airlines have slashed schedules and laid off thousands of employees because of the energy crisis, the oil industry has built up one of the largest stockpiles of jet fuel in the country's history for this time of year.

Jet fuel supplies stood at a near-record 28.9 million barrels for the week ending Dec. 21—14 percent more than the reserves total of 25.2 million barrels one year earlier. A barrel holds 42 gallons.

These figures come from the American Petroleum Institute (API), a trade organization which compiles weekly statistics on the industry.

Earl Ross, a public relations official for the API, appeared baffled about the increase in jet fuel supplies over 1972.

"I really couldn't say," he replied when asked about the high level of stocks. "I really have no way of knowing. We just get the numbers from the oil companies. Sometimes there are no apparent explanations for these things."

About 1,500 departures a day have been canceled by the airlines, because of the energy crisis. And Lou Davis, a public relations official for the Air Lines Pilots Association, says about 16,000 employees are slated for layoff due to what he termed "the alleged oil shortage."

William E. Jackman, an assistant vice president of the Air Transport Association of America, told the Inquirer that early last month the international carriers were having trouble getting jet fuel and indicated they would have to cancel flights over the holidays.

Then William E. Simon, administrator of the new Federal Energy Office, announced that 1.5 million gallons of jet fuel would be requisitioned from the Defense Department and made available to the airlines.

Within several days of Simon's announcement, Jackman said, "suddenly a lot of fuel became available from the large suppliers. Two suppliers—Standard Oil Co. of California and Texaco—came forward with 9 million gallons each."

"Now, the next question you're going to ask is, where did all that jet fuel come from?"

We're living with that question from day to day," Jackman added.

Jackman said the airlines were paying an average of about 12 cents a gallon for fuel at the beginning of 1973.

By the end of the year, he said, the prices had increased by 50 to 100 percent.

In some instances, where airlines purchased fuel on a spot basis rather than under longer term contracts, the price was as high as 60 cents to 80 cents a gallon, Jackman said.

On Thursday *The Inquirer* disclosed that the oil industry, as of Dec. 21, 1973, also had stored away a near-record 203 million barrels of heating oil and other distillate fuel oils—up 23 percent over the 165 million barrels on hand last year.

The 203 million barrels equal a 58-day supply, even without taking into account any of the conservation measures implemented under the Federal government's mandatory allocation programs. The measures include the turning back of the thermostats in homes and businesses.

The supply figure also does not include the fuel oil stocks of independent companies and the supplies of individual dealers.

This means the oil companies already have put away enough distillate fuel oil to meet the nation's needs through much of the winter.

But while the reserves of both distillate fuel oils and jet fuel are up over a year ago, the picture is somewhat different for gasoline reserves.

For the week ending Dec. 21—the latest figures available—motor gasoline supplies amounted to 203 million barrels. This figure is down 3 percent from the 1972 figure of 209 million barrels.

Even worse, with gasoline prices now in the 50-cent-a-gallon range, oil company refineries this month—acting on orders of the Nixon Administration—are scheduled to cut their gasoline production by 930,000 barrels a day.

Martin Lobel, a Washington attorney and former oil specialist on the staff of Sen. William Proxmire (D., Wis.), says that, because of the cutback in gasoline production, there will be another round of price hikes this spring.

"What's going to happen," says Lobel—whose law firm represents a number of independent oil companies—"is that the companies will raise prices once again, citing the shortage of gasoline."

Under the Federal government's mandatory allocation program, airlines currently are operating with 5 percent less fuel than they used in 1972. That reduction in supplies took effect last Dec. 1.

Interestingly, the American Petroleum Institute statistics show that in November the industry stockpile of jet fuel rose 11 percent, climbing from 24.4 million barrels to 27.1 million barrels.

Those reserves continued to mount during the first three weeks of December, going up to 28.9 million barrels.

The figures include two kinds of jet fuels, naphtha-based and kerosene. The airlines use a much larger volume of the kerosene variety, and these stocks are up—even higher than the overall figures.

For example, for the week ending Dec. 21, the kerosene-type jet fuel reserves were at 23.2 million barrels, compared with 19.6 million barrels a year earlier—a jump of 18 percent.

In some weeks in September and October and even into November, refineries were turning out upwards of 700,000 barrels of kerosene type jet fuel a day.

When the allocation program took effect, Dec. 1, kerosene jet fuel production dropped, to an average of 687,000 barrels a day the first week, then to 611,000 barrels a day the second week.

In designing the allocation program, the

Federal government projected a jet fuel shortage of 400,000 barrels a day in the first three months of this year.

#### OIL SUPPLIES ADEQUATE DESPITE "CRISIS" FEARS

(By Donald L. Barlett and James B. Steele)

Oil has poured into the United States during the last 12 months at levels high enough to meet current demands—even without rationing cutbacks—for gasoline, heating oil and jet fuel.

Thus, the United States, at worst, should be experiencing an oil shortage no more severe than what it endured last summer and last winter when there were only slight shortages in scattered regions of the country.

This conclusion is based on studies of data compiled by the United States Bureau of Mines and the American Petroleum Institute (API), an organization supported by the oil industry. Both the bureau and the API get their figures directly from the oil companies.

The Bureau of Mines data show that from January through last September, the latest period for which figures are available, supplies of oil products totaled 4.8 billion barrels while demand was at 4.7 billion barrels.

From October through December, API figures show that imports of both crude oil and refined products were running ahead of the same months in 1972—despite fear that the Arab oil boycott would drastically reduce supplies.

For the four weeks ending last Nov. 30, imports of crude oil were averaging 3.2 million barrels a day—up 38 percent from the same time in 1972, when the figure was 2.3 million barrels a day.

For the four weeks ending Dec. 28, crude oil imports averaged 2.9 million barrels a day, an increase of 26 percent over the 2.3 million barrels a day imported during the same period in 1972.

While there are no final consumption statistics yet for 1973, available data from both the Bureau of Mines and API indicate petroleum supplies for the year will have totaled approximately 6,408,000,000 barrels and demand will have been about 6,392,000,000 barrels.

The API figures, as *The Inquirer* reported earlier this week, show the oil industry has stockpiled near-record levels of heating oils and jet fuel for this time of year.

According to API's latest figures, released late Friday afternoon, there was another increase in heating oil inventories last week, which now stand at 203.5 million barrels, up 28 percent over this time last year.

The five largest oil companies in the country were asked by *The Inquirer* why the large quantities of oil coming into the country were not being passed on directly to gas stations, airlines and homeowners. Only one company, Gulf Oil Corp., had an immediate response.

Fuller McCowan, Gulf's coordinator of foreign public relations, said fuel oil is being held in reserve by Gulf because "the cold weather is ahead of you."

As for airline fuel, he said, "I have not heard that any airline is having trouble getting jet fuel."

McCowan said he would need more time for research to fully explain the apparent paradox between oil inflow into the United States and the current oil crisis. But he emphasized that "it's absolutely untrue that Gulf Oil Corp. is stockpiling. We are refining our products at maximum."

The companies that declined to respond at all until they could further study the data were Exxon, Mobil, Texaco and Standard of California.

The continuing *Inquirer* study has indicated that the Federal Government has consistently overstated the immediate severity of the oil shortage.

Last November, the White House released a statement forecasting that demand for petroleum products would outstrip supplies by 7.5 percent during the last three months of 1973.

But records maintained by the Bureau of Mines show that demand ran ahead of supplies in the last quarters of both 1972 and 1971, as well as in other years.

In 1972, for example, when there were no rationing programs and no soaring prices for oil products, there was a 4 percent deficit between supply and demand.

An *Inquirer* analysis of Bureau of Mines data shows a regular pattern over the last three years, with the oil industry turning out more products than are used in the months from April through October.

But beginning in November, and continuing into March, the demand begins to run ahead of production.

During February 1973, for example, the production of petroleum products represented 94 percent of demand. In February 1972, it was even lower—91 percent. And in February 1971, it was 94 percent.

Then in June last year, production reached 106 percent of demand. In June of 1972, the figure was 103 percent; in June 1971, it was 100 percent.

As *The Inquirer* disclosed last Dec. 2, the Federal Energy Office inflated the oil shortage figures for both the last quarter of last year and the first three months of this year, at first predicting a 17 percent deficit this quarter. That prediction has now been reduced to 13.6 percent.

The importance of not overstating the extent of the oil shortage was underscored earlier this week by the Conference Board, a prestigious economic research organization based in New York.

The board is headed by Alexander B. Trowbridge, former secretary of Commerce, and its membership includes some of the nations' leading business executives from such corporations as General Electric Co. and General Foods Corp. and Koppers Co. Inc.

While agreeing there was an oil shortage, the Conference Board pointed out that exaggerating the problem could force plants to close unnecessarily because fuel allocations were not as large as they might have been.

The Conference Board noted, as *The Inquirer* disclosed earlier this week, that the oil industry had built up substantial inventories, especially of heating oils and jet fuel.

The stockpiles of both now stand at near-record levels, although gasoline inventories are down somewhat from previous years.

None of this is to suggest there is no oil shortage. Nor that conservation measures should be abandoned.

One of the problems, as last year's statistics indicate, is the supply of petroleum products is about even with demand.

A barrel of crude oil, which holds 42 gallons, is converted into a variety of products, from gasoline to jet fuel to residual fuel for electrical utilities.

To increase the output of any one product, a refinery must reduce the output of another product. Thus, there may be enough home heating oil at a given time, but a shortage of gasoline because of miscalculations in demand for individual products.

This is what is happening now, as refineries, on orders of the government, have cut back gasoline production while increasing the output of other products.

But while there are sizable inventories of jet fuel and heating oil, the existing stockpile of gasoline is below last year's level.

The problem is further aggravated because of a shortage of refinery capacity in the United States and the inability of many refineries to process foreign crude oil which has a high sulphur content.

The Inquirer disclosed last July that the lack of refinery capacity—now short about 4 million barrels a day—was one of the underlying reasons for the country's energy problems.

Over the last 20 years, the major American international oil companies gradually shifted the base of their refinery and marketing operations outside the United States.

They invested billions of dollars throughout Europe and Asia, building refineries to meet their growing markets in the Eastern Hemisphere, while failing to keep pace with energy needs in this country.

#### OIL TANKERS SAIL ON DESPITE EMBARGO (By Donald L. Barlett and James B. Steele)

During the month of December—some seven weeks after the Arab states announced they were cutting off oil shipments to the United States and the Netherlands and reducing overall production—103 oil tankers sailed from Bahrain, a tiny Arab sheikhdom on the Persian Gulf.

That was the largest number of tankers to leave the Arab oilport in any single month last year except May, when there were 127 sailings. During September—the month preceding the boycott—63 tankers left the port, 40 ships fewer than in December.

Those few statistics, perhaps better than others, explain what is happening in the oil-rich countries of the Middle East—with the one exception of Saudi Arabia. They also explain, at least in part, why the United States is not experiencing the massive oil shortages originally forecast by the Federal government.

They also help to explain the lack of concern over the oil crisis shown by officials in the governments of some European countries—such as Spain, France and the United Kingdom—where the mood is much more optimistic than in Washington.

For the past week, an Inquirer reporter working in London has been sifting through the shipping reports of Lloyd's of London, tracing the movement of oil tankers in and out of the Persian Gulf ports of the Arab nations.

The tankers have names like the Esso Aruba and the Texaco Newcastle and the Chevron Madrid and the Esso Okinawa and the Chevron Antwerp. After loading up with oil, they head for ports like Milford Haven in Great Britain and, in some cases, "unspecified destinations."

An Inquirer analysis of the Lloyd's of London shipping reports, covering six large Arab ports picked at random, shows that:

From January through September 1973, on the average, a total of 475 ships sailed from the ports each month. During the last three months of the year, with the embargo going into effect Oct. 19, there were an average of 478 tanker departures each month.

There has been a marked decline in oil tankers leaving Saudi Arabia, by far the most vocal of the Arab states in the current Middle East boycott. In December, 171 tankers left Ras Tanura, Saudi Arabia, compared with 228 ships in September.

But tanker sailings from Kars Island in Iran, a country close to Saudi Arabia, but not an Arab state and not a participant in the boycott, have increased substantially. In the first nine months of 1973, there were, on the average, 77 tankers departing monthly. In the last three months, this figure soared to 124 ships per month.

In Kuwait, 98 tankers sailed from the oilport of Mena Al Ahmadi during December. That was the largest number of sailings reported from the port in any month last year.

Total sailings during the final quarter of 1973 from the six analyzed ports were up substantially over the same period in 1972.

During 1972, the six ports recorded a total of 1,093 sailings for the months of October, November and December. In 1973, the same

ports showed 1,435 sailings—a 31 percent increase.

The general picture that emerges from these statistics is that while there has been a cutback in oil production in Saudi Arabia, the Middle East cutback as a whole clearly is nowhere near as profound as suggested by the Arabs and government officials in Washington.

As one official in one of the world's largest oil companies told an Inquirer reporter in his London office:

"You must remember, the Arabs are a very proud people. They may say, 'Do what you want to, but don't let us know about it.'"

"It's been rumored some of the Arabs have even told the companies they don't have to cut back (oil production) the full amount."

He said definitely that the Arabs are not enforcing the oil embargo and no restrictions were placed, for example, on any oil company's dealings with the Netherlands.

For the more than two months the oil embargo has been in effect, the oil company official said, Arab oil has been flowing into Holland.

Why would the Arabs, with great fanfare, announce that they were shutting off oil shipments to the United States and the Netherlands, cutting back production by millions of barrels a day, and then not bother to really enforce the boycott or reduce production to the levels claimed?

One possible explanation is that the mere shock value of the announcement alone, and the panic that followed, got the Arabs what they wanted.

First, the United States began exerting pressure on Israel to reach a Middle East peace agreement. Then the price of oil started to soar, with oil that once sold for \$2 a barrel now going in some cases for upwards of \$17.

Those price increases already are being felt in the United States as the multi-national oil companies begin passing along the increases to gasoline station dealers and heating oil distributors.

The fears over the effects of the embargo and cutbacks in oil production were fanned by gloomy predictions from Washington.

In a nationwide television address delivered Nov. 25, President Nixon, warning of oil shortages running up to 17 percent of demand, said:

"When I spoke to you earlier, I indicated that the sudden cutoff of oil from the Middle East had turned the serious energy shortages we expected this winter into a major energy crisis."

"That crisis is now being felt around the world, as other industrialized nations have also suffered from cutbacks in oil from the Middle East."

As everyone now knows, of course, that 17 percent shortage never materialized and the figure has been scaled back.

Indeed, the Lloyd's shipping statistics, supported by interviews with knowledgeable oil industry sources in London, seem to indicate the Arabs got exactly what they wanted without reducing production to the point where it would have had the crippling effects on European nations that were first forecast.

Then, too, the Arab states will be pulling in tens of billions of dollars more each year in additional revenue as a result of the higher prices.

As The Inquirer reported on the Arab boycott, the effects were not as damaging as U.S. government officials were saying, it is the international oil companies that ultimately determine how much oil each country will receive.

As the system now works, the multi-national oil companies distribute the supply of crude oil and petroleum products to their markets in Europe and Asia and the United States.

And even though the major oil companies have lost some of their power over the years,

the international flow of oil still is controlled largely by seven oil companies, five of which are American. The Arab nations play no role in this distribution process.

The seven are Exxon Corp., Mobil Oil Corp., Texaco Inc., Gulf Oil Corp., Standard Oil Company of California, British Petroleum Company and Royal Dutch Shell.

The Inquirer reported last summer, in a three-part series entitled "Oil—The Created Crisis," that the five American multi-national oil companies have been shifting their operations outside the United States.

As a result, these companies—which now determine in large measure how much oil the United States will receive, and when—sell nearly two barrels of petroleum products in foreign countries for every barrel they sell in this country. A barrel holds 42 gallons.

This is a condition which enables at least the international oil companies to engage in self-fulfilling prophecies when it comes to determining the level of oil imports in the United States.

None of this is to suggest that the United States does not have energy problems. Nor that practical conservation measures should be abandoned.

What it does mean, though, is that the severity of the oil shortage has been overstated, resulting, in turn, in a needless loss of jobs and slowdowns in other businesses and industries.

While most Arab states have cut oil production to the levels announced, other countries, in addition to Iran, have stepped up production.

A shipping industry authority who supervises the chartering of tankers in London told The Inquirer that American oil companies were looking for tankers to transport additional crude oil from Nigeria.

Nigeria, along with the Arab states, is a member of the organization of Petroleum Exporting Countries (OPEC), but it is not participating in the embargo.

There has been speculation among some industry observers that the oil companies, rather than directly violate the Arab embargo, simply switched oil shipments from one country to another.

For example, Nigerian oil originally scheduled to be shipped to Europe may have been sent to the United States while the Arab oil scheduled for the United States was shipped to Europe.

Although the Lloyd's of London shipping statistics indicate no cutback in the number of ships leaving Arab ports, some oil industry officials claim that some of the tankers are not fully loaded.

Fuller McCowan, coordinator of foreign public relations for Gulf Oil Corp, said the company's field personnel reported that ships were leaving with less than a full load, but he didn't know if any of the tankers belonged to Gulf.

Other oil industry observers doubt that many ships leave with less than full loads because it simply isn't economical.

An official of the British Petroleum Company told The Inquirer that all BP ships are sailing fully loaded, although they wait longer at the docks because there is somewhat less pressure to sail.

Interestingly, a dispatch filed last week by the London Times from Bahrain, which began:

"Tankers bound for Britain loaded 3.5 million barrels less than their permitted quota from Aramco's Saudi Arabian terminal."

"The fact that the oil was available and just not lifted has astonished shipping circles here (in the Persian Gulf)."

The Times, speculating on the reason for this, guessed that there was a momentary tanker shortage—but not an oil shortage.

Aramco is owned jointly by Exxon Corp., Texaco Inc., Mobil Oil Corp. and Standard Oil Company of California.

The Lloyd's figures, gleaned from statistics covering the sailings of 5,707 ships, list

both arrivals and departures at most of the world's major ports.

The information appears in Lloyd's list, which has been published on most weekends and Saturday by Lloyd's of London since 1734.

The information concerning shipping movements is reported to Lloyd's by its agents stationed at ports around the world.

While The Inquirer analysis of the destination of ships that picked up oil in Arab ports during the last three months did not turn up any bound for the United States, some ships were listed as headed for Rotterdam, the Netherlands oil port supposedly under a complete Arab embargo.

In England, where a wage dispute with coal miners has led to drastic reductions in electrical power, there are few signs of the oil shortage.

Milford Haven, England's largest oil port and the second largest in Europe after Rotterdam, is receiving an ample supply of oil from the Arab states.

Milford Haven recorded an average of 248 oil tanker arrivals for each of the first nine months of 1973, according to Lloyd's.

But in the final three months of the year, during the global energy scare, Milford Haven received an average of 270 arrivals a month, a 9 percent increase over the same period last year.

The inventory of petroleum products in England is now higher than at this time last year, according to a British Petroleum Company executive.

He said that despite an estimated deficit of 9 to 10 percent, more oil is flowing into England now than last year and rationing is not under consideration.

The fact England's imports of petroleum are increasing is not surprising when viewed in light of disclosures by The Inquirer last week of similar circumstances in the United States.

In the States, The Inquirer found, American oil companies have built up stockpiles of heating oils and jet fuel to near-record levels for this time of the year.

#### DUTCH OIL PLENTIFUL—CRISIS A HOAX, OFFICIAL SAYS

(By Donald L. Barlett and James B. Steele)

Despite fears of massive disruptions for the Netherlands because of the Arab oil embargo, the Dutch are getting most of the petroleum they need and their economy is operating at near normal levels.

"Personally, I think the whole thing is a hoax and the government is being carried away with it," said Jack Bax, a press aide for the city of Rotterdam, Europe's largest oil port, in speaking to an Inquirer reporter.

The Netherlands and the United States were the only two countries in the world supposed to be totally cut off from Arab oil. The impact was expected to be far more severe for the Dutch, who are accustomed to importing 70 percent of their petroleum from the Arabs, than for the Americans, who get less than 10 percent from that source.

But to this date, 2½ months since the boycott started, Dutch service stations remain open, gas is plentiful and no one is being asked to limit sales to 10 gallons per customer to hold down consumption. Sunday driving, however, is still barred throughout the country.

There have been no massive layoffs, oil refineries are running at a swift pace and oil stocks are close to normal for this time of year.

The Dutch government, which frantically warned of impending oil shortages two months ago, is growing increasingly embarrassed by its earlier predictions, and it has now scaled down estimates of the shortage.

Gas rationing, anticipated weeks ago, has been postponed until Jan. 11 at the earliest.

And if rationing does come, it may not last more than three weeks, according to one Amsterdam newspaper.

#### EFFECTS OVERSTATED

A similar situation has existed in the United States where the Federal Government—as The Inquirer disclosed early last month—exaggerated both the effects of the Arab boycott and the severity of the nation's oil shortage.

As a result of these overstatements, coming in the midst of continuously rising prices for petroleum products, there have been layoffs of thousands of workers in the United States and slowdowns in some businesses and industries.

The Netherlands has weathered the oil boycott so well, according to Dutch sources, because the multi-national oil companies have quietly sent to The Netherlands large supplies of Venezuelan, Nigerian and Iranian crude once earmarked for other nations.

Arab oil, once expected to go to the Dutch, has filled in the gap elsewhere for the diverted Venezuelan, Nigerian and Iranian supplies.

The Inquirer also disclosed early last month that America's international oil companies were acting as policemen for the Arabs during the embargo, making the final decision as to which countries would receive oil and how much.

Thus, the oil companies, rather than the Arabs, actually determine the level of oil imports into both the United States and the Netherlands.

Although sources familiar with the Dutch oil situation take the fact of diversion for granted, it is impossible to say exactly how much oil is coming from where.

#### BAN IS IMPOSED

The national government imposed a ban on the reporting of oil stocks and of shipping movements in Rotterdam after the Dutch news service, Algemeen Nederlands Per, published a story Dec. 7 showing that the Arab boycott had not slowed the flow of oil into Rotterdam.

The ANP story quoted sources in the port of Rotterdam who predicted a slight downturn in December, an upswing of oil imports in January and normal oil imports in February and March.

The reporting ban was implemented for "state reasons," according to B. Van Donkeelaar, an aide to the minister of economic affairs, who oversees petroleum and energy matters.

To release import and export information, he added, might "annoy other states."

Rotterdam observers who are close to the port and the oil supply situation believe the government has imposed the secrecy ban because it does not want to provoke the Arabs into taking steps that would truly seriously deprive The Netherlands of oil.

"We really don't care where the ships are coming from," said Bax, the Rotterdam press aide. "It's the companies' business where they get oil. All we care about is how much is coming in. I don't think the problem is very serious."

#### PRICES SOARING

Indeed, about the only factor of the energy crisis that seems to have the Dutch bothered is the soaring price of petroleum—a problem that is worrying many other countries.

Keeping Rotterdam and the Dutch supplied with oil—regardless of its derivation—is an important consideration for the multi-national oil firms.

As Europe's largest oil port, Rotterdam is as vital to the oil companies as to the daily lives of the Dutch citizens.

The city is a major distribution point for moving oil to the rest of western Europe. In 1972, a total of 129 million tons of crude oil was discharged at Rotterdam.

About 45 percent of that crude oil was re-exported to other countries. The rest was

processed at Rotterdam refineries and the finished products either exported or used in The Netherlands.

#### THREE ARE U.S. OWNED

The heart of the oil industry in Rotterdam is the sprawling refineries and terminals of five multi-national companies—three of them American owned. They are ESSO, a subsidiary of the Exxon Corp.; Gulf Oil Corp., and Chevron, a subsidiary, of Standard Oil of California.

Royal Dutch Shell and British Petroleum are the other two major companies operating in Rotterdam.

This week, an Inquirer reported could note that the refineries of these companies were busy and that tankers, such as the ESSO Aarhus and Myrtea were discharging their cargoes of crude oil.

While no official estimates are available, observers believe that the Dutch oil stock pile is between five and six million tons, normal for this time of year. The Netherlands storage capacity is six million tons.

#### SPEEDS REDUCED

The government is crediting its oil conservation programs with keeping The Netherlands from being as hard-pressed as originally feared. Conservation measures have included no driving on Sundays, reduced speed limits and pleas for the use of less electricity.

But observers believe that these programs alone could not possibly account for the fact that Rotterdam's ports and refineries continue to operate at a high rate.

And this has added to speculation that the Arab boycott and production cutbacks have been far less stringent than announced.

The Arabs said they would boycott only The Netherlands and the U.S. But had threatened, in addition, to reduce overall production by 25 percent. That means daily production should have fallen from 20 million barrels to 15 million. There are 42 gallons in a barrel.

#### SLACK PICKED UP

Observers in Rotterdam argue that the diversion of Venezuelan, Nigerian and Iranian oil to The Netherlands would have been impossible unless Arab oil was picking up the slack in other countries. But, they add, with all the oil coming into Rotterdam, it would be difficult for the Arabs to pick up the slack if production had actually been cut 25 percent.

The Inquirer disclosed Sunday that shipping statistics from Lloyd's of London indicated that oil tanker shipments from six major Arab ports averaged about the same for October, November and December—the three boycott months—as for the nine previous months.

Even the Arabs are starting to hint that the cutback has been less than 25 percent. A Beirut newspaper, quoting a source in the Organization of Petroleum, Exporting Countries 25.5 million barrels of oil had gone to the United States, despite the boycott.

The OPEC source said most of this, but not all, had been shipped from Libya and refined in the Bahamas before entering the United States.

#### DEATH OF ROBERT JOSEPH COAR

Mr. FANNIN. Mr. President, it was with great sadness that I received word of the death last Wednesday of Robert Joseph Coar, the fine gentleman who was instrumental in setting up our radio-television facilities in the Congress.

On many occasions when I was in the Senate studios, Bob Coar and I would discuss Arizona and what was going on in that State. I recall how much he looked forward to living in Arizona after

his retirement last year. It is indeed regrettable that he had so little time to enjoy the retirement which he had earned.

Mr. President, I know that I echo the sentiments of many of my colleagues in paying tribute to Bob Coar for his long and valuable service both in assisting individual Members and the Congress as a whole. I wish to extend my sympathy to his wife and children.

Mr. President, I ask unanimous consent that the story which appeared in the January 25, 1974, Arizona Republic, be printed in the RECORD.

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

**"BOB" COAR DIES AT 68; RADIO AIDE TO ROOSEVELT**

Robert Joseph "Bob" Coar, 68, an electronics engineer whose career in sound for motion pictures and broadcasting included doing the technical part of President Franklin D. Roosevelt's "fireside chats," died Wednesday in Guadalajara, Mexico.

Mr. Coar was the founding director of what is now the U.S. Joint House and Senate Radio-Television Facility from 1935 until retiring in 1973.

His experience went back to the early days of radio and television and employment by the Bell Sound Lab in Hollywood and the Radio Corporation of America, while with RCA he went to Washington to install recording equipment for Federal Communications Commission hearings.

Mr. Coar developed a service for members of Congress in the late 1930s, recording their voices for distribution to radio stations in their home districts. Assisted by his wife, Helen, he operated with his own equipment and used makeshift studios in made-over storage rooms in the basement of the Senate Office Building.

When TV came along, and after the service became highly popular with members of Congress and residents, Congress bought out Mr. Coar's business in 1947 and established it as a service of the House and Senate.

Mr. Coar continued to advise members on how to present their voices and faces to the voters. He instructed many of them in radio and TV delivery, helped arrange the format of their shows, and even at times served as the interviewer or as the moderator of panel shows which he helped them organize, sometimes pressing reluctant newsmen into role as panelists. He was the first to televise programs from Washington to New York City and was commentator on those shows.

Since taken over by the Congress, the studios have been enlarged and have become much more elaborate, with equipment that Mr. Coar—as a professional—certainly must have envied.

Announcement of Mr. Coar's death to the House and Senate, which probably will take place today, is expected to evoke many tributes from members who were assisted by him over the years.

Mr. Coar, a native of Farmington, Maine, studied at Lafayette University and Columbia University School of Engineering at night. He worked as an installer of electronic equipment for the New York Telephone Co. and before that was with the New Jersey Power & Light Co. at Summit, N.J.

Survivors of Mr. Coar, who established a home in Phoenix in 1960, include his wife, Helen B., of 64 E. Columbus; a son, Robert G. of Phoenix; three daughters, Mrs. Helen Ralls of Sacramento, Calif., and Mrs. Gall Murdock and Jacqueline Coar of Phoenix; and three grandchildren.

Memorial services in Phoenix will be announced later.

**INDUSTRY INFLUENCE OVER FEDERAL REGULATORY AGENCIES**

Mr. HUMPHREY. Mr. President, on August 3, 1973, I introduced Senate Resolution 160, cosponsored by 13 of my colleagues, proposing the establishment of a temporary select committee of the Senate to study and investigate Federal regulatory agencies.

The resolution sets a schedule calling for a report and recommendations from the committee by January 20, 1976.

In remarks at the time of introduction of this resolution, I listed two central questions to be answered by this study: The extent to which the executive branch has gained control and influence over the operations of regulatory agencies, and the extent to which the industries subject to regulation have come to influence the agencies.

I have spoken at length in the past on the subject of executive intrusion into regulatory agency operations. Today I wish to pursue further the issue of industry influence over the agencies and then to discuss possible reforms.

There have been numerous published reports of the phenomenon of regulator becoming subject to the regulatee. One that must stand among the most revealing is an article written by Nicholas Johnson, who at the end of 1973 concluded 7 years as a Federal Communications Commissioner. The article was published in the March 1971 issue of the Georgetown Law Journal, while Mr. Johnson was still on the FCC.

Mr. President, I wish to summarize the major points on the subject of industry domination of regulatory agencies, as raised by Mr. Johnson in his article, entitled "A New Fidelity to the Regulatory Ideal."

The author asserts that several reasons can be found for industry domination of the agencies.

**INDUSTRY RESOURCES AND INFORMATION**

First, the industries are in command of massive financial resources, political influence, and manpower. How can the staff and resources of the Federal Communications Commission, for example, be compared to those of the Nation's communications industry, which when only the major broadcasting corporations and the telephone communications complex are considered together, constitute a major element of the Nation's annual economic output?

Second, as if the size of the industries under regulation and the resources they can command were not enough to overwhelm the agencies, Mr. Johnson observes that in addition the agencies are themselves understaffed and underbudgeted to do their work effectively.

Third, as in so much of our way of life today, information is the key to effective operation of the agencies. Yet, through shortages of staff and budget the agencies are often incapable of efficient, timely information-gathering themselves. Their solution is too often to rely on the industries they regulate to provide the information on which decisions are based.

As we have seen in the energy crisis, wide discrepancies can occur as Govern-

ment is forced to rely on industry to supply data on such factors as production volume and supply of resources, as the basis for deciding how to regulate them. Many of us in Congress have been shocked by the discovery that we were hamstrung in our decisionmaking attempts, because we were virtually at the mercy of industry statistics on energy resources against which there were no reliable, independently gathered facts for comparison.

Yet, this is precisely the situation in which regulatory agencies have all too often had to operate on a daily basis for years.

**LIMITS ON PUBLIC INVOLVEMENT**

A fourth fault Mr. Johnson finds with current regulatory agency operations is that they lack significant provision and encouragement for citizen participation.

The public also lacks financial, technical, and manpower resources to counter the strength of industries in the regulatory arena. Further, the procedures of the agencies are complex and technical, beyond the comprehension of the ordinary layman. Worse, they are conducted in a manner that barely pays lipservice to the idea of public conduct of public business.

In reality, notices of proceedings and related information are issued in such a way as to make a mockery of the term "made public." These notices, rather, are issued in a form that seems calculated to assure that only Washington lawyers will—first—find them, and—second—be able to interpret their meaning. Further, the news media and interested citizens are hampered by legal limits on access to agency information.

If, as Mr. Johnson points out, the agencies conduct their business out of the scope of normal public vision, they certainly show little inclination to encourage public participation in their proceedings. It is an easy matter to thumb through records of recent agency hearings and find great masses of statements and testimony by industry spokesmen, but little expression of the public viewpoint, even in these days of consumer advocacy.

**POLITICAL INFLUENCE**

Finally, there is the political power and influence of the industries being regulated. There are, by one count, more than 1,500 advisory bodies assigned to work with the regulatory commissions of the Federal Government. And who tends to dominate these bodies, which can and do have great influence over the commissions and agencies? Industry, of course. And, Mr. President, a large number of commissioners themselves come from the industries they are appointed to oversee.

The rationale for this is that you must turn to industry to find experts conversant with the subject matter before the Commission. However, this means of acquiring such specialized capabilities can frequently be at the expense of assuring adequate representation of the public interest.

Mr. Johnson refers to what he calls "the subgovernment phenomenon," which further tends to build bias into the agency operations. The "deferred bribe" represents a blatant form of this

phenomenon. It is well-known, observes the author, that the industries being regulated, and their law firms, trade associations and industry publications, tend to recruit personnel from the ranks of agency staffs, as well as practicing job-swapping among their own ranks. This results in an incestuous relationship in which a young lawyer on one of the Federal agency staffs is unlikely to go too far toward offending anyone in the industry he is helping to regulate, if he is concerned with his future job prospects in that industry.

#### AGENCY LONG-RANGE PLANNING INADEQUATE

Mr. Johnson raises other criticisms of present agency operations, particularly in reference to the FCC. He observes that there is a shameful lack of long-range policy planning, with the result that decisions tend to be made "ad hoc," without the guidance of broad, planned, forward-looking policies. Thus, the FCC seemed almost caught by surprise by such technological innovations as cable television and communications satellites, for example.

Finally, it is Mr. Johnson's opinion that the agencies tend, consciously or unconsciously, to react unfavorably when reform movements do crop up. And one of the favorite tactics is administrative delay. The public becomes aware of a crisis involving an agency's functioning. An investigation is ordered and the news media carry reports of the crisis, the attending controversy and the outcry for reform.

Almost without exception, the agencies and industries have been able to weather these storms simply because time is on their side. The storm always abates if they wait long enough.

Mr. President, I have only outlined one critic's observations on the weaknesses of the present regulatory system as they reflect the influence of the industries under regulation.

#### PARTISANSHIP IN APPOINTMENTS

The influence of the executive branch further subverts the original ideals of the regulatory system: The protection of the public interest through independent, quasijudicial bodies functioning as an arm of the Congress.

Mr. Johnson points out in his article that the present administration has openly stated that "the hallmark of its appointment policy is 'political emphasis,'" which the author suggests operates "perhaps at the expense of expertise, independence and diversity of views" in appointments to regulatory agencies.

He goes directly to the point with his comment that—

For an agency which must perform in a non-partisan way in the heart of the political process, it is disturbing that partisanship enters into the appointment of its members.

We should be particularly concerned about an appointment, where political acceptability and ambition are combined with a personal bias toward the industry which the appointee will be responsible to help regulate. We must avoid the bias that what is good for the industry is good for the general public.

Mr. President, I suggest that this philosophy, which I call the General Bullmoose theory of Government regulation, is all too pervasive and is but one reason why the Senate needs to investigate fully the operations of the regulatory agencies and produce solutions to the problems such an investigation is certain to reveal.

#### RECOMMENDATIONS FOR REFORM

Cries for reform have sounded for years. The reformers have taken many approaches, ranging from complete dismantlement of the agencies to strengthening them and increasing their independence.

We are all familiar, I am sure, Mr. President, with the proposals a few years ago of the so-called Ash Council, the President's Advisory Council on Executive Organization. In 1971 this council proposed removing the judicial powers from the regulatory agencies and creating a new court to handle this aspect of their work, while regrouping the agencies under four superagencies, each with a single head.

Perhaps some of the proposals of the Ash Council deserve consideration. But, on balance, I find them lacking in the one major aspect that needs urgent attention from the Congress—restoration of the ideal of protecting the public interest as the primary concern of the agencies.

Mr. President, shortly after the Ash Council announced its proposals, Mr. Johnson's article appeared in the Georgetown Law Review.

An able and dedicated spokesman for the public interest, Mr. Johnson has offered some of the most constructive suggestions for reform of the FCC, many, if not all, of which should also be considered for application in reforming the other regulatory agencies.

In his article, Mr. Johnson offered a fourfold set of solutions to the weaknesses and biases that afflict the regulatory agencies.

He suggests that the Ash Council itself reflected the same bias that is a major problem with the agencies. Its five members were all businessmen, and their proposals seem inclined toward benefiting the business community and particularly businesses regulated by the Federal agencies, but to the virtual exclusion of consumer interests. They emphasized efficiency in their report. They would, in short, make the regulatory agencies function in a manner which one might describe as "businesslike," which in this case is not necessarily a favorable term.

Mr. Johnson suggests that the agencies, the ideals behind their establishment, and the framework in which they have been organized, are sound at base. But they have lost sight of their initial public interest purpose. Fundamental reforms are required to revive and strengthen that purpose.

But the reforms proposed by then-Commissioner Johnson do not require departure from the essential concepts of regulatory agency functions and ideals. Rather they are aimed at restoring the regulatory system to the form and objec-

tives envisioned when it was first established.

As Mr. Johnson so aptly states in his article:

There is no known substitute for a strong commission properly imbued with a firm legislative mandate and vigorous powers to prosecute, legislate and judge.

#### APPOINTMENTS SCREENING, CITIZEN ADVOCATES, AND POLICY PLANNING

The Johnson reforms would, first, provide greater independence of these agencies from the industries they regulate and from the executive branch. A system of screening potential commissioners by public-interest organizations, similar to the process by which the bar associations provide advice and counsel on appointees to Federal legal posts, as well as improved pay and better staff assistance for regulatory agency members, are means by which this independence might be increased.

Second, the author proposes steps to increase the role of citizen-advocates in the agency decisionmaking processes. These include involving public service lawyers in the review of agency cases, and issuing well-publicized invitations to citizen lobby organizations and the public at large to voice their opinions.

Establishment of long-range policy planning as a daily activity within the agencies is a third proposal. Modernization of antiquated management systems is a companion recommendation. Economists, program planners, and systems analysts are among the types of professionals Mr. Johnson recommends adding to agency staffs, to end "ad hoc" decisionmaking, and to cure the lack of a soundly devised framework of policy planning as a guide.

#### CONGRESSIONAL AND JUDICIAL OVERSIGHT

Fourth, he recommends steps to assure increased, regular review of agency activities by the public and other branches of Government, including the Congress and the judicial branch.

To achieve this latter goal, according to Mr. Johnson, would require more rigid adherence to the principle of antisecrecy in agency operations, both in meetings of commissions and their supporting bodies, and in making information available to the news media and public. Congress should make oversight of regulatory agency activities a routine and automatic undertaking, and judicial review should be greatly strengthened.

The author suggests a need to expand the concept of consumers' standing under law, to challenge agency rulings through court procedures and related legal means. A related simple but basic reform would be to insist that agencies meet the requirements of their legislative mandate, which spells out the objective of protecting the consumer.

#### REGULATORY AGENCY INITIATIVES

Mr. Johnson recommends that the agencies should themselves take the initiative in encouraging and seeking out consumer viewpoints on policy and decisionmaking. Factfinding tours are a device he suggests as useful. He also sees great need for enlarging agency efforts to investigate and act upon complaints

from the public. The agencies should, in the author's view, assist consumers in obtaining quality legal assistance, and advice, to assist the public in making its voice heard by the agencies in their proceedings.

Mr. President, intriguing and seemingly worthy as these suggestions seem, it is impossible at this time to judge their merits. The reason is that we simply do not have sufficient information as a legislative body to decide what should be done. All we know for sure is that something needs doing and soon—reform is long overdue, as we should have realized by now from the troubles in the railroad industry and their apparent connection with inadequacy in Federal regulation.

We should have learned the same lesson when we recently discovered our inability to make intelligent, independent judgments in dealing with the energy crisis, because the Federal agencies concerned with this field depend almost exclusively upon industry sources for information on such factors as fuel supply and production.

Fears have been expressed publicly that regulatory failure could produce a "flying Penn Central," a crisis in our airline industry.

#### CONGRESSIONAL ACTION URGENT

Mr. President, the urgency of the matter is compounded by the speed with which our society and its technology are changing. Our regulatory agencies are still operating according to concepts that have been or are becoming outmoded by change. The agencies are forced to cope helter-skelter with conditions never envisioned when the agencies were established. Examples of the impact of technological change include communications satellites and cable television, containerized shipping in interstate and international commerce, and new power and energy demands as well as potential resources.

In considering this set of conditions and problems, Mr. President, we must keep in mind that it often has been observed that no aspect of Government touches so many American lives and fortunes, with the possible exception of taxes, as the Federal regulatory system.

I urge prompt action by the Senate on Senate Resolution 160, so that the Senate can rationally and effectively address the problems associated with the broad scope and complexity of this regulatory system. The public interest demands that comprehensive reforms in regulatory agency operations be launched without further delay.

#### TRIBUTE TO STEWART McCLURE

Mr. JAVITS. Mr. President, I am pleased to join my distinguished colleagues in this tribute to Stewart McClure who retired at the end of last year after some 30 years of Government service during which time he served as staff director and as chief clerk of the Committee on Labor and Public Welfare, of which I am the ranking minority member.

I first had an opportunity to become acquainted with Stew McClure when I joined the Committee on Labor and Public Welfare in the 86th Congress in 1959. I have since come to appreciate his devotion to the committee, the resources of his experience and knowledge, and his willingness to be of service to all Members on both sides of the aisle. On behalf of myself and my colleagues of the minority, I wish Stew McClure well for the years ahead. He merits our appreciation and our good wishes.

#### EXTENSION OF THE GI BILL

Mr. ROTH. Mr. President, I am concerned about the impending expiration date on May 31 this year of the GI bill education training benefits for veterans of the post-Korean conflict period and Vietnam era, and for servicemen on active duty. My own experience as a veteran of World War II has convinced me of the benefits of the GI bill.

On January 4 last year, Senator INOUYE, my distinguished colleague from the State of Hawaii, introduced S. 147 to amend chapter 34 of title 38, United States Code, to extend the time period within which veterans may be entitled to educational assistance under such chapter after their discharge or release from active duty. The bill is still pending in the Senate Committee on Veterans' Affairs. I understand that hearings will be scheduled in the spring.

I am seriously concerned that during hearings and debate, the provisions of the current law will lapse, resulting in the termination of vital educational programs affecting thousands of veterans.

Many of the veterans who are now enrolled in full-time or part-time programs, either in daytime or in the evenings, are holding jobs which may soon be adversely affected by the energy shortage which is already having a ripple effect throughout our economy, thus further impinging upon employment. The critical need for reeducation and retraining is evident. This bill should be given high priority by this distinguished body.

#### "LET'S STOP KICKING AMERICA" EDITORIAL DESERVES WIDE CIRCULATION

Mr. BAYH. Mr. President, a dear friend of mine and leading citizen of Michigan City, Ind., Mr. Bud Ruby, was so impressed with a Canadian editorial entitled "Let's Stop Kicking America" that he had it transcribed and sent it to me. I agree with Bud that this view of America's place in the family of nations needs widespread circulation. It is the kind of shot in the arm that we need every now and then, a reminder of the greatness of our country.

True, we have faults. But we are one of the few nations where the people have an opportunity to correct those faults. I have been around the world and can say, quite confidently, that the United States is still the very best place of all to live. So let us stop kicking America—and let us

keep on trying to make a great nation even greater.

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

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

#### LET'S STOP KICKING AMERICA

The United States dollar took another pounding on German, French and British exchanges this morning, hitting the lowest point ever known in West Germany.

It has declined there by 41 per cent since 1971 and this Canadian thinks it is time to speak up for the Americans as the most generous and possibly the least appreciated people in all the earth.

As long as 60 years ago, when I first started to read newspapers, I read of floods on the Yellow rivers and the Yangtze. Who rushed in with men and money to help? The American did.

They have helped control floods on the Nile, the Amazon, the Ganges and Niger.

Today the rich bottomland of the Mississippi is under water and no foreign land has sent a dollar to help.

Germany, Japan, and to a lesser extent, Britain and Italy, were lifted out of the debris of war by the Americans who poured in billions of dollars or forgave other billions in debts.

None of those countries is today paying even the interest on its remaining debts to the United States.

When the franc was in danger of collapsing in 1966, it was the Americans who propped it up and their reward was to be insulted and swindled on the streets of Paris. I was there, I saw it.

When distant cities are hit by earthquakes it is the United States that hurries to help . . . Managua, Nicaragua, is one of the most recent examples. So far this spring, 59 American communities have been flattened by tornadoes. Nobody has helped.

The Marshall Plan, the Truman Policy, all pumped billions upon billions of dollars into discouraged countries. Now newspapers in those countries are writing about the decadent warmongering Americans.

I'd like to see one of those countries that is gloating over the erosion of the United States dollar build its own airplanes.

Does any other country in the world have a plane to equal the Boeing Jumbo Jet, the Lockheed Tristar or the Douglas 10?

If so, why don't they fly them? Why do all international lines except Russia fly American planes? Why does no other land on earth even consider putting a man or woman on the moon?

You talk about Japanese technocracy and you get radios. You talk about German technocracy and you get automobiles. You talk about American technocracy and you find men on the moon, not once but several times . . . safely home again.

You talk about scandals and the Americans put theirs right in the store window for everyone to look at. Even their draft dodgers are not pursued and hounded. They are here on our streets. Most of them unless they are breaking Canadian laws, are getting American dollars from Ma and Pa at home to spend here.

When the railways of France, Germany and India were breaking down through age, it was the Americans who rebuilt them. When the Pennsylvania Railroad and the New York Central went broke, nobody loaned them an old caboose. Both are still broke.

I can name to you 5,000 times when the Americans raced to the help of other people in trouble.

I don't think there was outside help even during the San Francisco earthquake.

Our neighbors have faced it alone and I'm one Canadian who is damned tired of hearing them kicked around. They will come out of this thing with their flag high. And when they do, they are entitled to thumb their nose at the lands that are gloating over the present troubles.

I hope Canada is not one of these.

#### BILL OF RIGHTS FOR THE MENTALLY RETARDED

Mr. JAVITS. Mr. President, I have long been concerned with the need to guarantee humane care and treatment to the mentally retarded including the development of alternative programs of community care, in place of a lifetime of confinement in an institution. To achieve that goal, I have pledged myself to work for the enactment into law of my "Bill of Rights" for the mentally retarded.

A recent editorial by WBEN-TV of Buffalo, N.Y. entitled "More Mercy Needed for Mentally Ill and Retarded" dramatically illustrates the need for this bill. The editorial urges us to move forward and provide the necessary facilities to enable people to return to communities where they can live productive lives to their fullest potential.

I commend this WBEN-TV editorial broadcast to the attention of my colleagues, and ask unanimous consent that the WBEN editorial be printed in the RECORD.

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

##### MORE MERCY NEEDED FOR MENTALLY ILL AND RETARDED

Government in recent years has wisely turned from treating mentally ill and retarded persons as if they were something less than human.

The hell holes in which such people were once forced to live have largely been replaced by more humane hospitals and treatment centers, where the goal has become returning people to communities where they can live productive lives to the extent of their capabilities.

In the abstract, society has approved this change. Most people now recognize, at the intellectual level, that most mentally ill or retarded people present a danger to no one. But when this becomes personal—as it does when people are asked to allow those with even minimal difficulty or illness to live in neighborhood group or halfway houses—intellect is overruled by emotion.

Despite sound evidence that many retarded people do not need institutional care and could support themselves if living in households providing a degree of supervision, few neighborhoods have shown willingness to allow these so-called "different" and "dangerous" people living room.

Several recent court tests have found that neighborhood hostility is not a sufficiently compelling reason for allowing a community to keep out group homes or halfway houses. The due process and equal protection provisions of the Constitution require more substantial reasons than fear and prejudice.

The sad awakening to what actually constitutes mental illness or retardation often comes only when people encounter these situations in their own families. Until the public, however, is willing to douse its fear in knowledge, it remains true that "man's inhumanity to man makes countless thousands mourn."

#### RULES OF THE COMMITTEE ON AGRICULTURE AND FORESTRY

Mr. TALMADGE. Mr. President, section 133B of the Legislative Reorganization Act of 1946, as amended, requires that the rules of each committee of the Senate be published in the CONGRESSIONAL RECORD not later than March 1 of each year. The following are the rules of the Committee on Agriculture and Forestry:

##### RULES OF COMMITTEE ON AGRICULTURE AND FORESTRY

1. Regular meetings shall be held on the first and third Wednesday of each month when Congress is in session.

2. Voting by proxy authorized in writing for specific bills or subjects shall be allowed whenever a majority of the Committee is actually present.<sup>1</sup>

3. Five members shall constitute a quorum for the purpose of transacting committee business: *Provided*, That one member shall constitute a quorum for the purpose of receiving sworn testimony.<sup>1</sup>

#### MY CONFLICT OF INTEREST

Mr. DOMENICI. Mr. President, even the humblest freshman Senator knows the time-honored customs and traditions of this great body, of which there are so many to guide our conduct and our etiquette.

One is that our distinguished Members shall vote only "present" when the yeas and nays are called on an issue which has the prospect of affecting their personal well-being, especially their bank accounts.

This long-accepted position, I must confess, causes some problems for me.

They arise, not because I feel the custom is wrong, for I do not. Nor am I constrained because my business interests are so widespread; in fact, they are relatively humble.

But I do have one complicating factor most of my distinguished colleagues do not have; the size of my family, which I believe to be the largest of any of us who occupy this Chamber.

There are eight small Domenicis at home, plus a normal complement of two parents—a truly large total, almost a horde by comparison with the small families which have now become the fashion and the mode.

So perhaps, on Thursday last, when we voted to increase the deduction against income tax each taxpayer is entitled to claim for himself and each of his dependents by \$100, I should have refrained from voting and voted myself only as "parent."

Even the least mathematically inclined of our Members can quickly calculate that this change would affect my financial condition by a full \$1,000 worth of additional deductions each year.

But I would observe, in the light-hearted mood which animates this statement, that I was much inclined, as a

<sup>1</sup> For further restrictions with respect to proxies and quorums in the reporting of measures and recommendations, see Section 133(d) of the Legislative Reorganization Act of 1946, *supra*.

father and bill-payer, to shrug my shoulders and ask myself, "What does this really have to do with the day-to-day expenditures of my true-life family?"

Yes, it is true that the proposed improvement would have increased our deduction by something just over 15 percent—almost enough to reflect the inflation of our times.

But in the harsh realities of bookkeeping and bank balances, we all know only too well how little even \$750 worth of deduction per dependent has to do with anything factual, like the cost of butter—or beans. My wife, who is not an extravagant mother, can consume at least one of those deductions just getting our family equipped for back-to-school.

So, like all taxpayers, I shall only smile faintly through my pain, send in my return in a spirit of bravery—and be grateful to the Almighty that the love and affection in our crowded home cannot be diminished, either by the actions of Congress in the use of its taxing power or by our economy, with its cries for "more" and "more" as the inflationary spiral continues.

This, for those of us whose families are large, is probably the most meaningful of "deductions" in an otherwise strange world.

#### AN ADVANCED TECHNOLOGY THRUST NEEDED

Mr. MOSS. Mr. President, this country can use technology to live better while consuming less of our resources. However, if we are to achieve this goal, a strong, well directed national advanced technology thrust is needed. Many approaches have been discussed in the past including a Cabinet-level department of technology, an idea which certainly merits increased study.

An article in the Washington Post of January 27, 1974, discussed an important problem in achieving adequate high level coordination of the Federal Government's vast expenditures in advanced technology.

The Post article entitled "Lack of Science Adviser to Nixon Hit" is of such importance that I ask it be printed in full in the RECORD.

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

##### LACK OF SCIENCE ADVISER TO NIXON HIT

(By William Stockton)

Early in 1973 President Nixon abolished the post of presidential science adviser at the White House and disbanded the Office of Science and Technology.

The task of advising the President about science and technology went to H. Guyford Stever, director of the National Science Foundation, a federal agency that funds scientific research with an annual budget of about \$570 million.

President Nixon's action worried many scientists, but most took a wait and see attitude.

Now, in the face of the energy crisis and the distractions of the Watergate scandals, there is an increasing clamor among the nation's scientific leadership for a presidential science adviser of greater rank and voice.

Some scientists are concerned there is insufficient high-level coordination of the federal government's vast expenditures on research and development. There also is concern Stever is being ignored in important decisions that require technical expertise not now available in the White House.

Congressional critics suggest Stever has little influence in the administration. They contend he is reluctant to press ideas or enter controversial areas where sound advice might help resolve complex issues.

Stever dismisses such criticism.

"I've found it very easy to get our views, suggestions and recommendations to the top people in the White House," he said in an interview. "I have all the access I need to the President's top advisers. They listen quite a bit," Stever said.

Concern became more visible last fall when a committee of 23 presidents of scientific societies with a combined membership of 300,000 scientists called for a cabinet rank science adviser or a cabinet level department of science and technology.

"It is essential that all levels of government have a continuing source of scientific and technical information and advice," the committee said. "Without more top level coordination of federal efforts in science and technology," it warned, "solving problems such as energy and food shortages would be more difficult."

Officials of the American Chemical Society, a professional organization of 110,000 chemists and chemical engineers, have been particularly critical.

"It is now starkly clear that the President has no one within his office or cabinet on whom he can rely for understanding and marshaling the forces of technology and for meeting the new crisis threatening the quality of life . . ." Robert W. Cairns, chemical society executive director, wrote in a recent issue of the society's magazine.

"Good government now requires experienced technology leadership . . ." he wrote. ". . . the termination of the Office of Science and Technology brought to a sudden end a useful experiment that might have developed a greatly needed technological sophistication in the White House."

Carl Frey, executive director of the Engineers Joint Council, which represents several engineering societies, feels the distraction of the Watergate scandals has prevented the Nixon administration from continuing the restructuring of the science advisory machinery begun last year with the end of the Office of Science and Technology.

"There is no question they're not devoting enough attention to this," he said.

The President's science adviser can't be expected to fight for his ideas when he also must wear the National Science Foundation director's hat, contends Rep. Mike McCormack, (D-Wash.), who was a research scientist before being elected in 1970.

"There is a built-in conflict now. It's completely unrealistic to expect the director of NSF, who must depend on the White House's good will for his budget, to fill the role of science adviser," McCormack said.

Stever agrees there is a conflict, but adds: "I don't consider it a major problem."

Stever doesn't think the science adviser should push ideas or explore controversial areas uninvited.

"My philosophy is that we are an information agency. I want our team to explore the problem, get the best possible views and give them to the people who make policy," he said.

NSF staff members say Stever emphasizes long range science advice and consciously steers away from short term problems.

Yet when President Nixon last summer ordered a major study to outline a \$10 billion

five-year energy research and development effort, he named Dixy Lee Ray chairman of the Atomic Energy Commission, to direct it. Several NSF staff members participated, however.

Because of Sputnik during President Eisenhower's administration "there was a need to bring science right to the top in the White House," Roy L. Ash, director of the Office of Management and Budget, said in an interview in September.

"Now science and scientific points of view are represented throughout government," he said, "There isn't a need to bring the scientific point of view directly into the President's office. It gets there everyday."

#### THE PACE INSTITUTE AT COOK COUNTY JAIL: REPLACING REVENGE WITH REHABILITATION

Mr. PERCY. Mr. President, it has been my pleasure and my honor to work very closely over the years with the PACE Institute in the Cook County jail. I have watched as it grew from one man's dream into a reality which is improving the lives of all of the people of Cook County. The dedicated founder of the program, Rev. John Erwin, the tireless chairman of the Committee of One Hundred, Oscar Getz, the generous benefactor, Ray Kroc, as well as hundreds of volunteers who contribute their time and money to this unique program have demonstrated the positive aspects of enlightened and effective corrections programs.

PACE has taken prisoners at the Cook County jail, given them fundamental educational and vocational skills, and provided them with the feeling that other people care enough to spend time with them. The results of this program have included dramatically reduced recidivism rates for those who go through the program, and a heightened sense of involvement and caring for all of those who are connected with PACE.

The business community has responded exceptionally well to the challenge of PACE, providing expertise, money, materials, and personnel. One of these companies, Inland Steel, has supplied the building materials which house the PACE Institute on the grounds of the jail. In the recent publication of the company, Inland, a fine article describing the PACE Institute appears. I ask unanimous consent that this article be printed in the RECORD.

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

#### REPLACING REVENGE WITH REHABILITATION (By Van Lesley)

There are 2000 prisoners in the dismal Cook County Jail on Chicago's Southwest Side—more than in many state prisons. Many of these prisoners have not yet been tried or convicted; too poor to afford bail, they are waiting out long months until their cases come up on overcrowded court dockets. Those already sentenced are short-termers. A year is the maximum here.

The men serving time in Cook County Jail are the individual realities behind that abstract phrase, "crime in the streets." They are the robbers, the muggers, the burglars, the pursesnatchers, the junkies—the ones who got caught. Most of them are young—under 30—and black. And most, upon re-

lease from jail, will return to the city's ghettos and resume lives of poverty, violence, and failure.

What does their jail sentence accomplish? For many, it is just a form of occupational hazard. In grim reality, three out of four will be back behind bars on new charges within 90 days. As one jail staffer puts it, "These guys aren't even good at being bad."

But there are prisoners at Cook County Jail who want to go straight, who, despite having made one or two, or a number of mistakes, want to break out of the downward spiral of the crime cycle—to make a new life for themselves within society rather than outside of it. For them there is a unique program at Cook County Jail designed to help them upgrade their educations and start learning the rudiments of a trade so they can find a job on release. Perhaps most importantly, it provides a format for them to think through their attitudes toward society and their own lives. The program is called PACE Institute (PACE is an acronym for Programmed Activities for Correctional Education). And, in the words of Winston E. Moore, reform-minded Executive Director of the Cook County Corrections Department it offers "rehabilitation, not revenge."

Prisoner training programs are nothing new, of course, but they have been more the province of state and federal prisons than of county jails. Nationally such programs range from classroom education to work-release; in the latter, prisoners leave prison in the morning for regular "outside" jobs and return to their cells after work. Not all efforts are that progressive. A few years ago one prison warden said with a straight face that duty in the prison laundry had a rehabilitative effect because it instilled regular work habits. A chain gang would do the same.

PACE is unique in a number of ways. It is housed in two modern, air-conditioned buildings sandwiched between cell blocks—the only such educational facility among county jails in the U.S.\* Most importantly, the recidivism rate for men completing the PACE program is just about the exact reverse of that for the general jail population. This means that about one out of every five PACE graduates ends up back in jail—a dramatic switch from the general recidivism of 70 to 80 per cent.

(A word of caution about these statistics is in order, though. PACE trainees are volunteers and are carefully screened before being admitted to the program. Applicants who don't seem sincere about wanting to change their lives are kept out on the grounds that they would probably interfere with the achievements of the more seriously inclined. So PACE trainees probably include a high proportion of those men who would not be back in jail anyway. As one sociologist has said in reference to such "good risk" volunteer programs in general, "Their (recidivism) rates would be low whatever program you placed them on—work-release, standard parole, or running the wheel at Las Vegas.")

But PACE does help those who want to go straight, many of whom are multiple offenders who have spent more of their adult lives inside jail than out. As an example, consider one recent PACE trainee. First arrested at the age of 14 for robbing another boy, he was involved at 15 in a gang war that left one youth dead. At 18 he was arrested for robbery, theft, and possession of narcotics, and given a sentence of one year on probation. He started using heroin. At 20 he was arrested for armed robbery and spent six months in Cook County Jail. At 21 he was back on another six-month sentence, for possession of marijuana.

"I looked at myself, sitting there in that cage, and decided something had to change," he said a few months ago, shortly before his release, "so I got in PACE. Now, when I get

out this time, the street will be the same, but I'll be different."

How different? For one thing, he has more confidence in his ability to make it. His capacity for reading and fundamental mathematics was greatly improved through PACE training. Furthermore, he had a job upon release, as a machine operator at a suburban manufacturing plant. He is now being helped "on the street" by PACE's intense follow-up program. He also formed a realistic appraisal of himself. "PACE can get you on the right level and give you a start," he says, "but you have to do the rest." Such personal honesty may be the first step in making it.

"As a result of completing the PACE program, he succeeded at something worthwhile, perhaps for the first time in his life," says the jail's senior Protestant chaplain, the Rev. John R. Erwin, who founded PACE. "And that is our one message to these men: 'You have a right to succeed.'"

Some 400 men have been in PACE since Rev. Erwin started a small experimental group five years ago. This year, with the opening of its second building, PACE handles 120 trainees at a time.

"Our trainees are typically in their twenties and, on the average, have about a fifth-grade ability to read and write," says PACE's 34-year-old director, Jack Solomon. Trainees spend an average of five months in the PACE program, although there is no set length of time, other than an admission requirement that the prisoner have at least four months remaining on his sentence. "We can't really help anyone in less time than that," Solomon explains.

PACE strives for total involvement of its trainees. When the volunteer inmate is accepted, he is moved away from the general jail population to a special tier of cells housing other PACE trainees. His scholastic aptitude and achievement levels are determined through batteries of tests. He is aided by PACE's three dozen staff members in determining what goals he wants to set and how best to achieve them.

Each morning, trainees sign "contracts" for six hours of educational activity that day. Then many go to a kind of combined group therapy and bull session, called Zoom, for lively discussions of their attitudes, aspirations, and values.

Basic education classes rely heavily on modern teaching machines utilizing materials prepared specifically for PACE, which permit individuals to progress at their own speed. Educational material runs the gamut of the "three R's," from beginning reading to trigonometry. Since the majority of PACE trainees are school dropouts or "under-achievers," particular emphasis is put on upgrading their reading skills, since reading is the key to mastering most other subjects. What they have to read is important, too. A lot of material by black writers is used, since these students won't relate to white-suburbanite textbooks. Another part of the day is actually spent in federally-funded pre-vocational instruction in such areas as welding, carpentry, electronics, and the like. "It's not our purpose to train men for specific jobs," says Solomon, "but to guide them toward areas where they may follow up when they're released."

Release by no means ends the trainees' involvement with PACE. "We're the only program in the nation with a complete follow-up on the street," says Solomon. "Our field workers maintain contact with released trainees for two years, helping them adjust to a new life." PACE may help the trainee find a job, or get into a more comprehensive job-training program, or even get back into school. Some PACE graduates are now in federally-funded job-training programs; others are at work at a variety of occupations, as carpenters, mechanics, machine operators, salesmen. Some even have gone on to college on scholarships located for them through

PACE, and one man is now working on a master's degree in psychology.

While PACE's goal is to help its trainees keep out of jail in the future, the program also has brought another group of people to Cook County Jail for the first time. The program relies on a corps of volunteers—mostly white middle-class suburbanites—who help trainees with everything from reading to carpentry. A number of Chicago's business leaders donate not only money but time to PACE. Men such as Ray A. Kroc, Chairman of McDonald's Restaurants, and Oscar Getz, Chairman of Barton Brands, are frequently seen at PACE. Senators Charles H. Percy and Adlai E. Stevenson, III, have been guest speakers at PACE.

According to Solomon, "People helping people is the real reason for our success. Every guy in this program can relate to somebody on our staff, and that is the important thing."

All these machines and equipment that we have are fine, but the important thing is our staff and our volunteers, people who help a guy find out what he wants to do, and help him do it."

All of this takes money, of course, PACE's budget this year is \$663,956. Only a bit more than half of this comes from state or federal funds. The rest, some \$275,000, is raised from private sources—individuals, corporations, foundations, churches. PACE has a blue-ribbon Committee of 100, a Who's Who of Chicago leaders—including Inland's President, Michael Tenenbaum—for fund-raising.

Among organizations giving money to PACE is the Inland Steel-Ryerson Foundation, the company's charitable arm. "PACE Institute is just one of 64 organizations to which we contribute in what might broadly be called the field of urban and minority programs," explains Claude J. Peck, Jr., Secretary of the Foundation. Many of these programs—some of which are highly experimental—have gained Foundation backing only within the past five years.

In 1968 the Foundation's board of directors decided to increase support of programs striving for solutions to the urban problems being manifested in major social upheavals. While the Foundation had for years contributed to a number of well-established agencies working in this area, such as the Urban League, it was decided to broaden Inland's involvement by supporting new programs, some even of a controversial nature. These include such widely differing groups as Aspira and Alse, programs for developing educational potential of Puerto Rican and Latin American youngsters in Chicago and northwestern Indiana; the National Association for the Advancement of Colored People's Legal Defense and Educational Fund for training lawyers in civil rights cases; CAM Academy, a school for dropouts on Chicago's seamy West Side; the Metropolitan Leadership Council for Open Communities, Home Investments Fund, as well as the Contract Buyers League, which assist minority groups in home-ownership, both in Chicago and in its suburbs.

"The separation of urban and minority here is somewhat artificial," Peck explains, "as most of the organizations which we are talking about here include elements of both."

The overall amount of support in 1972 for such programs was about \$160,000, out of the Foundation's total contribution of \$1,200,000. Beyond that, the Foundation gave nearly \$450,000 to 45 United and Community Funds—in areas where Inland employees live—for the support of health, welfare, youth, and human-relations efforts; and an additional \$68,000 to specific agencies.

Another \$157,000 last year went to the support of college scholarships and fellowships. Four-fifths of this helped finance college educations for students under 18 different programs, the largest two of which are for children of Inland employees. Some 170 sons and daughters of Inland people are

currently attending college with Foundation-backed scholarships. The Foundation also supports a number of scholarships tailored for minority-group students.

"Community welfare and education received 81 per cent of our support in 1972," says Inland Treasurer and Foundation President Robert J. Greenebaum, "and our contributions in these two areas this year are at about the same level."

"The Inland Steel-Ryerson Foundation will continue to remain aware of the emerging problems of our society," adds Peck, "and try to support those efforts that offer the possibility of positive change in geographic areas of primary concern and employee concentration. This includes urban and minority programs of proven value and new efforts struggling to cope with the new problems of the cities."

As foundations go, Inland's is not large when compared with such giants as Ford or Rockefeller. To readers jaded by daily headlines about millions and billions of dollars, the amounts of its individual grants may often appear to be small. But the student from a working-class family, for whom college wouldn't be possible without that Foundation scholarship, doesn't look at it that way. And to programs struggling to get started, \$1000 may be more important than 10 times that amount would be once they're established—and they might not make it without such support. PACE, for instance, has received \$11,000 from the Inland Steel-Ryerson Foundation—not a great deal in terms of the program's total budget—but this is only one of more than 30 corporations and foundations on its long list of supporters. In the overall social context, such foundations have become vital links for businesses to refuel money in America through social institutions that are not supported by taxes alone.

The late Edward L. Ryerson, one-time Inland Chairman who initiated the company's first foundation in 1946, summed it up neatly some two decades ago. He said, "A corporation has a civic responsibility to its community which is just as important as the responsibility of the individual citizen." Today, this concept of corporate social responsibility is widely held.

There are of course critics of business foundations, and cynics who see support of urban and minority programs as an attempt to buy off ghetto rage—a figurative "Soul Brother" sign in business's window. But those who directly benefit from such programs, such as the PACE trainee, may hardly know—and properly so—just where the money is coming from. They know, instead, that here at last is some concrete manifestation of concern for their problems, and some evidence at last that they are not really society's outcasts.

#### LEWIS L. STRAUSS

Mr. HATFIELD. Mr. President, I wish to add a few words of tribute to a man I was pleased to call a friend. I refer to Lewis L. Strauss, who died on January 21.

Lewis Strauss was no stranger to controversy, yet we must not allow our recollections of him to focus only on these very visible, and often controversial, times in his life. To do so would be to ignore the numerous very substantial contributions he made on a number of other areas—areas where the country has gained so much from his efforts.

We have heard a great deal recently that the late 1970s and 1980s will witness the fruition and the blooming of atomic power. The germination of this goes back to the early days of the Atomic Energy Commission under the guiding spirit of Lewis L. Strauss. As we move into an era when atomic power provides a safe

alternative to conventional energy sources, we should remember our debt to this man and his goals.

At the memorial service for Lewis Strauss on January 25, 1974, at the Washington Hebrew Congregation, two moving and eloquent tributes were delivered in his memory. All of us in the audience were touched by their comments. One was by Rabbi Joshua O. Haberman, Rabbi of the Washington Hebrew Congregation, and the other by Admiral Arleigh Burke. I call the attention of my colleagues to these two warm and personal comments about Lewis Strauss. I ask unanimous consent that these two tributes be printed in the RECORD.

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

IN MEMORY OF ADM. LEWIS L. STRAUSS  
(By Rabbi Joshua O. Haberman)

"The righteous shall flourish like the palm tree;

He shall grow like a cedar in Lebanon.  
Planted in the house of the Lord.

They shall flourish in the courts of our God.  
They shall still bring forth fruit in old age;  
They shall be full of sap and richness;  
To declare the Lord is upright.

My Rock, in whom there is no unrighteousness."

—Psalms 92.13-16.

GOOD FRIENDS: We have entered this sacred place anxious to share with one another memory of Lewis L. Strauss. This large assembly of men and women of different walks of life, of diverse faiths, of all sorts of authority and competence, reflects the extensive spread of his fruitful life and the wide range of his contact and influence. Because of his brilliant mind, his nobility of character and his uprightness as a man, we are now a community of mourners, each bringing to this hour a measure of affection, of friendship, of respect. It is as though all our hearts had become one heart, filled with loving sympathy for his sorely bereaved household. A link has been broken in the chain of love that bound them together in family union. As Walt Whitman put it, ". . . the best is that which must be left unsaid,"—we shall be unable to express adequately the meaning of his life to those who were dearest to him, the gentleness of his love as a husband, the tenderness of his heart as father and grandfather, the devotion of a brother.

However family, friends or acquaintances might differ in the quality and intensity of their feelings, we are all as one in our appraisal of the stature of the man we lost. We may apply to him the words of King David's lament over the death of one of his ablest generals:

"Know ye not that there is a prince and a great man fallen this day in Israel?"  
—II Samuel 3.38.

Admiral Strauss had the qualities of the authentic leader: vision, daring, tenacity, the princely qualities of leadership. But, matching all these endowments that make for victory and success were the inner spiritual qualities of greatness which produced excellence of character, a life of spotless integrity and honor.

He was princely in his generosity, a compassionate son of the Covenant, whose heart and hand responded readily to the Jewish people's desperate cry for help. Yet, he knew that while charity begins at home, that was not where it must end. And so, he became a philanthropist who showered his beneficence upon all kinds of non-sectarian institutions of learning and healing.

The public career of our departed, his crucial role in one of history's decisive moments, has already been prominently recognized in the press, in contemporary literature and in

the utterances of the nation's highest authorities. To all this I should only wish to add a glance at his inner spiritual core. His Jewish heritage, received from revered parents, ennobled his soul. Words of Hebrew prayers sanctified his daily life. He observed the Sabbath as a day with God. He knew and loved and read and re-read the sacred Scriptures and was proud to be able to study them in the original Hebrew language. He undertook to teach the Bible to his son and, together, they published a private edition of selected Bible portions to mark the boy's attainment of the age of Bar Mitzvah.

He gloried in the ancient Biblical Covenant as the faith of his fathers and accepted its mandates as the spiritual foundations of his life. Characteristically, he asked to be laid to rest in the traditional Jewish manner, with a "tallit," the prayer scarf, wrapped around his shoulders.

Political controversy has projected a public image of this man which unduly accentuates his fiercest fighting capacity. Tough he was, but also gentle, an affable, delightful man of great sensitivity and tact, a man of charm and culture with whom conversation was edification, a man who met his fellow with a warm heart and a cheerful countenance.

His name is linked to the creation of the most awesome weapons system of the ages. He meant it as America's, as the free world's most potent guarantee of liberty and peace. He was one of the fathers of the Atoms-For-Peace program. His heart was bent on peace, not war. A great idea of his, whose time, unfortunately, had not yet come, was a project of international cooperation in the Middle East, the Eisenhower-Strauss De-salting Plan, which could have made the desert bloom with Arabs and Israelis turning swords into plowshares. Symbol of his devotion to "shalom," peace, as a personal ideal, was the provision in his will to smash all firearms in his possession following his death so that no one might say that he inherited a gun from Lewis L. Strauss.

As I think of him, I see him in the image of the 92nd Psalm:

"The righteous shall flourish like the palm tree;

He shall grow like a cedar in Lebanon."

Why like a palm tree or a cedar? asked one of our sages. Because the other, smaller trees soon fade from view as we go past them. But the stately cedars and palm trees are seen long after the others have disappeared. So it is with those who live righteous lives.

Even after the passage of many years, there will stand out in our memory this stately, noble man, with sturdy Jewish ancestral roots, nurtured in the generous soil of America, rugged in character like the trunk of the tree, a straight man of sound fiber and true grain, upright and forthright, not only outstanding but upstanding. Yet, beneath the tough bark of the tree was the living sap of human kindness and above rested the crown of a keen mind, spreading out in numerous branches of knowledge.

As the psalmist said:

"Planted in the house of the Lord,  
They shall still bring forth fruit in old age."

His spirit remained unbroken, down to the last. He never cringed nor cowered. Yes, he was a prince and a great man. We must match his faith with ours and face this moment with the same fearlessness which, throughout the ages, moved our people to say at a time such as this:

"The Lord has given.

The Lord has taken.

Blessed be the name of the Lord." Amen.

MEMORIAL SERVICE FOR REAR ADMIRAL  
LEWIS L. STRAUSS  
(By Arleigh Burke)

We are here today to do honor to the memory of a dear friend and a renowned American—Admiral Lewis Strauss.

Every great nation has been made great by the men that nation has produced. In the history of the two centuries of the United States, it has been given to very few men to make extraordinary contributions to our country and to our society.

Such a man was Lewis Strauss.

We could wish that we might have known young Lewis in those early days when he was formulating his ideals, days when his parents firmly instilled in him appreciation of the privilege of growing up in this land of the free. We can only guess at the lessons he learned in the hard competitive school of salesmanship. Even then the scholar was beginning to appear, for these were times on the road when he was free to read the books he always carried. The goal was always before him—earning enough money to go to college and study physics.

But the first World War was now in progress, and the newspapers in Lewis' hometown of Richmond were filled with the tales of suffering in Belgium, and of Mr. Herbert Hoover who was hard at work to bring the stranded Americans home. President Wilson was calling Mr. Hoover to Washington where he would work without pay.

Young Lewis had saved his money for college, but he decided that instead he would also go to Washington to help Mr. Hoover, and also without pay. He was well received in his Senator's office by the Senator's secretary. His request for a letter of introduction to Mr. Hoover created no problem. One was struck off immediately, and the Senator's name was signed by the secretary.

But even in those days integrity was a way of life for Lewis. The coveted letter was useless in his eyes.

The story of how this young man made his own way into Mr. Hoover's office and into Mr. Hoover's life as advisor, friend and confidant, is only the beginning of a great career.

When World War II loomed, Lieutenant Commander Strauss, United States Naval Reserve, was called to active duty. He early provided an invaluable source of workable ideas to the Bureau of Ordnance. It was then that those of us in the Navy first came to appreciate his ability to get to the heart of complex problems. During those five years of active duty he was given greater and greater responsibilities, and as before he became the chief advisor and trusted confidante of the Secretary of the Navy, who was later to become the first Secretary of Defense.

It was then too that his naval officer associates came to recognize his dedication to his country, his great patriotism, and his courage to stand for what he felt was right for mankind and his country. In those years friendships were formed that stood the test of years.

After the war was over, Admiral Strauss was appointed a member of the Atomic Energy Commission by President Truman. There he took part in history making decisions familiar to us all.

Retirement from those arduous years did not last long. A trusted experienced chairman of the Atomic Energy Commission must be found. President Eisenhower gave Lewis the task of finding a qualified man to take this important position who would be willing to accept the necessary sacrifice of personal considerations including financial loss. The search was long and difficult and finally President Eisenhower drafted Lewis once more into the service of his country.

Both Presidents gave him their complete trust and confidence because they knew him to be a staunch man devoted and loyal to the best interests of his country. They respected his rare wisdom and good judgment. Their faith in his strength of character was justified for he did defend the best interests of the United States, and under his guidance the security of the United States was maintained and enhanced.

In all of these years of devoted service to his nation, he made great contributions in

many fields. His services were sought by Presidents for he demonstrated again and again his great ability to organize and direct large organizations so that they were successful in their endeavors. His work, his achievements, helped the United States become a great, generous, responsible nation.

His great accomplishments were not solely, or even the foremost reasons that Lewis Strauss was admired—respected—and loved by his many friends, great as his achievements were. In his personal life, as well as in his official life, his outstanding characteristic was integrity. He was straightforward—direct—a man of high principles and high standards—standards by which he lived—standards by which he measured himself and his actions.

Last of all, he was a kindly, modest man. He liked people—he understood people. He was a pleasant man to be with—for he exuded warmth and graciousness. He was also fun—for he had a keen sense of quiet humor.

It was these personal characteristics that made him a staunch reliable friend—so many people thought of him as one of their best friends—and he was.

Lewis Strauss was a great American—a great man—a great friend.

We shall miss him.

**Mr. HATFIELD.** I also ask unanimous consent to have two newspaper articles on Lewis Strauss printed at this point in the RECORD.

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

[From the New York Times, Jan. 22, 1974]

**LEWIS STRAUSS DIES, EX-HEAD OF AEC**  
(By Aiden Whitman)

Rear Adm. Lewis L. Strauss, U.S.N., retired former chairman of the Atomic Energy Commission, died yesterday of cancer at his home, Brandy Rock Farm, in Brandy Station, Va. He was 77 years old.

For about a dozen years at the outset of the atomic age Lewis Strauss, an urbane but sometimes thorny former banker with a gifted amateur's knowledge of physics, was a key figure in the shaping of United States thermonuclear policy. He was a member of the Atomic Energy Commission from 1946 to 1950, and its chairman from 1953 to 1958.

In the often-acrimonious debates within the Government and the atomic community in 1949 and 1950 following the explosion of a Soviet atomic bomb in 1949, Mr. Strauss was a powerful advocate of immediate American development of a hydrogen bomb. His view, which had the support of a leading atomic Dr. Edward Teller, but not that of another Dr. J. Robert Oppenheimer, prevailed with President Harry S. Truman. The first American hydrogen device was exploded Nov. 1, 1952, followed in 10 months by the detonation of a Soviet device.

In his dealings with Congress as commission chairman, Mr. Strauss—pronounced to rhyme with traws—with sometimes less than tactful, "For the first time in my life I have enemies," he remarked after an especially arduous experience on Capitol Hill. One result of these tussles was that the Senate, in June, 1959, rejected his nomination by President Dwight D. Eisenhower to be Secretary of Commerce. He had been acting Secretary since the previous October. Privately bitter over this rebuff, Mr. Strauss returned to private life.

#### PUZZLED OBSERVERS

In the years of his mightiest influence in Washington, the owl-faced Mr. Strauss puzzled most observers. He was, on the one hand, a sociable person who enjoyed dinner parties and who was adept in prestidigitations; and, on the other hand, he gave the impression of intellectual arrogance. He could be warm-hearted yet seem at times like a stuffed shirt. He could make friends yet create antagonisms.

"He has more elbows than an octopus," one associate said after citing his affable qualities.

Assessing M. R. Strauss's settos with members of Congress, one observer suggested that he was "seemingly driven by an overwhelming desire to prove that he has been correct on every major and minor point in every major and minor battle in which he has been engaged for the last decade." An air of infallibility, this observer went on, affronted many Congressmen who referred public servants willing to display a modicum of humility.

Mr. Strauss exercised enormous power as chief of the A.E.C. His job was to make certain that the United States produced more nuclear weaponry than the Soviet Union. In addition, he was special adviser on atomic matters to President Eisenhower, and all Federal agencies were obliged to clear their atomic-related activities with him. The strictest secrecy about the atomic effort then prevailed, with the result that Mr. Strauss was laden with a stupendous amount of top-classified information. It was a burden he felt keenly.

#### COLD WAR ASSUMPTION

At the same time, Mr. Strauss accepted the basic assumption of the cold war—that the Soviet Union was bent on world conquest. "Honesty, truth and solemn covenants appear to be abstractions which have existence for them only as a bait for those of other nations naive enough to believe in them," he wrote in "Men and Decisions," an autobiographical memoir. To thwart what he saw as the Soviet goal, he advocated both the amassing of nuclear weapons and hermetic security.

His beliefs underlay his role in the Oppenheimer loyalty-security hearing of 1954, in which the physicist's loyalty was upheld, but not his security clearance. Mr. Strauss maintained that he did not initiate the hearing, but his critics argued that he did not defend Dr. Oppenheimer, then a contract consultant to the A.E.C. The charges against the man often called "the father of the atomic bomb" dated at least to 1947—these charges had to do with Communist associations—and their appearance in 1954 seemed to many scientists to be a form of retribution for Dr. Oppenheimer's opposition to the hydrogen bomb.

"Physicists who regard Strauss as the master architect of the case against Oppenheimer believe that in the last analysis Strauss was sincere," Nuel Pharr Davis wrote in "Lawrence and Oppenheimer," a detailed account of differences between Dr. Oppenheimer and Dr. Ernest Lawrence over atomic policy. Dr. Lawrence, the Berkeley physicist, along with Dr. Teller, was a Strauss mentor in science. Both men also had strong reservations about Dr. Oppenheimer.

#### DEROGATORY INFORMATION

Paradoxically, Mr. Strauss, a trustee of the Institute for Advance Study at Princeton, N.J., was responsible for Dr. Oppenheimer's appointment as director in 1947. At the time, the scientist informed Mr. Strauss that the Federal Bureau of Investigation file contained "derogatory information about me." Mr. Strauss, according to the Davis book, was familiar with the material and regarded it as trivial. The parting of ways seemingly came over Dr. Oppenheimer's reluctance to press on with a superbomb.

Mr. Strauss's early life had a touch of the Horatio Alger theme. Born on Jan. 31, 1896, in Charleston, W. Va., he was the son of a shoe merchant. He grew up in Richmond and became a traveling salesman for his father's shoes after he was graduated from high school. He had developed meantime a text-book interest in physics as well as a layman's concern with Judaism.

By his 20th birthday, Mr. Strauss had saved \$20,000 and was thinking about attending college. In his memoir, he recalled

that he was attracted instead by a desire to work for Herbert Hoover, appointed in the wartime year 1917 to manage food production in the United States. He went to Washington, searched out Mr. Hoover and sat down in his hotel suite.

"In a short while, Mr. Hoover entered from his adjoining office. He was wearing a hat and overcoat and was on his way to an appointment," Mr. Strauss recounted in after years, adding:

"I recognized him from his photographs, and, seeing that his secretary did not intend to introduce me, I stepped up and gave my name and said that I would like to work for him, adding that I had understood that he was accepting no salary for his services and that I would be happy to work for two months under the same arrangement.

"As I completed that long sentence, he looked at me with a puzzled smile and asked, 'When do you want to start?' 'Right now,' I replied. 'Take off your coat,' he said and left. These 12 words were the only exchange I had with him for a matter of weeks."

#### CONFIDANT OF HOOVER

Ultimately, Mr. Strauss became Mr. Hoover's assistant, confidant and close friend. It was through Mr. Hoover that he met Mortimer Schiff, a partner in Kuhn, Loeb & Co., the investment bankers. He joined the Wall Street concern in 1919 and spent about a quarter-century with it, accumulating vast wealth, impeccable respectability and a wardrobe that included a derby and a fur-collared overcoat.

Making at least \$1-million a year as a Kuhn, Loeb partner, Mr. Strauss helped to market Kodachrome film for Eastman Kodak and the Polaroid camera for Edwin Land. Meantime, he maintained his interest in physics, becoming absorbed in cancer research. After his mother died of a malignancy in 1935, he helped finance a generator at the California Institute of Technology with the aim of producing radioactive isotopes for cancer therapy. He also sought out physicists fleeing from Nazism and befriended them. From them and other sources he learned in 1939 that uranium had been fissioned in Germany.

In 1941, Mr. Strauss, who held a Reserve commission as a lieutenant commander in the Navy, joined the Navy Department's Bureau of Ordnance and helped to coordinate its inspection of weapons production. He was also co-opted by Secretary James V. Forrestal, a fellow Wall Street banker, as his special assistant, and he represented the Navy on the Interdepartmental Committee on Atomic Energy.

Mr. Strauss left the department after four years with the rank of rear admiral in the Reserve, an honorific of which he was exceedingly proud. Indeed, he liked afterward to be addressed as Admiral Strauss, which upset some regular officers who looked upon him as a civilian.

After a brief return to Kuhn, Loeb, Mr. Strauss was back in Washington as a member of the first Atomic Energy Commission, which was headed by David E. Lillenthal, the former chairman of the Tennessee Valley Authority. An admitted "black Republican" of pronounced conservative attitudes, Mr. Strauss got along well with President Truman and, initially, with members of Congress.

On the commission, Mr. Strauss was often at odds with the chairman. One issue had to do with monitoring atomic explosions outside the United States. Mr. Strauss ultimately persuaded the Pentagon to set up detection stations, which picked up the first Soviet atomic explosion in 1949, a few days before Moscow made its official announcement.

Another issue was the hydrogen bomb, on which Mr. Strauss was insistent. The decision to proceed with the project caused profound reverberations in the scientific community. Many agreed with Dr. Oppenheimer

in his opposition while others backed Dr. Teller. Mr. Strauss saw the issue as a military one, and he appeared never to have regretted his stand. "The atom is amoral," he contended.

After leaving the commission in 1950, Mr. Strauss worked for the Rockefeller family as a financial adviser and indulged his interest in farming at Brandy Rock, a 1,500-acre spread near Culpeper, Va., where he bred cattle and raised corn.

Returning to the Atomic Energy Commission in 1953 for a five-year term as chairman, he earned a reputation for operating a tight ship. He also became embroiled in the so-called Dixon-Yates controversy, which involved a contract for privately financed electrical power to compensate the T.V.A. for electricity used for atomic purposes. The contract, canceled in the end, hurt Mr. Strauss politically—he supported it—and it contributed to the campaign against him when he was nominated as Commerce Secretary.

Surviving are his widow, the former Alice Henauer; a son, Lewis H. Strauss, and three grandchildren, Louis C., Jeremy and Jacqueline Strauss.

The funeral will be at 2 P.M. on Thursday in Temple Emanu El, Fifth Avenue at 65th Street. There will also be a memorial service at 3 P.M. on Friday in the Washington Hebrew Congregation, Washington.

[From the Washington Post, Jan. 22, 1974]  
LEWIS L. STRAUSS, EX-AEC CHAIRMAN, DIES  
AT AGE 77

(By George C. Willson)

Lewis Lichtenstein Strauss started out his adult life quietly enough—as a banker—but then found himself in public life embroiled in one controversy after another. The controversies included the Dixon-Yates power contract and his role in stripping famed nuclear scientist J. Robert Oppenheimer of his security clearance.

Born in Charleston, W. Va., on Jan. 31, 1896, Mr. Strauss (pronounced Straws) went to public schools in Richmond before beginning his long but often-interrupted government service in 1917 as secretary to Herbert Hoover, then head of the Belgian Relief Commission.

His banking career followed two years later when, at the age of 23, he joined the Wall Street firm of Kuhn, Loeb & Co.—eventually becoming a partner. He married another partner of that firm, the former Alice Hanauer, in 1923.

He returned to government in 1941 when he was activated as a naval reserve officer. His active-duty naval career, from February, 1941, to May, 1946, set him on a course of top-level federal jobs.

He rose to the rank of rear admiral in the successive jobs of assistant to the chiefs of the Naval Bureau of Ordnance; special assistant to the Secretary of the Navy and naval member of the Interdepartment Committee on Atomic Energy. He became a right-hand man to the late James V. Forrestal, Secretary of the Navy during World War II and later the nation's first Secretary of Defense.

President Truman in 1946 named Mr. Strauss as one of the first members of the Atomic Energy Commission when the then-secret art of nuclear explosives and energy was placed under civilian control. The seeds of controversy were sown in this appointment to the AEC.

Mr. Strauss, as an AEC member with the ear of the President, urged Mr. Truman to reject the advice of some scientists—including J. Robert Oppenheimer—and go ahead with the construction of the hydrogen bomb.

Mr. Strauss later said that he advised President Truman to take this course for fear that without the H-bomb the United States could not maintain its nuclear edge over the Soviet Union.

President Truman made his momentous decision to go ahead with the H-bomb in 1950. Mr. Strauss, upon learning the President's decision, resigned from the AEC because—as he wrote Mr. Truman—he felt he could safely return to private business. "The issue involving national security which are my primary concern are now resolved as I had hoped and recommended," he wrote.

In accepting the resignation, President Truman said, "Your counsels have been invaluable."

Before Mr. Strauss left the AEC for what turned out to be a short break in public service, there had been numerous reports of the raging controversy within the government over whether the H-bomb should be built. The objections included moral reservations about developing a weapon with such immense destructive power.

Not only was Mr. Strauss one of those pushing hard for speedy construction of the H-bomb, he also was at the forefront of the successful effort to monitor Soviet progress by developing detection device for nuclear blasts. He contended that the Soviets stole American nuclear secrets, enabling the Soviet Union to break the U.S. monopoly on the superweapon.

During his brief return to the business world, from 1950 to 1953, Mr. Strauss served as financial adviser to the Rockefeller family and as a director of Rockefeller Bros., Inc., and Rockefeller Center, Inc.

He returned to the atomic energy field on March 9, 1953, when he was named a special assistant to President Eisenhower on atomic energy matters. Mr. Eisenhower, on June 24, 1953, nominated him as chairman of the AEC keeping him as a personal atomic adviser as well.

In contrast to the conservative stance on sharing information he took in his first term on the AEC, including being the lone dissenter in a 4-to-1 vote to export isotopes (material made radioactive by exposure to atomic materials) to nations near Russia for commercial and possibly military use, Mr. Strauss was credited with shaping President Eisenhower's famous Atoms for Peace Program speech of Dec. 8, 1953, to the United Nations. That plan was to help other nations harness the atom for peaceful uses with the corollary hope it would shunt the emphasis away from military exploitation of nuclear energy.

Mr. Strauss, in his book "Men and Decisions," published in 1962, discussed the way he allayed Mr. Eisenhower's fears about aggressor nation hijacking uranium contributed to the U.N. Mr. Strauss proposed suspending uranium in a solution in tanks buried underground, "thus making a quick raid impossible."

Once nations became accustomed to contributing uranium to the U.N. bank—or as an aide put it: once "the first olive was out of the bottle"—Mr. Strauss and others working on the Atoms for Peace plan hoped the world demand would outstrip the supply until nuclear weapons would be cannibalized for peaceful purposes.

President Eisenhower never saw this dream come true. Mr. Strauss blamed "Soviet roadblocks" to stopping the International Atomic Energy Agency from realizing its full potential.

An ugly phase of Mr. Strauss, government service came in 1954—the Oppenheimer affair. Dr. J. Robert Oppenheimer was the nuclear scientist whom Mr. Strauss and others credited with making the paramount contribution to development of the atomic bomb.

But on June 12, 1954, Maj. Gen. K. D. Nichols, general manager of the Atomic Energy Commission and previously second-in-command of the Manhattan atomic bomb development project, said on the basis of a personnel hearing that Oppenheimer's security clearance for government secret information "should not be reinstated."

Mr. Strauss, then chairman of the AEC, was one of the four on the commission who voted to strip Oppenheimer of his clearance—an action that is still abhorred by much of the American scientific community.

Dr. L. A. DuBridge, former science adviser to President Nixon, wrote the commission that Oppenheimer's value is "so enormous as to completely overbalance and override the relatively trivial risks which the Personnel Security Board reports. In other words, the net benefits to national security will be far greater if Dr. Oppenheimer's clearance is restored than if it is terminated."

Specifically, Nichols, on the basis of the personnel board's investigation, said that Oppenheimer "did not show enthusiastic support" for the President's decision to develop the H-bomb, "which might have been expected of the chief atomic adviser to the government . . ."

Oppenheimer's opposition was not based on "sinister motives," Nichols said. But the way the scientist portrayed his opposition raised "disturbing" questions about his veracity. Nichols cited what he considered other conflicting statements by Oppenheimer that Nichols said "raise a question" about "his character and veracity in general."

In defending his own vote to strip Oppenheimer of his security clearance, Mr. Strauss wrote in his 1962 book that Oppenheimer continued to have contact with Haakon Chevalier—an academic colleague of Oppenheimer whom Mr. Strauss said Oppenheimer "had informed on as being involved in an attempt to obtain secret information on the atomic weapon project for the Soviet espionage organization."

The personnel hearings on Oppenheimer, Mr. Strauss wrote, "also developed Dr. Oppenheimer's admission that he had fabricated a 'tissue of lies' to tell to American security officers . . ." Mr. Strauss said he concluded Oppenheimer's employment by the U.S. Government was not "clearly consistent with the interests of the national security . . ."

Critics of Mr. Strauss' role in the Oppenheimer case contended he went beyond his rightful role of weighing the evidence and participated in a campaign to "get" the scientist. Joseph and Stewart Alsop, in a Harper's magazine article in 1954 entitled, "We Accuse," accused Mr. Strauss of "venting the bitterness of old disputes through the security system" and of helping to instigate Oppenheimer's security problems.

Public attacks from a different direction were launched against Mr. Strauss for negotiating the Dixon-Yates power contract. The controversy centered around the proposal for a private utility combine to build a power plant near Memphis, Tenn., and to sell the electricity to the government. Edgar Dixon and Eugene A. Yates were the chief executives of the independent utility.

In response to charges that Dixon-Yates was a fix of some type, President Eisenhower ordered the papers surrounding the contract proposal released to the press.

The name of Adolph Wenzell, then a vice president of an investment firm called the First Boston Corp., was not mentioned in the public papers on the Dixon-Yates contract negotiations released by the Eisenhower administration.

Since Wenzell had been a consultant for the government's Budget Bureau as well as the utility companies trying to get the contract, his omission in the AEC's public release of Dixon-Yates proceedings prompted conflict-of-interest charges. The Dixon-Yates contract was signed on Nov. 11, 1954, amid controversy—only to be canceled on June 16, 1954, amid more controversy.

The new question was whether the Dixon-Yates combine should be paid cancellation costs. The AEC's general counsel concluded that such payment should be held up until it was determined whether Wenzell was indeed guilty of conflict of interest. The attorney's advice, Mr. Strauss wrote in his book,

"made me unhappy, for I believed the parties had acted in complete good faith."

The Supreme Court, on Jan. 9, 1961, ruled that Wenzell had indeed been guilty of conflict of interest and therefore reversed the lower court's finding that the utility should be reimbursed. Mr. Strauss regarded that of that Supreme Court decision as his personal vindication:

"... No one in the AEC" knew, until December, 1954, that "Wenzell, while serving as a consultant to the Budget Bureau, had been meeting with and supplying information to the sponsors regarding the project," the court said in part of its opinion cited by Strauss.

But the U.S. Senate saw Mr. Strauss' role differently. Sen. Wayne Morse (D.-Ore.), for example, said in 1959—after the Dixon-Yates contract had been canceled but before the Supreme Court ruling—that Mr. Strauss was "an enemy of the American people" for trying to "foist" the contract on the nation. Morse also assailed Mr. Strauss for his opposition to proposals to limit testing of nuclear weapons.

It was this type of opposition that prompted the Senate, on June 19, 1959, to reject on a 49-to-46 vote President Eisenhower's nomination of Mr. Strauss as Secretary of Commerce. The Washington Post, in an editorial printed Oct. 25, 1958, had criticized Mr. Strauss "punchant for deviousness and secrecy," but his competence as an administrator entitled him to the job of Secretary of Commerce.

In his book, Mr. Strauss explained the Senate's rejection this way:

"Several elements of opposition converged at the vote and augmented one another. Anti-Semitism was certainly the least of these, and negligible. But there was the punitive opposition by the advocates of government development of electric power; the animosity engendered by the Oppenheimer case; the personal animus of a senator; my strong belief in the paramount importance of maintaining the constitutional principle of the separation of powers and my defense of the executive branch in that regard; my unfortunate trait of stubbornness in refusing to conciliate by conceding error where error had not occurred; for following orders and honoring the oath of office, and opportunity for a numerically superior political opposition to strike a blow at a popular President..."

The newspaper clips about Lewis Lichtenstein Strauss thin out after the Senate debate of 1959. His book caused a flurry of attention, with the Aug. 5, 1962, review by Charles Poor of The New York Times opening with the line: "The stature of those who have opposed Lewis L. Strauss does not seem to have grown tremendously through the years..."

Mr. Strauss did break into the national news briefly in 1963 when he testified before Congress against the nuclear test ban treaty, calling it "a clay pigeon made to be breached." But otherwise the spotlight in the 1960s moved off Mr. Strauss and other Eisenhower Republicans. One bit of irony came in 1963 when Mr. Strauss sent Oppenheimer a congratulatory telegram for receiving the highest AEC honor, the \$50,000 Fermi award.

In 1964, Mr. Strauss headed a space and atomic energy panel for GOP presidential candidate, Barry Goldwater, and was elected as the first chairman of the Eisenhower College in Seneca, N.Y., in 1965. Mr. Strauss popped into the news again in 1967 as his plan for setting up nuclear desalting plants in the Middle East for both Arabs and Jews was discussed. Otherwise, it was a comparatively quiet life on the Strauss Black Angus cattle farm in Brandy, Va.

Mr. Strauss' long list of trusteeships and other offices during his lifetime included that of president of the board of trustees of the Institute for Advanced Study at Princeton, N.J.

President Eisenhower personally presenting him the Medal of Freedom in July, 1958,

was one of the admiral's most treasured moments. He also received more than 20 honorary degrees from colleges and universities in the United States and abroad.

Besides his wife, Mr. Strauss leaves a son, Lewis L. Jr. of Culpeper, Va.

#### ADDRESS ON JUVENILE JUSTICE BY THE HONORABLE TOM RAILSBACK BEFORE THE NATIONAL COUNCIL OF JEWISH WOMEN

Mr. PERCY. Mr. President, Congressman TOM RAILSBACK has consistently been one of the most knowledgeable and dedicated individuals in the Congress and in the Nation in the area of improving our juvenile justice system. He has made it his business to make sure that the public and its representatives in Congress are aware of the system that daily handles thousands upon thousands of the children of this Nation. Tragically, all too often the system is so brutal and ineffective that it turns these children into criminals by starting them on the road to crime.

A great deal needs to be done to reform the way we in the United States deal with our juvenile delinquents. The majority of them could be directed toward productive pursuits instead of crime if only the proper facilities and programs were available. Toward this end, Congressman RAILSBACK has introduced H.R. 45, which would establish the Institute for the Continuing Studies of Juvenile Justice. I have been pleased to sponsor this important piece of legislation in the Senate as S. 580. Though this legislation passed the House in the last Congress, it is still pending in the Senate. We are now working with the administration and many voluntary agencies toward enactment of legislation in this area.

This morning Congressman RAILSBACK addressed the National Council of Jewish Women and his remarks provide an excellent overview of the problems in the area of juvenile justice. Mr. President, I ask unanimous consent that the speech be printed in the RECORD.

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

#### JUVENILE JUSTICE

(By Hon. TOM RAILSBACK)

I would like to thank you for the opportunity to be here this morning. Just last month I had the pleasure of meeting with the Chairman of your Task Force on Juvenile Justice, Mrs. Flora Rothman, to discuss the need for legislative action to improve our present juvenile justice system. I certainly want to commend your organization for your continuing interest in our young people.

Quite obviously, you are all aware of the large number of juveniles who run afoul of the law today and the inability of our current system to deal with them. I will not spend a great deal of time recounting statistics. Let me just say a word or two about a few trends which I find particularly discouraging.

First, more young women are now entering the criminal ranks. In 1972, arrests for young females under 18 rose more than twice as rapidly as arrests for males of the same age.

There is also an increasing frequency of senseless, violent crimes committed by young teenagers—up nearly 200% in the past decade.

Finally, young people continue to be responsible for a disproportionate percentage of crimes committed. While children between the ages of 10 and 17 constitute only 1/4 of our total population, they are responsible for 50% of all criminal arrests.

The real tragedy, however, is the recidivism of young offenders. As a member of the House Subcommittee on Prison Reform, I have visited several prisons. From what I have seen and heard, I am convinced that too often imprisonment only provides the opportunity for young people to become more hardened criminals. In fact 75% of first-time young offenders who go to prison will return within 5 years. Frankly, our entire juvenile justice system could be indicted on that fact alone!

One area which should receive the highest priority is specialized training for all those within the judicial system. Judges, parole officers, policemen, social workers—all must learn how to deal with young people who enter and leave the juvenile justice system and try to readjust to society. A bill I have introduced, H.R. 45, sets up an Institute for Juvenile Justice which would provide short-term courses on modern, proven effective methods of dealing with delinquent youths.

Probation officers especially are in need of help. The increasing concentration of young people in caseloads means far more work for these officers, because younger offenders tend to violate the conditions of their release more than others.

To provide money for additional probation officers, I offered an amendment to an appropriation bill last year to increase funding for the Bureau of Prisons. This has now been enacted into law.

Top priority must also be given to finding alternatives to prison, particularly in the case of juveniles who are often arrested for such noncriminal offenses as truancy, running away from home, and curfew violations.

Some of you may already be aware of the Brooklyn Plan which has been in use for a number of years. Under the plan, if the U.S. Attorney determines that the offender may be successfully rehabilitated without conviction, he may decline to prosecute for a certain period of time (usually about a year), and place the offender under the supervision of the Probation Service. So far, this pre-trial diversion program has been quite successful. About 95% of the juveniles in the program have responded successfully.

For my part, I have introduced legislation at the Federal level to provide statutory authority for pre-trial diversion. My bill is not revolutionary, but it is a small step toward increasing the incentive of selected offenders toward rehabilitation without losing the general deterrent effect of our criminal justice system.

Perhaps pre-trial diversion and better training are partially responsible for last Friday's announcement by the Department of Health, Education, and Welfare that for the first time in 11 years, the number of cases handled by the Nation's juvenile courts has declined. In 1972, juvenile courts processed an estimated 12,500 fewer cases than they did the previous year. Although the actual reduction in numbers of cases going through the juvenile courts was slight—amounting to about 1%—it does mark the first time since 1961 that delinquency cases in the courts have decreased. As encouraging as this report is, however, we really don't know why it happened, and we can't draw any sweeping conclusions. It is really just too early to know if the decrease marks a permanent downward trend that will be sustained.

This same report revealed that while court caseloads were down in both urban and rural areas, it was up in suburban jurisdictions. Further, the increase in the number of girls' delinquency cases was a disturbing sign.

The cost to society of young people who have run afoul of the law will amount to nearly one billion dollars this year. Yet economics alone cannot describe the tremendous waste of talent and ability. It is clear that our efforts—while encouraging—are still not enough.

Two major Federal agencies which are responsible for the treatment, prevention and control of delinquency are HEW's Youth Development and Delinquency Prevention Administration, and the Department of Justice's Law Enforcement Assistance Administration. HEW focuses on the prevention of delinquency, while rehabilitation and control are generally left up to the Justice Department. Unfortunately, neither agency seems fully committed to the problems of the young offender. To compound that problem, nearly 40 other agencies all direct programs relating to some form of juvenile delinquency prevention and control. And within these agencies a myriad of different offices direct different aspects of juvenile delinquency efforts. It seems to me that we desperately need one central location for all information and direction in the fight against juvenile crime. The Juvenile Justice bill I mentioned earlier would have as one of its main goals the coordination of the various agencies and programs dealing with juvenile delinquency.

On the Senate side, a bill introduced by Senator Birch Bayh, Chairman of the Senate Juvenile Delinquency Subcommittee, S. 821, also has as one of its goals the coordination of all federally assisted delinquency programs. In addition, it amends the Federal juvenile delinquency law to provide basic procedural rights for juveniles who come under Federal jurisdiction—rights which I am convinced are essential for juvenile justice.

Another bill I would like to mention which has already passed the Senate is the Runaway Youth Act.

When this problem was first examined by Congress in 1955, it was estimated that approximately 200,000 young people ran away from home. In 1972, one million had run away—with an alarming number in the 11-14 age bracket. Further, a majority of runaways are young girls. This may help explain the growth in female delinquency we have been witnessing in the past few years.

Because running away from home is a juvenile offense, it can have serious legal consequences for the youngster involved. Runaways under 18 years of age are subject to arrest, detention in jail, or even incarceration in a juvenile institution. And this happens to many of them. According to FBI reports, over 200,000 were arrested last year. Moreover, it is estimated that approximately one half of the 100,000 juveniles presently confined in our large correctional institutions are runaways, truants, or simply unwanted at home. These are not the children who can be helped by institutionalization. To the contrary, all too often institutionalization simply educates them in the ways of crime.

The Runaway Youth Act, S. 645, tackles the runaway problem by providing Federal assistance to local groups to establish temporary shelter care facilities, counseling services, and to conduct research on the nature and scope of the runaway problem. A House Subcommittee is now examining whether this is the best legislative approach to a very serious problem.

Last year, another bill passed the Senate which contained an amendment requiring States to allocate 20% of their LEAA funds to improve juvenile justice the first year and 30% each subsequent year. Currently, less than 20% of all LEAA crime funds are spent on juvenile delinquency—yet youth crime accounts for 1/2 of all criminal activities. This amendment would have ensured a more responsive effort towards the problems of our young people. Unfortunately, the amendment was eliminated by the Conference Commit-

tee, and the LEAA bill was signed into law without that important provision.

This defeat unfortunately all too well portrays the lack of a full commitment by the Congress in the area of juvenile justice. What we need now is a good legislative push—perhaps when the Juvenile Delinquency Act expires in June. With a concerted effort by all of us, I feel confident that we will witness effective legislation this Congress, and begin to solve the problem of juvenile crime—with its tragic waste of young lives and national squandering of resources.

Our juvenile offenders have the potential to become either tomorrow's law abiding citizens or tomorrow's costly liability caught in the revolving door of recidivism. It is up to all of us to see that our juvenile offenders take that first option—to become tomorrow's law abiding citizens. I look forward to continue working with all of you to accomplish our mutual goal.

And, thank you again for inviting me here today.

#### THE ENERGY EMERGENCY ACT

Mr. FANNIN. Mr. President, the Senate's action yesterday in rejecting the Emergency Energy Act should not be viewed as an end to our efforts to resolve the energy crisis. It should be a beginning. We have now cleared the decks of a bill which was thrown together under poor circumstances and with too little consideration of its far-reaching, detrimental consequences.

Today I would like to state publicly that which I told Chairman JACKSON privately yesterday evening. I am most anxious to work with him and other Members of this Senate to produce legislation which will resolve our energy crisis.

Congress should move forward as rapidly as possible in at least four areas:

First, we need a new emergency bill giving the President authority to require energy conservation. This bill should include provisions requiring oil companies to provide reasonable information needed in formulating national policy and in carrying out programs. Although I still am hopeful rationing will not be necessary, the bill also should provide standby authority for the President should rationing become unavoidable.

Second, we should work quickly, but very carefully on a windfall profits bill which would insure that excess revenues of the oil companies be invested in beneficial exploration and development. Our objective should be to encourage increased production of energy for our Nation, not to punish the oil companies.

Third, I hope the House of Representatives will approve the energy research and development bill which the Senate passed last session. The sooner we can undertake a massive effort to develop our own vast indigenous energy resources such as nuclear energy, oil shale, coal in solid, liquid, and gaseous forms geothermal and solar energy—the sooner we can free ourselves from increasingly costly foreign sources.

Fourth, let us not forget that the trillion cubic feet shortfall in natural gas supplies is a principal contributor to the Nation's current problem. On the basis of heat content, FPC-controlled natural gas prices are less than one-sixth the price of imported foreign oil. Thus, with

replacement costs running higher than selling costs for domestically produced natural gas, there is little incentive to drill for new supplies. Only deregulation of wellhead prices can get gas production back on track. We need such legislation now.

#### GENOCIDE TREATY

Mr. GOLDWATER. Mr. President, relative to the recurrent debate about the so-called Genocide Convention, I would remind my colleagues that Webster's Dictionary concisely defines genocide as "the deliberate and systematic destruction of a racial, political, or cultural group." The commitment of the American people and Government against genocide, as so defined, is unsurpassed and unmatched around the globe. Our interventions in support of free peoples against totalitarianism in the two World Wars of this century and our leadership in the creation and recognition of the independent State of Israel clearly attest to the dedication we have against genocide.

But, Mr. President, the pending Genocide Convention departs from the popular meaning of that term. Rather than applying only to the destruction of a whole people, the proposed Convention defines genocide to mean "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group." By this language, Dean Clarence Manion, former head of the Notre Dame Law School, has stated it is not necessary for the accused to attack even one member of a group in order to be guilty of genocide.

Moreover, the Convention's definition of genocide is not restricted to the killing of members of a group, but includes "causing serious bodily or mental harm to members of the group." This means a person can be charged with genocide for mere words or personal habits which can be construed by someone else to cause "mental harm" to members of some race, religion, or other group.

Further, reading from the Convention itself, I note that genocide is defined to include "imposing measures intended to prevent births within the group." If perpetrated with an intent to annihilate an entire race or creed, certainly all humane persons would condemn such a practice. However, genocide is not precisely limited by the Convention, and is instead broadly and loosely defined. There is no assurance that simple birth control measures offered to relieve the burden of overpopulation or given as advice in the administration of an ongoing welfare program will not be treated as an instrument of genocide.

Another indication of the wide-open boundaries on defining the crime of genocide is the reach of the Genocide Convention to not only acts which result in genocide, but to conspiracies, "complicity"—whatever that means—attempts, and direct, and public incitement to commit genocide. If this does not cover the waterfront of just about any activity that someone wants to call genocide, it would be difficult to think of more sweeping language.

With this background as to the almost

limitless scope of actions which might be considered in some culture or in some circumstances to be punishable as genocide, another provision of the Convention takes on increased significance. For, under article IV of the Convention, persons shall be punished for genocide "whether they are constitutionally responsible rulers, public officials, or private individuals." Thus, the President of the United States or a Senator or Congressman who has voted the wrong way on some social program could be harassed with charges of committing genocide. The Genocide Convention would lay the elected leaders of the United States open to all kinds of charges arising out of their innocent actions. It would give a club to our enemies to beat us over the head with.

Once a person is accused of genocide, he may be tried wherever in the world the alleged act was committed or by whatever international penal court has been accepted by nations who are parties to the convention. Conceivably, this means that an official of the United States who may be visiting or serving in Japan could be tried at any time in the future for responsibility on the part of his government in dropping the two atomic bombs which killed several thousands of Japanese. Even if the legitimate Government of Japan would never think of bringing such an accusation, guerrilla groups supposedly acting to uphold the Convention, would be encouraged to establish mock trials, in which accusations of the commission of all sorts of crimes by the United States could be aired against us. A U.S. leader visiting India could theoretically be brought to trial there for complicity in genocide because U.S. aid moneys had been used to supply birth control services to some group in India in the past.

Or former American military personnel returning to Southeast Asia as tourists or on business may be apprehended and charged with genocide, because of their past participation in our struggle against communism in the area. It would be relatively simple under the Genocide Convention to place former American pilots on trial for trumped-up charges of intending to destroy part of a national or racial group. Somewhere down the road, should the present governments of South Africa or Rhodesia be replaced by native African rulers, Americans in those two countries could be charged under the Genocide Convention with complicity in genocide, because of U.S. recognition and past support of the white governments there.

In summary, the Genocide Convention is so open-ended, the full range of crimes with which innocent Americans could be charged and against which they would have to defend themselves defies listing. I must ask, Mr. President, is placing its signature on the Genocide Convention the only way in which the United States can reaffirm its true dedication against genocide? Do we not bear witness to our commitment to the survival and liberties of individuals by our everyday deeds? What country in the history of the world has ever uplifted the freedoms and economic status of its citizens to such heights as the United States? Where

in the annals of history can one find any nation which has so unselfishly and without any designs of conquest or expansion given of its blood and resources with such dedication as the United States did by its participation in the fight against tyranny during World Wars I and II? What nation has ever compared with the generosity of the United States following the last world war when it embarked upon the Marshall plan to rebuild war-ravaged countries and the lives of impoverished peoples?

Far from being embarrassed at our rejection of this badly written document, which has very little to do with its title, the United States can stand as the leader of the world in the fight against genocide by virtue of our actual deeds in the 20th century. Our behavior in the world community and at home is all that could be asked to justify this country's claim to moral leadership among the free peoples of the world.

Mr. President, I oppose this treaty and will vote against it.

#### SANCTIONS AGAINST THE PRESIDENT

Mr. TOWER. Mr. President, at a time when shrill voices are heard clamoring for unprecedented congressional sanctions against the Presidency, it is important to hear both the substance and tone of statements from two groups of Americans representing the heartland, and the heart, of our Nation.

The American National Cattlemen's Association, representing thousands of independent, self-reliant families, recognizes the dangers inherent in any unsubstantiated campaign which entangles the normal processes of our Government. In their national convention on January 23, 1974, the cattlemen therefore adopted the following resolution, calling for an end to the divisive attacks on the Presidency which threaten our constitutional structure:

#### AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION, RESOLUTION No. 34

Whereas, the American National Cattlemen's Association remains firmly in support of the U.S. Constitution that separates the powers of government among the Executive, Legislative and Judicial branches; and

Whereas, the Executive branch has come under severe attack which, if not quickly resolved may ultimately weaken and destroy the Constitutional separation of powers and permit views contrary to those supported by the cattle industry to be furthered; and

Whereas, these attacks may be preventing all branches of government from effectively performing the functions for which they were created;

Now, therefore be it resolved, that Congress be urged to immediately determine the merits of a constitutional proceeding to resolve the controversy surrounding the Presidency.

But the attack on the Presidency is more than a conflict between legislative and executive, it is an assault by proponents of a political philosophy soundly rejected by the American people at the ballot box. The American Farm Bureau Federation, representing over 2 million American families, has seen this assault for what it is, a threat to individual freedom and our representative form of gov-

ernment. The Farm Bureau Federation, whose members must daily stand on their own decisions and judgments, have called for an end to such destructive activities. At their January 17, national meeting, the Farm Bureau's House of Delegates unanimously adopted the following resolution:

#### SPECIAL RESOLUTION ADOPTED UNANIMOUSLY BY THE HOUSE OF DELEGATES OF THE AMERICAN FARM BUREAU FEDERATION, ATLANTIC CITY, N.J., JANUARY 17, 1974

The office of the President of the United States is under attack by groups and individuals whose philosophy and objectives are contrary to those of Farm Bureau members. Continued use of the "Watergate" issue by this group as a delaying tactic ultimately could destroy the effectiveness of the Presidency.

In the interest of individual freedom, we believe that our present representative form of government, as provided in our Constitution, must be preserved by the proper division of authority among the Legislative, Executive and Judicial branches of government.

We urge Congress, through its properly constituted committees, to make a decision on whether or not there is basis for continuing the impeachment process. Such a decision is long overdue. Any further delay creates a cloud as to the integrity of Congress itself. This is no time for "politics as usual." The citizens of this country expect their government to act promptly and responsibly on major issues confronting the nation.

We need to get an ear to the ground and listen to the grassroots of America—to the people. They are giving us a message, one which we must hear, and the message to Congress is to get off the President's back and to get on with the work of the Nation.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. If there be no further morning business, morning business is closed.

#### LEGAL SERVICES CORPORATIONS ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of the unfinished business, S. 2686, which the clerk will state by title.

The legislative clerk read the bill by title, as follows:

A bill (S. 2686) to amend the Economic Opportunity Act of 1964 to provide for the transfer of the legal services program from the Office of Economic Opportunity to a Legal Services Corporation, and for other purposes.

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER. Time for debate on the legal services bill, the Scott-Byrd amendment, and the cloture motion, all prior to the vote on the Scott-Byrd amendment, shall be equally divided and controlled by the majority and minority leaders or their designees.

Mr. EAGLETON. Mr. President, I intend to speak in opposition to the Scott-Byrd amendment. I will ask whoever has control of the time if I may be permitted some time to speak in opposition thereto.

The PRESIDING OFFICER. There is no one present representing the majority.

Mr. EAGLETON. Mr. President, I have been told by the grapevine that I am representing the majority insofar as this amendment is concerned.

The PRESIDING OFFICER. How much time does the Senator yield himself?

Mr. JAVITS. Mr. President, if the Senator will yield, I think I am the only one representing the management of the bill. I understood the Senator would handle the Scott-Byrd amendment and deal with it. I do hope that the Senator will recognize that this is the only time for debate on cloture, too, so that in controlling the time I hope he will accommodate Senators who wish to speak on that.

Mr. EAGLETON. Mr. President, my remarks will be brief and to the point.

First, I ask unanimous consent that Bob Harris and Andy Manatos have the privilege of the floor during the pendency of this matter.

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

Mr. EAGLETON. Mr. President, I rise in opposition to Senator Scott's amendment to transfer responsibility for Lorton Reformatory from the District of Columbia government to the U.S. Bureau of Prisons.

The transfer of Lorton is an idea whose time has passed. Several years ago there was a major problem there with the prison population far in excess of the rated capacity and the number of guards far less than that needed. However, all this has changed. The prisoner population is now down to the rated capacity; the number of guards at Lorton has virtually doubled in the past 3 years and the escape rate has dropped dramatically. In 1972 there were 39 perimeter escapes from the entire Lorton complex. In 1973 this figure was reduced to 13 or exactly one-third of those the previous year. And even in 1972, the last year for comparative figures, the escapes per thousand prisoner population were lower from Lorton than from either the Virginia or Maryland State prisons.

On December 24, 1973, the President of the United States signed the home rule bill and we gave the citizens of the District of Columbia powers over the operation of their courts, gave them power to tax, to pass ordinances, zone, and the normal routine powers that go with a city or a State. The District of Columbia is a curious composite of both city and State.

As we give with one hand, the measure of the Senator from Virginia would take away by saying that they cannot run their own penal system.

No one likes penitentiaries. No one likes incinerators. I take it that the good people of Virginia do not want prisons or incinerators in their backyard. We have many who hold the same feelings in Missouri with respect to penal institutions and incinerators.

The fact is that Lorton is where it is, and that any quasi-state containing 750,000 people has to have a penal institution. There it is in the home State of the Senator from Virginia. I am sure

that the immediate residents of that area have written him and are concerned, upset, and dismayed. The Senator's amendment is in response to that concern and dismay.

It still has to be said that a governmental entity comprised of three-fourths of a million people must have a penal institution. And if it is to have true home rule, it must have jurisdiction over that penal institution, including the management, control, and parole practices in connection therewith.

The Senator from Virginia (Mr. WILLIAM L. SCOTT) for years in the House introduced this penal legislation.

On June 14, 1973, I asked the Attorney General for his comments as to whether this institution should be transferred to the Bureau of Prisons, since that is under the Department of Justice. Late yesterday afternoon my office received a phone call from the Justice Department, finally answering my June request. Their answer:

The Justice Department is opposed to the transfer of Lorton to the U.S. Bureau of Prisons.

Senator Scott's amendment was last before the Senate on July 10, 1973, and was defeated at that time. I see no reason to engage in an extended debate regarding this transfer, and believe that the reasons against such transfer may be summed up very simply.

First, the transfer of Lorton would not create better security for Lorton, rather it would close the prison down entirely since the U.S. Bureau of Prisons does not operate this type of mixed facility with prisoners ranging from minimum to maximum security on such a small scale. Therefore, the proposal is really not a transfer proposal at all, but an attempt to eliminate the only District of Columbia penal institution in existence.

Second, in line with both the theory of home rule and the theory of President Nixon's New Federalism, the Congress has attempted to delegate its authority to the local government rather than attempting to federalize the District.

Third, and perhaps most importantly, the District of Columbia government is doing as good a job as any government in controlling its prison population. As a matter of fact, as I noted earlier, the escape rate from Lorton, to which Senator Scott has referred, is lower than that of prisons in the State of Virginia.

Finally, the U.S. Department of Justice has informed me that they are opposed to the transfer of Lorton. Their reasons may best be summed up by an interview in the Corrections Digest of January 23, 1974, with Norman A. Carlson, Director of the U.S. Bureau of Prisons. Director Carlson, commenting on the transfer of Lorton Reformatory to the Bureau of Prisons, stated:

I am unalterably opposed to Bureau control of Lorton. I believe that if the District of Columbia is going to be a self-ruling city then it should have responsibility for all facets of the society that live here. Just as the city controls its hospitals, schools and police, so should it control Lorton. The criminal justice system in this area should be handled on a continuum and not be fragmented out, as would be the case if the D.C. courts were under the city and Lorton fell under federal jurisdiction. And to be honest,

given the resources and the situation the city has to work with, I don't know if the Bureau could do any better job with Lorton than is presently being done.

Mr. President, I ask unanimous consent that a letter and supporting materials which I have received from Mayor Walter Washington, together with an editorial which appeared in the Washington Post this morning, be printed at this point in the Record.

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

THE DISTRICT OF COLUMBIA,  
Washington, D.C., January 29, 1974.

Hon. THOMAS F. EAGLETON,  
U.S. Senator,  
Washington, D.C.

DEAR SENATOR: In accordance with your request, I am transmitting a package of information on the District of Columbia's operations at the Lorton Complex.

I am enclosing a statement of my views in opposition to proposals that would transfer control of that facility to the Federal Government.

Included in the package are the following documents:

A report made to me today by Delbert C. Jackson, Director of the Department of Corrections.

An excerpt from an interview this month with Norman A. Carlson, Director of the Federal Bureau of Prisons, reiterating his opposition to a transfer of the facility.

Other supporting materials.

Your interest and support in this matter is greatly appreciated.

Sincerely,

WALTER E. WASHINGTON,  
Mayor-Commissioner.

STATEMENT OF MAYOR WALTER E. WASHINGTON,  
JANUARY 29, 1974

Once again, I feel it is of urgent importance to call attention to the direction and goals of our criminal justice system and the essential part the institutions at Lorton play in that system.

The Senate has been highly supportive of our efforts in the past, especially in helping us get the resources we need to get the job done. We look forward to continued support in the future.

Despite a dramatic population increase which placed a tremendous strain on Lorton facilities and programs in 1972, the population has decreased substantially and stabilized during 1973. The incidence of escapes and absconds which resulted from overcrowding and understaffing have dropped dramatically as the population has stabilized and staffing has increased. Further, we have taken decisive measures to control the conditions which result in these incidents.

Security equipment has been increased. The number of officers and other staff has been increased. Rehabilitative educational and vocational training programs and self-help groups to provide positive outlets for the men in Lorton institutions have been expanded. Administrative reorganization of the institutions is under way, and management training for key staff people is in progress.

Further, in response to current population projections, we have prepared a detailed plan to reorganize facilities which will vastly increase our capabilities for operating an efficient, secure and rehabilitative system. Under this plan, men will be separated by age, offense and rehabilitation needs into smaller, more secure institutions and major support services will be reorganized to serve all Lorton institutions.

The City has maintained in the past and continues to maintain that it is essential for the success of our criminal justice system that local control of the facilities of Lorton be maintained. We have found that the re-

sources available in the local community and the coordination of the resources developed by the city government over the years have been key elements in supporting those under our supervision when they return to the community.

I am pleased to note that Norman A. Carlson, director of the Federal Bureau of Prisons, remains unalterably opposed to Bureau of Prisons control of Lorton. Earlier this year Mr. Carlson was quoted in a published interview as stating:

"I am unalterably opposed to Bureau control of Lorton. I believe that if the District of Columbia is going to be a self-ruling city then it should have responsibility for all facets of the society that live here. Just as the city controls its hospitals, schools and police, so should it control Lorton. The criminal justice system in this area should be handled on a continuum and not be fragmented out, as would be the case if the D.C. courts were under the city and Lorton fell under federal jurisdiction. And to be honest, given the resources and the situation the city has to work with, I don't know if the Bureau could do any better job with Lorton than is presently being done."

Although no correctional system—local, state or federal—can ever completely eliminate all incidents, we have developed and have successfully operated a system to keep these incidents at a minimum. At the same time, the evidences of successful rehabilitation of the men in Lorton institutions are substantial.

We place a higher percentage of those released from the correctional institutions in jobs than are employed in the total population. An increasing number of men released from these institutions are coming out with education and vocational skills they need to get a job—including some who have become college graduates. Corrections department residents increasingly are involved in self-help programs to provide mutual support to solve the problems which caused them to commit crimes in the first place. Increasing numbers also are being assisted by citizen groups, who help them during the transition from institutional to community living.

To remove the facilities at Lorton from the support which has been built up over the years in the local business and civic communities and to separate these facilities from the resources of other District government agencies would not only be a step backward administratively, but would also be contrary to the position taken by the Senate with regard to self-determination for the District.

We have looked in the past to the support of the U.S. Senate for the resources we need to help us make Lorton the kind of secure and rehabilitative complex we need. The Senate has been responsive in the past in providing these resources, and with these resources we are achieving our goals. We look for continued support for the job we are doing at Lorton.

D.C. DEPARTMENT OF CORRECTIONS,  
Washington, D.C., January 29, 1974.

Memorandum to: Honorable Walter E. Washington, Mayor-Commissioner, District of Columbia.

From: Delbert G. Jackson, Director.  
Subject: Security at Lorton.

This report is submitted on security measures which have been effected to improve our administration of the institutions at the Lorton Reservation.

Over the past year, we have been involved in many efforts, both internal and in cooperation with other District and neighboring jurisdictional agencies, which have been geared to enhance the security of our institutions in Virginia. Specifically, in terms of personal security efforts, we are able to report that in cooperation with other District agencies we have sponsored a special effort aimed at the removal of debris from the reservation thereby reducing the inci-

dence of contraband; we have installed new and improved dormitory lighting at the central facility, as well as new and improved lighting attached to the exteriors of the Central Facility; we have installed free standing lights at the quadrangle and its environs; new security doors have been added to the Central Facility; at Youth Center #1, we have replaced all room doors and locks to improve the personal security of the residents.

In addition, regarding institutional security, we have increased the number of shake-downs which are conducted unannounced and periodically; ingress areas to the reservation have been reduced to two, gates #1 and #6; every individual, whether a Department employee or outside visitor, is searched upon entry into the reservation; metal detectors have been installed, mobile patrols have been created to scan the periphery on a continuous basis from 4:00 p.m. to 8:00 a.m. daily; the number of security posts has been increased over the past year; we have installed new siren equipment and have plans for instituting further improvements in this area; based on our authorized complement, we have increased our staff of correctional officers and have added a new correctional training program to better prepare our men for the responsibilities of their jobs; we have issued identification cards to all inmates to aid in population control.

In a continuing effort to foster better communication and improve our relationships with other criminal justice agents in the area, we have undertaken several steps to enhance our institutional security maintenance capability. In this regard, we meet at least quarterly with surrounding police and fire department officials from Maryland, Virginia and the District. I have also been meeting with the Chairman of the Fairfax County Board, and the Chiefs of Fire and Police in an effort to improve direct liaison at the policy level. Through these efforts we have established several joint task forces to improve both police and fire measures. As a result, we now have improved procedures for escape alerts and fire warnings. In addition, the D. C. Department of Corrections notifies the FBI field office in Alexandria of escapes, assaults, rapes, or other cases prosecutable under the law as soon as Corrections officials are notified. Local police also aid in the apprehension of escapes.

The FBI and the Department have now established direct communication and liaison on all current cases. In this regard, recent articles in the local press charged that a "free wheeling drug ring" was operating in Lorton involving paid employees. Although the Department of Corrections and the District of Columbia can neither comment upon or review these charges until presented with specific facts, when and if substantiated facts are brought forth, the District and the Department will investigate the matter thoroughly in an effort to answer all of the questions. Appropriate sanctions will be enforced against any inmate or employee proven to be involved in drug trafficking.

Our plans for physical improvements at Lorton are also largely influenced by the desire to improve operations and create a more secure environment for staff, inmates and the public at large. The Department expects that approval and implementation of the Lorton Improvement Plan will improve internal and external security.

The present Complex will be reduced to a 400-person institution. This size reduction will enable physical improvements including the elimination of blind spots by new fence lines, improved perimeter and internal lighting, a road for perimeter patrols, and physical separation of support services as the laundry and industries. Opportunities for escape or the introduction of contraband will thereby be significantly limited. In addition, the size reduction will enable more

efficient population control and management.

The new institutions architectural design will enhance security. The living units will form a formidable security perimeter and fences will surround any open areas. Each of the institutions will have all "wet" rooms, that is rooms with individual toilets and sinks and will be designed in clusters so that in times of disturbances, sections of the institutions can be separated and residents contained within their rooms.

In terms of previous problems in the security area, there were two factors contributing to institutional unrest in the Department's facilities in 1972: overcrowding was at its maximum, and the institutional staff contained a high proportion of inexperienced personnel.

Over-crowding is probably the single greatest factor in institutional disorder, as inmates experience frustration, and idleness. Even recreational facilities become overtaxed, and inmate cliques form. A large discontented population is difficult to control, but for a staff in which nearly one out of two officers has less than three years experience, the problem becomes more difficult. These problems will be largely alleviated as the population declines, and our training efforts take effect.

We recognize that the problems of adequate and effective security have many facets and we have been attempting to address as many of these areas as physically possible in order to achieve a model facility that will be the safest possible for all who come into contact with it, either through court action, employment, or geographic proximity.

Statistically, things are improving, although in areas such as these improvement can never be considered as a signal to slacken our efforts.

In 1972, there were a total of 34 perimeter escapes from the Central Facility. This occurred during a period of severe overcrowding at this facility. Since that time the resident population has been declining, the correctional force has been enlarged, and security procedures have been tightened. As a result, in 1973 only 2 perimeter escapes occurred at the Central Facility.

On the Reservation, which includes the Central Facility and the two Youth Centers, there were 39 perimeter escapes in 1972. This was reduced to 13 in 1973.

In addition, the total number of "walkaways" from the Minimum Security Facility decreased from 67 in Fiscal Year 1972 to 64 in 1973.

Assaults on personnel during 1972 and 1973 remained almost the same with only a few percentage points difference. Assaults by inmates on inmates have risen, but only slightly.

The following table reflects the escapes from Virginia, Maryland, D.C. and Federal Bureau of Prisons during FY 1972. This is the latest year for comparative data.

FISCAL YEAR 1972 ESCAPES

Jurisdictions	Escapes	Population	Escapes per thousand
Federal Bureau of Prisons.....	671	22,089	30.38
Virginia.....	250	6,029	41.46
Maryland.....	266	5,083	52.36
District of Columbia...	144	3,581	40.20

Security measures are only as effective as those who eventually must implement them. It has therefore been our belief that not only must we improve our physical capabilities and reduce the opportunities for transgression, but we also must make every effort to involve our own personnel in a united effort. We have therefore undertaken to improve direct communication capabilities within the Department.

We are now in the final stages of improving the internal communications system of administrative issuances. Within the past several months many system improvements were made which guarantee that policy direction reaches the people who need it.

This will now provide us with a formal system for communicating policy and procedural orders of the Department, thereby enhancing the ability of every member of our operation to perform his job at the best possible level of effectiveness.

All of the above efforts have been initiated in our sincere belief that security, in the final analysis, is the foremost responsibility of this Department. Rehabilitation efforts are possible only in an environment that has first taken those steps necessary to protect those individuals associated with it, whatever that involvement may be.

[From the Corrections Digest, Jan. 23, 1974]  
EXCERPTS FROM AN INTERVIEW WITH NORMAN A. CARLSON

(Excerpts from an interview with Norman A. Carlson, Director of the Bureau of Prisons of the Department of Justice. He was asked his position on the proposal to remove the Lorton Reformatory Complex from District of Columbia government operation in favor of placing it under the U.S. Bureau of Prisons. His answer follows:)

"I am unalterably opposed to Bureau control of Lorton. I believe that if the District of Columbia is going to be a self-ruling city then it should have responsibility for all facets of the society that live here. Just as the city controls its hospitals, schools and police, so should it control Lorton. The criminal justice system in this area should be handled on a continuum and not be fragmented out, as would be the case if the D.C. courts were under the city and Lorton fell under federal jurisdiction. And to be honest, given the resources and the situation the city has to work with, I don't know if the Bureau could do any better job with Lorton than is presently being done."

#### CORRECTIONAL BUDGET INFORMATION

For the past five years the District of Columbia has placed priority on improving the resource availability for corrections and all criminal justice programs. Virtually every program area—corrections, courts, bail, legal services—has witnessed tremendous program expansion.

#### Operating budget

Fiscal year 1970 (1,530 positions)	\$17,850,000
Fiscal year 1974 (2,090 positions)	30,200,000

Funding has been increased by more than 69% and positions by 37%.

Since FY 1970 the number of correctional officer positions has been increased from 850 to 1,150 in the Department. Now more than 800 correctional officer positions are assigned to Lorton.

It is estimated that about two thirds of the total departmental budget or \$20,000,000 is directly related to activities at Lorton. For courts' and related agencies budgets amounted to \$16,500,000 in FY 1970. The FY 1974 appropriation for those agencies amounts to \$34,200,000.

#### CHART CAPTION

For much of recent history, Lorton has been impacted by severe overcrowding, causing many difficult operational problems. This population has tapered off and has now reached rated capacity, eliminating many of the problems attendant on overcrowding. Further relief will be provided when the program of construction and modernization now proposed is completed. The attached table shows the average monthly population at Lorton.

Chart not included in RECORD.

CXX—87—Part 2

#### NEWS RELEASE

Mayor Walter E. Washington sent to the City Council today a proposal to modernize corrections facilities at the Lorton Correctional Complex to provide increased rehabilitation opportunities and improved security.

The proposal, which would include construction of three new facilities already authorized, is in the form of a request to reprogram \$45 million for the modernization work.

The proposal by Mayor Washington would reduce the actual capacity of Lorton facilities by about 200. It also substantially reduces the number of spaces from the total projected in an earlier construction plan. The proposal is based on new population projections which reflect a leveling off of the number of offenders sent to correctional institutions.

Following City Council clearance, the request would go to the House and Senate appropriations subcommittees for their review and approval.

The \$45 million to modernize the complex is part of an original \$65 million authorization for Lorton construction. Mayor Washington proposed today that \$10 million of the original total be used to complete the detention facility now being built to replace the D.C. Jail. The balance of funds authorized would be retained as a reserve.

In making the reprogramming request, the Mayor said:

"By acting favorably on these requests, the Council and the Congress will provide funds to go forward with projects already approved to modernize and strengthen detention facilities. Upon completion of these facilities, the D.C. Department of Corrections will for the first time in generations have available modern, decent and secure facilities, designed to support a rehabilitative program with a focus on education, training and counseling."

The plan calls for construction of three institutions for 200 residents each, reduction through modernization of the existing Central facility from some 900 to 400 spaces, elimination of one outdated facility for some 300 residents, and retention of three existing facilities for 400 or fewer residents each.

This would result in a net reduction of some 200 spaces, and all new spaces would be in complexes of 400 or fewer residents.

Residents with varying lengths of sentences, varying rehabilitation needs and in different age groups would be placed in units with others of similar sentence structures and needs, resulting in provision of more individualized attention for residents. Certain administrative and support services would be centralized to serve all institutions.

"The result of this construction would be that resident interaction is likely to become a positive and supportive rehabilitation element," the Mayor said. "In smaller institutions, security will be maintained more easily, and staff members will be able to provide more specialized and individualized attention."

"We believe these proposed facilities will be of significant help in enabling the Department to accomplish its mission."

#### SENATOR SCOTT'S ASSAULT ON LORTON

Some years ago, a fearless band of congressional law-and-order men headed by former House District Committee Chairman John L. McMillan (D-S.C.)—and abetted by then-Rep. William L. Scott (R-Va.)—came up with a singularly ill-conceived plan to solve any and all problems at Lorton, the city's prison complex. In the sacred-sounding names of law, order and the "federal interest," this self-appointed posse proposed that Lorton be turned over to federal control.

Fortunately, there were always enough thoughtful members of Congress around who recognized that this change would not work miracles for penal propriety, and each time

the plan was dropped or defeated. But Mr. Scott, who is now a member of the Senate, is still peddling this counterproductive provision—this time in the form of an amendment to the Legal Services Corporation bill scheduled for Senate consideration today.

The idea, which has been opposed consistently by local as well as federal corrections officials, seems to be to stop "permissiveness" by turning overall the inmates to Uncle Sam's custody. As Mr. Scott once explained, in this way "militants would not need to be concentrated in one institutional complex." Instead, you could just distribute the bad actors around the country and forget about the struggling programs aimed at returning them to their community as productive members of society.

That may appeal to politicians who would rather rant about "discipline" than create a good, local correctional setup. But fragmentation of the correctional system would only aggravate the real problems that earnest local officials have been working to solve. Programs to deal with crime and rehabilitation—from improvement of the facility to better staff training and narcotics treatment and control—need local ties and supervision to be effective.

James V. Bennett, former director of the Federal Bureau of Prisons, opposed the Lorton transfer on these grounds, and the current director, Norman A. Carlson, has made his view clear in an interview published this month in Corrections Digest:

"I am unalterably opposed to Bureau control of Lorton. I believe that if the District of Columbia is going to be a self-ruling city then it should have responsibility for all facets of the society that live here: Just as the city controls its hospitals, schools and police, so should it control Lorton."

Not only should the criminal justice system be handled on a continuing basis, said Mr. Carlson, but "to be honest, given the resources and the situation the city has to work with, I don't know if the Bureau could do any better job with Lorton than is presently being done." To ignore these professional judgments in favor of an ill-considered plan to dump the whole problem on the federal government is senseless. Members of the Senate who have any faith in the city's ability—and responsibility—to cope with local matters should vote against the Lorton amendment.

The PRESIDING OFFICER. Who yields time?

Mr. WILLIAM L. SCOTT. Mr. President, I made a statement with regard to the amendment at the time the amendment was offered to the Senate. This is a matter that I believe the Senate has heard about many times. I believe it is a matter that the Senate is well informed on. I did insert in the RECORD miscellaneous clippings with regard to the hardships that were imposed on the State of Virginia by this penal institution.

You know, Mr. President, we refer to it as a reformatory. It is not a reformatory in any sense. It does not reform, and it is not for people who have been convicted of misdemeanors. We have convicted felons who are the primary make-up of this institution.

It is something that the board of supervisors of Fairfax County, where the facilities are located, have indicated that they would like to see moved to Federal control. The General Assembly of the State of Virginia has passed a resolution urging the transfer to Federal control.

The attorney general of Virginia has filed a law suit asking that the penal

institutions be declared a public nuisance.

We have had murders committed on inmates by inmates and on guards by inmates.

This is something that does require the attention of the Senate.

I hope that we have a favorable vote on our amendment.

Mr. President, I am glad to yield to my colleague, the distinguished senior Senator from Virginia.

Mr. HARRY F. BYRD, JR. Mr. President, I join my junior colleague from Virginia in supporting the amendment.

It seems to me that the Congress of the United States should take cognizance of the very bad condition that exists in this facility which is located in the State of Virginia, although operated by the District of Columbia.

My colleague from Virginia has had printed in the RECORD the fact that during 1972 there were 137 instances of prisoner assaults, 50 inmate assaults on prison guards, and 51 assaults on inmates by inmates.

The District of Columbia has either been unwilling or unable to bring order out of chaos. If the District of Columbia Committee wants to oppose this amendment, I think that it has some obligation to demand that the government of the District of Columbia take steps to bring about conditions in that penal facility which will not only protect the inmates from assault upon the guards and upon one another, but will also protect the people in the neighborhood where the facility is situated.

I think that the two Senators from Virginia have recommended as fair an approach as possible to the Senate; namely, the transfer of this penal institution to the Justice Department.

Mr. WILLIAM L. SCOTT. Mr. President, I am delighted to yield to the Senator from Alabama.

Mr. ALLEN. Mr. President, I thank the Senator for yielding to me so that I may speak in opposition generally to the Legal Services Corporation proposal, and not with respect to the amendment of the Senator from Virginia which I do support.

Mr. President, the Legal Services Corporation bill is being offered as the solution by one gesture to all the legal problems of the poor, the deprived, the minorities, the underprivileged and every other group in society which claims to have a grievance. Mind you, I am not saying real grievances do not exist. In fact, I favor steps to enable all citizens to have equal, fair access to the judicial system, but in pursuit of this goal, excesses can and do arise. Not only excesses in action, but errors in direction, or excesses in a certain course of action have occurred; examples are legion.

There is one course of action in particular which I view as contrary to much in America's tradition and, indeed, sharply out of keeping with the American character.

Mr. President, I have spoken in past days in opposition to the creation of the Legal Services Corporation. I wish to speak today with respect to one activity of the Legal Services activities now being carried on in the Department of the OEO.

Mr. WILLIAM L. SCOTT. Mr. President, might I inquire of the Senator from Alabama that perhaps, since we do have limited time, that he only take a few moments.

Mr. ALLEN. I am delighted to comply with that request.

Mr. President, I refer to the practice of involuntary busing of schoolchildren which has been much decried in these Halls for several years. Practically everyone is against forced busing, but especially those who have to deal with it in anything like a practical, everyday way. Parents who hazarded their life savings to buy a house in a neighborhood so their children would have access to better public schools understandably resent a system which consigns their children by bus to inferior schools.

What is more important and more directly my concern is the question of what causes school systems to start busing programs. Why do they suddenly determine that they are improperly balanced, and the only cure is large-scale busing? Well, school boards do not wake up one fine morning and embrace the idea—far from it. Most city and county school boards are compelled to adopt busing schemes, compelled by force of law. In many cases, the party who brings the suit, who starts the whole thing rolling, is one of our local friendly legal services lawyers. Also, in numerous cases, standing behind the nonlegal services attorney is the ammunition and armor of a legal services backup center, a research organ whose sole purpose is to fill him with recent case background, briefs, related information, outside help of every type imaginable, and so on, a backup center funded by the taxpayers.

A good example of a backup center is the Harvard Center on Law and Education. The Harvard Center has been instrumental all over the country in generating busing suits that in turn brought about busing programs. It strikes me as ironic, however, that their own city of Boston was singled out recently by the New York Times for an article in the Sunday magazine section to be examined microscopically and was declared a monumental failure in equal education.

Mr. President, the cost to the taxpayers of a Legal Services Corporation is not inconsequential. Legal Services has had specific allocation since 1966, when it was given \$26 million. By 1974, the program had budgeted \$71.5 million, well over a 100-percent increase. In 1966, about 1,000 lawyers were involved; at this time, estimates are around 2,200. That means, at a cost close to a hundred million dollars, more than 2,000 attorneys are on the loose without a care in the world, free to exercise their legal skills in whatever way they choose, without any supervision from the footers of the bills.

In Portland, Oreg., in 1970, OEO legal services filed a class action against the school board. At this time, that case, I believe, is in the court of appeals and has so far cost the city of Portland some \$22,648. It has not cost the social reformers a thing—remember, from their perspective, it seems as if legal services is free. The checks keep coming from Washington, no matter what kind of

work they do or what sort of services they provide or fail to provide. Of course, the people of the city of Portland sooner or later have to produce that \$22,648, in one way or another. Under the bill we are considering today, any time a legal services office decides to sue a school board, city government, or other agency, they can make the proceedings as costly and as time consuming and difficult as they want. Win or lose, it is no money out of their pockets, but it is often a financial problem to the defendant and the taxpayer. It seems we have given legal services attorneys an effective way to harass public officials and clobber the taxpayer.

An excellent amendment introduced by Congresswoman EDITH GREEN was adopted by the House. It provided that the court would give court costs and attorney fees to the defendant if he won the case. The money would come out of the Legal Services office. I am sorry that provision was not included in the bill before us. If anything would have a restraining effect on trivial or plain harassment cases, given the unrestricted funding of all activities, this might be the thing to do it. As the situation stands, however, there is no disincentive to filing expensive, unpopular, unlikely law suits.

That, I contend, is precisely what the Harvard Center has done. They make no pretense of being objective or impartial in their ideas on equality in education and how to attain it. Their prejudice is very obvious. Their publication, entitled "Inequality in Education," shows very clearly the basic presumption: the focus is on the problems rather than on possible solutions. They assume that all school systems are guilty of inequality until proven innocent.

In March 1972, "Inequality in Education" ran a three-page article that must surely rank as a masterpiece of empty verbiage and use of politico-patriotic trigger words.

Until we are sure that ending busing will not bring a return to segregated public schools; until we have those assurances, we must not unduly limit ourselves—and certainly not constitutionally.

Mr. President, this line of argument is wrenching the Constitution from its original spirit and intent, as are others who try to justify this busing monstrosity on constitutional grounds. The laws of the land are clear enough to prevent segregated schools, if those laws were given a chance to be invoked in objectivity and freedom from pressure and considered in the spirit of judicial disinterest on which the American system is based. However, tragically, this neutrality, this dispassion, has been destroyed by the vehemence and fervent ideology of young liberals and radicals in the corps of legal services lawyers.

They seem to believe that people can be forced to "care for one another" by being forced to associate with each other a few hours a day in classrooms. As if "caring for one another" were the most important thing in a free society—never mind respecting one another's rights.

Equality is not the only thing of value. Dignity and diversity are equally important, and perhaps more so. But the legal services fanatics are dedicated to their ideas and at the price of corrupt-

ing the judicial system. They have been given the free mechanisms for exercise of their schemes, they pursue their reforms at taxpayers expenses. The city governments and school boards elected by the people and responsible to the citizenry have no unlimited resources for defense of their position in the face of such assaults. But competition it is—competition in rhetoric, agitation, propaganda, citizen activism, legal twists and turns, threats of disorder if certain ends go unattained—that is not justice, that is countervailing pressures. Those are the tactics of populism, of street governance, of government by yelling.

Mr. President, this is a travesty of justice, and this is the predicament to which unrestricted legal services has brought us. Continuation of this pattern, for the unending foreseeable future, as provided by an independent Legal Services Corporation, with no restrictions or restraints whatsoever on activities legal or extra-legal by well-financed, well-provided-for, young lawyers bodes ill for our country and our society, and promises further disruption and distortion. Thus, I oppose unconditionally S. 2686, and will continue to do so as long as it remains the uncontrollable hydra it presently is. There has to be a better way to deliver legal services to the truly needy.

Mr. EAGLETON. Mr. President, I ask unanimous consent that I may yield the remainder of my time to the distinguished Senator from New York (Mr. JAVITS).

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

Mr. JAVITS. Mr. President, we are about to vote immediately after a vote on this amendment on cloture with respect to the Legal Services bill.

The Legal Services bill, along the basic outline of those which passed the Senate on two previous occasions, was worked out painstakingly with the administration. The administration stated its position on the bill through Counsellor to the President former Representative and former Secretary of Defense, Mr. Laird.

There would hardly be any point at this stage of the debate and in the few minutes we have remaining to argue the merits of the bill. However, I think a few things have to be emphasized.

First, the House, the Senate, and the President have agreed that there should be an independent national Legal Services Corporation. To delay a vote on this question under those circumstances is merely to delay something which by general consensus has now been accepted as the way in which to carry on the program and the benefits to be derived from the program. It is a desirable program because of all the things that we have developed respecting the sense of dignity of the poor in this country. The sense of dignity of the poor at this time in the Legal Services Corporation seems to be at the top of the priorities.

It must be understood that, notwithstanding a cloture vote which does nothing but enable us to go ahead with our consideration of the bill, every one of the amendments—and there are, I believe, in excess of one hundred—perhaps

150 of them by now—will be voted on either up or down, and by a rollcall vote if the proponents desire it. A cloture motion does not prevent votes on amendments or on amendments to amendments provided they are on file before a favorable vote on the cloture motion is taken. The Senate will vote them either up or down by a majority.

In short, I emphasize the fact that this vote only enables us to get on to the business of passing a policy that is acceptable to the White House and that has been accepted twice by the Senate, and in principle by the House.

I deeply believe that, as always happens, this is a test as to whether this Government is run by 33 Members of the Senate, which the Constitution never dreamed of; or whether it is run under the Constitution, by the President and by a majority of each House.

It has always been said on the part of the filibusterers that we should not worry about it, that if we really want to get on with the business of getting a good bill, we can get it.

Let me see whether that is so or not. Will we get it or will the whole process be frustrated for reasons that have nothing to do with the merits of the proposed legislation or an ability to change the legislation?

Mr. MONDALE. Does the Senator from New York agree that the bill here before us now has probably been more thoroughly analyzed and more thoroughly heard, and is the result of a longer period of intensive negotiation between both sides of the aisle, and between Congress and the Executive, than perhaps any other matter we will have before us this year?

Mr. JAVITS. There is no question about that. And not only, as I say, is that the case, but let us look at the commitment of the White House and its limitations. What they have said—in the letter of October 4 written by Melvin Laird, counsellor to the President, addressed to Senator NELSON—is:

Therefore, we urge that final action be taken on the bill in this general form by the full Committee and by the Senate followed by an expeditious reconciliation of issues with the House passed bill so that the best possible measure may result and a National Legal Services Corporation may be implemented at the earliest opportunity.

In the same letter, they also say:

While we differ with some of the specific provisions of the bill as reported, we believe it does include essential principles proposed in the Administration's bill such as independence and accountability of the Corporation, freedom of the attorney to represent his client, and maintenance of a vital program.

The White House was absolute as they made this arrangement with me. I speak with the greatest personal knowledge. The White House reserved its right to use whatever influence it has in the Congress, and it is well known that they favor some elements of the House bill. But that is all right with us; we can fight that. We say, "Now, let us get on with the business of considering amendments to the bill and getting it out of the Senate, and then we will take our chances—and fight—in conference."

There is nothing locked in about the bill. However, we believe that the great majority of us are in essential agreement, and wish to implement a pretty well agreed upon effort.

Mr. MONDALE. Will the Senator yield further?

Mr. JAVITS. I yield.

Mr. MONDALE. One of the things that perplexes me about the opposition to this bill is that what we are seeking to establish and maintain here is, it seems to me, elementary justice. All that we seek to assure by this measure is that the poor—those unable to afford the opportunity to have a lawyer represent them in legal proceedings—should have the right to do so in the courts and the tribunals of the land. We do so in the face of a clear record that, absent such a program, the right to certain constitutional rights is a mockery for millions of Americans who cannot afford to be represented before the courts of our land.

Would the Senator from New York (Mr. JAVITS) not agree that what we are seeking to establish here is nothing less than elementary justice for a position of America?

Mr. JAVITS. There is no question about that, Mr. President. And in addition to the constitutional rights of the indigent, which have often been denied before, there is the additional fact that this is the one program that is relatively economical in money, that represents for its size an enormous bulk in terms of the rehabilitation of the poor, who feel justifiably that they, too, have the dignity and standing to have their rights protected in America, and to have a lawyer.

Mr. MONDALE. Will the Senator yield further?

Mr. JAVITS. The Senator from Arizona wanted me to yield for a question.

Mr. GOLDWATER. Mr. President, have there ever been hearings held on this bill?

Mr. JAVITS. Oh, yes, many days.

Mr. GOLDWATER. In this Congress?

Mr. JAVITS. We turned the matter out in the last Congress.

Mr. GOLDWATER. The reason I ask is that, while I shall vote against this bill, I do not like to do so. I like the purpose and intent of the bill. But as I have stated previously on this floor, there is evidence that it is used for political purposes. Their people in Arizona deny that, those who make the charges and make the pretense of appearing before the committee.

I think, frankly, the basic idea is good, but I do not like to see the Federal Government in my State, for example, spending three times as much money in one area of the State as we spend through the Attorney General's office in the whole State.

Mr. JAVITS. In the first place, the bill is very tough on political activities. But beyond that, why are we having a corporation? Previously because of what the Senator says, to insure and institutionalize the continuing conduct of the program as a responsible program.

Mr. KENNEDY. Mr. President, I firmly oppose amendment No. 837 to the Legal Services Corporation bill. The Senator from Virginia introduced this measure because he insists that under Federal control, the District of Columbia correc-

tional facility at Lorton, Va., would be administered more easily and efficiently. I am certain that if substantial evidence existed to indicate that such a transfer would eliminate or greatly reduce the problems described by the Senator, then clearly the Federal Government, the government of the District of Columbia, and the Congress, would have seen fit to make such a transfer long ago. But all who fully understand the problems at Lorton agree that there is no more justification for transferring that facility to Federal control than there is for transferring the Virginia State penal system to the U.S. Department of Justice.

Instead, there must be a committed determination to provide the resources and the cooperative assistance of local agencies to insure the proper management of that facility if it is to serve the National Capital community. Public concern about security at Lorton reaches a peak when reports of spectacular escapes are announced. And certainly for those of us who live in Fairfax County, such reports may seem alarming. Indeed, they are no less alarming than reports of escapes from the Virginia State penitentiary in Richmond or from any other State prison complex around this country. However, penal officials have advised me that the escape rate from the Virginia State complex compares with that at the maximum security facility in the D.C. Corrections Department at Lorton. The reason for that is simple. Maximum security facilities are arranged to house offenders in separate rooms. Each person is placed in a cell with personal sleeping and toilet facilities. Such offenders are able to realize a modicum of privacy. It is also easier for prison officials to maintain adequate security with such an arrangement. But a large part of the Lorton complex is significantly different. At Lorton, more than 1,000 offenders are housed in 24 dormitories designed to hold 850 people. The overcrowding and lack of privacy create enormous problems that certainly do not lend themselves to effective control.

Instead of seeking to shift this vital municipal responsibility to the Federal Government we should concentrate on ways to improve the ability of the District government to manage the system that serves its citizens.

Somewhat those who support the transfer seem to feel that the resources of the Federal Government can be brought to bear upon the problems at Lorton to impose stronger controls. If that is the case, if money and other resources from the Federal Establishment promise to solve the problems at Lorton, then we should give the District of Columbia government adequate funds to meet that problem.

Beyond the question of funding, at least four fundamental reasons clearly demonstrate why the complex at Lorton should remain under control of the District of Columbia.

First, home rule means the District should control its own service facilities. Last year the Congress enacted a landmark piece of legislation to begin implementing home rule for the District of Columbia. Any meaningful followup to

that legislation can only be that which enables the city government to effectively perform its duties. Home rule means that the District of Columbia manages and administers the services required to meet the needs of its people. That goal can be accomplished only by providing the city managers with the necessary tools.

Second, a unified criminal justice system is the most direct way to deal with the problems of offenders.

I share the view of Norman Carlson, Director of the U.S. Bureau of Prisons, who insists that such a transfer would be unwise and inappropriate. Prison experts are convinced that a transfer to Federal control would simply fragment the criminal justice system in the District of Columbia.

There is simply no evidence to indicate that the U.S. Bureau of Prisons could perform the task at Lorton any better than officials in the city of Washington.

Indeed, the serious overcrowding in the Federal prison system has strained Federal penal facilities to strive to accommodate the 3,700 inmates who exceed the rated capacity of existing Federal penal facilities.

Third, any attempt to achieve rehabilitation of offenders can be best accomplished through family contacts with maximum possible access to the offender's home.

Proponents of the transfer to Federal control suggest that a dispersal of Lorton inmates throughout the Federal penal system would substantially relieve the overcrowdedness at the Virginia complex. But Federal officials, who are already charged with the care of some District of Columbia offenders in Federal penitentiaries know that inmates who are moved away from home become more unmanageable than those who can maintain family contacts. Separation from families breeds discontent and frustrations that Federal officials know only too well. Removal to faraway locations effectively reduces any chance to achieve rehabilitation through family contacts.

Fourth—mutual assistance from Virginia and the District of Columbia authorities can best insure security inside the complex, and for the home and business neighbors of the Lorton facility. Because geographic boundaries strictly limit the District of Columbia in its effort to provide expanded services, the property in Lorton, Va., is unique. Yet, District officials have worked cooperatively with Fairfax County administrators to assist with the responsibilities of managing that correctional complex.

Mrs. Jean Packard, chairwoman of the Fairfax County Board of Supervisors, says that a transfer to Federal control simply will not solve the problem.

Mrs. Packard has urged the board of supervisors and the Virginia State Legislature to support a demand for adequate and immediate support to increase the capabilities of the District of Columbia Department of Corrections. In her view, the District of Columbia deserves to be provided with the proper tools and continued cooperation from Fairfax County officials to insure that the existing system will work.

These reasons substantially support

the demand to provide the District of Columbia government with adequate assistance to operate Lorton. Attempts to transfer control to the Federal Government completely avoid the issue of providing satisfactory attention to the problems of maintaining a penal institution.

Mr. President, last July, 44 Senators opposed the attempt by the Senator from Virginia to transfer the facility at Lorton to Federal control. We rejected the transfer at that time and there is every reason to reject it at this time.

I urge the Senate to oppose the amendment offered by the Senator from Virginia to transfer this important District of Columbia institution to control of the U.S. Department of Justice.

Mr. WILLIAM L. SCOTT. Mr. President, we are almost at the point of voting on the amendment that I have proposed to transfer the Lorton penal institution from the control of the District of Columbia government to the Attorney General.

Let me add, for the information of some of my colleagues who are friends of labor, that the then president of the American Federation of Government Employees, John Griner, when this matter was before the House of Representatives, did appear and testify in favor of the proposal to transfer this facility. I feel this is something they might be interested in knowing.

I would also like to call the attention of my colleagues to a letter that is on each Senator's desk, a letter from me to my colleagues, providing some information in support of the amendment. I ask unanimous consent that the letter be printed in the RECORD at this point.

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

U.S. SENATE,  
Washington, D.C., January 28, 1974.

DEAR COLLEAGUE: As you may know, I recently offered as an amendment (No. 887) to the Legal Services Corporation Bill (S. 2686), a proposal to transfer the Lorton, Virginia Penal Facility from the control of the District of Columbia to the jurisdiction of the Attorney General.

This proposal is not new to the Congress. In fact, it was passed by the House during the 91st Congress but the Senate at that time failed to include it in the bill as finally agreed upon.

The conditions that existed at Lorton at that time continue to exist today and the situation grows worse by the day, as the number of murders, robberies and jail breaks increase. During 1972 the record discloses 137 instances of prisoner escapes, 50 inmate assaults of inmates upon inmates. During the past year there have been six murders committed at the facility, including the murder of a corrections officer.

The Virginia General Assembly and the Fairfax Board of Supervisors have called for the transfer of Lorton to federal control but still no action has been taken by Congress to relieve this complex and continuing problem.

Enclosed is a copy of my amendment. I hope you will see fit to support this proposal when it comes up for a vote, and if you are interested in co-sponsoring it, please let me know or have a member of your staff contact Pat Carty on extension 52026.

Sincerely

WILLIAM L. SCOTT,  
U.S. Senate.

Mr. WILLIAM L. SCOTT. Mr. President, this is a festering sore within Virginia. The State of Virginia has no control over a penal institution within its boundaries. I just wonder how any Senator would feel about a similar facility being in his own State, and not having any control whatsoever over it.

I urge that the amendment be adopted, and unless someone desires time, I am prepared to yield back the remainder of my time.

Mr. NELSON. Has all remaining time been yielded back?

The PRESIDING OFFICER. There are 3 minutes remaining before the vote. Who yields time?

Mr. WILLIAM L. SCOTT. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. WILLIAM L. SCOTT. I have just been handed a note saying that the yeas and nays have not been ordered. It is my recollection that there was unanimous consent for the yeas and nays when the majority leader was here on the floor. If not, or if there is any doubt, at this time I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

Mr. NELSON. Mr. President, I call attention to the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

Mr. MONDALE. Mr. President, I am standing in for the Senator from Wisconsin (Mr. NELSON), and I object.

The PRESIDING OFFICER (Mr. CLARK). Objection is heard. The Clerk will continue to call the roll.

The second assistant legislative clerk continued to call the roll.

Mr. GOLDWATER. Mr. President, a parliamentary inquiry. Under unanimous consent were we not to vote at 2 p.m. today?

The PRESIDING OFFICER. The Senate is in a quorum call and debate is not in order.

Mr. GOLDWATER. I am not talking about debate. I am asking a question.

The PRESIDING OFFICER. A quorum call is in order even though the hour has been set for a vote at 2 o'clock.

The clerk will continue the call of the roll.

The second assistant legislative clerk continued to call the roll.

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

Mr. GOLDWATER. Mr. President, I object—I object.

The PRESIDING OFFICER (Mr. BARTLETT). Objection is heard. The clerk will continue to call the roll.

The second assistant legislative clerk continued to call the roll, and the following Senators answered to their names:

	[No. 15 Leg.]		
Abourezk	Fannin	Mondale	Sparkman
Alken	Fong	Montoya	Stafford
Allen	Fulbright	Moss	Stennis
Baker	Goldwater	Muskie	
Bartlett	Griffin	Nelson	Abourezk
Bayh	Gurney	Nunn	Bartlett
Beall	Hansen	Packwood	Bayh
Bellmon	Hart	Pastore	Beall
Bennett	Haskell	Pearson	Bennett
Bentsen	Hatfield	Pell	Bentsen
Eible	Hathaway	Percy	Bible
Biden	Helms	Proxmire	Biden
Brock	Hollings	Randolph	Brooke
Brooke	Hruska	Ribicoff	Burdick
Burdick	Huddleston	Roth	Cannon
Byrd	Hughes	Schweiker	Case
Harry F., Jr.	Humphrey	Scott, Hugh	Church
Byrd, Robert C.	Inouye	Scott,	Clark
Cannon	Jackson	William L.	Cook
Case	Javits	Sparkman	Cranston
Chiles	Johnston	Stafford	Dole
Church	Kennedy	Stennis	Domenici
Clark	Long	Stevens	Eagleton
Cook	Magnuson	Stevenson	Engleton
Cotton	Mansfield	Symington	Fong
Cranston	Mathias	Taft	
Curtis	McClellan	Talmadge	Buckley
Dole	McClure	Thurmond	Gravel
Domenici	McGee	Tower	Hartke
Dominick	McGovern	Tunney	
Eagleton	McIntyre	Weicker	
Eastland	Metcalf	Williams	
Ervin	Metzenbaum	Young	

Mr. ROBERT C. BYRD. I announce that the Senator from Alaska (Mr. GRAVEL) and the Senator from Indiana (Mr. HARTKE), are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from New York (Mr. BUCKLEY) is necessarily absent.

The PRESIDING OFFICER. A quorum is present.

Mr. GOLDWATER. Mr. President, I suggest the absence of a quorum.

Mr. ROBERT C. BYRD. I ask for the regular order, Mr. President. A quorum call is not in order. A quorum call has just been completed.

Mr. GOLDWATER. I think a quorum call is in order.

Mr. ROBERT C. BYRD. A quorum call is not in order.

The PRESIDING OFFICER. Inasmuch as business has not transpired since the last quorum call, another quorum call is not in order.

The question is on agreeing to the amendments of the Senator from Virginia (Mr. WILLIAM L. SCOTT). On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Alaska (Mr. GRAVEL) and the Senator from Indiana (Mr. HARTKE), are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from New York (Mr. BUCKLEY) is necessarily absent.

The result was announced—yeas 38, nays 59, as follows:

	[No. 16 Leg.]	
	YEAS—38	
Alken	Dominick	Hruska
Allen	Eastland	Huddleston
Baker	Ervin	Long
Bellmon	Fannin	McClellan
Brock	Fulbright	McClure
Byrd	Goldwater	Montoya
Harry F., Jr.	Griffin	Nunn
Byrd, Robert C.	Gurney	Randolph
Chiles	Hansen	Roth
Cotton	Helms	Scott,
Curtis	Hollings	William L.

	Talmadge	Young
	Thurmond	
	Tower	
	NAYS—59	
Abourezk	Hart	Moss
Bartlett	Haskell	Muskie
Bayh	Hatfield	Nelson
Beall	Hathaway	Packwood
Bennett	Hughes	Pastore
Bentsen	Humphrey	Pearson
Bible	Inouye	Pell
Biden	Jackson	Percy
Brooke	Javits	Proxmire
Burdick	Johnston	Ribicoff
Cannon	Kennedy	Schweiker
Case	Magnuson	Scott, Hugh
Church	Mansfield	Stevens
Clark	Mathias	Stevenson
Cook	McGee	Symington
Cranston	McGovern	Taft
Dole	McIntyre	Tunney
Domenici	Metcalf	Weicker
Engleton	Metzenbaum	Williams
Fong	Mondale	

NOT VOTING—3  
Buckley Gravel Hartke

So Mr. WILLIAM L. SCOTT's amendments were rejected.

Mr. EAGLETON. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. STEVENSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HELMS. Mr. President, there has been some discussion on the floor about the shortcomings of the present legal services program of OEO. The proponents of the Legal Services Corporation bill argue that under their bill the shortcomings would be cured. It is my opinion that the shortcomings are inherent in the structure of the staff attorney system that would be perpetuated in the present bill.

This is borne out if we examine some of the shortcomings involved. And I do not intend to discuss mere hearsay or biased newspaper articles. I intend to make available for the record some of the inspection reports filed by civil servants at the Office of Economic Opportunity itself. If anything, the inspections are slanted to give Legal Services personnel the benefit of the doubt.

The findings, while unofficial and incomplete, do nonetheless shed some light on the reasons why so many Americans are supporting the drive to reform Legal Services abuses. They indicate how widespread the abuse is, and how easily it comes about. We are constantly told that such examples are the exception, that they are minor in the overall context of the program. But the way in which they are described by inspectors of the OEO itself leaves little doubt that the structure of the program itself is the major abuse, and that it can only be wiped out by statutory reform.

These are Government documents which have been hitherto undisclosed. I realize that there may be some criticism for disclosing them. But we have here no real secrets essential to our national security or defense. We have, on the face of it, only the desire of some bureaucrats to cover up the abuses in OEO.

I am also sure that the enthusiastic supporters of OEO will welcome their

publication. Indeed, it is an article of faith among Legal Services attorneys that the public should have complete access to the workings of bureaucracy and of bureaucratically funded programs. I have learned, in fact, that the official monthly publication of the Legal Services program, *Clearinghouse Review*, ran a 15-page cover article urging citizens to take full advantage of the Freedom of Information Act, which says, and I quote:

The public is now keenly aware that there are literally tons of government documents which hundreds of government agencies currently consider beyond their reach . . . the fruit, in a manner of speaking, is ripe for the picking.

The article continues:

This article and the Freedom of Information Act are both slanted toward the view that all government records should presumptively be disclosed. Poverty lawyers and their client groups—welfare rights, tenant and consumer organizations—have always taken the position that where a benefit exists, it should be utilized, and that where a benefit might be obtained through political action or litigation, the benefit should be pursued.

It is not my purpose to endorse this article or any of its presumptions. I merely cite it to indicate that the publication of inspection reports on the Legal Services program ought to be eagerly awaited by those who are enthusiastic supporters of the program.

Mr. President, I ask unanimous consent that the article from *Clearinghouse Review* be printed in the *Record* at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HELMS. Mr. President, I have five of the inspection reports prepared within the OEO itself, and I ask unanimous consent that they be printed in the *Record* at the conclusion of my remarks. They are as follows:

First. "Legal Aid Society of Alameda County/Union City, Calif."—This report discloses that the Legal Services project office was used as an official voter registration site in violation of the Economic Opportunity Act.

Second. "Monterey Legal Aid Society/Seaside, Calif."—This January 1972 report relates to the involvement of a Legal Services employee on behalf of the Movement for a Democratic Military and the Pacific Counseling Service "which counsels military people concerning their rights as conscientious objectors." Such activity is justified on grounds that it occurred during the attorney's "free time" as an ACLU attorney, offers the report. But, for professionals, who decides what is "free time" when they are supposed to be full-time employees of a Government-subsidized Legal Services program?

Third. "Legal Services Aids South Dakota Indian Radicals."—This March 1973 report reviews the role of Gary Thomas, a Legal Services attorney, in representing an American Indian Movement leader involved in rioting.

Fourth. "Native American Rights Fund at Wounded Knee."—This OEO report and newsclipping discuss the presence of this organization at Wounded Knee and

a class action suit which NARF—Native American Rights Foundation—brought against law enforcement officials in Scottsbluff, Nebr.

Fifth. "1971 Inspection of San Mateo Legal Aid Program."—This report describes questionable activities by a former Legal Services project director.

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

(See exhibit 2).

#### EXHIBIT 1

[From *Clearinghouse Review*, May 1972]

#### KNOWLEDGE IS POWER: POVERTY LAW AND THE FREEDOM OF INFORMATION ACT

(By Stephen R. Elias and Trudy Rucker, Staff Attorneys, Center on Social Welfare Policy and Law)

#### INTRODUCTION

Information—public versus classified—has recently aroused widespread interest and controversy, particularly since the Pentagon papers case. The public is now keenly aware that there are literally tons of government documents withheld from the public domain in the secret preserve of government officials. Although the act of divulging such "secret" documents has become heroic, since the Freedom of Information Act<sup>1</sup> was passed in 1967 any member of the American public has been entitled to inspect millions of documents which hundreds of government agencies currently consider beyond their reach. It is conceded that the precise records obtained by Daniel Ellsberg might not be obtainable under the Freedom of Information Act.<sup>2</sup> However, vast amounts of records of the same public importance are obtainable under the Act, and the fruit, in a manner of speaking, is ripe for the picking.

This article and the Freedom of Information Act are both slanted toward the view that all government records should presumptively be disclosed. Poverty lawyers and their client groups—welfare rights, tenant and consumer organizations—have always taken the position that where a benefit exists it should be utilized, and that where a benefit might be obtained through political action or litigation, that benefit should be pursued. In the case of the Freedom of Information Act, there is a large volume of information which if made public or available to the poor would help them obtain their rights. Legal Services lawyers should seek this information aggressively.

This article is concerned with the uses of the Federal Freedom of Information Act<sup>3</sup> and the problems likely to be encountered therewith. The Act identifies the type of material to be made available to the public, and the manner in which it must be made available. This includes information which must be printed in the Federal Register,<sup>4</sup> information which the agency is required to index and keep available for public inspection (such as final opinions and statements of policy interpretations which have been adopted by the agency and are not published in the Federal Register), and administrative staff manuals and instructions to staff which affect a member of the public.<sup>5</sup> Finally, the Act requires all other identifiable records to be disclosed upon request except as specifically exempted.<sup>6</sup> The Act also provides for judicial review of an agency's failure to make the requested information public; it lists the types of records exempted from the Act's coverage (nine such exemptions in all);<sup>7</sup> and it provides that no records shall be withheld except as specifically provided in the second part of the Act.<sup>8</sup>

This article will not discuss the Federal Register requirement. Further, although at times it will discuss the types of information

which must be indexed and kept available in libraries, it will not examine all possible problems in the area in detail.<sup>9</sup> (This subject is appropriate for additional extensive investigation and analysis.) The primary thrust of this article, therefore, is a discussion of the Act as it relates to records which are likely to be of help to poverty lawyers.

#### THE ACT AND ITS HISTORY

Until the Freedom of Information Act was passed in 1967, a citizen's right of access to public documents was largely in the realm of common law equitable principles. While a public disclosure section of the Administrative Procedure Act (APA) had been in force since 1946,<sup>10</sup> the Senate Judiciary Committee concluded that this older statute usually served the purpose of non-disclosure. This statute largely depended on traditional common law concepts. For example, a person had to have a proper and legitimate interest in the document, and the agency in possession of the document was entitled to withhold the document if, in the agency's judgment, the release of the document would be contrary to the public interest. Judicial review, to the extent it existed, consisted of an equitable balancing of interests between the parties—the needs of the plaintiff as opposed to the needs of the agency and the possible harm to the public interest. Recognizing that in practice this "equitable" system favored the agency over the citizen, Congress spent 12 years formulating the present Freedom of Information Act.<sup>11</sup>

In general terms, the Freedom of Information Act eliminated the prior requirement that parties requesting the records have a direct and proper interest in them.<sup>12</sup> All identifiable records (as covered by the Act) must now be made available for inspection and copying upon request unless specifically exempted by the Act. The Act specifies nine exceptions (discussed below) and then states: "This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section."<sup>13</sup> The Senate report section pertaining to this statutory section reads:

"The purpose of this subsection is to make it clear beyond doubt that all materials of the Government are to be made available to the public by publication or otherwise unless explicitly allowed to be kept secret by one of the exemptions in subsection (e)."<sup>14</sup>

Despite clear congressional intent that the specifically enumerated exemptions be the sole determinants as to whether records may be withheld, a threshold debate arises concerning whether Congress intended to strip the district court of its equitable powers. One commentator argues that a court may balance the equities among the parties and refuse to order disclosure of records not exempted by the Act if it finds that the harm to the public interest would be greater than the plaintiff's need for the record.<sup>15</sup> Most of the cases, however, have concluded that Congress intended to do its own balancing, and that the court's sole responsibility is to examine the exemptions (interpreting them in favor of disclosure) to see if a record has been properly withheld. The debate is most clearly presented in *Soucie v. David*,<sup>16</sup> where the majority held that the Act stripped the courts of their equitable jurisdiction (based on the legislative history indicating Congress' intent to do its own balancing)<sup>17</sup> and on the clear wording of § 552 (c) quoted above. Judge Wilkes, while concurring, argued that the courts retain their equitable power and may, if they choose, uphold an agency's decision to withhold records even though such records are not within one of the specific exemptions.<sup>18</sup> Concerning congressional intent, the more recent case of *Wellford v. Hardin* has noted: "It is not the province of the Courts to restrict that legislative judgment under the guise of judicially

Footnotes at end of article.

balancing the same interests that Congress has considered." <sup>19</sup> *Getman v. NLRB* <sup>20</sup> has fully concurred with the conclusions of the *Soucie* and *Wellford* courts. It would seem, therefore, that despite dicta to the contrary <sup>21</sup> the weight of authority clearly requires a strict reading of the Act. There is no doubt that the burden of justification rests heavily on the agency withholding the record after a proper request. <sup>22</sup>

The Act is accompanied by a House <sup>23</sup> and Senate <sup>24</sup> report comprising 95% of the relevant legislative history <sup>25</sup> and by a contemporaneous Attorney General's memorandum <sup>26</sup> (hereafter called A.G. memorandum) which purports to be an impartial analysis of the Act in light of the relevant legislative history. The A.G. memorandum is naturally biased in favor of the agencies, and in light of the fact that the agencies were virtually unanimous in opposing the statute, the memorandum constitutes a highly partisan statement against full implementation of the Act. <sup>27</sup> However, at least one court case has reminded us that the Attorney General is not charged with administering the Freedom of Information Act, and therefore the memorandum is not to be accorded the force and effect of law. <sup>28</sup> Furthermore, only the Senate report accompanied the bill through both houses, and this report is true to the actual language of the Act, whereas the House report (relied on almost exclusively in the A.G. memorandum) so departs from the language of the Act as to effectively "amend" it. <sup>29</sup> In light of the fidelity of the Senate report to the clear wording of the statute, conflicts between the Senate and House reports should be resolved in favor of the Senate report. Three cases have so specifically concluded. <sup>30</sup> Likewise, to the extent that the Attorney General's report conflicts with the Senate report or the clear words of the statute, the latter should prevail. <sup>31</sup> However, since the A.G. memorandum is the advice of the agency's "lawyer," the agencies should always at a minimum comply with the interpretations therein. This background, as will be seen, is extremely important to a number of issues which poverty lawyers are likely to encounter while pursuing records under the Freedom of Information Act. Of course, since the Act exempts from disclosure only those records specifically designated in the Act, the legislative history should always remain subservient to the plain meaning of the statute, and should never be resorted to except in the case of statutory ambiguity.

#### EXEMPTIONS

The Freedom of Information Act states essentially that all identifiable records must be made available for inspection upon proper request unless they are specifically exempted by any one of the Act's nine exemptions. <sup>32</sup> The exemptions include:

- (1) matters specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy;
- (2) matters related solely to the internal personnel rules and practices of an agency;
- (3) matters specifically exempted from disclosure by statute;
- (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (7) investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency;
- (8) matters contained in or related to examination, operating, or condition reports

prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps concerning wells.

Of these nine exemptions, the first, <sup>33</sup> sixth, eighth and ninth do not on their face seem particularly relevant to the types of records which poverty lawyers are likely to seek. Nor is there any case authority indicating otherwise. This article will therefore be confined to those exemptions which are most likely to confront poverty lawyers.

#### The second exemption

Although the second exemption, which covers internal personnel rules and practices, has been the subject of litigation only twice, <sup>34</sup> it might prove relevant in the future. The actions of agency personnel often seem incomprehensible and remain unexplained. Administrators frequently act on internal instructions which the agency does not consider to be in the public domain. However, materials which must be indexed and kept available for inspection include "administrative staff manuals and instructions to staff that affect a member of the public. . . ." <sup>35</sup>

In *Polymers v. NLRB* the Second Circuit held that the second exemption applied to a staff manual entitled "A Guide to the Conduct of Elections." <sup>36</sup> The exact nature of this manual is not clear from the opinion. However, the court relied exclusively on the House report which interprets the second exemption as exempting "operating rules, guidelines, and manuals of procedure for government investigators and examiners." <sup>37</sup> The court noted that the Senate report limits the exemptions to instructions dealing with such internal matters as sick leave, and that *GSA v. Benson* had criticized the House report for going beyond the scope of the Act. <sup>38</sup> In fact, the House report absolutely contradicts the Senate report and the clear words of the Act—a point appropriate for extensive discussion and criticism. <sup>39</sup> In light of the relevant legislative history, the *Polymers* case carries its own admission of error. Because of poverty lawyers' lack of experience in this area, it is difficult to gauge the type and amount of information which they might obtain under § 552(a)(c). However, it is clear that when properly interpreted the second exemption should not stand in the way of an expanded understanding of the reason for official behavior.

#### The third exemption

The third exemption applies to all records specifically exempted by any other statute. The A.G. memorandum explains this as preserving the force and effect of any statute which restricts disclosure of records not exempted by the Freedom of Information Act itself. The A.G. memorandum refers to a House committee print entitled *Federal Statutes on the Availability of Information* which provides a list of many of the statutes prohibiting the disclosure of various types of records. A study of this document has revealed only one statute which seems to apply in any way to the poverty law context. <sup>40</sup> The committee print, however, was published in 1960, and by its own terms is not exhaustive.

The one case which has dealt with this exemption <sup>41</sup> held that a statute allowing the agency to withhold information upon the written request of the provider, where disclosure would be prejudicial to the provider, was the type of statute which exempted records through the third exemption. The case contains no real analysis of this exemption and there is clearly much room for argument as to precisely what kinds of statutes the case was referring to.

#### The fourth exemption

The fourth exemption has been the subject of some litigation, and to the extent that the information sought involves financial or commercial information or trade se-

crets which have been obtained from a person outside the agency under a pledge of privilege or confidentiality, the exemption may prove troublesome. <sup>42</sup> However, many courts have made it clear that the fourth exemption applies only to financial and commercial information or to trade secrets, and that the confidential or privileged information exempted must possess these characteristics. <sup>43</sup> Although the House report and the A.G. memorandum indicate a different position, *Getman*, <sup>44</sup> for example, relied on the clear wording of the statute and adopted the position, taken by the court in *Consumers Union*, <sup>45</sup> that only the Senate report is to be relied on. <sup>46</sup> In *Schapiro v. SEC*, <sup>47</sup> the district court for Washington, D.C. discussed the question of who determines the "confidential" nature of the records. The court, quoting *Grumman Aircraft v. Renegotiation Board*, held that the test for availability was "whether they [the records] contain commercial or financial information which the contractor would not reveal to the public." <sup>48</sup> Addressing the defendant's argument that the person giving the record to the agency should be the one to determine its confidentiality (the subjective test), the court stated:

"Regardless of whether the information was submitted on the express or implied condition that it would be kept confidential, a Court should determine, on an objective basis, that this is not the type of information one would reveal to the public." <sup>49</sup>

In short, the confidentiality of financial or commercial information is not solely dependent on the donor or the agency, but may be subjected to the independent, and final, judgment of the reviewing court.

#### The fifth exemption

The fifth exemption is by far the most common one raised by HEW, the agency with which the authors have had most of their experience. Although the subject of much litigation, <sup>50</sup> this exemption is clear enough on its face. The only records exempted are inter-agency or intra-agency memoranda which are not available by law to a party in litigation with the agency. That is, only intra-agency or inter-agency records which are not discoverable by law are exempted. Since the word "agency" is defined by § 551 of the Administrative Procedure Act to exclude state agencies, <sup>51</sup> a strong argument can be made at the outset for the proposition that no record which passes between a federal and a state agency is exempted by this section. Although this was pointed out to the House committee, <sup>52</sup> the exemption as written failed to exempt communications between the federal and state governments. Since the committee did not change the wording, the conclusion is justified that communications between such governments are not exempted from disclosure. As stated in *Getman*, "[T]he court is not free to give the statute an expansion which Congress considered and denied." <sup>53</sup> Therefore, no state plan proposals, waiver requests, conformity materials, suggestions or comments by the federal agency, or any other communication of any sort between a federal agency and a state agency or official should be considered exempt by this section. HEW has now taken the lead and recognized the availability for inspection of all such records. <sup>54</sup>

What is available by discovery is covered essentially by FRCP Rule 26b. This rule states that:

"[P]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be

inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

The key requisites for material to be discoverable, therefore, are relevance to the cause of action and the lack of any applicable "privilege."<sup>55</sup>

In freedom of information cases, however, there is no substantive litigation by which the relevance of the requested documents can be judged. Further, the Freedom of Information Act abolished the requirement that a person have a direct and proper interest in a record, and therefore the agency itself would never, under the Act, have occasion to question the relevance of a record to any possible lawsuit. The conceivable relevance of records to some hypothetical lawsuit is not mentioned in the legislative history nor in the A.G. memorandum. Rather, strong evidence shows that Congress was only concerned with allowing the government to withhold those records which are subject to the privilege exception in Rule 26b(1).<sup>56</sup>

The exception of privileged materials applies to records which come within the common law privileges of doctor-patient, attorney-client, and clerical relationships. But in litigation against the government, the federal government has consistently raised a special privilege—the executive evidentiary privilege—as a defense to motions to compel production of documents. This privilege has been held to reside in the executive to protect it from disclosure of documents which would expose its actual reasoning processes as opposed to the factual bases for decision making. Thus,

"... the privilege obtains with respect to intra-governmental documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which government decisions and policies are formulated."<sup>57</sup>

The purpose of the privilege has been stated to be twofold: first, to protect and encourage a frank interchange of opinion within the agency, and second, to protect the reasoning process of the agency from public exposure.<sup>58</sup>

It is helpful to see how this executive evidentiary privilege works in practice. In *Kaiser Aluminum & Chemical Corp. v. United States*,<sup>59</sup> the court of claims held that an agency employee's internal opinion on possible agency action on a \$36 million contract between the agency and Kaiser, was the type of record which an agency could claim as privileged. In *Machin v. Zuckert*,<sup>60</sup> the United States Court of Appeals for the District of Columbia held that Air Force deliberations or recommendations pertaining to a crash were privileged, even absent military secrets, but that the factual findings and conclusions of mechanics who actually examined the wreckage must be disclosed. In *Boeing Aircraft v. Coggeshall*,<sup>61</sup> a case concerning attempts to obtain records from the renegotiation board, the court held that the executive privilege applied to those records which recommended policies to be pursued by the renegotiation board, in order to preserve the integrity of its decision-making process; it also held that purely investigatory or factual reports were not within the privilege.<sup>62</sup>

When agencies invoke the privilege on judicial review, the courts are faced with the choice of accepting the agencies' characterization of the nature of the documents, or examining the records *in camera* to determine whether they fit within the privilege. In some cases the courts inspected the records *in camera*, and ordered privileged matter to be separated from non-privileged if commingling had occurred.<sup>63</sup> Such inspection was not ordered in cases where the privileged nature of the records seemed evident.<sup>64</sup>

The legislative history of the Freedom of Information Act indicates that the courts

must apply the same test to the fifth exemption as they always have when the executive evidentiary privilege has been raised in discovery proceedings against federal agencies.<sup>65</sup> Certain difficulties are presented, however, by the clear wording of the statute. For example, in discovery proceedings, the executive privilege may have to yield where the requester has great need for the record. The privilege, in other words, is balanced against the requisites of justice in the courtroom. Yet in Freedom of Information cases, the need for the record is not a factor. The exemption refers to records available to a "party," rather than "the person making the request." The question, then, is whether records which are only sometimes available in litigation are available under the Freedom of Information Act. This question was squarely dealt with in a recent District of Columbia case. In *Sterling Drug*,<sup>66</sup> the plaintiffs had been charged with Section 7 Clayton Act violations involving a merger with another company. The FTC had previously approved a similar merger between one of Sterling's competitors and another company. Sterling unsuccessfully petitioned the agency to drop the charges on the ground of this approval, and then moved for production of records consisting *inter alia* of FTC staff memoranda, memoranda of individual commissioners, and memoranda prepared or adopted by the commission as a whole relating to the basis for their decision to uphold the merger in the other case. This motion was denied. A Freedom of Information case was then filed, seeking disclosure of the records. The plaintiffs claimed that the records were discoverable in the Clayton Act action pending against them, and were therefore not exempt under the fifth exemption. The lower court held that the records consisted of internal working papers relating to the formulation of policies and were therefore exempt under the fifth exemption. On appeal, the District of Columbia circuit court considered the question raised by the plaintiffs as to whether the discoverability of a record in litigation automatically meant that the record was not within the fifth exemption. Quoting at length from Davis, *The Information Act, A Preliminary Analysis*,<sup>67</sup> and relying on language in the House report and the A.G. memorandum that the fifth exemption does not apply to memoranda which are routinely discoverable, the court concluded that records otherwise privileged did not escape the exemption solely because they might, in special circumstances, be discoverable.

As modified by *Sterling*, then, the courts will follow the discovery cases and allow the withholding of records which would reveal the reasoning process of the agency; such memoranda would include internal working papers and drafts, in which statements of opinion and suggestions were made regarding agency decisions or action. Conversely, no memorandum which embodies data relied on by the decision maker, no report, statistical workup, computer printout or any other factual data should be considered exempt.<sup>68</sup>

*Sterling*, however still leaves open the question of what is or is not exempt from disclosure. The court held that the memoranda prepared by the commission staff and individual commissioners were exempt, while the memoranda prepared by the commission as a whole were not. The court reasoned that memoranda which comprised operative agency law were discoverable, whereas opinions and recommendations which did not necessarily comprise the whole of an agency policy did not constitute such agency law and were therefore within the exemption comprising internal opinions and recommendations. However, 5 U.S.C. § 552(a)(2)(B) requires that agencies index and have available for inspection those "statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register." In a powerful and

well reasoned dissent,<sup>69</sup> Judge Bazelon has pointed out that to the extent that the staff and commissioner memoranda provide the basis for all or part of a final agency decision, they then fall within the classification of § 552(a)(2)(B) and should be made available. Judge Bazelon reminds us that although the purpose of the exemption was to encourage discourse at the policy formulation stage, Congress intended to prevent the development of "secret law" within an agency. The dissent points out that the Ninth Circuit had previously decided in *GSA v. Benson*<sup>70</sup> that the kind of opinions and recommendations sought in *Sterling* were not within the exemption to the extent that the agency ultimately adopted them expressly or implicitly. In any event, even the majority in *Sterling* leaves no doubt that memoranda constituting the working law of an agency are not within the exemption.

When there is a dispute as to the characterization of a record, or when a record contains both types of material, the court has a duty, as in discovery proceedings, to examine the records *in camera* to decide which material is discoverable.<sup>71</sup>

It seems reasonably clear that Congress intended bureaucrats to be able to engage in frank interchange of opinion without the world knowing their individual views, and that without the privilege this might be inhibited. Therefore, in deciding whether the privilege should apply, courts should look to see whether the specific record in question will or will not expose the agency's reasoning process to public view. In the discovery case of *Machin v. Zurker*,<sup>72</sup> the court decided that disclosure of the mechanic's opinions as to the causes of the accident would not expose the agency's reasoning process, and that such opinions were actually in the nature of a factual summary. This approach protects the government against having to disclose documents which will harmfully reveal its thinking process while at the same time providing for full disclosure of all records which contain the basis for government action.

The Senate and House reports and the A.G. memorandum express the belief that the fifth exemption prevents premature disclosure.<sup>73</sup> This refers to situations where disclosure would make nugatory the purpose for the records or would prejudice contractual negotiations in progress.<sup>74</sup> Clearly, only where parties are actually negotiating in a contractual sense should prematurity be considered an issue. Thus, where the federal government is performing a function concerning a state government, such as deciding whether to grant a state's request for a § 1115 waiver, the alleged prematurity aspect would not apply, regardless of the present stage of the federal agency action. HEW's example in its regulations exempting records "of correspondence between Federal and state or local officials, privileged through custom and usage or where disclosure might prejudice negotiations in progress," is thus without merit.<sup>75</sup>

#### The seventh exemption

Although the seventh exemption has been held applicable to areas not generally of concern to poverty lawyers, some discussion of this exemption is nevertheless in order. The Senate report refers to the investigatory files in the seventh exemption as follows: "These are the files prepared by Government agencies to prosecute law violators."<sup>76</sup> This language indicates that Congress had in mind proceedings of regulatory agencies with power to mete out punishment for law violations by court prosecution. In *Bristol Myers Co. v. FTC*<sup>77</sup> the court concluded that "Congress intended to limit persons charged with violations of the Federal regulatory statutes to the discovery available to persons charged with violations of Federal criminal law." Such actions would be brought by the FDA in food adulteration cases, the FTC in anti-trust actions, the SEC in financial in-

Footnotes at end of article.

stitutions regulations, the FPC in oil and gas cases, and the CAB in airlines regulations.

Quite recently, the Fourth Circuit held that the seventh exemption "should not be enlarged . . . to include records of administrative action taken to enforce the law." In so holding, the court determined that letters of warning of non-compliance with federal law were disclosable.<sup>78</sup> Finally, in interpreting this exemption, Judge Skelly Wright in *Getman v. NLRB*<sup>79</sup> concluded that the purpose of the exemption was to ensure that agencies' court cases would not be harmed by the disclosure. To the extent that an agency's activities do not involve judicial enforcement as an affirmative matter, then materials collected to implement the law should not be excluded from disclosure by this exemption.<sup>80</sup>

Even where the seventh exemption may be applicable, however, withholding is justified only when the files are in fact compiled and maintained for such judicial law enforcement purposes. Thus, a long lapse of time without any intervening "law enforcement" activity between the compilation of the files and the date they are requested would indicate that the files are no longer being maintained for "law enforcement" purposes.<sup>81</sup> Further, when the files, or records therein, have been disclosed to the parties subject to the agency's "law enforcement" actions, it is obvious that further disclosure to the public cannot hurt the agency's case in court.<sup>82</sup>

#### BEYOND THE EXEMPTIONS

Although it might be argued that agencies can lawfully withhold any record which falls within the exemptions, a number of agencies have adopted regulations which compel them to disclose any record, exempted or not, unless there are compelling reasons to the contrary. Thus, in *GSA v. Benson*<sup>83</sup> the agency refused to release the records of certain business transactions between it and the person requesting the records. The court, *inter alia*, noted that the agency required disclosure in the absence of a compelling reason to the contrary, and that since the court could discern no compelling reason for the agency to withhold the records, the records must be disclosed, notwithstanding the fact that they might fit within one of the exemptions. Other examples of such regulations are: (1) the Department of Interior regulations which require disclosure unless the records fit within an exemption and "sound grounds exist which require the invocation of the exemption" or disclosure is prohibited by statute or executive order;<sup>84</sup> (2) HEW regulations which provide that "disclosure of particular items of such [exempt] kinds will nevertheless be made when this can be done consistently with obligations of confidentiality and administrative necessity";<sup>85</sup> (3) HUD regulations which prohibit a record from being withheld unless it both comes within an exemption and "there is need in the public interest to withhold it";<sup>86</sup> and (4) DOT regulations which provide that notwithstanding the exemptions the department will release a record "unless it determines that the release of that record would be inconsistent with a purpose of the [exception] section covered."<sup>87</sup> These types of regulations are binding on the agency and provide a means to obtain otherwise exempted records.<sup>88</sup>

A number of agencies also attempt to define and interpret the exemptions in the Freedom of Information Act further. These regulations give examples of the types of records which the agency considers exempt. These interpretations and examples are often broader than the statutory exemption. If these interpretative regulations exempt from disclosure items which are not exempted by the governing statute, they con-

flict with the statute,<sup>89</sup> they are outside the official's scope of authority,<sup>90</sup> and are hence invalid. A federal administrative regulation must comport with the enabling legislation, including the congressional mandate as it is "ascertainable in underlying policy."<sup>91</sup> In any freedom of information case the underlying policy of Congress is to interpret the exemptions strictly, in favor of the fullest possible disclosure.<sup>92</sup>

The exemptions, therefore, refer to a limited class of materials. Moreover, the Act expressly requires that all other records shall be disclosable. Although some courts have gone astray and used their own judgment as to whether or not certain records should be disclosed, the great majority of courts have looked only to the exemptions for possible justification of agency withholding. And as records are more aggressively pursued under the Act in the future, the exemptions should, under proper court interpretation, become increasingly narrow, veering away from the old, broad equitable principles toward the clear statutory intent of total possible disclosure of government records.

#### APPLICATION OF THE ACT

From the cases which poverty lawyers have filed against federal agencies, it appears that the following agencies are most often involved: Health, Education and Welfare; Housing and Urban Development; the Bureau of Indian Affairs; the United States Department of Agriculture; the Department of Labor; the Department of Transportation; the Environmental Protection Agency; and the Department of Justice. Each of these agencies administers programs which involve some degree of federal-state cooperation; most of the programs also involve federal-state shared funding schemes. The federal agencies are responsible for assuring that federal law is fully complied with. If it is not, then no federal money should theoretically be provided for the program's operation.<sup>93</sup> Whether or not federal agencies choose to take any action in the event of non-compliance, most of them collect considerable data concerning compliance (or lack thereof) with applicable federal laws. All such data compiled by any of the agencies and programs specified above should be obtainable under the Freedom of Information Act on the ground that the one possibly applicable exemption—the fifth—does not apply either because the material was obtained from the state or some other non-agency source and is thus not within the exemption, or because such data does not in any way expose the reasoning process of the agency, but rather constitutes factual summaries and reports. To the extent that conformity materials include recommendations to higher officials based on factual data or summaries, such recommendations might also prove disclosable, especially if the recommendation is later adopted by the agency head. Even if the recommendation were in a privileged form, however, the administrator could excise the privileged materials from the rest of the materials, or, if the administrator contests the request, the court could do so.

Another type of record consists of the communications between a federal agency and the state agency. Lengthy correspondence often goes on between them concerning either state plans to take certain actions in the future, or state practices of the recent past. These records are not exempted by the fifth exemption, which only refers to communications involving federal agencies.<sup>94</sup> Also, such communications would be discoverable in litigation because their disclosure would not expose the agency's reasoning process. As already mentioned, HEW has recently changed its policy and now allows disclosure of all such correspondence.<sup>95</sup>

Another type of record which should be available for inspection under the Freedom of Information Act consists of the formal and informal opinions which are constantly

handed down in response to state agency queries and requests. For example, within the past year California sought HEW's opinion on some administrative changes it desired to make in California's welfare programs. HEW put its opinion in the form of a letter stating that some of the changes were permissible while others would violate the Social Security Act and would need waivers. Regardless of how HEW might wish to characterize such a communication, under the Act it should have been characterized as an agency opinion or decision, indexed, and made available for inspection in the agency library. Another type of decision making is the agency response to each public information request received by the office. These decisions should also be in the library. General policy decisions are often made by regional federal officials and then sent to the agency head for final approval.<sup>96</sup> These intra-agency opinions and decisions, no less than the opinions and decisions sent out by the agency, should be on file and readily available.

Finally, the large number of decisions made by federal agencies which seem to conflict with the governing statute or even the agencies' own regulations is an area of increasing concern to poverty lawyers.<sup>97</sup> In other cases, it appears that the reasons for certain agency decisions are either purely political or have no basis in fact. Recent examples of the latter include the New York regional SRS commissioner's determination that New York had an adequate utilization review procedure in its Medicaid program,<sup>98</sup> and HUD's decision to allow various redevelopment projects to proceed based on a HUD certification of a workable program,<sup>99</sup> where no basis in fact existed for either decision.<sup>100</sup> At the time the decision is made it is often unknown what kind of record exists and what is before the decision maker. Clearly, except for internal staff opinions, suggestions and recommendations it is permissible to obtain the factual and analytical record on which the decision is based. It would seem that a request for the documents, reports, memoranda, computer printouts, charts, graphs and surveys on which an administrator relied to make his decision (i.e., the administrative record) would be sufficient identification and such records would therefore be obtainable under the Freedom of Information Act except for those records which consisted of agency debates over policy matters.

There are many uses to which the types of information outlined above can be put. Groups of poor persons have always had to face the explanation from bureaucrats that the bureaucrat is acting on information which "unfortunately" is unavailable to the public. Clearly, the obtaining of all or most of the same information which the bureaucrat has will greatly help these organizations in their efforts to attain power in relationship to the government agencies with which they deal. Second, as has been tragically proven in the case of the Pentagon Papers, governments can go awry absent public accountability. The harder it is for bureaucrats to conceal their errors, hopefully the fewer they will make. The more the administrative decision making process is brought to light, the less likely it is that political deals will be made.

The aftermath of a recent case filed by NWRO<sup>101</sup> to obtain copies of waiver applications submitted by the States of California and New York provides a good example of the uses which an organization can make of the type of information discoverable under the Freedom of Information Act. The purpose of the suit was to obtain the waiver applications as early as possible in order to have a chance to provide HEW with comments and criticisms, and to be able to mount a political campaign prior to any HEW approval of the applications. The suit was settled on the basis of an agreement by HEW to release the

Footnotes at end of article.

applications at least 30 days prior to taking any formal action on them.<sup>102</sup> The first application received was from California, which was seeking to run a demonstration project whereby medicaid recipients would be charged a certain amount for aid and services. During these 30 days, CWRO prepared and submitted an extensive comment and criticism of the project. The next applications received under this agreement were two applications submitted by New York. One of them sought a waiver of Social Security Act provisions so as to allow New York to operate forced work programs, without pay, for all welfare recipients. The second application was for waivers permitting New York to operate a program in which the grant would be reduced to \$2,400 for a family of four from the approximate current average level of \$3,760. The family would then be given an opportunity to work itself back up to the current grant level by accruing such "brownie points" (which were assigned a dollar value) by among other things cooperating with school authorities, joining the boy or girl scouts, participating in both control programs and joining forced work projects. NWRO and various community and professional groups mounted an attack on the demonstration projects and HEW eventually informed New York that the project's proposals were unapprovable as submitted. (This was after HEW had told New York that the applications would certainly be approved.) New York submitted new proposals, which HEW approved shortly thereafter. A lawsuit is currently pending challenging this approval on the grounds that the agreement to give 30 days lead time was violated. The New York community is still alerted to many problems in the new proposals, and it is quite possible that because of the political opposition the projects will never be carried out. In any event, the community, by being forewarned, is forearmed.

In addition to the use of records for purposes of political mobilization, records obtainable under the Act can prove valuable in litigation. Although many records would be obtainable by discovery upon the filing of a lawsuit, it is often important first to compile information in order to put the lawsuit together. In one type of litigation in which poverty lawyers are becoming increasingly involved—judicial review of federal administrative action—it is of the utmost importance to ascertain the scope and extent of the "administrative record" on which the decision maker relied in making the decision.<sup>103</sup> Much of the decision-making power which is subject neither to adjudicatory nor rule-making public hearings is committed to federal agencies by statute. Thus, the Secretary of HEW may grant certain waivers of Social Security Act provisions, the Secretary of HUD may certify the existence of a workable plan for redevelopment, and the Secretary of Transportation may decide to release federal funds for a highway. In each case there is no formal record, nor is there generally a requirement for formal findings. Such decision making, although carried out pursuant to a governing statute, is called "informal."

The scope of judicial review for such informal decision making has recently been described by the Supreme Court,<sup>104</sup> in *Citizens to Preserve Overton Park v. Volpe* under which the court is to review the administrative record. However, if there is no such record (as is often the case in informal decision making), then the administrator may make *ex post facto* findings which will themselves be subject to judicial review. In the absence of any *ex post facto* findings, the plaintiffs may discover the basis for the administrative decision. (Such discovery is not necessarily precluded by the existence of findings, however.)

Since the filing of a lawsuit seeking judicial review gives the administrator a chance to devise *ex post facto* rationalizations in light of the complaint's allegations, the plaintiffs are in an infinitely stronger position if the administrative record can be ascertained and established prior to the filing of the suit. Most of the data on which such informal decisions should be based is obtainable under the Act, and therefore a request for the documents which comprise the administrative record in respect to a particular decision will prove invaluable in these types of lawsuits.

It is also valuable to have the records prior to filing a suit, for possession of information indicating a relatively sure victory may well be enough to settle the matter out of court. Alternatively, the information obtained may indicate that a lawsuit would not be appropriate in the first place.

#### HOW TO REQUEST A RECORD

The operative words of the statute in respect to procedure are:

"Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person."<sup>105</sup>

Although the information sought must be in the form of records within the meaning of the Act, the Act does not define the word "records." The A.G. memorandum, however, adopts the definition of records used in a 1943 statute:

"(T)he word 'records' includes all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics made or received by any agency of the United States Government in pursuance of Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data contained therein. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of the word 'records' as used in this Act."<sup>106</sup>

The question of what constitutes identifiable records has been litigated.<sup>107</sup> It is clear that while the courts may not look favorably on a broad fishing expedition, the agencies must make a reasonable attempt to search out and find the records which are requested, regardless of the comprehensiveness of the request.<sup>108</sup> In this connection, the Senate report states:

"It is contemplated by the committee that the standards of identification applicable to the discovery of records in court proceedings would be appropriate guidelines with respect to the identification of agency records, especially as the court would have jurisdiction to determine any allegations of improper withholding."<sup>109</sup>

"The records must be identifiable by the persons requesting them, i.e., a reasonable description enabling the Government employee to locate the requested records. This requirement of identification is not to be used as a method of withholding records."<sup>110</sup>

That it may be inconvenient for the agency to search out and compile records for inspection is no excuse for the failure to produce non-exempted materials.<sup>111</sup>

In many cases the existence of specific records will come to light by word of mouth

and specific identification is easy. In other cases it may not be known whether certain documents exist, but their existence can be deduced. Requests for such deduced records should be framed in an affirmative manner on the assumption that the records do exist, rather than as a question as to whether the records exist. This tactic will also prevent the agency from concealing the existence of a record.<sup>112</sup> However, the request should also specify that the agency either give you what is asked for, or state the reasons for non-disclosure, including the alleged non-existence of any of the records requested. If the agency answers that no such record exists, such an answer may prove to be invaluable. For example, in one case currently being litigated involving judicial review of federal administrative action, the plaintiffs asked for all reports, surveys, memoranda, etc., on which the defendants based their decision. The agency answered that no such records existed. In establishing the arbitrariness of the defendant's decision the plaintiffs have a headstart. In any event, every request for records should include a request that the agency immediately contact the requesting party if it has any question whatsoever about the identification of the records. This obviates the possibility of a later defense, should judicial review become necessary, that the records were not identifiable.

The records should be described as thoroughly as possible, for experience has shown that agencies will interpret the request as narrowly as possible. Although the Act requires the courts to interpret the exemptions strictly,<sup>113</sup> on judicial review they are not under a duty to order the production of a record not properly requested in the first instance.<sup>114</sup> And if the first request is not complete, the requesting party may have to re-exhaust the administrative remedy.

Each agency is required to publish rules stating the time, place, fees and procedure to be followed in requesting records.<sup>115</sup> The rules, according to the statute, designate the proper person or persons to whom a request should originally be made, the form of such request, and the fees, if any, involved for searches and copying.<sup>116</sup> Such rules also establish an intra-agency appellate process, designating the person to whom an appeal may be made (usually the head of the agency or operating agency) and the form of the appeal. The rules established by the agency should be followed as closely as possible to obviate the defense, should judicial review be necessary, that the request "was not in accordance with the agency's rules" and that administrative remedies were therefore not properly exhausted.

The Act also requires that if a proper request is made the records must be made available promptly. In the case of the agencies with which poverty lawyers usually deal, there is no specific time period designated within which a request must be answered or an appeal decided. This loophole means that an agency may sit on a request virtually forever; only the Department of Transportation expressly provides for an intra-agency appeal in the event a request is not initially answered within a reasonable time.<sup>117</sup> It would seem that the failure of the agencies to specify time periods, both for response to an initial request and/or for an appeal in case records are denied clearly violates the requirement that the agency "shall make the records promptly available."<sup>118</sup> The question, of course, is what constitutes a reasonable time within which the agency must act.

One commentator suggests that a ten-day limit be set for an initial response;<sup>119</sup> one agency has adopted such a time limit.<sup>120</sup> In some cases, however, ten days may be a longer period than is really necessary in light of the request, whereas a complicated request involving retrieval from different sources might take more than ten days. One possible practice is to note in a request that

Footnotes at end of article.

the rules have no time limit, that the records are needed immediately (or at a particular time) and that if there is any problem immediate contact should be made. After ten days (unless the agency has been given a longer period in the request), if no response has been received another letter should be sent placing a time limit of an additional week or two on the agency's response. If there is still no response, or if a response is of an obviously dilatory nature, then the delay would be treated as a denial,<sup>121</sup> and a letter of appeal should be sent to the appropriate official. In the letter of appeal the time limit should be approximately 30 days. If there is still no adequate response, then the case can be considered ripe for review. This is only one tactic; undoubtedly there are many more. The main point is that delay is the agency's one predictable defense to a request which it doesn't wish to honor, and a good record should be made in the event that judicial review is sought of a final agency decision implied by delay, for exhaustion of administrative remedies becomes a problem in such a case. Unreasonable delay, however, has been held to provide an exception to the exhaustion rule.<sup>122</sup> Furthermore, the absence of any time period in the statute should help overcome the exhaustion doctrine. Finally, exhaustion is not required when the outcome of the request or appeal is pre-ordained.<sup>123</sup>

The Act provides that the records be made promptly available to "any person." This means that any person may request a record, without any evident connection between the record and the person and without any particular necessity for the record.<sup>124</sup> "Person" is defined in § 551 to include associations, corporations and partnerships, as well as individuals, and therefore requests can be made by poor persons' groups as well as by any individual.

Finally the request for identifiable records must be made of an agency as that term is defined by § 551 of the Administrative Procedure Act.<sup>125</sup>

#### JUDICIAL REVIEW

Theoretically it should not often be necessary to go to court to get identifiable non-exempted records. The Act and its legislative history make clear that all questions of doubt should be resolved by the agencies in favor of disclosure. From the beginning, however, the comments on the Act and its operation have concluded that agencies are most reluctant to part with records even though they are clearly outside any of the exemptions.<sup>126</sup> Because of this reluctance (anticipated by Congress), judicial review is available. The operative section states:

"On complaint, the district court of the United States in the District in which the complainant resides, or has his principal place of business, or in which the agency records are situated, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo and the burden is on the agency to sustain its action. In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member. Except as to causes the court considers of greater importance, proceedings before the district court as authorized by this paragraph, take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practical date and expedited in every way."<sup>127</sup>

Since most actions against a government agency involve a presumption in favor of the agency, poverty lawyers may be at a loss as to how to litigate under a statute which throws the burden on the other side. A suggested tactic is that the complaint should simply cite the facts without going into too much detail (depending on the circumstances),

that what is requested are in fact identifiable records, the facts of the denial, and that the records do not fall within any of the statutory exemptions and are therefore disclosable. The prayer, outlined in the statute, is to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

The provision providing for de novo review means that the court is obliged to make its own examination of the records and the agency's reasons for withholding them, and to render a decision based on its independent judgment. This means that the agency must justify its action in court, without being able to rely on its administrative reasons for withholding the records.

Concerning litigation strategy, much depends on whether a preliminary injunction is sought, and what kind of administrative record has been made with the agency prior to judicial review. If such an injunction is sought, or if all the agency's reasons for non-disclosure have previously been brought into the open, it might be well to argue the merits of the case fully in the opening brief without waiting for the agency to justify in court its decision to withhold the record. On the other hand, if no preliminary injunction is sought, or if the agency has not yet fully presented its reasons for withholding the records, it might be wise to make the defendants first justify their action, saving the major arguments and discussion for a reply brief. In any event, it is important to remember that legally a presumption runs in favor of disclosure and that the burden is on the agency to justify its action.

Preliminary injunctions are somewhat hard to obtain in freedom of information litigation due to the problem of establishing irreparable injury and the statutory calendar preference.<sup>128</sup> A preliminary injunction would also be seeking the same relief as a final injunction, unless the preliminary injunction were to prevent some other agency action from occurring until the freedom of information issue was resolved.<sup>129</sup> The sole purpose of the Freedom of Information Act is to obtain records. To the extent that the preliminary injunction would result in the disclosure of the records at issue, full relief would be accomplished prior to a final judgment in the matter. However, a preliminary injunction was granted affording full relief in *Shapiro v. SEC*, presumably on the grounds that the probability of success upon a final adjudication was virtually a certainty.<sup>130</sup>

Since federal agencies have 60 days in which to answer, having to wait for a trial might result in the need for the records becoming moot, notwithstanding the statutory trial preference. Perhaps the most promising way to obtain speedy relief is to move for summary judgment 20 days after the complaint is filed, pursuant to Rule 56 of the Federal Rules of Civil Procedure, and for an order shortening time for the hearing on the motion. Since witnesses are usually not relevant to this type of action, and since the facts are either unlikely to be materially disrupted, or if so, capable of resolution by *in camera* inspection rather than by trial, freedom of information cases seem ideally suited for summary judgment proceedings. The sole issue is likely to be whether a particular record is or is not exempted by the Act.

#### CONCLUSION

The Freedom of Information Act has been used remarkably infrequently, considering the millions of people whose lives are dependent upon the proper functioning of government agencies. Although the small number of lawsuits seeking judicial review of agency withholding does not necessarily mean that thousands of requests made daily of agencies are not met satisfactorily, the initial experience of poverty lawyers in their attempts to obtain information bearing on their cli-

ents' problems has been less than satisfactory. Even a cursory examination of agency regulations indicates that large areas of potentially useful information are considered exempt by the agencies, notwithstanding the clearly contrary language of the Act and the Senate Judiciary Committee Report. Congress deliberately made judicial review of agency withholding an easily manageable form of proceeding, anticipating that the agencies would be reluctant to yield anything whatsoever for public scrutiny, let alone the types of records made disclosable by the Act. Given the amount and types of information which are currently unavoidable to poor people by agency misrepresentation of the Freedom of Information Act (stimulated by the A.G. memorandum, in fairness to the agencies), it is hoped that vigorous action will be taken to convey the information to the people most affected by the federal agencies in question. As poverty lawyers and organizations assert the rights of the people they represent, it is expected, along with increased litigation, that a number of agencies will begin to rethink their position. This is apparently the case with HEW, as evidenced by its new policy of disclosing federal-state communications. Perhaps no more fitting conclusion to this article can be made than to quote the HEW memorandum implementing the new policy, in the hope that other agencies will adopt the same reasoning and take the same action concerning the disclosable records in their possession.

"In order to respond intelligently to these requests, we have had to review carefully our past policies regarding the release of information to the public and to the news media. We have found that the biggest need is to re-emphasize the SRS and the Department position that information and records should be made readily available unless there are overriding reasons to the contrary. It is not the intention of the Freedom of Information Act or the Department's Public Information Regulation that all records falling into an exempt category are for that reason to be withheld from disclosure. On the contrary, both clearly subscribe to the concept of fullest possible disclosure.

"In keeping with the concept of fullest possible disclosure, SRS will henceforth consider that correspondence and documents between SRS and State and local agencies, and internal SRS letters, memorandums or documents furnished to a State or local agency, are in the public domain and are available to news media representatives and members of the public. This includes Section 1115 project proposals and State plan material which will be considered available for release on request when received at the SRS office having approval authority.

"Communications from officials of SRS to State officials, and internal communications furnished to a State, will be considered available for release when sufficient time has elapsed to insure receipt by the addressee.

"Communications from State officials to officials of SRS will be considered available for release at the Federal level as soon as received by the addressee."<sup>131</sup>

#### FOOTNOTES

<sup>1</sup> 5 U.S.C. § 552.

<sup>2</sup> 5 U.S.C. § 552 (b) (1) appears to exempt such records. *But see* *Mink v. EPA*, 40 U.S.L.W. 2233 (D.C. Cir., Nov. 2, 1971), *review granted*, 40 U.S.L.W. 3428 (U.S. Sup. Ct., Mar. 6, 1972).

<sup>3</sup> The Act applies only to federal agencies; however, a number of states have their own freedom of information acts and in one recent case, a state court used federal case law to interpret the state statute. *Citizens for Better Care v. Reizen*, No. 13166-C (Mich. Cir. Ct., Feb. 23, 1972), available from the Clearinghouse, Clearinghouse No. 5827. For

an exhaustive listing of the freedom of information laws of each state, see Hobson, *The Damned Information: Acquiring and using public information to force social change*, Washington Institute for Quality Education, available at a cost of \$2.00.

<sup>45</sup> 5 U.S.C. § 552(a) (1).

<sup>46</sup> 5 U.S.C. § 552(a) (2).

<sup>47</sup> 5 U.S.C. § 552(a) (3).

<sup>48</sup> 5 U.S.C. § 552(b).

<sup>49</sup> 5 U.S.C. § 552(c).

<sup>50</sup> See Davis, *The Information Act, A Preliminary Analysis*, 34 U. CHI. L. REV. 761 (1967), for an explanation and interpretation of these first two requirements.

<sup>51</sup> 5 U.S.C. §§ 701 *et seq.*

<sup>52</sup> Davis, *supra*, note 9.

<sup>53</sup> Davis, *supra*, note 9 at 765; Skolnick v. Parsons, 397 F.2d 523 (7th Cir. 1968); S. REP. NO. 813, 89th Cong., 1st Sess. 5-6 (1965).

<sup>54</sup> 5 U.S.C. § 552(c).

<sup>55</sup> S. Rep. No. 813, 89th Cong., 1st Sess. 10 (1965).

<sup>56</sup> Davis, *supra*, note 9 at 767.

<sup>57</sup> 448 F.2d 1067 (D.C. Cir. 1971).

<sup>58</sup> The Senate Report makes clear in a number of instances that the statute does the balancing. For example, in referring to phrases found in the former Act, such as "requiring secrecy in the public interest" and "required for good cause to be held confidential" the Report states: It is the purpose of the present bill to eliminate such phrases, to establish a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language. S. Rep. No. 813, *supra*, note 14.

And, the Report continues: It is not an easy task to balance the opposing interests, but it is not an impossible one either. It is not necessary to conclude that to protect one of the interests, the other must, of necessity, either be abrogated or substantially subordinated. Success lies in providing a workable formula which encompasses, balances, and protects all interests, yet places emphasis on the fullest responsible disclosure. S. Rep. No. 813, *supra*, note 14 at 3.

<sup>59</sup> 443 F.2d at 1080 (D.C. Cir. 1971).

<sup>60</sup> 444 F.2d 21, 25 (4th Cir. 1971).

<sup>61</sup> 450 F.2d 670 (D.C. Cir. 1971). For a comment on *Getman* and its effect on the "equity" question see 1971 U. ILL. L. FORUM 329 (1971).

<sup>62</sup> Epstein v. Resor, 421 F.2d 930 (9th Cir. 1970); Bristol Myers Co. v. FTC, 424 F.2d 935 (D.C. Cir. 1970).

<sup>63</sup> H.R. REP. NO. 1497, 89th Cong., 2d Sess. (1966).

<sup>64</sup> S. REP. NO. 813, *supra*, note 14.

<sup>65</sup> Davis, *supra*, note 9 at 762.

<sup>66</sup> Att'y Gen. Memo on the public information section of the Administrative Procedure Act (1967) (hereinafter referred to as Att'y Gen. Memo).

<sup>67</sup> See Davis, *supra*, note 9 at 761.

<sup>68</sup> Consumers Union, Inc. v. Veterans Administration, 301 F. Supp. 796 (S.D. N.Y. 1968).

<sup>69</sup> Davis, *supra*, note 9 at 809-810.

<sup>70</sup> Getman v. NLRB, 450 F.2d 670 (D.C. Cir. 1971); Consumers Union, Inc. v. Veterans Administration, 301 F. Supp. 796 (S.D.N.Y. 1968); and GSA v. Benson, 239 F. Supp. 590 (D.C. Wash., 1968), *aff'd on other grounds*, 415 F.2d 878 (1969). For a complete discussion of this conflicting legislative history, see Davis, *supra*, note 9 at 809-810.

<sup>71</sup> Davis, *supra*, note 9 at 809-810.

<sup>72</sup> 5 U.S.C. § 552 (b).

<sup>73</sup> See Epstein v. Resor, 421 F.2d 930 (9th Cir. 1970).

<sup>74</sup> Polymers, Inc. v. NLRB, 414 F. 2d 999 (2d Cir. 1969); and see Cuneo v. Laird, — F. Supp. —, 40 U.S.L.W. 2543 (D. D.C., Jan. 14, 1972).

<sup>75</sup> 5 U.S.C. § 552(a) (2) (c). The Senate Committee Report stated that the purpose of this section was to allow a public examination of the basis for administration, and that

the word "administrative" was in the statute to allow instructions to law enforcement personnel of the regulatory agencies to remain undisclosed. The House Report characteristically goes further and exempts instructions to staff which, if disclosed, would defeat the purposes of the agency. Examples given by the A.G. memorandum are:

... those portions of its staff manuals and instructions which set forth criteria or guidelines for the staff in auditing or inspection procedures, or in the selection or handling of cases, such as operations tactics, allowable tolerances, or criteria for defense, prosecution or settlement of cases.

The A.G. recommends that the undisclosed information be deleted from the manual. However, it should be noted that the Act itself allows deletion for matters which will constitute an unwarranted invasion of personal privacy and requires a written statement explaining such deletions. Assuming that the A.G. memorandum and the House Report are accepted, the deletions of undisclosed material should likewise be explained in writing.

<sup>76</sup> 414 F.2d 999 (2d Cir. 1969). The court also raised the spectre of relevance in respect to the application of the second exemption. Clearly, however, relevance is no longer required for disclosure. After holding that the second exemption applied, the court also considered the staff manual to be exempted by the fifth exemption. This conclusion seems preposterous in light of the history and meaning of the fifth exemption, discussed *infra*.

<sup>77</sup> H.R. REP. NO. 1497, *supra*, note 22. While the House Report would exempt,

... records which relate to ... internal rules and practices which cannot be disclosed to the public without substantial prejudice to the effective performance of a significant agency function. . . .

The Report *excludes* from the exemption matters of internal management such as employee relations and working conditions. Thus, the House Report seems to be standing the second exemption on its head. See Att'y Gen. Memo, *supra*, note 25 at 30-31. As if to demonstrate the absurdity of the House Report's interpretation of the exemption, HEW lists the following matters as being exempt from disclosure:

This exemption covers only those internal rules or instructions to personnel relating to how employees carry out their assigned functions and activities for which the department has responsibility. Thus, materials which provide guidelines or instructions to employees relating to tolerances, selection of cases, quantum of proof, and the like, are within this exemption. However, materials having only management significance, such as rules relating to work hours, leave, promotion, plans, while relating to personnel may be disclosed. 45 C.F.R. § 5.72.

<sup>78</sup> See Polymers v. NLRB, 414 F.2d 999 (2d Cir. 1969); also see S. REP. NO. 813, *supra*, note 14.

<sup>79</sup> Davis, *supra*, note 9 at 778.

<sup>80</sup> The Social Security Act, 42 U.S.C. § 1306, prohibits disclosure of records obtained by the Secretary pursuant to the operation of the program. The legislative history indicates that this statute was meant to protect individual personal information obtained by the Secretary of HEW pursuant to the administration of Title II of the Social Security Act, 42 U.S.C. §§ 401 *et seq.* House Ways & Means Comm., Social Security Amendments of 1939, H.R. Rep. No. 728, 76th Cong., 1st Sess. (1939); *Hearings on H.R. 6635 Before the House Ways & Means Comm.*, 76th Cong., 1st Sess. (1939); 1950 U.S. Code Cong. & Admin. News 3287, 3481. See also, 20 C.F.R. § 401 for the departmental regulations implementing 42 U.S.C. § 1306 and 45 C.F.R. § 5.11 for the section which incorporates 20 C.F.R. § 401 into the department's general regulations

implementing the Freedom of Information Act. Although 20 C.F.R. § 401 extends the coverage of § 1306 to the Medicare Program (Title XVIII), such an interpretation is most questionable in light of the pertinent legislative history. In any event, it is clear that § 1306 does not apply to materials generated within the agency in respect to Title I and XVIII.

<sup>81</sup> Evans v. U.S. Dept. of Transportation, 446 F.2d 821 (5th Cir. 1971). As this article was going to press, a decision came down from the District of Columbia federal district court limiting this exemption to those statutes which exempt *specific* types of records, as opposed to statutes which "generally prohibit all disclosures of confidential information." Schapiro & Co. v. SEC, — F. Supp. —, 40 U.S.L.W. 2599 (D.D.C., Mar. 14, 1972).

<sup>82</sup> Sterling Drug Co. v. FTC, 450 F.2d 698 (D.C. Cir. 1971).

<sup>83</sup> Consumers Union, Inc. v. Veterans Administration, 301 F. Supp. 796 (S.D.N.Y. 1968); Soule v. David, 448 F.2d at 1080 (J. Wilkey, concurring).

<sup>84</sup> 450 F.2d 670 (D.C. Cir. 1971).

<sup>85</sup> 301 F. Supp. 796 (S.D. N.Y. 1968).

<sup>86</sup> *Contra, see*, Grumman v. Renegotiation Board, 425 F.2d 578 (D.C. Cir. 1970); and see Davis, *supra*, note 9.

<sup>87</sup> — F. Supp. —, 40 U.S.L.W. 2599 (D. D.C., Feb. 28, 1972).

<sup>88</sup> 425 F.2d at 582 (D.C. Cir. 1970).

<sup>89</sup> *Supra*, note 46, — F. Supp. at —.

<sup>90</sup> Sterling Drug, Inc. v. FTC, 450 F.2d 698 (D.C. Cir. 1971); Mink v. EPA, 40 U.S.L.W. 2233 (D.C. Cir. Nov. 2, 1971); Getman v. NLRB, 450 F.2d 670 (D.C. Cir. 1971); Soule v. David, 448 F.2d 1067 (D.C. Cir. 1971);

Bristol Myers v. FTC, 424 F.2d 935 (D.C. Cir. 1970); Ackery v. Ley, 420 F.2d 1336 (D. D.C. 1969); American Mail Line, Ltd. v. Gulick, 411 F.2d 696 (1969); GSA v. Benson, 415 F.2d 878 (9th Cir. 1969); Consumers Union v. Veterans Administration; 301 F. Supp. 796 (S.D. N.Y. 1968); International Paper Co. v. FPC, 438 F.2d 1349 (2d Cir. 1971); Polymers v. NLRB, 414 F.2d 999 (2d Cir. 1969).

<sup>91</sup> 5 U.S.C. § 551 states:

... "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—(A) the Congress; (B) the courts of the United States; (C) the governments of the territories or possessions of the United States; (D) the government of the District of Columbia; or except as to the requirements of section 552 of this title—(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them; (F) courts martial and military commissions; (G) military authority exercised in the field in time of war or in occupied territory; or (H) functions conferred by sections 1738, 1739, 1743; and 1744 of Title 12; chapter 2 of Title 41; or sections 822, 1884, 1891-1902, and former section 1641(b) (2) of Title 50, appendix.

For a broad discussion of the meaning of "agency" within the Freedom of Information Act context, see Soule v. David, 448 F.2d 1067 (D.C. Cir. 1971).

<sup>92</sup> See Davis, *supra*, note 9.

<sup>93</sup> 450 F.2d at 673, *fn.* 7.

<sup>94</sup> Social Rehabilitation Service (SRS) Information Memorandum, AO-IM, 72-10, Dec. 8, 1971, quoted at length in the conclusion to this article.

<sup>95</sup> Boeing Aircraft v. Coggeshall, 280 F.2d 654 (D.C. Cir. 1960).

<sup>96</sup> See H.R. REP. NO. 1497, *supra*, note 22; S. REP. NO. 813, *supra*, note 14.

<sup>97</sup> Carl Zeiss Stiftung v. VEB Carl Zeiss Jena, 40 F.R.D. 318, 324 (D. D.C. 1966), *aff'd sub. nom.* Carl Zeiss Jena v. Clark, 384 F.2d 979, *cert. denied*, 389 U.S. 952 (1967) (hereinafter referred to as *Carl Zeiss*).

<sup>87</sup> *Id.*  
<sup>88</sup> 157 F. Supp. 939 (U.S. Ct. Cl. 1958).  
<sup>89</sup> 316 F.2d 336 (D.C. Cir. 1963).  
<sup>90</sup> 280 F.2d 654 (D.C. Cir. 1960).  
<sup>91</sup> In *Davis v. Braswell Motor Freight Lines, Inc.*, 363 F.2d 600 (5th Cir. 1960), the court held that communications between the NLRB and the general counsel's office were privileged and that the plaintiff's attempt to probe the reasoning process of the agency should be resisted on the grounds outlined in *United States v. Morgan*, 313 U.S. 409, 421-422 (1941), that the court should not be allowed to question or probe the administrator's mind any more than the mind of the judge. For extensive discussions of the history and scope of the executive privilege against disclosure of records under the discovery statutes, see *Freeman v. Seligson*, 405 F.2d 1326 (D.C. Cir. 1968); *Carrow, Government Non-disclosure in Judicial Proceedings*, 107 U. PA. L. REV. 166, 184-187 (1959). For other cases in which the privilege was held *not* to apply, see *Bank Line Ltd. v. United States*, 76 F. Supp. 801 (S.D. N.Y. 1948); *Mitchell v. Bass*, 252 F.2d 513 (8th Cir., 1958).  
<sup>92</sup> *Boeing Aircraft v. Coggeshall*, 280 F.2d 654 (D.C. Cir. 1960).  
<sup>93</sup> See *Kaiser Aluminum & Chemical Corp. v. United States*, 157 F. Supp. 939 (U.S. Ct. Cl. 1958); *Carl Zeiss*, 40 F.R.D. 318 (D. D.C. 1966), where the court was satisfied as to the privileged nature of the records and refused to inspect.  
<sup>94</sup> *GSA v. Benson*, 415 F.2d 878 (9th Cir. 1969); *Sterling Drug v. FTC*, 450 F.2d 698 (D.C. Cir. 1971); and *International Paper v. FCC*, 438 F.2d 1349 (2d Cir. 1971).  
<sup>95</sup> 450 F.2d 698 (D.C. Cir. 1971).  
<sup>96</sup> *Davis*, *supra*, note 9.  
<sup>97</sup> *Soucie v. David*, 448 F.2d 1067 (D.C. Cir. 1971); *GSA v. Benson*, 450 F.2d 878 (9th Cir. 1969); *Bristol Myers v. FTC*, 424 F.2d 935 (D.C. Cir. 1970); *Ackerly v. Ley*, 420 F.2d 1336 (D.C. Cir. 1969).  
<sup>98</sup> 450 F.2d 698, 712.  
<sup>99</sup> 415 F.2d 878.  
<sup>100</sup> *Soucie v. David*, 449 F.2d (D.C. Cir. 1971); *Wellford v. Hardin*, 444 F.2d 21 (4th Cir. 1971); *Ackerly v. Ley*, 420 F.2d 1336 (D. D.C. 1969); *Bristol Myers v. FTC*, 424 F.2d 935 (D.C. Cir. 1970); *Schapiro Co. v. SEC*, — F. Supp. —, 40 U.S.L.W. 2599. However, the Supreme Court has agreed to hear argument on whether an agency must submit its memoranda to *in camera* inspection. *EPA v. Mink*, 40 U.S.L.W. 2233 (D.C. Cir., Nov. 2, 1971). The circuit court in *Mink*, ordered such inspection and the agency is appealing on the grounds that the executive evidentiary privilege is grounded in the constitutional separation of powers doctrine and that having to submit the privileged materials even to a court is violative of this doctrine.  
<sup>101</sup> *Machin v. Zucker*, 316 F.2d 336 (D.C. Cir. 1963).  
<sup>102</sup> See H.R. REP. NO. 1497, *supra*, note 22; S. REP. NO. 813, *supra*, note 14.  
<sup>103</sup> Att'y Gen. Memo, *supra*, note 25.  
<sup>104</sup> 45 C.F.R. § 5 *et seq.*, Appendix A. This example may no longer be viable because of SRS's new policy of releasing all memoranda which involve federal-state communications notwithstanding any claimed prematurity of such release.  
<sup>105</sup> S. REP. NO. 813, *supra*, note 14.  
<sup>106</sup> 424 F.2d 935.  
<sup>107</sup> *Wellford v. Hardin*, 44 F.2d 21 (4th Cir. 1971).  
<sup>108</sup> 450 F.2d 670.  
<sup>109</sup> But in a recent Fifth Circuit case (*Evans v. U.S. Dep't of Transportation*, 446 F.2d 821 (5th Cir., 1971)), the court held that a letter complaining of a pilot's mental stability was part of a file compiled in respect to an investigation of the complaint and thus exempt under § 552(b) (7), notwithstanding the fact that the investigation could only result in an

administrative revocation of the pilot's license. This case employs no reasoning whatsoever, and betrays a misunderstanding of the Act and its history, especially in light of the persuasiveness of the other cases in the area which hold otherwise.

<sup>110</sup> *Shapiro Co. v. SEC*, — F. Supp. —, 40 U.S.L.W. 2599.

<sup>111</sup> *Getman v. NLRB*, 450 F.2d 670 (D.C. Cir. 1971); *Schapiro Co. v. SEC*, — F. Supp. —, 40 U.S.L.W. 2599.

<sup>112</sup> 415 F.2d 878.

<sup>113</sup> 43 C.F.R. § 2.2.

<sup>114</sup> 45 C.F.R. § 5.70.

<sup>115</sup> 24 C.F.R. § 15.21.

<sup>116</sup> 49 C.F.R. § 7.51.

<sup>117</sup> For a general discussion of agency regulations in respect to the Freedom of Information Act, see *Gianella, Agency Procedures Implementing the Freedom of Information Act*. AD. L. REV. 217 (1971).

<sup>118</sup> *Koshland v. Helvering*, 298 U.S. 441, 441 (1936).

<sup>119</sup> *Addison v. Holly Hill Fruit Products*, 322 U.S. 607 (1943); *Manhattan Gen. Equipment Co. v. C.I.R.*, 297 U.S. 129, 134 (1930).

<sup>120</sup> *United Steel Workers of America v. NLRB*, 390 F.2d 846, 851 (D.C. Cir. 1968), *cert denied* 391 U.S. 904 (1967).

<sup>121</sup> *Bristol Myers v. FTC*, 424 F.2d 935 (D.C. Cir. 1970).

<sup>122</sup> *Arizona State Dep't of Public Welfare v. HEW*, 449 F.2d 456 (9th Cir. 1971); *Rosado v. Wyman*, 397 U.S. 397 (1970).

<sup>123</sup> See note 50, *supra*.

<sup>124</sup> See note 53, *supra*, and the conclusion to this article.

<sup>125</sup> See *GSA v. Benson*, 415 F.2d 878 (9th Cir. 1969); *American Mail Line Ltd. v. Gulick*, 411 F.2d 696 (1969) and *Sterling Drug v. FTC*, 540 F.2d 698 (D.C. Cir. 1971).

<sup>126</sup> See *Rodway v. USDA*, Civ. No. 2553-71 (D. D.C. 1971) which alleges wholesale violations of the Food Stamp Act by USDA in promulgating new regulations under the Act; and *Rockbridge v. Lincoln*, 449 F.2d 567 (9th Cir., 1971), which held that the BIA had violated its statutory duty to regulate traders on the Navajo reservation.

<sup>127</sup> See *Bass v. Richardson*, — F.2d —, 40 U.S.L.W. 2334 (2d Cir., 1971).

<sup>128</sup> *WACO v. Weaver*, 294 F. Supp. 433 (N.D. Cal., 1969).

<sup>129</sup> Another example of this type of decision-making is the waiver power granted to the Secretary of HEW by § 1115 of the Social Security Act. This power was recently exercised in allowing California to implement a policy of co-payment for Medicaid services and benefits—a practice otherwise forbidden by federal law. See *CWRO v. Richardson*, Civ. No. C-72-341 (N.D. Cal., 1972), an action filed to challenge the decision.

<sup>130</sup> *NWRO v. HEW*, Civ. No. 1042-71 (D. D.C. 1971).

<sup>131</sup> See *NWRO v. Richardson*, 334 F. Supp. 488 (D. D.C. 1972).

<sup>132</sup> *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971).

<sup>133</sup> *Id.*

<sup>134</sup> 5 U.S.C. § 552(a) (3).

<sup>135</sup> Att'y Gen. Memo, *supra*, note 25.

<sup>136</sup> *Bristol Myers Co. v. FTC*, 424 F.2d 935 (D.C. Cir. 1970).

<sup>137</sup> *Gianella, supra*, note 87 at 231.

<sup>138</sup> S. Rep. No. 813, *supra*, note 14 at 2.

<sup>139</sup> *Id.* at 8.

<sup>140</sup> *Wellford v. Hardin*, 315 F. Supp. 175 (D.C. Md. 1970), *aff'd* 444 F.2d 21 (4th Cir. 1971); *Gianella, supra*, note 87.

<sup>141</sup> See Note, *The Freedom of Information Act and the FTC: A Study in Misfeasance*, 4 Harv. Civ. Rights-Civ. Lib. L. Rev. 345 (1969); *Nader, Freedom From Information: The Act and the Agencies*, 5 Harv. Civ. Rights-Civ. Lib. L. Rev. 112 (1970).

<sup>142</sup> 5 U.S.C. § 552(c).

<sup>143</sup> *GSA v. Benson*, 415 F.2d 878 (9th Cir. 1969).

<sup>144</sup> 5 U.S.C. § 552(b). These rules are located as follows for a number of agencies with which poverty lawyers are most likely to have contact: HEW, 45 C.F.R. § 5; HUD, 24 C.F.R. § 15.1; Dep't of Labor (DOL), 29 C.F.R. § 70.1; USDA (Consumer and Marketing Service), 7 C.F.R. § 900.513; Dep't of Immigration, 8 C.F.R. § 103.9; Dep't of Interior (Bureau of Indian Affairs), 43 C.F.R. § 2.1; Dep't of Transportation (DOT), 49 C.F.R. § 7.1.

<sup>145</sup> While nothing in the statute requires an agency expressly to copy a record as such, it would seem that the phrase "shall make the records promptly available" would include copying. This would be especially true where the request comes from a location other than where the records are physically located. Also, the A.G. memorandum assumes that copies will be made available, probably on the basis of the Senate Report which states:

... The phrase ... copying ... was added because it is frequently of little use to be able to inspect orders or the like unless one is able to copy them for future reference. Hence the right to copy these matters is supplemental to the right to inspect and makes the latter right meaningful. S. REP. NO. 813, *supra*, note 14.

<sup>146</sup> 49 C.F.R. § 7.71.

<sup>147</sup> A case has recently been filed against HEW which, *inter alia*, seeks a declaratory judgment declaring that the absence of time limitations in the agency rules violates the Freedom of Information Act. *Dellums v. HEW* (D. D.C., Jan. 28, 1972), available from the Clearinghouse, Clearinghouse No. 7328.

<sup>148</sup> *Gianella, supra*, note 87.

<sup>149</sup> *Defense Supply Agency*, 32 C.F.R. § 1260.6 (b) (3).

<sup>150</sup> There is good support for this approach in *Environmental Defense Fund v. Hardin*, 428 F.2d 1093, 1099 (D.C. Cir. 1970).

<sup>151</sup> *Id.* See also, *Isbrandtsen v. United States*, 211 F.2d 51 (D.C. Cir. 1958); and *American Broadcasting Co. v. FCC*, 191 F.2d 492 (D.C. Cir. 1951). On promptness and possibilities for judicial review of unlawfully withheld agency action, see also *Gianella, supra*, note 87.

<sup>152</sup> See, e.g., *NWRO v. HEW*, Civ. No. 1042-71 (D. D.C. 1971) (order denying motion to dismiss, entered Aug. 11, 1971).

<sup>153</sup> *Skolnick v. Parsons*, 397 F.2d 523 (7th Cir. 1968); *Davis, supra*, note 9.

<sup>154</sup> See note 50, *supra*.

<sup>155</sup> Note, *The Freedom of Information Act: A Critical Review*, 38 Geo. Wash. L. Rev. 150 (October 1969); *Katz, The Games Bureaucrats Play: Hide and Seek Under the Freedom of Information Act*, 48 Tex. L. Rev. 1261 (1970). See *supra*, note 111.

<sup>156</sup> 5 U.S.C. § 552(a) (3).

<sup>157</sup> *Bristol Myers Co. v. FTC*, 24 F.2d 935 (D.C. Cir. 1970). But see, *Ackerly v. Ley*, 420 F.2d 1336 (D.C. Cir. 1969), where the appellate court noted its displeasure with the delay by the agency which resulted in the plaintiffs receiving the requested records well after the hearing for which the records were initially requested.

<sup>158</sup> E.g., 5 U.S.C. § 705.

<sup>159</sup> See, e.g., *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), where the court preliminarily enjoined the government's seizure of the steel mills even though, under the government's analysis of the case, such an injunction effectively disposed of the case. The Supreme Court upheld such preliminary injunctions when successful outcome for the plaintiff is assured.

<sup>160</sup> *Supra*, note 53.

<sup>161</sup> Department of Health, Education, and Welfare, Social and Rehabilitation Service, Information Memorandum AO-IM 72-10 (December 8, 1971). Available from the Clearinghouse No. 7361 (3 pp.).

## EXHIBIT 2

## (ATTACHMENT 1)

INSPECTION DIVISION, OFFICE OF  
ECONOMIC OPPORTUNITY,  
Washington, D.C., January 26, 1972.

To: JOHN R. BUCKLEY.  
Thru: C. B. Patrick, Harry R. Carpenter, Jr.,  
Robert G. Kinney.  
From: John F. Rios.  
Subject: Voter Registration Activities, Legal  
Aid Society of Alameda County, Union  
City, Calif.

During the course of an inspection of the Southern Alameda County Economic Opportunity Agency, a CAA, Inspectors observed a county sign displayed in the front store window of an outreach office of the CAA at 525 H Street, Union City, designating that location as an official voter registration office for Alameda County. Inquiries in the location reflected the CAA provides office space within for staff members of the Legal Aid Society of Alameda County, an OEO Legal Services program, not a delegate agency of the CAA.

CAA and Legal Services employees at the outreach office advised Inspectors a Legal Services staff member, Maria Vizcarra, was the voter registrar and that she could and would register voters at the center. Mrs. Vizcarra was not present for interview during two visits by Inspectors to the location.

Rene C. Davidson, Chief, Registrations and Elections for Alameda County, advised Inspection that Maria Vizcarra is listed in his records as an official Deputy Voter Registrar.

Inspectors did not conduct further investigation to determine if other Legal Services staff were engaged in voter registration activities in Alameda County.

## RECOMMENDATIONS

1. Notify Office of General Counsel and Legal Services of apparent violation of Section 603(b)(3) regarding this grantee.
2. Institute inspection of Legal Aid Society of Alameda County to determine extent of prohibited political activities.

## ATTACHMENT 2

OFFICE OF ECONOMIC OPPORTUNITY,  
Washington, D.C., January 4, 1972.  
INSPECTION DIVISION

To: JOHN R. BUCKLEY.  
Thru: C. B. Patrick.  
From: Harry R. Carpenter, Jr., John F. Rios,  
Thomas F. Fitzpatrick, Jr.  
Subject: Request by Richard H. Ichord,  
Chairman of the Committee on Internal  
Security, House of Representatives, for  
Information Concerning the Alleged Use  
of an OEO Vehicle by Bruce Neuberger,  
Seaside, Calif.

By letter dated November 16, 1971, Representative Richard H. Ichord, Chairman, Committee on Internal Security, House of Representatives, requested Philip Sanchez, Director of OEO, to furnish a report concerning the use of a vehicle bearing license number OEO 1400 by Bruce Neuberger in Seaside, California on November 20, 1970.

The records of the San Francisco Regional Office reveal that a 1963 Plymouth bearing license number OEO 1400 was assigned March 19, 1970, with OEO approval, from GSA surplus to the Monterey County Antipoverty Coordinating Council, Inc., Salinas, California.

Amelia Harris, Operations Officer for the Monterey CAA, told Inspection that OEO vehicle 1400 was assigned to the CAA, but that it had transferred the vehicle on March 19, 1970 to the Monterey County Legal Aid Society located in Seaside, California. She explained that the Legal Aid Society is an OEO-funded legal services program and is a delegate agency to the CAA.

Mrs. Jane VanHook, Attorney Director of the Monterey Legal Aid Society, advised that

her agency has a GSA surplus 1963 Plymouth bearing license number 1400. She made inquiries of her staff and determined that on November 20, 1970, Donald Hubbard, a Reginald Heber Smith Fellow assigned to her program, made use of this vehicle to visit a client at 580 Amador Street, Seaside, California, on official business. While in the process of leaving the premises, Hubbard was approached by a Bruce Neuberger, a neighbor of Hubbard's client, and asked for a ride to his place of employment since it was on the way to the Legal Aid office. Mrs. VanHook said that this was all she knew about the matter and referred Inspection to Hubbard for the details. She assured Inspection that she never heard of Bruce Neuberger and that he was never a client of their office.

Donald Hubbard told Inspection that he has been employed as a "Reggie" since August 1, 1970 with the Monterey Legal Aid program. He stated that Neuberger, a neighbor of one of his clients, had asked him for a ride to his place of employment on November 20, 1970. Since Neuberger's place of employment was en route to the office, he agreed to accommodate him. Hubbard explained that when he entered the parking lot to Zaraida's Mexican Restaurant where Neuberger worked as a dishwasher, two plainclothesmen detectives approached his car and pulled Neuberger out and arrested him. Hubbard emphasized that the detectives did not approach him or communicate with him during this incident and allowed him to proceed. Hubbard said he immediately called the Legal Aid office and reported the incident. He assured Inspection that the Legal Aid office was in no way involved. Hubbard noted he learned later that Neuberger had been arrested for traffic-ticket violations. Hubbard told Inspection that this was the only time that he had given Neuberger a ride in the car and that at no time did he represent Neuberger.

VanHook told Inspection that Hubbard had authority to use the vehicle and that Neuberger did not have authority to use the car but had been given a ride out of pure courtesy by Hubbard since the place of employment was in the direction of the Legal Aid office. She assured Inspection that no other non-OEO people had access to the vehicle. This matter received no press and, to the best of her knowledge, was a single incident.

Detective Terry Mangan of the Seaside Police Department told Inspection that he arrested Bruce Allen Neuberger at approximately 3:00 p.m. on November 20, 1970 while Neuberger was a passenger in a vehicle bearing license OEO 1400. Mangan noted that the arrest was made on traffic warrants outstanding against Neuberger at the time. Mangan told Inspection that as far as he knew, Neuberger did not have anything to do with the Legal Aid program. The driver of the vehicle was unknown to Detective Mangan and was permitted to proceed and was not involved in the arrest of Neuberger on November 20, 1970.

Mangan stated that the whereabouts of Neuberger is presently unknown, and it is believed he left the area approximately six months ago. Detective Mangan told Inspection that this single use of the car bearing license OEO 1400 by Neuberger on November 20, 1970 was the only use of any OEO vehicle by Neuberger known to him. He reiterated that Neuberger had nothing to do with any Legal Aid program nor any other Government vehicle. Detective Mangan advised that this information was furnished two California State EOO Investigators named Kenneth Trigger and Bill Charlton, who considered the matter inconsequential and took no action to the best of his knowledge.

John Sattorini, Legal Services Specialist for the California State Economic Opportunity Office, told Inspection that there was no record of this matter in their office. Sattorini explained that Bill Charlton once

worked for his office but is no longer associated with the State EOO.

In Representative Ichord's letter, he also requested a response as to whether or not any OEO funds had been expended to assist the personnel connected with the Movement for a Democratic Military, the Pacific Counseling Service, or any other person, group, or organization engaged in the so-called counseling of military personnel in the Fort Ord area.

Mrs. Jane H. VanHook, Directing Attorney, Legal Aid Society of Monterey County, Seaside, California, told Inspection that Detective Terence Mangan's testimony before Representative Ichord's Internal Security Committee on October 27, 1971 concerned matters that had occurred more than a year ago. She assured Inspection that the conduct of her staff was not in violation of any OEO rules and regulations, to the best of her knowledge. She stated that no funds were used for non-grant purposes. However, she admitted that in 1970 her staff did spend much of its time on matters relating to the military. However, she added, because of her own personal belief that the priorities of the poor in the area are so much greater in housing, employment, and discrimination, she has caused, with Board support, a substantial decrease in the number of military matters handled by her staff in 1971. She cited the office statistics from January 1 through November of 1971 which show that her staff handled 2,143 cases, only 104 of which involved military matters.

Mrs. VanHook stated that over a year ago, a group known as the Movement for a Democratic Military (MDM) emerged in the area but was short-lived after a brief and ineffective attempt to establish a base of operations at a local coffee house. The coffee house and the movement folded in the fall of 1970 and have not reappeared since that time, she said. Mrs. VanHook noted that Seaside is heavily populated with retirees from the military, and that this segment of the population is quite conservative and completely opposed the MDM effort.

Mrs. VanHook, who is black, explained to Inspection that 40 percent of the Seaside population is black, and a large percentage of the black community are military, both active and retired. Mrs. VanHook assured Inspection that she and the rest of the black community are opposed to any involvement with the military, beyond representing needy, qualified personnel who cannot get legal assistance elsewhere. As an example of the kind of service given by her office to the military, she cited hardship cases where enlisted personnel attempt to obtain a hardship discharge as the only way to resolve some serious problem at home.

Mrs. VanHook admitted that one of her staff attorneys, Steve Slatkow, has been particularly active in military matters, both on and off the local military base, at Fort Ord. However, she added, his involvement with a local group called the Pacific Counseling Service, which counsels military people concerning their rights as conscientious objectors, has been restricted to after-hours time. This activity is done solely on his own time as an ACLU lawyer and is not an official, sanctioned, office activity.

Mrs. VanHook furnished Inspection with a copy of the minutes of the Legal Aid Society Board meeting of July 28, 1970, outlining the direction staff attorneys take concerning their legal duties. The Board minutes reflect a statement by staff member Steve Slatkow that the agency does not represent Peace groups but that he represents them on his own time as an ACLU attorney. In the minutes, Slatkow said that the issuance of a misdemeanor citation to the Peace group (not identified), including Slatkow, may involve a trial at which point, he will take either vacation or leave of absence during the trial period. The minutes further

reflected that the Board felt there ought to be a differentiation between cases where military counsel is available, although perhaps not desired by the client, and those cases where no military counsel is available. A committee was appointed to create guidance for the acceptance of military cases. The committee was headed by Mr. Lawrence Shostak.

Lawrence Shostak, a private attorney doing business in Salinas, California, told Inspection that he served on the Monterey County Legal Aid Board for three years and resigned in September of 1971 because of the press of his own private work. Shostak said that the committee met with Slatkow on one occasion after the July 1970 Board meeting to discuss the matter of military cases. The committee accepted Slatkow's statement that he handled only qualified hardship cases and that his activities with the Pacific Counseling Service were done on his own time. The committee considered the matter resolved, but has not issued a written report, Shostak said. Shostak explained that there have been no complaints, to his knowledge, about the program or the activities of any of its attorneys. There have been, he said, expressions of concern by other Board members including Roberts Hinrichs who, as a retired, military, legal officer, had conveyed to the Board expressions of concern made to Hinrichs by his friends in the military.

Robert Hinrichs, a Legal Aid Board member and a practicing private attorney in Salinas, California, told Inspection that while there have been no specific complaints, his friends in the military felt that the soldiers at Fort Ord were furnished with adequate legal counseling and did not need the assistance being furnished by the Monterey Legal Aid staff. Hinrichs stated that he agreed with this analysis and cited his own service of 12 years in the General Advocate's office of the U.S. Army, which has a special branch of legal advisers who counsel military personnel regarding matters of hardship, discharges, and conscientious objector status. It was Hinrichs' opinion that soldiers are well paid and that, in effect, their pay is spending money since their clothing, housing, retirement, and medical needs are furnished free by the Service. Hinrichs admitted that military lawyers are restricted to the role of counseling and cannot represent a soldier in a legal proceeding. He admitted further that no specific complaints have been lodged by anyone concerning the Monterey Legal Aid program or any of its attorneys.

The Chief Intelligence Office, Lt. Colonel Tom Horiuchi, at Fort Ord, California refused to meet with Inspection based on his instructions from the Department of Defense, which recently directed that the Army will no longer investigate civilians and will no longer maintain any files on civilians. The Colonel stated that he was obliged to follow this directive to the letter and could not meet with Inspection to discuss this matter. He stated that his response was not to be interpreted as meaning that he did or did not have any complaints. He noted, however, that the local newspapers have reported on this matter.

The May 6, 1971 issue of the Monterey Peninsula Herald carried a front-page story concerning a march by anti-war demonstrators to the Presidio of Monterey, another local military installation. Citations were given, and the demonstration dissolved without incident. No names associated with the Monterey Legal Aid office appeared in this article.

According to Shostak, there was an anti-war demonstration in May of 1971 at Fort Ord, and a radio account of the incident used the name of Luke Hiken, one of the "Reggies" assigned to the Monterey Legal Aid program. Hiken, according to Shostak, has been in regular contact with Fort Ord, where he

is working to establish an Affirmative Action Plan to be established pursuant to Executive Order 11246. Hiken has also been working at Fort Ord to request the military to provide surplus land for low-cost housing and to supply other kinds of assistance to the local poor. The Hiken incident was resolved to the satisfaction of the Board, Shostak explained, by accepting Hiken's explanation that he was at Fort Ord in connection with his normal assignment and by surprise wound up in the middle of the demonstration.

Hinrichs told Inspection that he was not satisfied with Hiken's account but had no information to challenge it. He added that no complaints had been made concerning Hiken's activities.

The October 28, 1971 issue of the *Monterey Peninsula Herald* carried an article captioned "Mangan Charges Ridiculous." In the article, Steve Slatkow, the staff attorney for the Legal Aid Society of Monterey County, called absurd, inaccurate, or outdated the testimony of Seaside Detective Sgt. Terence Mangan before the House Internal Security Committee. The article showed that Mangan had testified on October 27, 1971 in Washington, D.C. in part about the Movement for a Democratic Military, claiming that the Movement operated a coffee house for several months in 1970 in Seaside where "revolutionary" films were shown. Mangan alleged soldiers were advised on resisting orders, filing complaints against officers, and claiming conscientious objectors' status. Mangan called the Pacific Counseling Service in Monterey a hub for distribution of underground newspapers and claimed that some attorneys connected with the Legal Aid Society offered draft and general counseling services to GI's. In the article, Slatkow responded to Mangan's charges, saying that the Legal Aid office gives advice on legal problems to any qualified person regardless of his status and added there is no formal or informal relationship between the Pacific Counseling Service and the Monterey Legal Aid Society.

Steve Slatkow told Inspection that he personally, acting as an ACLU attorney, has maintained a constant, supportive position with the Pacific Counseling Service. In effect, he explained, they call him for advice. These activities, he assured Inspection, do not involve his handling any cases for the Pacific Counseling Service or representing any of their clients.

According to Terry Mangan, his Department has not had any complaints regarding the Legal Aid Society this year. His speculation was that due to publicity received, the organization would be careful to operate within their guidelines.

Mangan told Inspection that Steve Slatkow was arrested on July 4, 1970 at a parade in Seaside where unauthorized groups attempted to participate—namely, the Movement for a Democratic Military, Peace and Freedom Party, Women's International League for Peace and Freedom, Veterans for Peace, and the Monterey Liberation Front (termed by Mangan as a coalition of Peace groups). When the members of these groups refused to leave the line of march, Mangan said, some twenty-three were arrested, charged with violating a local ordinance preventing the blocking of a street, and Slatkow was one of those arrested.

Mangan stated that Slatkow fought the charges through the courts, and the case was dismissed by the California State Supreme Court. According to Mangan, Slatkow was not affiliated with one particular group but, rather, was overseeing the whole demonstration, and moved from one group to another, and seemed to be accepted by all.

According to Mangan, the Pacific Counseling Service is an "umbrella" organization for many of the activists' groups, and Attor-

ney Slatkow is still close to this organization. Mangan also advised Inspection that very recently a new office opened at 467 Alvarado Street in Seaside called the Lawyers Military Project, and its objective is to help conscientious objectors. The Director of this organization is Attorney Louis N. Hiken, Mangan said, who is affiliated with attorneys of the Legal Aid Society. A report to Mangan's office indicated that the reason for this office being opened is that the Legal Aid office is crowded and additional facilities were needed.

Mangan stated that the attorneys who were active at Fort Ord were Slatkow, Hubbard, and Ray Schonholtz. Slatkow and Schonholtz are also with ACLU, Mangan stated. Mangan said that there has been less activity at Fort Ord this year than last.

Regarding the statement by Slatkow and VanHook that Mangan's information was not current, Inspection was told by Mangan that this is not true. While the Movement for a Democratic Military is no longer in existence, other groups bearing different names are engaged in the same tactics (strategies employed to further "The Movement"); ergo, his concept of the operations of activists in the area is current, Mangan claimed. As an example, Mangan stated that a new group called Peoples Army Defense Committee has been formed and would operate similarly to the defunct Movement for a Democratic Military.

The Monterey Legal Aid program is funded with \$90,200 of OEO money. Technically, it is to service the poor of Monterey County, but concentrates on the Monterey Peninsula. According to Attorney-Director VanHook, with her staff of two attorneys and two "Reggies," they can't handle the cases in their own backyard, let alone the whole county. By an unwritten agreement, she said, CRLA handles the rest of the county, which is rural. Since CRLA deals mainly with Chicano problems, she added, she has focused on the problems of the blacks in Seaside.

Mrs. VanHook furnished Inspection with a copy of an evaluation of her program conducted by Auerbach Associates under a contract with OEO. The evaluation report, dated August 3, 1971, was based on an evaluation team visit in October of 1970. The report indicated impaired relationship with the CAA and CRLA, and urged the Legal Aid to fulfill its mandate to service the county and to cooperate more closely with CRLA. The evaluation report questioned the amount of time spent by the staff on conscientious objector cases, in counseling the organizing of "street people," and in preparing for an attack on abuses at Fort Ord. The evaluators recommended that time spent on Fort Ord be limited to 50 percent of one attorney's time. The evaluators found that the two staff attorneys and the two "Reggies" were spending considerable time in analyzing Fort Ord's influence on Seaside. On the other hand, the evaluators were impressed with the Director's own approach, which was to act as a community leader serving community causes.

COMMITTEE ON INTERNAL SECURITY,  
Washington, D.C., November 16, 1971.

Mr. PHILIP SANCHEZ,  
Director (Acting), Office of Economic Opportunity, Washington, D.C.

DEAR MR. SANCHEZ: The Committee on Internal Security has recently heard testimony dealing with attempts to subvert the armed forces of the United States.

On October 27, 1971 Detective Terry Mangan of the Seaside, California Police Department testified concerning revolutionary organizations active in the Fort Ord, California area. Testimony was also given concerning the Movement for a Democratic Military which was described as being affiliated with the Pacific Counseling Service and

as having published a document urging disruptive action at Fort Ord for the purpose of crippling it as a training base. Mangan said that an attorney, Steve Slatkow of Monterey, assisted the Pacific Counseling Service as a legal advisor. He said Slatkow is affiliated with the Monterey County Legal Aid Office which he believes is funded by the Office of Economic Opportunity. He added that he recalls arresting one Bruce Neuberger, a local activist for the Movement for a Democratic Military, while Neuberger was in a surplus military vehicle assigned to the Legal Aid Office. This vehicle bore U.S. Government license OEO 1400, according to Detective Mangan.

A further check on this matter with the Seaside Police Department revealed that the above arrest took place on November 20, 1970. Neuberger was a passenger in the car. The driver is unknown. Neuberger was reportedly being given regular "taxi service" in this vehicle to his job as a dishwasher in a restaurant. The vehicle was a Plymouth station wagon. The Committee staff has further been informed that the State of California OEO personnel conducted an inspection of OEO functions in the Monterey area; that the above described use of an OEO vehicle was reported to the inspectors; and that the matter was dismissed by the inspectors as insignificant.

I would be interested in receiving a report on the authorized use of the vehicle bearing license number OEO 1400, why Bruce Neuberger was occupying it, whether such use exceeded OEO authority, who granted permission for its use by Neuberger, what other non-OEO people had access to the vehicle, whether the Monterey Legal Aid Office is in fact funded by OEO and, if so, for how much and for what purpose and the controls in effect to insure the proper expenditure of these Government funds.

I would like to know specifically if OEO funds have been expended to assist the personnel connected with the Movement for a Democratic Military, the Pacific Counseling Service, or any other individual, group, or organization engaged in the so-called counseling of military personnel in the Fort Ord area.

I will be appreciative for your assistance in this matter.

Very truly yours,

RICHARD H. ICHORD, *Chairman.*

#### TRANSFER ORDER EXCESS PERSONAL PROPERTY

- Order No. 0091.
- Date, March 10, 1970.
- To: General Services Administration, Utilization and Disposal Service, Personal Property Division, 49 Fourth Street, San Francisco, Calif 94103.
- Ordering Agency (*Full name and address*): Office of Economic Opportunity, 100 McAllister Street, San Francisco, Calif 94102.
- Holding Agency (*Name and address*): Naval Supply Center Disposal Dept., Bldg. 834 Code 302.2 Oakland, Calif 94625.
- Ship to (*Consignee and destination*): Monterey County Anti Poverty Coord., Council Inc., 6 W. Gablian Street PO. Box 1087.
- Location of property, Naval Supply Center Disposal Dept., Bldg. 834 Code 302.2 Oakland, Calif 94625.
- Shipping instructions, Will Pick Notified Max Velazquez (408) 424-0091.
- Ordering agency approval, Signature, Loui F. Roch. Title, Regional Property Administrator.
- Date, 3/11/70.
- Appropriation symbol and title, Grant 7035.
- Title, Regional Property Administrator.
- Allotment, GSA 1147.
- Property ordered.

GSA and holding agency Nos. (a), 13949, N00, 228-0015 L, Item No. (b), 009, Description, (c) 2310-889-2018 Automobile Sta. Wagon, USA #106490 Cond R-4 Plymouth

1963, Serial #2535144129, unit, (d) ea. quantity, (e) 1, unit, (f), \$1840.00, total, (g), \$1840.00.

14526-N00223-0022 Item No. (b), L001, Description, (c) 2310-889-2018 Automobile Sta. Wagon, USA #LG 6497 Serial No. 2535151190, Plymouth 1963, Cond R-4, unit (d), ea. quantity (e), 1, unit (f), \$1840.00, total (g), \$1840.00.

#### CERTIFICATION

I certified that this property is being acquired in lieu of property that could have been properly purchased with grant funds under the terms of an OEO Grant. Property to be used in support of the Legal Aid Society (Acct. 5 7) and the Tri-County Emergency Food & Medical Services (WH) (Acct #51) Paragraph 2A(1) OEO Instructions 7003-1 6/17/69.

MAXIMILIANO VELAZQUEZ,

*Property Management, MCPAC.*

#### GOVERNMENT VEHICLE LICENSE INFORMATION

To: Chief, Management Division, Attn: Property Administrator, Office of Economic Opportunity, 100 McAllister St., San Francisco, California 94102.

From: CAA Name, Monterey County Anti-Poverty Coordinating Council Inc. Grant no.: 7035.

CAA Address: 6 West Gablian St., P.O. Box 1087, Salinas, Ca., 93901.

Item Description & Capacity: Automobile Sta. Wagon, Plymouth.

Year of Manufacture: 1963.

Make & Model: Plymouth.

Engine Serial No.: 2535144129.

Chassis Serial No:

Date Vehicle/Equipment Received: April 16, 1970.

Acquisition Cost: \$1,740.00.

Signature:

MAX VELAZQUEZ.

Title: Property Mgr.

Date: April 16, 1970.

#### ATTACHMENT 3

##### OFFICE OF ECONOMIC OPPORTUNITY,

*Washington, D. C., March 9, 1973.*

To: ERIC BIDDLE.

Thru: Robert Slonager.

From: John Myers, James Poole.

Subject: Involvement of OEO Grantee Personnel in South Dakota Indian Disorders.

#### CUSTER AND RAPID CITY

On Sunday, January 21, 1973, Wesley Bad Heart Bull, an Oglala Sioux, was stabbed by a white man in Buffalo Gap, South Dakota. Bad Heart Bull later died in Hot Springs. His killer was charged with manslaughter.

On February 6, members of the American Indian Movement (AIM), together with numerous local Sioux, converged on Custer, South Dakota to protest the leniency of the charge against Bad Heart Bull's alleged killer. After discussions with State's Attorney Hobart Gates, disorders erupted which led to the burning of the Court House, the Chamber of Commerce, a bulk oil station, damage to police cars and injury to eight police officers. Thirty-four persons were arrested, including Russell Means, a leader of the BIA takeover in Washington, and Dennis Banks, AIM National Field Director. According to State's Attorney Gates and Sheriff Ernest Pepin, no known staff persons of any OEO funded agency were involved in the disorders. However, Mr. Gates advised that Gary Thomas, a Legal Services Lawyer from the Pine Ridge Reservation, was listed as defense attorney for Severt Young Bear, who had been charged with rioting, a felony. Young Bear is an AIM leader from Pine Ridge.

On February 9 AIM Indians initiated disturbances in Rapid City which led to forty-two arrests. According to Assistant Chief of Police Carol Boze, there was no involvement of CAA, Legal Services or other OEO gran-

tee personnel in the Rapid City trouble. Boze was generally positive in his comments about the local CAA and said he had only very slight knowledge of the Legal Services operation.

Among the Indians involved, but not arrested in Rapid City, was Clyde Bellecourt, Director of Minneapolis AIM. Sharing a room with Bellecourt when he and other Indians were evicted from the Imperial 400 motel was a woman who, according to Assistant Chief Boze, may have been Clyde's wife, Peggy Bellecourt. Peggy Bellecourt is also a member of the Board of Directors of Minneapolis AIM, which received OEO funds to operate the Minneapolis AIM Survival School.

#### LEROY CASADOS

During an earlier inspection, this office learned that the husband of an employee of the Northwest Nebraska Community Action Agency headquartered at Chadron, had participated in the November, 1972 takeover of the BIA building in Washington. Susan Casados is a Family Planning supervisor, living in Alliance, Nebraska, and working out of the NNCAA office there.

She is married to Leroy Casados, a Mexican-American who has been deeply involved and influential with the American Indian Movement. Other AIM activities in which Casados has participated include the protests in Gordon and Alliance, Nebraska relating to the death of Yellow Thunder in Gordon last year.

In addition, Casados was arrested in Scottsbluff, Nebraska on January 15, 1973 and confined for possession of concealed .45 cal., .32 cal., and 22 cal. handguns and makings for firebombs. Sgt. Jim Livingston, Scottsbluff Police Department, advised that during this disorder, AIM people and partisans of former Nebraska Panhandle Community Action Agency Director Ramon Perez, took over the NPCAA headquarters. A sheriff's officer was stabbed during the fracas. Most participants, including Casados, have not yet come to trial.

Inspection made contact with an informant who is well acquainted with Susan Casados, who advised that Susan told him her husband, Leroy, was storing weapons, including two machine guns, in their home in Alliance. Susan Casados allegedly told this informant that on an unspecified date, two uniformed Alliance police officers came to her home when her husband was not there and asked her to consent to a search of the premises. Casados told the informant that she refused to admit the officers. After their departure she allegedly removed the weapons from her home in two separate trips to the country.

The same informant, who is a Sioux Indian, advised that he had seen the following artifacts and equipment, allegedly taken from the BIA headquarters in Washington, in the home of his cousin on the Pine Ridge Reservation:

1 tape recorder; 1 camera; 1 sand painting done by Southwestern Indians and 1 ceremonial wedding cup. This informant would not reveal the identity of the cousin because of the family relationship, but advised that many of the items had been given to militant Indian leaders in the Rapid City area.

An Alliance, Nebraska police lieutenant advised that on January 15 his office was altered by the FBI that Casados was jailed in Scottsbluff. The FBI agent said Casados had made a phone call to his wife in Alliance, telling her to "get rid of the stuff," or words to that effect. Two Alliance police officers went to the home of Leroy and Susan Casados and asked Mrs. Casados to consent to a search of the premises. The police expected to find items stolen from the BIA. She refused to admit them. Later that evening, while the house was under surveillance, Mrs. Casados left once by automobile, returned and left again. She was not followed.

On February 28, the day following the takeover by AIM and other militants of the trading post at Wounded Knee, Inspectors learned from an official source on the Pine Ridge reservation that AIM allegedly had two machine guns inside the area controlled by them.

#### PINE RIDGE AND WOUNDED KNEE

On Friday, February 23, the Oglala Sioux Tribal Council voted down a move to impeach Tribal Chairman Richard Wilson. The count was 14-0, four other members of the 20 member Council having walked out in protest before the vote was taken.

The charges against Wilson included misuse of funds, nepotism, false arrest of another Council member and other improper performance of his tribal office. Following this apparent endorsement of Richard Wilson, the Council went on to pass resolutions requesting an FBI audit of tribal records and an investigation of subversive activity on the reservation.

On February 25 Vernon Bellecourt announced a caravan of Indians was coming from Rapid City to Pine Ridge "in response to requests from the people of Pine Ridge."

Tuesday morning, February 27, AIM leader Russell Means was assaulted by alleged followers of Richard Wilson in front of the Sioux Nation trading post in Pine Ridge. Legal Services Attorney Gary Thomas reportedly was with Means at the time and according to one source, he also was slightly injured.

The same evening numerous Pine Ridge residents, led and encouraged by AIM leaders, ransacked the trading post at Wounded Knee. About 18 arrests were made by U.S. Marshals and Indian police. Tribal Chairman Richard Wilson told Inspection that approximately 12 of these persons are employees of the Pine Ridge CAA. Tribal and CAA offices were closed during the inspection due to the critical situation on the reservation and no check of personnel records for names of those arrested could be made at that time. Wilson offered to provide a list of CAA persons arrested as soon as some stability is restored.

Later, on the evening of February 27, approximately 300 Indians occupied the town of Wounded Knee and took 11 hostages. Shots were exchanged with Federal authorities.

On February 28, Inspection interviewed Richard Wilson regarding the involvement of OEO funded personnel in the Wounded Knee disorder. Wilson, surrounded by a corps of flak-jacketed, heavily armed supporters, strongly protested the alleged participation of Legal Services attorneys Gary Thomas and Mario Gonzalez in AIM efforts to remove him from the Tribal Chairman position. According to Wilson, he was going to have Legal Services removed from the reservation, either with the cooperation and compliance of the attorneys or by force without it. Wilson also advised that he had warned Gonzalez to leave the reservation or expect bodily harm.

Inspectors attempted to contact Thomas and Gonzalez on the reservation, but were not successful. It was rumored that one or both of them were with the militants at Wounded Knee. Gonzalez' home on the reservation was closed and apparently unoccupied.

Wilson's bodyguards, Glenn Three Stars and Joe Merrival, gave Inspection copies of Criminal Complaints and Warrants sworn against them by Gary Thomas, charging both with assault by "quarreling with" Thomas outside the Sioux Nation trading post. This apparently occurred at or near the time of the assault upon Russell Means. Both Merrival and Three Stars volunteered to Inspection that they were not the persons involved in the attack upon Means, and stated further that they had not even spoken to Gary Thomas on that occasion. Charges against

both men were dismissed, they said, by the Tribal Judge.

#### ATTACHMENT 4

[Administratively Confidential]

OFFICE OF ECONOMIC OPPORTUNITY,  
Washington, D.C., March 8, 1973.

To: ERIC BIDDLE.

Thru: Bob Slonager.

From: Michael DeCandio, Charles L. Gray.

Subject: Native American Rights Foundation (NARF).

NARF was initially formed through a grant received from the Ford Foundation, from which organization they are presently receiving over one million dollars in grants. In addition, NARF is the recipient of a \$65,000 grant from OEO Legal Services, and a 2-year grant initiated by OPD for \$250,000 in program 232 funds to administer a pilot project dealing with Indian education problems. The OPD grant has been transferred to Indian Division and terminates on July 31, 1973. However, planning is under way to award a supplemental grant of \$35,000 to NARF to carry them through the first quarter of fiscal year 1974. Hopefully, they will subsequently be refunded for the entire fiscal year 1974. Project Director for this OPD grant is John O'Brien, Indian Division.

On March 8, 1973, Dan Israel of the Native American Rights Foundation (NARF) informed Inspection that the class action referred to in the January 25, 1973 issue of the Denver Post (attachment) referred to a Temporary Restraining Order filed against the City and County of Scottsbluff, Nebraska. The Restraining Order stated that evidence indicated that the "Constitutional Rights of Indians and Chicanos were being violated by City and County authorities." The Restraining Order directed the city and county to cease and desist from committing these Constitutional violations.

In reference to the staying of the prosecution of those involved in the disturbances in Scottsbluff (attachment), Israel said that the order was dissolved by "its own terms on February 1, 1973." Specifically, the Indians, Chicanos, City and County Officials negotiated an agreement which was incorporated into the Restraining Order. The agreement specifies that:

1. The defendants are to refrain from engaging in any unlawful actions.
2. A Human Rights Commission is to be set up in Scottsbluff to investigate problems relating to unequal justice for Indians, Chicanos and any other persons denied equal protection under the law.
3. Equal employment opportunity.
4. Equitable distribution of municipal services.
5. In order to insure compliance with this agreement, one Chicano, one Indian, one representative each from the city and county governments will serve as members on the Human Rights Commission.

Israel further commented that the staying of prosecution does not mean that none of the individuals involved in the disturbances will not be prosecuted. The decision as to what extent prosecution of the involved individuals will encompass, will depend on the good faith of all the parties involved in providing the cooperation necessary to insure that the Human Rights Commission is successful in attempts to solve the problems on which the disturbances focused.

In commenting on the involvement of OEO funded employees in the disturbances in Scottsbluff, Wounded Knee or Pine Ridge, Israel said no OEO funded employees were involved. He explained that the NARF funds are received from:

1. Ten private foundations
2. Public contributions
3. OEO, but only under "legal services for backup Center work."

Commenting on whether any NARF personnel were present at Wounded Knee, Israel

said that Roy Haber and John Echohawk were present at Wounded Knee over the weekend of March 2-5. Israel said "Let me state that these persons went to Wounded Knee at the invitation of Bill Gershny (phonetic), who is assigned to the Solicitor's Office, Department of Interior." Israel believed that Haber and Echohawk were helpful in helping to negotiate an arrangement between the Indians (AIM) and the government. However, Haber and Echohawk departed on Monday morning, March 5, when the confrontation changed to one between the AIM people and the Tribal Council. Israel explained that NARF has no authority to negotiate disputes between Indians and the Tribal Councils. Israel further commented that at present, there are now three distinct groups at Wounded Knee:

1. The AIM people
2. Two-hundred non-AIM residents
3. White people

On March 9, 1972, Mr. Duard Barnes, Assistant to Mr. William A. Gershuny (correct spelling), Associate Solicitor for Indian Affairs, Solicitors Office Department of Interior, informed Inspection that Mr. Gershuny did not invite Mr. Haber and Mr. Echohawk to Wounded Knee during the weekend of March 2-5. What actually transpired, according to Barnes, as told to him by Gershuny was that the AIM people in Wounded Knee (not further identified), requested that Gershuny contact NARF and ask that several lawyers from this organization come to Wounded Knee to aid in the negotiations. Barnes said, "This was the extent of our office's involvement with NARF's presence at Wounded Knee."

#### ATTACHMENT 5

OFFICE OF ECONOMIC OPPORTUNITY,  
Washington, D.C., October 4, 1971.

#### INSPECTION DIVISION

Report of inspection.

From: Thomas F. Fitzpatrick.

Subject: Sheldon Otis, Ex-Director of the Legal Aid Society of San Mateo, Redwood City, California. Date of inspection: September 28, 1971.

#### BACKGROUND

This is a Legal Aid program serving the needs of the poor in San Mateo County. It is a delegate agency of the San Mateo County Economic Opportunity Commission, located in Redwood City, California, operating under Grant Nos. CG 7069, CG 7193, and CG 9042.

#### BASIS FOR INSPECTION

This report has been prepared in response to a request from Howard Phillips, Special Assistant to the Director, as stated in his memorandum of September 22, 1971 entitled "Inspection of Legal Services activities in the prisons." (Attachment #1)

#### FINDINGS

1. Sheldon Otis, a white attorney from Detroit, Michigan, served as Director of the Legal Aid Society of San Mateo from June 1970 to January 1971 and resigned for personal reasons.

2. Otis became chief attorney for Angela Davis after he left the Legal Services program.

3. District Attorney Keith C. Sorenson has filed a complaint against Otis charging him with violating Section 487, California Penal Code, two counts. Otis is to surrender when he is discharged from the hospital where he is recuperating from pneumonia.

4. Otis apparently embezzled \$10,000 of Reginald Heber Smith funds while he was Director of the Legal Aid Society of San Mateo. Otis returned the funds before he left the program. The embezzlement was reported to the San Mateo County District Attorney by the present Director, Simon Rosenthal, a former OEO Legal Services official (Attachment No. 2).

5. Sheldon Otis owes money to the Internal Revenue Service. Otis currently owes IRS \$21,091.79. It is believed he embezzled the \$10,000 from the Reginald Heber Smith funds to meet his tax obligations.

6. Walter Harrington, Board Chairman, and local police authorities had no other information to indicate any questionable activities by Otis during his stewardship of the Legal Services program in San Mateo.

7. The Legal Aid Society of San Mateo enjoys a fine reputation in the community, and no other members of the staff are subjects of any investigation by the local authorities.

#### DETAILS

Wilbur R. Johnson, Chief Criminal Deputy District Attorney of the San Mateo County District Attorney's Office, told Inspection that a complaint had been filed charging Otis with embezzlement, in the amount of \$10,000.00 from the Legal Aid Society of San Mateo County, specifically funds from the Reginald Heber Smith Community Lawyer Fellowship Program. However, Otis was not arrested as he had contracted pneumonia and was confined to the intensive care ward in the Herrick Memorial Hospital, Oakland, California. According to Johnson, Otis was fully aware of the charges, was cooperative, and was to have surrendered himself on Monday, September 20, 1971. Johnson advised that Chief Inspector, Jack Jones of the San Mateo County District Attorney's office, was in charge of the investigation.

Subsequent to the conversation with Mr. Johnson, Inspection contacted Mr. Kenneth Irving, in charge of the Intelligence Unit of the Marin County Sheriff's Office, in an effort to determine the status of Sheldon Otis with the defense of Angela Davis.

Irving told Inspection that Otis is an attorney for Angela Davis along with attorneys Howard Moore and Margaret Burham; that he, Otis, does background work but appears to be the chief defense attorney in the case. Irving also advised that Otis may not practice law in the State of California, however, due to a judicial ruling may practice in the Angela Davis trial.

Irving said he had occasion to talk to Otis on Friday, September 17, 1971 and stated that Otis did not appear to be in ill health. According to Irving, a newspaper article (paper unidentified) mentioned the possibility that Otis had ingested pills causing his sudden illness. (Later, the present Executive Director of the Legal Aid Society in San Mateo, Simon Rosenthal, told Inspection that it was his understanding that Otis had taken an overdose of barbiturates.) Irving advised Inspection that his information was that Otis had left the San Mateo County Program January 23, 1971, and the same month appeared as defense attorney for Angela Davis.

Inspection then contacted Mr. Donald Midyette, Senior Investigator in the office of the Marin County District Attorney, who confirmed information given by Irving.

On Tuesday, September 28, 1971, Jack Jones, Chief Inspector for the San Mateo County District Attorney, told Inspection that the matter Inspection was inquiring about was of a sensitive nature and that any information he gave Inspection must be considered confidential and treated accordingly. Jones was most cooperative and allowed Inspection to peruse the file of Sheldon Otis. The following information was obtained from said file:

A complaint was filed against Sheldon Otis, 2814 Kelsey, Berkeley, California, born 12/14/32, SSN 378, 25 8965, phone 548-5205, occupation attorney, on September 17, 1971 charging violation of Section 478 of the California Penal Code, two counts. The complaint was signed by Jack Jones.

The investigation was assigned by Wilbur R. Johnson, Chief Criminal Deputy District Attorney, on August 10, 1971. The investigation was predicated upon receipt of informa-

tion that subject Sheldon Otis embezzled \$10,000 from the Legal Aid Society of San Mateo County.

The embezzlement consisted of subject issuing two checks drawn on the Reginald Heber Smith Fund account (Attachments No. 3 and No. 4).

The first check was dated August 11, 1970 in the amount of \$2,500.00. The second check was dated 9/28/70 in the amount of \$7,500.00.

Investigator Jones contacted Glen R. Nelson, Jr., Operational Officer of the Wells Fargo Bank County Center Office in Redwood City, on August 10, 1971. Nelson supplied him with the necessary data concerning Otis' transactions.

Otis opened a personal checking account #294969 on June 15, 1970. The initial deposit was in the amount of \$2,520.00. Subsequently, the \$2,500.00 check of August 11, 1970, drawn on Legal Aid Society-Reginald Heber Smith Fund Account #023525 was deposited in Otis' bank account #294969 on 8/13/70. This check was Legal Aid Check #398, Bank 90-1168, which is the Wells Fargo County Center Bank.

The second check in the amount of \$7,500.00, issued 9/28/70, drawn on the Legal Aid Society account, payable to Sheldon Otis, was negotiated through the City National Bank in Detroit, Michigan. A letter from Dennis J. Mullahy, Chief Officer of the Intelligence Unit of the Detroit Police, stated that this check was deposited in Mr. Otis' account #301 511 838, on 9/28/70. Mullahy stated further that another check in the amount of \$8,500.00 was deposited in Otis' account at the same time. The \$8,500.00 check was a Cashier's Check drawn on the Bank of the Commonwealth, Detroit, Michigan, dated 9/25/70. This check was issued by Arthur Swartz of Detroit Michigan. The bank statement of the account shows a total of \$15,000.

Investigator Jones' report shows that the Legal Aid Society bank records indicate that Otis re-deposited the money he had withdrawn; \$2,500.00 was deposited on 12/28/70 and \$7,500.00 was deposited on 1/6/71. Both these checks were drawn on the Security Pacific National Bank, 2205 Broadway, Redwood City. The \$2,500.00 from Sheldon Otis' personal account #006 015 as of 12/28/70. The \$7,500.00 check was a cashier's check #712614, dated 1/6/71, drawn on the same bank. Both checks were deposited in the Legal Aid Society account.

According to Inspector Jones, Marland Mosen, Assistant Manager of the Security Pacific National Bank, 2205 Broadway, Redwood City, phone 368-2974, was contacted on 8/20/71 regarding the cashier's check. Mosen advised that Otis opened a commercial account No. 006 015 on 9/21/70 and closed this account on 6/3/71. Statements pertaining to this account were to be mailed to 2221 Broadway, P.O. Box 5287, Redwood City. The bank statement shows that on 12/28/70 the sum of \$10,000.00 was deposited in this account and also shows the withdrawals of the two checks. When the account was opened, only one signature was required, that of Otis. A second signature, that of Barbara Epmeler, Otis' personal secretary, was added on 12/4/70. Epmeler was hired by Otis when he became Director. She resigned in February 1971 upon request of Rosenthal, who found her performance unsatisfactory.

The \$10,000.00 deposit of 12/28/70 showed that it was a wire transfer from the Bank of Nevada, Merland Square Office, to the United California Bank in San Francisco, authorized by Mr. Bernard Otis (believed to be Sheldon's brother).

Chief Inspector Jack Jones advised Inspection that he interviewed Mr. Simon Rosenthal on August 20, 1971. Jones reports that Mr. Rosenthal (who is the Executive Director of the Legal Aid Society of San Mateo County) told him that Otis was employed as Executive Director from June 15, 1970, until

January 22, 1971. Rosenthal also told Jones that when he took over as Executive Director on January 25, 1971, it became obvious to him that there had been mismanagement in the office and there were indications that the budget was overspent. He, Rosenthal, requested an audit. Rosenthal told Jones that he first became aware of Otis taking money from the Legal Aid Society Fund when the Bookkeeper-Secretary, Esther Larsen, told him about Otis' actions. This was in February of 1971, and Miss Larsen told Rosenthal, according to Jones, that Otis had taken \$2,500.00 out of the account because of his moving from Detroit to San Mateo. Miss Larsen did not mention the \$7,500.00 check.

(Later Rosenthal told Inspection that Miss Larsen kept quiet so as not to injure the program or Otis.) Rosenthal went on to tell Jones that there was no provision, no rule, no regulation by which a Director could borrow money from any of the funds administered by the program. Rosenthal told Jones the Director's salary came from Office of Economic Opportunity grants. Rosenthal went on to tell Jones that there was a delay in getting the audit, which was received in mid July. The audit (performed by Joseph J. DeMattels, CPA, 1520 Tacoma Way, Redwood City, Emerson 8-2941) showed that Otis had taken a total of \$10,000 from the account and that this sum was paid back in December of 1970 and January of 1971, also that the checks used were out of numerical sequence (taken from the back of a permanently bound check book). (See Attachment #5, copy of audit.)

Jones told Inspection that on July 21, 1971 the audit was presented at the Executive Board Meeting, and the Board directed that Walter Harrington (Chairman of the Executive Board) and Simon Rosenthal (Executive Director) report the embezzlement to District Attorney Keith C. Sorenson. Jones stated that Rosenthal also made a report to Federal authorities. (Inspection interviewed Simon Rosenthal who advised Inspection that he had written a letter to Mr. Glenn Carr, Director, Reginald Heber Smith Community Lawyer Fellowship Program, Howard University School of Law, 1343 H Street, N.W. Washington, D.C. on July 22, 1971, advising him of the circumstances with a carbon copy of this letter to Mr. Steve Huber, OEO Legal Services. See Attachment #6).

Rosenthal told Jones that on 7/26/71 he received a call from Sheldon Otis who said he had heard of the audit report. Otis told Rosenthal, during this conversation, that he had always intended to return the money and he would freely discuss the situation with the Executive Board and the District Attorney to explain his side. Otis indicated to Rosenthal that the reason for taking the money was because his move across the country found him short of cash and that personal fiscal problems existed involving his legal business in Detroit, the Internal Revenue Service, and client's responsibilities necessitated his obtaining the amount he took. Otis, according to Jones, requested Rosenthal to keep him advised re this temporary loan.

Jones advised Inspection that on August 9, 1971 Rosenthal and Harrington met with Keith Sorenson, the District Attorney, to discuss the case. According to Jones, Rosenthal told him that he called Otis and told him of the meeting with the District Attorney. Rosenthal also told Otis that he had reported the matter to the State Bar. Otis again offered to discuss the matter with the Board and/or the District Attorney. Since that time, Rosenthal has not communicated with Otis.

Inspector Jones advised Inspection that he interviewed Miss Esther Larsen, Bookkeeper-Secretary of the Legal Aid Society. Miss Larsen resides at 3003 McGarvey, Redwood City, phone 369-1214. She has been employed in

the program since September of 1966 and has been the bookkeeper since 1968. Miss Larsen told Jones that when Otis was hired, he set up the Legal Aid Society-Reginald Heber Smith account for one signature which could be that of Miss Larsen or Sheldon Otis, and this account did not necessitate a Board member's signature. Larsen stated this was out of the ordinary; however, Otis was the Director and operated in this manner. Larsen stated to Jones that there was no Board action regarding this bank account. In addition, Otis set up a Post Office Box at the main post office in Redwood City and had all the bank statements mailed to this box. Only Otis had a key to this box, and he picked up all the mail. Upon occasion Barbara Epmeier, a secretary, would pick up the mail. Larsen went on to tell Jones that she took a three weeks' vacation (last week in July, first two weeks in August, 1970), and on her return, she looked for the bank statements on the Reginald Heber Smith Account.

Otis told her he had them and would give them to her later. During September, October, and November Larsen continued to ask for the bank statements, and Otis continued to stall, saying he would give them to her at another time. In December of 1970 Otis gave Larsen a check in the amount of \$2,500.00, saying that he had borrowed some money and wanted to put it back into the account. He gave her the statement showing the withdrawal. He made no comment re the \$7,000.00. Larsen stated to Jones that there was no provision for anyone to borrow from these funds.

Larsen told Jones that Otis had submitted his notice of resignation prior to his repayment of the \$2,500.00. She explained the resignation stemmed from employee problems which showed Otis did not have support from the Board. Larsen stated she continued to ask Otis for the bank statements without results. On January 6, 1971 Otis gave Larsen a check in the amount of \$7,500.00, stating that this was the balance and that he had paid back all he borrowed. Then Otis gave Larsen all the bank statements. Larsen deposited the check. Larsen stated it was some time before she informed anyone regarding these illicit withdrawals. She stated further that the checks in question, numbers 398 and 399, had been removed from the last page of the check book. These was a third check, #400, which is still missing.

Inspector Jones told Inspection that several facts appeared to be significant in this case. He listed them as: (1) Otis, on being employed, set up the bank account so that withdrawals could be made with one signature; (2) Otis removed checks from the rear of the check book; (3) Otis kept the bank statements pertaining to this account and did not permit the bookkeeper to reconcile the account; (4) Otis opened his personal checking account for \$2,500.00. He negotiated the first check locally and the second through a Detroit bank; (5) Otis did not repay the funds until he had submitted his resignation; (6) Otis set up two commercial accounts in local banks, Wells Fargo and Security Pacific National; (7) At the time, Otis apparently had no shortage of funds. A \$7,500.00 check was deposited, an additional \$8,500 was deposited, and on 12/28 he had a wire transfer to his account in the amount of \$10,000.00.

Inspector Jones told Inspection that Sheldon Otis was interviewed by Wilbur E. Johnson, Chief Criminal Deputy District Attorney, and himself; that Otis identified his signatures on the checks; that he admitted negotiating these checks; that the money was to be used for personal reasons; that he had no explanation other than that he used poor judgment and fully intended to repay; that he did not know of any rule or regulation that permitted his taking the money; that he did not discuss the withdrawals with any member of the Board of Directors. Otis told Johnson and Jones that Mrs. Larsen, the

bookkeeper, was aware of the withdrawals. He advised that she kept the check book; however, he admitted keeping the bank statements and did not give them to Larsen until he had repaid the money he took.

Otis told Johnson and Jones that the repayment of the money he took was from money he received from his brother, Bernard Otis, of Las Vegas, Nevada who owed him money. Otis was asked why the money was replaced with two checks rather than one, and he could give no reason other than that he wanted to repay in the same fashion as he had withdrawn.

According to Inspector Jones, Otis attempted to minimize his embezzlement of these monies by stating that the Smith account was used for many purposes in the Legal Aid Society, even to advancing money to other employees as draws against their paychecks. He admitted, however, that these were small sums. Otis could not recall removing the checks from the rear of the Legal Aid Society checkbook and was unable to tell what happened to check #400.

Otis, according to Jones, attempted to justify his action by stating the money he took was merely a loan which he fully expected to repay, and because he did repay the amount taken, no further legal action should be taken.

Inspector Jones requested of Wilbur Johnson that a criminal complaint be issued against Sheldon Otis for the embezzlement of funds from the Legal Society-Reginald Heber Smith Fund Account. The complaint was issued.

The newspapers, Redwood City Tribune and San Mateo Times, carried a story re the actions of Sheldon Otis (Attachments No. 7 and No. 8).

Inspection interviewed Walter Harrington, Jr., Chairman of the Board of Directors of the Legal Aid Society of San Mateo County, regarding the situation involving Sheldon Otis and the embezzled funds.

Harrington is a practicing attorney in the State of California and has offices at 617 Veterans Street, Redwood City, phone 365-4411. He has been with the Legal Aid Society Program for the past five years, serving as member, secretary, and now Chairman since December of 1970. He advised Inspection that he was aware of the Otis case. However, he believed that Inspector Jones would have more complete knowledge as to various details than he did. Harrington told Inspection that Otis was hired in June of 1970 and that he, Harrington, had voted against the hiring of Otis.

Inspection asked Harrington if he knew the reason for Otis leaving the program, and he answered by saying that it was due to a personnel problem. Harrington explained that Otis had trouble with a staff attorney named Eugene Moriguchi and fired him. Moriguchi appealed his dismissal, and the Personnel Committee found no sufficient cause for the dismissal. The committee recommended that Otis place Moriguchi on probation. Otis then asked for a full Board meeting and the full Board upheld the findings of the Personnel Committee. Three weeks later, according to Harrington, Otis resigned. Harrington told Inspection that at this time, Otis had information regarding the checking of fiscal matters, and this also may have influenced his decision to resign.

Harrington told Inspection that upon his being elected Chairman, he called for an audit of the books and contacted J. DeMatteis, CPA, to conduct said audit. The audit was made, the discrepancy found, the Chairman reported the findings to the Board, and the Board directed that the matter should be reported to the proper governmental authorities.

Harrington and Rosenthal went to the San Mateo County District Attorney and, as a result, the complaint was filed against Otis.

Harrington stated that the program was a

good, viable, productive one, receiving much support from the people in San Mateo County. Harrington was very complimentary regarding Rosenthal, the present Executive Director. Harrington stated that the community was very fortunate in obtaining the services of a man like Rosenthal. He mentioned that Rosenthal was very intelligent, an excellent administrator, and a very nice guy. Harrington pointed out that Rosenthal was the original Director of the program and knew all facets. He, Harrington, believes Rosenthal will continue to operate a very good program and does not expect to encounter difficulties such as the present situation has presented. Harrington stated that he did not believe the publicity given the actions of Otis has injured the program nearly as much as it might have. He explained to Inspection that he had been in contact with the Bar Association and had the assurance that members of said association were very willing to accept a great many cases normally handled by the Legal Aid Society and this, by private practicing attorneys, without fee. Harrington states the program is very acceptable in San Mateo County and will continue to improve.

Harrington told Inspection that he advocates more adequate auditing from the Federal level to preclude incidents akin to the Otis case. He was most optimistic regarding the future of the Legal Aid Society of San Mateo County and was most cooperative with Inspection. His rapport with the Bar Association is a considerable factor with regard to the operations of the Legal Aid Society, Harrington concluded.

On September 28, 1971, Inspection interviewed Simon Rosenthal, Executive Director of the Legal Aid Society of San Mateo County, regarding the case of Sheldon Otis. Rosenthal was very receptive and cooperative. He told Inspection that he was the first Executive Director of the program in 1966, stayed two years, then went to the Office of Economic Opportunity in Washington, D.C., Legal Services. He left OEO in April of 1970, went to Europe until December of 1970. While there in London, he received a letter advising that the position in San Mateo was open, and he accepted. At the time of his acceptance of the position, he knew of some of the problems but believed he could rectify these difficulties.

Rosenthal told Inspection he started as Executive Director on January 25, 1971. He advised that Otis was hired in June of 1970, submitted his resignation and left in January 1971. On Otis' last day, according to Rosenthal, January 22, 1971, he met Otis, talked to him about the program, and was impressed with him. He stated that in his opinion Otis had a very high I.Q., was articulate, intelligent, and impressed everyone he met. He believes that Otis' difficulty stems from emotional problems, the nature of which he could not explain, that precipitated his actions. Rosenthal mentioned that it was his understanding that Otis had taken an overdose of barbiturates causing his present illness. Rosenthal told Inspection that Otis was previously employed on a Government-funded program in Detroit but was unable to state the name of the program or Otis' capacity.

Rosenthal told Inspection that the particular flaw he found in Otis was that he was not an administrator. He stated that under Otis, the program was an administrative fiasco.

According to Rosenthal, the minutes were not meaningful, the filing was poor, and budget was overexpended, and personnel problems existed. It took Rosenthal four months to reorganize the program.

Inspection asked Rosenthal if he knew why Otis had resigned from the program. He answered that he believed Otis was aware of the general administrative problems with which he was unable to cope, that he may

have recognized that he was not going to have a free hand, and finally realized he just couldn't do what he wished to do in all areas. These considerations coupled with the case of Otis attempting to dismiss another employee and not getting the support of the Executive Board were, according to Rosenthal, factors causing the resignation.

Rosenthal said he discovered that Otis had opened a one-signature account which was unusual and certainly improper, and Rosenthal changed this. The bookkeeper, according to Rosenthal, became upset about checks and the attitude of Otis and talked to him about the situation. Then Rosenthal learned that Otis had been intercepting bank statements and felt that the entire situation should be examined. He talked to the Board Chairman, and both decided that circumstances called for an audit.

At the January 20th meeting, the Board voted to have an audit of the books of the program, and the firm of J. DeMatteis was engaged to conduct the audit. The audit report came out in July and showed the withdrawals and subsequent deposits made by Otis. This matter was presented to the Executive Board, and the Board instructed Rosenthal and Harrington to report the matter to the proper authorities. This was done and, as previously stated, resulted in a complaint being filed against Otis.

Rosenthal told Inspection that at first he was very angry with Otis. Later, he mellowed, especially in view of the fact that the money was returned, and the work of the program was not impaired. The administrative problems he had inherited were solved by the time Otis' dereliction was uncovered, and Rosenthal feels that the situation merely caused much more work for him.

Inspection asked Rosenthal if he knew what use Otis made of the \$10,000. Rosenthal stated that he did not know; however, in a telephone call he had with Otis, it was indicated that it was to be used for personal obligations and perhaps to appease the Internal Revenue Service.

Rosenthal told Inspection that Otis repaid the money, \$2,500 December 29, 1970 and \$7,500 on January 7, 1971. Rosenthal explained to Inspection that the basic OEO Grant is handled through the local CAP and that the embezzled money was not from the OEO grant money but from the Reginald Heber Smith Fellowship Program which, Rosenthal claimed, was non-Federal funds. Rosenthal stated that San Mateo County controls the funds of the EOC program and there is no problem there. The Heber Smith funds come directly to the Aid program and separate accounts are maintained, he said. Monies are Federal in origin, but the direct conduit is through the universities.

Rosenthal told Inspection that at present the program is a very good one; that it has a good potential; that the staff is excellent; that many dedicated people are working on the program; and that he believes the problems are solved.

Rosenthal pointed out that recently, private lawyers in the county have accepted over 200 cases from the program without fee. He, Rosenthal, believes the program has been revitalized, and he is getting more professionalism than ever before. He also told Inspection that the Executive Board consisted of 21 people, 12 of whom are attorneys.

Rosenthal gave Inspection a copy of the audit (Attachment #5), copies of the two checks (Attachments #3 and #4), copy of a letter he wrote to the Board Chairman attempting to expedite the audit (Attachment #9), copy of the letter he wrote to Glenn Carr, Director of the Reginald Heber Smith Program (Attachment #6), copy of the Personnel Listing (Attachment #10), copy of his own resume (Attachment #2), and cop-

ies of the minutes of the Board of Directors from January 20 to September 22, 1971 (Attachment #11).

Contracts with San Mateo County police officials, San Mateo County District Attorney's staff and the Chairman of the San Mateo Legal Aid Society's Board of Directors developed no information indicating that Otis or other employees of the San Mateo Legal Aid Society had been involved in controversial or political matters.

OFFICE OF ECONOMIC OPPORTUNITY,  
Washington, D.C., September 24, 1971.

Date: September 22, 1971.

Reply to Attn. of: Howard Phillips.

Subject: Inspection of Legal Services activities in the prisons.

To: John Buckley.

In connection with the other work which your staff will be doing in this area, I call your attention to the attached AP wire story which appeared in the Sunday Star of September 19. The story reports that an attorney for Angela Davis, Mr. Sheldon Otis, formerly the Executive Director of the San Mateo Legal Aid Society, has been charged with embezzling \$10,000 from that organization.

Please develop a report for the Director which determines:

a. Degree of Mr. Otis' involvement in radical activities while an official of an OEO funded legal services project.

b. The extent of involvement by other personnel of that project in radical political activities.

c. The facts about the embezzlement charge.

It would be appreciated if a report on this matter could be available by October 5.

Thank you.

HOWARD PHILLIPS,  
Special Assistant to the Director.

#### CLOTURE MOTION

The PRESIDING OFFICER (Mr. BARTLETT). Under the previous order the Senate will now proceed to the cloture vote. The clerk will report the cloture motion.

The legislative clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon the bill (S. 2686), a bill to amend the Economic Opportunity Act of 1964 to provide for the transfer of the legal services program from the Office of Economic Opportunity to a Legal Services Corporation, and for other purposes.

Robert Taft, Richard S. Schweiker, Gaylord Nelson, William D. Hathaway, Harrison A. Williams, Mark Hatfield, Alan Cranston, James B. Pearson, Gale W. McGee, and John V. Tunney.

J. Glenn Beall, Jr., Mike Mansfield, Adlai Stevenson, Walter F. Mondale, Hugh Scott, Jacob K. Javits, Edward W. Brooke, Edward M. Kennedy, and William Proxmire.

The PRESIDING OFFICER. Under the previous order a quorum call provided under rule XXII having been suspended by unanimous consent, the Senate will now vote the cloture motion.

The question is: Is it the sense of the Senate that debate on S. 2686, to transfer the legal services program from the Office of Economic Opportunity to a Legal Services Corporation, be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Alaska (Mr. GRAVEL) and the Senator from Indiana (Mr. HARTKE), are necessarily absent.

I further announce that if present and voting, the Senator from Indiana (Mr. HARTKE), would vote "yea."

Mr. GRIFFIN. I announce that the Senator from New York (Mr. BUCKLEY), is necessarily absent.

I further announce that, if present and voting, the Senator from New York (Mr. BUCKLEY), would vote "nay."

The yeas and nays resulted—yeas 68, nays 29, as follows:

[No. 17 Leg.]

#### YEAS—68

Abourezk	Haskell	Nelson
Aiken	Hatfield	Nunn
Bayh	Hathaway	Packwood
Beall	Hollings	Pastore
Bellmon	Huddleston	Pearson
Bentsen	Hughes	Pell
Bible	Humphrey	Percy
Biden	Inouye	Proxmire
Brooke	Jackson	Randolph
Burdick	Javits	Ribicoff
Byrd, Robert C.	Kennedy	Roth
Case	Magnuson	Schweiker
Church	Mansfield	Scott, Hugh
Clark	Mathias	Stafford
Cook	McGee	Stevens
Cranston	McGovern	Stevenson
Dole	McIntyre	Symington
Domenici	Metcalf	Taft
Dominick	Metzenbaum	Talmadge
Eagleton	Mondale	Tunney
Fong	Montoya	Weicker
Griffin	Moss	Williams
Hart	Muskie	

#### NAYS—29

Allen	Eastland	McClellan
Baker	Ervin	McClure
Bartlett	Fannin	Scott,
Bennett	Fulbright	William L.
Brock	Goldwater	Sparkman
Byrd,	Gurney	Stennis
Harry F., Jr.	Hansen	Thurmond
Cannon	Helms	Tower
Chiles	Hruska	Young
Cotton	Johnston	
Curtis	Long	

#### NOT VOTING—3

Buckley	Gravel	Hartke
---------	--------	--------

The PRESIDING OFFICER. On this vote there are 68 yeas and 29 nays. Two-thirds of the Senators present and voting having voted in the affirmative, the cloture motion is agreed to.

#### LEGISLATIVE PROGRAM

Mr. GRIFFIN. Mr. President, I yield myself 3 minutes.

I wonder if I could ask the distinguished majority leader what the program is, so that we might have some idea what the program is for the rest of the afternoon or anything beyond today that he can tell us.

Mr. MANSFIELD. Yes, indeed. I am delighted that the distinguished acting Republican leader has made the inquiry.

It is the intention of the joint leadership that we stay on this bill until a reasonable hour this evening—6 o'clock, maybe 7 o'clock.

There may be votes in the meantime. However, there will be no votes between the hours of 4:30 and 5:30 this afternoon because the Republican leadership will

have a meeting with the President of the United States during that time. So, any votes during that period of time will pile up until they return.

Following the disposal of the pending business today or tomorrow, we will then take up the so-called Genocide Convention and stay with that until it is completed.

That is the best information that I can give the Senate at this time, except that if we finish the bill tonight we will come in at noon tomorrow. If we do not finish the bill tonight, we will come in at 10 o'clock tomorrow morning.

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

Mr. GRIFFIN. I yield to the Senator from New York.

Mr. JAVITS. Mr. President, does not the majority leader think that it would be useful for the membership to have an idea on how many amendments are at the desk and by how many Senators? We were informed that 14 Senators have amendments at the desk and that the amendments at the desk aggregate about 150. Many of them will not be called up, I assume.

I give the Senator that information because it bears on the statement he has made.

Mr. MANSFIELD. The Senator knows that is the usual situation at the time a cloture motion is filed. As far as the number of amendments which will be offered is concerned, I will take a chance at this time and ask for a show of hands on the part of the Members who will offer the amendments which they have at the desk on this bill.

It looks like about eight Senators. That is not too bad.

Mr. GRIFFIN. Mr. President, of course, we do not know how many amendments each of the Senators will offer.

Mr. MANSFIELD. I always play the odds.

#### ORDER FOR ADJOURNMENT

Mr. MANSFIELD. Mr. President, in anticipation that we will complete our action on the bill today, I ask unanimous consent that when the Senate completes its business tonight in joint session, it stand in adjournment until the hour of 12 noon tomorrow.

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

Mr. MANSFIELD. If the bill is not finished tonight, it is the intention of the leadership to change that hour to 10 o'clock tomorrow morning, but that will be done at an appropriate time today.

#### LEGISLATIVE PROGRAM (CONTINUED)

Mr. MANSFIELD. Again, for the information of the Senate, Senators will meet in this Chamber at 8:30 this evening for the purpose of proceeding in a body from the Senate Chamber to the Hall of the House of Representatives, leaving the Senate Chamber at the hour of 8:42 p.m.

#### ORDER TO VACATE VOTE ON CLOTURE MOTION TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the vote on the cloture motion which was supposed to take place on tomorrow had the cloture vote today failed be vitiated.

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

#### LEGAL SERVICES CORPORATION ACT

The Senate continued with the consideration of the bill (S. 2686) to amend the Economic Opportunity Act of 1964 to provide for the transfer of the legal services program from the Office of Economic Opportunity to a Legal Services Corporation, and for other purposes.

The PRESIDING OFFICER. The bill is open to further amendment. Who yields time?

Mr. CURTIS. Mr. President, I yield myself 5 minutes.

The VICE PRESIDENT. The Senator from Nebraska is recognized for 5 minutes. The Senate will be in order.

Mr. CURTIS. Mr. President, I think that every Member of this body has concern and compassion for the poor. I believe that if we had a program that provided legal aid to needy citizens when a situation arises where a needy individual or a needy family should have legal counsel or perhaps legal assistance in one of the courts, that would be an excellent program.

Sometimes the poor person is faced with a multiplicity of demands for the payment of debts, and the only possible way for him to work out a logical, workable program to pay those debts is by having proper legal counsel. Poor people face evictions, and they, like every other segment of our populace, have domestic problems and problems in juvenile court and elsewhere.

Mr. President, those people, if free services are not available in the given community, should be provided with legal talent to properly protect their interests. That should be the sole and only purpose of a legal service agency of the Government. Whenever we take the taxpayers' money to set up a Federal agency to have the right and obligation to bring class actions, when they are engaged in such things as challenging the validity of an act of Congress, or where they are carrying on these many other legal activities that are political in nature, the taxpayers should not be called upon to pay the bill.

In other words, it amounts to this: If there is an individual who is in distress because of his problems or the problems of his family, if he needs a lawyer and there is none available, the service should be provided. The taxpayers will not object to that. But it is absolutely wrong to set up an agency supported by tax funds for political purposes, to advance political theories, to oppose the established government, or to fight for reforms that fit in with a particular po-

litical philosophy of some individual or group.

That is what this office has done, and that is what they expect to do. If they would confine their activities to helping poor people with their individual problems, this legislation would have been passed weeks ago. I would have no objection—

Mr. PERCY. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. CURTIS. I am happy to yield to the Senator from Illinois.

Mr. PERCY. I ask unanimous consent that Mr. William Lytton of the Government Operations minority staff be permitted access to the floor during the consideration of this measure and votes thereon.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. CURTIS. Mr. President, I would remind the Senate that people of low income who do not aline themselves with these people who bring the class actions get no financial help from the Government to impose their theories upon the country by means of the courts.

The VICE PRESIDENT. The Senator's 5 minutes have expired.

Mr. CURTIS. Mr. President, I yield the floor.

The VICE PRESIDENT. The bill is open to further amendment. If there be no further amendment to be proposed—

#### AMENDMENT NO. 892

Mr. BARTLETT. Mr. President, I call up my amendment No. 892.

The VICE PRESIDENT. The amendment will be stated.

The second assistant legislative clerk proceeded to read the amendment.

Mr. BARTLETT's amendment (No. 892) is as follows:

On page 19, after line 19, insert the following:

(7) To provide legal assistance with respect to any proceeding or litigation which seeks to procure an abortion unless the same be necessary to save the life of the mother, or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion contrary to the religious beliefs or moral convictions of such individuals or institutions.

The VICE PRESIDENT. How much time does the Senator yield himself?

Mr. BARTLETT. Mr. President, I yield myself such time as I may require.

The VICE PRESIDENT. The Senator from Oklahoma may proceed.

Mr. BARTLETT. Mr. President, the continuation of the legal services program in its present form means the continued Federal funding of a program which is an anathema to a substantial portion of the American taxpayers.

Since its inception the legal services program has been active in the pursuit of State and Federal laws prohibiting abortion. They have beaten the drums politically and legally for change in our abortion laws.

Unfortunately they, and other parties, have been quite successful. As we all

know the U.S. Supreme Court has negated all State antiabortion laws.

However, there remains some private bastions protected from the dictates of the Supreme Court that abortions be performed. Many hospitals around the Nation and many doctors are saying no to the performance of abortions.

Some of the legal services attorneys now have their sights on these dissenters who because of conscience have said no.

Mr. President, the record on the activities of the legal services lawyers on abortion issues is long.

In 1969 OEO funded a national legal program on health problems of the poor located at the University of California at Los Angeles. This was designed as a backup center to provide supportive services including collaboration in litigation involving health issues, development of materials for the use of legal services attorneys and the coordination of efforts in health law by legal service attorneys. In October 1969 the national legal program on health problems of the poor addressed all legal services lawyers on the subject, of a then recent California Supreme Court decision rendering an abortion statute unconstitutional. They said:

Legal Services attorneys should begin scrutinizing the impact of state abortion laws on their clients and should assert the rights of their clients before hospital abortion committees (if counsel is even permitted to appear before such committees)—consideration should be given to the filing of affirmative actions. The National Legal Program on Health Problems of the Poor will be glad to offer assistance to you with regard to any of these matters.

Legal services lawyers were quick to take up the challenge and abortion suits were filed in numerous States.

In my own hometown in February 1971 the Tulsa Legal Aid Society filed a brief arguing that the Oklahoma abortion law was unconstitutional, again financed by Federal dollars.

Mr. President, twice in recent elections the people have spoken on how they feel about abortion. Last November, the citizens of Michigan rejected legalized abortion by a 3 to 2 margin, and North Dakota rejected a similar amendment by 3 to 1.

My amendment would prohibit legal services attorneys from involving themselves with abortion issues. I have no idea of the percentage but it is obvious from the North Dakota and Michigan vote that a substantial number of our citizens are opposed to abortion on demand. We should not be using their tax dollars to fund abortion advice and litigation programs.

I know the legal services lawyers can find many productive areas in which they can be helpful to the poor without including advice of dubious value concerning abortion procurement.

Mr. President, I hope that my amendment will be accepted. I urge my colleagues to support it. I believe that it is consistent with the ideas of many Senators as to the confines of legal services action and I hope that it will be acceptable to those on the other side.

Mr. JAVITS. Mr. President, will the Senator from Oklahoma yield?

Mr. BARTLETT. I yield.

Mr. JAVITS. May I ask the Senator to yield on his time as I am going to need every minute of my time.

Mr. BARTLETT. I am glad to yield to the Senator on my time.

Mr. JAVITS. May I ask the Senator this question—

The VICE PRESIDENT. The Chair would advise the Senator that time can only be yielded by one Senator to another, under the rule, by unanimous consent. Is there objection?

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator from New York will state it.

Mr. JAVITS. Where a Senator yields to another Senator for a question, which is entirely within the rules, is any such consent necessary?

The VICE PRESIDENT. A Senator may yield for a question, but may not yield his time.

Mr. JAVITS. I understand that. I asked the Senator from Oklahoma to yield to me for a question, and he has done so, as I understand it.

Senator BARTLETT, would you tell us this: Your amendment uses the word "or" at the beginning of line 4 of the amendment after the word "mother". Is that a disjunctive or a conjunctive?

The reason for asking that is this: Is it the purpose of the Senator's amendment to prevent legal services from compelling anyone to do anything, either the prospective patient or the hospital, or the doctor, and so forth, from acting in respect to, "an abortion contrary to the religious beliefs or moral convictions of such individuals or institutions," we have done that here a number of times. If the Senator's purpose, on the other hand, is to make that disjunctive to cover the first three lines, that raises the direct question of action for a poor person to enable that person to do what he may wish to do.

May we know what is the Senator's purpose, because that word "or" could be construed either way, either as conjunctive or disjunctive.

Mr. BARTLETT. The Senator is speaking of the first word on line 4, the "or" and not the second? The word would be conjunctive. But I want to make certain that we are still—let me ask the Senator a question—

Mr. JAVITS. Yes.

Mr. BARTLETT. You would not interpret this provision, or this provision using the word "or" as conjunctive to permit the legal services to make a class action in favor of abortion and that kind of thing which has been done? The Senator is speaking more of the individual case, of a mother pursuing her desires.

Mr. JAVITS. That is correct. Well, a class action would have to proceed against an institution. What we are doing is saying that we may not have legal services start such a class action to make an institution do something contrary to the religious beliefs or moral convictions which prevail in that institution. Obviously, of course, an institution has no mind of its own—

Mr. BARTLETT. Right.

Mr. JAVITS. But if that is the thrust of it, I think, with the understanding that we may have to make that thrust clear in conference, personally I see no objection to it; but perhaps the manager of the bill would have a different view.

I might say to the Senator from Wisconsin that, as I construe it, what the Senator is seeking to do is to prevent legal services from being used to compel an individual or an institution from doing something with respect to abortion which is against the religious beliefs or the moral convictions of that individual or that institution.

Mr. NELSON. Is that part of the law now?

Mr. JAVITS. There is nothing specific in the law—

Mr. NELSON. As to legal services there is nothing in the existing law.

Mr. JAVITS. I have no doubt that they do no such thing under the current program.

Mr. NELSON. But we have adopted similar provisions in other legislation.

Mr. JAVITS. We have. The distinguished Senator from Idaho (Mr. CHURCH) has been the principal author of those provisions.

Mr. NELSON. Is the Senator making or suggesting a modification?

Mr. JAVITS. The only other modification I was going to suggest to the Senator is what has been pretty much the rubric in these matters, to save the life or to protect the health of the mother. But I have to leave that to the Senator, in view of the fact that we are under strict rules regarding other amendments than the one the Senator has proposed.

Mr. BARTLETT. If I understand it correctly, in line 3, it says "unless the same be necessary to save the life of the mother."

Mr. JAVITS. And we would write in there—that is, if the Senator wishes to follow the suggestion I am making, "or to protect the health" of the mother.

Mr. BARTLETT. Well, I think we could discuss that. I think the problem there is the definition that has been used as to the meaning of "health." We might have to define the terms.

Mr. JAVITS. We could say "to protect a serious threat to the health of the mother."

Mr. BARTLETT. I feel that this expresses it the way most people would look on it. The Senator is getting into the argument of the Supreme Court about the health of the mother, which of course has been interpreted in such a way that her health can possibly be her desires and her general feeling and not her physical health.

Mr. JAVITS. May I say, Senator, if it were her desires, this amendment would not apply, because the amendment says it is "contrary to the religious beliefs or moral convictions of such individuals or institutions." If it were contrary to her religious beliefs of moral convictions she undoubtedly would not be consenting. I am thinking of a situation short of death where we might have a very serious intent.

Mr. BARTLETT. I should like to advise the Senator from New York that it really expresses what I wish to convey

there. I think it is a very proper provision. I have real concerns with the use of the word in this instance, because of the way it has been defined and interpreted, which is contrary to most people's beliefs.

Mr. JAVITS. The Senator from California (Mr. CRANSTON) has just suggested to me, and while I have the floor I will do it for him, that it would be clearer that the word "or" at the beginning of line 4 of the amendment be conjunctive and not disjunctive, if in line 6 of the amendment, a comma were to be inserted after the word "abortion". Would the Senator read it from that point of view and see whether he would agree?

Mr. BARTLETT. The Senator is suggesting a comma after the word "abortion"?

Mr. JAVITS. On line 6, so that it would read "or provide facilities for the performance of an abortion, comma, contrary to".

Mr. BARTLETT. Yes. I think that would be agreeable.

Mr. JAVITS. The Senator would need to ask unanimous consent to make that change.

Mr. BARTLETT. Mr. President, I ask unanimous consent to insert a comma after the word "abortion" on line 6 of my amendment.

The VICE PRESIDENT. Without objection, the modification is so made.

Mr. JAVITS. Mr. President, I have no further comments. I have made my comments.

Mr. NELSON. Mr. President, a similar amendment was adopted on the floor of the House by a large vote so that the issue is in conference. There is some difference in language. We are going to have to deal with the issue in conference whether this is adopted or not. I have no objection to taking the amendment to conference.

The VICE PRESIDENT. The question is on agreeing to amendment No. 892 of the Senator from Oklahoma (Mr. BARTLETT) as modified.

The amendment was agreed to.

The VICE PRESIDENT. Who yields time?

#### AMENDMENT NO. 782

Mr. BROCK. Mr. President, I yield myself 5 minutes and call up my amendment No. 782.

The VICE PRESIDENT. The amendment will be stated.

The legislative clerk read as follows:

Amendment intended to be proposed by Mr. Brock to S. 2686, a bill to amend the Economic Opportunity Act of 1964 to provide for the transfer of the legal services program from the Office of Economic Opportunity to a Legal Services Corporation, and for other purposes, viz: On page 4, after line 2, insert the following:

(c) The Corporation created under this Act shall be deemed to have fulfilled the purposes and objectives set forth in this Act, and shall be liquidated on June 30, 1978, unless sooner terminated by Act of Congress.

Mr. BROCK. Mr. President, this is a simple amendment. It would limit the life of the Corporation to 5 years, at which time it could be authorized by Congress again. Its purpose is to conform with the House bill which passed the full House.

I quite honestly am not sure why an

unlimited authorization was included in the pending bill. It seems that if Congress has a constitutional responsibility, one of the more fundamental responsibilities imposed on us is to review and re-evaluate our programs.

I suggest that this is no different from any other Federal program, whether it is welfare or poverty or national defense or even Radio Free Europe. All these things should come back to this body for review, to see that the people for whom the program was intended are being benefited, as the design States.

I have no major pitch to make on this particular amendment, except to suggest that I think it would be in the interests of the proponents of the bill to accept it and to go on to some of the more fundamental questions.

I reserve the remainder of my time.

The VICE PRESIDENT. The question is on agreeing to the amendment.

Mr. NELSON. Mr. President, the bill authorizes \$71,500,000 for fiscal year 1974, \$90 million for fiscal year 1975, and \$100 million for fiscal year 1976, and each subsequent fiscal year. I am sure that the authorizing committees will consider a further specific authorization after fiscal year 1976. In fact, we would have to make an appropriation every year. If Congress wished to do so, the program could be terminated with respect to any year by refusing to give an appropriation. Congressional review through the appropriations process is adequately provided for in the bill. So I oppose the amendment.

Mr. BROCK. Would the Senator agree, then, that the effect of what he has said is to turn over the oversight responsibility of this program to the Committee on Appropriations instead of his own?

Mr. NELSON. No. When we get through with the 3 years of modestly rising authorizations, having provided no further increase in the level of the authorization after fiscal year 1976, we will have to consider another authorization. Furthermore, the authorizing committees will continue to exercise oversight responsibilities, as is our duty. In any event, the program can be terminated if Congress decides at any time not to appropriate the funds for a particular fiscal year.

Mr. JAVITS. Mr. President, I yield myself 1 minute.

The problem with all these operations is that the people who work for you have to have some concept that it has some continuity. Undoubtedly, with many young lawyers attracted to the operation of public service law, we are going to have lawyers some of whom are careerists and some of whom are undertaking it for a reasonable period of time.

I believe that Senator NELSON has properly made the point that this remains within our power to terminate at any time by denying appropriations.

As to the question of turning over authority to the Committee on Appropriations, we turn over a great deal of authority to them, anyhow, even within these authorizations.

Another point that should be raised in this connection is that the provision of one of the sections of our bill is rather

important in this regard. I invite attention to section 1007(g), at page 21.

The VICE PRESIDENT. The 1 minute of the Senator has expired.

Mr. JAVITS. I yield myself 1 additional minute.

That section reads:

(g) The Corporation shall provide for comprehensive, independent study of the existing staff-attorney program under this Act and, through the use of appropriate demonstration projects, of alternative and supplemental methods of delivery of legal services to eligible clients, including judicare, vouchers, prepaid legal insurance, and contracts with law firms; and, based upon the results of such study, shall make recommendations to the President and the Congress, not later than two years after the first meeting of the Board, concerning improvements, changes, or alternative methods for the economical and effective delivery of such services.

So I think that by limiting it to 1978, we restrict the opportunities for using the program under the corporation, in order to make more nearly perfect the effort to give this type of service to the poor.

In view of the other locked-in protections afforded by the law—to wit, appropriations and no fixed-sum authorization after 3 years—I agree with the Senator from Wisconsin that the amendment should be rejected.

The VICE PRESIDENT. The 1 minute of the Senator has expired.

Mr. HELMS addressed the Chair.

The VICE PRESIDENT. The Senator from North Carolina is recognized.

Mr. HELMS. I yield myself such time as I may require.

Mr. President, when I was young and first learning to play chess, I invented a motto that I have found useful in other ways in the years since. It goes, "When in doubt, allow yourself an out." I am in great doubt about the merits of the Legal Services Corporation, and so am anxious to allow the country an "out" should my suspicions prove well-founded. This "out" is offered by Senator Brock in an amendment to section 1003 of the Legal Services Corporation bill. The Brock amendment, No. 782, would add to section 1003 a subsection stating:

The Corporation created under this Act shall be deemed to have fulfilled the purposes and objectives set forth in this Act, and shall be liquidated on June 30, 1978 unless sooner terminated by Act of Congress.

It is interesting, is it not, that so controversial a bill lacked, until this amendment, a specific reminder of Congress' right to cessate operations of its creature? "Unless sooner terminated" is the wording. Of course, Congress has this right in all cases, to uncreate whatever it has created. I do not know offhand of any instances where that right has been exercised; but that does not alter its legitimacy. All the same, it is reassuring that it is restated so explicitly in this amendment.

The automatic liquidation is a relatively uncommon provision, one I consider an excellent idea, however, especially in light of the problematic nature of the corporation under discussion. As I said initially, when in doubt, leave an out. If the Legal Services Corporation proves to be plagued with all the prob-

lems that made OEO legal services a constant worry and frustration, and generates the popular disapproval and social conflict that OEO's project did, even if there is too much support in Congress to cut it off at an early stage, there is the probability it will not get tenured: By 1978, it will automatically go out of existence. A new bill and a new piece of legislation would be required to continue it. If, on the other hand, the corporation functions smoothly and is universally agreed to be beneficial and desirable, legislation to reestablish it should not be hard to get through Congress.

Just as an unruly son or daughter is restrained somewhat when away at college by recognition of the fact that papa could cut off the money, so the legal services activists, who have shown themselves to be antiestablishment and radical in the past, could find themselves calmed down by the recognition that if they do not behave properly, their water will be cut off in 1978. Legal services operatives have been notoriously inconsiderate of the public, who pay their salaries, let me remind Senators, in the pursuit of their ideological and minority-dictated campaigns. Anything to render them more responsive to the public is desirable. That is the thrust of many of the amendments that are going to be offered, a direction I heartily encourage.

Let me cite an example of what I am speaking about. About a year and a half ago, in June 1972, a letter was mailed to all Reginald Heber Smith fellows. It was mailed under the Wayne County Neighborhood Legal Services Centers and was written by one Elaine Palo, a lawyer with the Detroit legal services office, who signed herself, "Yours in the struggle, Sister in Detroit." The letter was essentially a strategy plan for lobbying to insure refunding of the Reginald Smith fellowship program at the different universities which sponsor it. Advice is clearly marked out in the letter to "coordinate community support," "contact your law schools." I suppose this type of advice is what would be considered, according to the bill presently before us, as "necessary to the provision of legal advice." I certainly see no provision in this bill which would preclude this kind of self-interested concerted effort to influence decisionmaking.

Elaine Palo's letter is interesting from other points, too. Evidently, she never learned that the possessive of "it" is spelled without an apostrophe: Everywhere she means to make "it" possessive, she spells it "it's," which, as I am sure you all recall, is the contraction form of "it is." So much for her grammar. As for her language, let me repeat, insofar as permissible in the Chamber, her last sentence: "Don't let them — us over!" Now, I ask Senators, is this the kind of person we wish to be fostering and encouraging? I do not believe Elaine Palo of Detroit is unique: I strongly suspect, sadly, that she is typical of the rude and ill-bred young lawyers fostered by legal services.

As to her spelling, when the proper name of the United States appears in her letter, she spells it with a "k," as in the sentence "My advice for you all out

there who are working for a better world in Amerika is \* \* \*." I am sure she would not consider my giving this speech to be working for a better world in her "Amerika," and I am quite sure she is correct: I am working for a better world in America.

Of course, there is no way to insure the standard or quality of lawyers under legal service programs. We are not allowed political tests of lawyers involved with this potential corporation; I am sure we would not be allowed to even inquire whether a candidate is a Communist. Obscenity and profanity and anti-patriotism would be considered beneath attention by the ideological forces behind this bill. They are not beneath my consideration, however; in fact, I consider them rather important, because the existence of obscenity indicates the existence of bitterness and contempt underneath the surface.

There is no reason why American taxpayers should be forced to continue financing and funding such uncivil, anti-American individuals and the activities they foster. Yes, a second chance can be argued. I am not sure I would argue for it, but if it must be given, at least let us insure that the second chance does not prove an eternal plague to the country. Let us incorporate into the legislation a way out of its perpetuation, for the sake of American citizens.

Mr. BROCK. Mr. President, if I may just take 1 or 2 minutes to pursue this point, I think I have some time reserved from my previous request, which I will use.

Let me put it in rather specific terms. I do not blame the people of this country for becoming a little worn out with Congress when it does things such as we have in this bill, where Congress authorizes a new corporation to evaluate itself and to tell us what a great job they are doing. I could write that report. I could write it down to the dotted "i" and the crossed "t": "We're doing a great job. All we need is more men and more money." That is what we are getting now. We do not get an adequate evaluation of ongoing Federal programs. Our committees are not exercising a responsible oversight function in too many cases. We continue programs years beyond their effective end point.

We wonder why the people of this country become frustrated. If they read this bill and saw that we not only refuse to reevaluate ourselves but also authorize the Corporation to reevaluate itself, I think we would understand why we have a problem in gaining and keeping their confidence; and why they believe we have abused the rights and privileges which they delegated to us.

It seems to me that it is absolutely fundamental to the constitutional process that someone in Government exercise an oversight, review, and reevaluation function. If it is not going to be Congress, then it is the Executive. Nobody elects the head of this proposed Corporation, nobody elects anybody on the board of the proposed Corporation any more than they elect the Secretary of Health, Education, and Welfare or the Secretary of Defense.

The fact is that it will not be independently audited, independently re-evaluated, and independently controlled. It is going to be independent of the political process itself, and I simply cannot accept that as something I can support in representing my constituents.

Mr. JAVITS. Mr. President, I yield myself 1 minute.

I point out also that the way the board is set up—and that was the big struggle—it is a board of 11, completely in control of the President, subject to the confirmation process of the Senate. The board is staggered, with the term of office of each member of the board 3 years, and various other staggered terms. The minute you get into the first stagger, which will be well within 1978, you appoint members of the board beyond the 1978 term. That is an added reason—together with the appropriations matter—the amendment should be rejected.

Mr. DOMINICK. Mr. President, I yield myself 2 minutes out of my allotted time.

There is a good deal in the RECORD, I say to the distinguished Senator from New York and to the distinguished Senator from Wisconsin, about such sums as may be necessary for the first 3 years. In fact, that is not so. On page 24 of the bill, it says "\$100 million for the fiscal year ending June 30, 1976, and for each subsequent fiscal year." So what we are doing is saying that we are going to authorize the appropriation of \$100 million as far into the future as infinity, unless we have some deadline.

It would seem to me only reasonable that we go forward with the amendment of the Senator from Tennessee so that at least we know what kind of burden we are putting on the governmental budget down the line. I already have joined on a fiscal affairs project so we can determine 5 years in advance what we are going to do.

But here we are saying \$100 million forever. That is taxpayer money, and not money we put out on a printing press, although sometimes it seems like it with the inflation rate and the constant raising of the debt limit.

So it seems to me that somewhere along the line we should have a check and balance, as the Senator from Tennessee so aptly said, so we can review the program to see if it is running satisfactorily and if it is not, to make such changes as we need to, and not appropriate beyond 1978.

On that basis we are talking about close to a half billion dollars counting all the years of authorizations that are spelled in the bill, and \$100 million thereafter. It does not seem to me that the proposal is unreasonable and I think that if Senators will listen carefully, they will accept this proposal. We are not trying to kill the bill. All we are saying is: Give us a chance to review it at a later date.

Mr. BROCK. Mr. President, I suggest the absence of a quorum.

Mr. CRANSTON. On whose time?

The PRESIDING OFFICER (Mr. BARTLETT). The time is not charged to either side.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BROCK. Mr. President, I ask for the yeas and nays on the pending amendment.

The yeas and nays were agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from Idaho (Mr. CHURCH), the Senator from Arkansas (Mr. FULBRIGHT), and the Senator from South Dakota (Mr. MCGOVERN) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from New York (Mr. BUCKLEY) and the Senator from Virginia (Mr. WILLIAM L. SCOTT) are necessarily absent.

The result was announced—yeas 37, nays 56, as follows:

[No. 18 Leg.]

YEAS—37

Allen	Cotton	Helms
Baker	Curtis	Hruska
Bartlett	Dole	McClellan
Beall	Domenici	McClure
Bellmon	Dominick	Roth
Bennett	Eastland	Sparkman
Biden	Ervin	Stennis
Brock	Fannin	Stevens
Byrd,	Fong	Taft
Harry F., Jr.	Goldwater	Thurmond
Byrd, Robert C.	Griffin	Tower
Chiles	Gurney	Weicker
Cook	Hansen	

NAYS—56

Abourezk	Humphrey	Nunn
Aiken	Inouye	Packwood
Bayh	Jackson	Pastore
Bentsen	Javits	Pearson
Bible	Johnston	Pell
Brooke	Kennedy	Percy
Burdick	Long	Proxmire
Cannon	Magnuson	Randolph
Case	Mansfield	Ribicoff
Clark	Mathias	Schweiker
Cranston	McGee	Scott, Hugh
Eagleton	McIntyre	Stafford
Hart	Metcalf	Stevenson
Haskell	Metzenbaum	Symington
Hatfield	Mondale	Talmadge
Hathaway	Montoya	Tunney
Hollings	Moss	Williams
Huddleston	Muskie	Young
Hughes	Nelson	

NOT VOTING—7

Buckley	Gravel	Scott,
Church	Hartke	William L.
Fulbright	McGovern	

So Mr. Brock's amendment was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. PASTORE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 898

Mr. COTTON. Mr. President, I call up my amendment No. 898.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

On page 24, line 20, after "1974," insert the word "and".

On page 24, line 21, beginning with the word "and" strike out through the word "year" in line 22.

On page 24, line 25, beginning with "Subsequent" strike out all through "designate," in line 2, page 25, and insert: "Subsequent authorizations and appropriations shall be for not more than two fiscal years."

On page 25, line 5, strike out "such".

Mr. COTTON. Mr. President, I can explain my amendment in 3 minutes. It is a milder amendment than the one that has just been rejected by the Senate.

As I understand it, the present bill provides that in the future the amounts authorized for the remainder of this year and the increased amounts authorized for next year and in subsequent years of the authorizations may go 3 years in advance.

Mr. President, I think it is not good procedure to have such authorizations. One of the things which we have to do is to draw a line here.

The only change my amendment would make is that it does not cut it off, but simply says that the authorization cannot be for more than 2 fiscal years.

That means that they would have to come back to the authorization committee.

Mr. President, it has just been suggested to me that if my amendment is modified so as to provide for 3 years' authorization in advance, but that the Appropriations Committee can only have 2 years in advance, the committee might be willing to accept it.

I am willing to amend my amendment to that effect if the committee is willing to accept it.

Mr. JAVITS. Mr. President, I am willing to accept that amendment.

Mr. COTTON. Mr. President, I modify my amendment to provide that the authorization may be for 3 years in advance, but the appropriations will not be for more than 2 years in advance. I am not satisfied with this amendment, because I feel that the Appropriations Committee should go over this every year, but I accept the compromise in order to save the amendment.

The PRESIDING OFFICER. The amendment is accordingly modified.

The amendment as modified, reads as follows:

On page 24, line 22, beginning with the word "and" strike out through the word "year", and delete the comma at the end of line 21.

On page 24, line 25, beginning with "Subsequent" strike out all through "designate," in line 2, page 25, and insert: "Subsequent appropriations shall be for not more than two fiscal years."

On page 25, line 5, strike out "such".

Mr. NELSON. Mr. President, I have no objection to the amendment. I am perfectly willing to accept the amendment as modified.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Hampshire (putting the question).

The amendment was agreed to.

Mr. HELMS. Mr. President, I ask unanimous consent that Mr. Ron Parker,

a member of my staff, may have the privilege of the floor.

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

Mr. DOMINICK. Mr. President, I ask unanimous consent that Mr. Bohan, a member of the minority staff, be given the privilege of the floor during the proceedings.

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

Mr. FANNIN. Mr. President, I yield myself 15 minutes.

The PRESIDING OFFICER. The Senator from Arizona is recognized for 15 minutes.

Mr. FANNIN. Mr. President, I find myself at odds with the committee report from its beginning to end. In the fifth paragraph of page 2 of the report it states:

The federally funded legal services program—of the Economic Opportunity Act of 1964 has been one of the most effective programs in the continuing war on poverty, and the Federal Government therefore has a major obligation to continue the program.

Effective for what? I agree that it has been effective for law reform and law changes through the courts rather than Congress, but I violently disagree that it has been effective especially in the last 5 years in performing the services for the poor in the activities which I believe it should have been performing. I also want to stress the words "continue the program." They illustrate the determination of the committee to continue the activities of Legal Services lawyers in fields for which taxpayers' money should not be spent.

On page 6 of the report, I find the statement that "the corporation will protect the integrity of the lawyer-client relationship." I submit that the bill does exactly the opposite. Where is the right of the client to select his own lawyer? Where is the right of the client to determine whether his case should be settled or appealed or dismissed? Where is the right of the poor client to have his case accepted at all? These are just a few of the rights of the client that have been traditional in the American system and which to me mean the "integrity of the lawyer-client relationship."

The next sentence states that it will remain accountable to the public through congressional appropriations. It is because that is the absolute only control which this bill provides that I am fighting its passage here.

On page 9 of the report, the committee sets forth six high sounding policies and purposes, most of which I agree with. However, in statement (2) I again find the words "the continuation of the present vital legal service program." That is precisely what I do not want to do.

Still on page 10, the committee sets forth the primary criteria for selection to the Corporation Board. They state, "adequately representative of the organized bar," with which I agree, except that I do not know whether "organized bar" means the American Bar Association, the National Lawyers Guild or other bar associations. The next criteria is "legal education." Here come the professors and I have discovered that there

are both good and bad professors. The next criteria for membership on the Board is that they must be representative of Legal Service attorneys. After learning about the many horrible examples of activities of Legal Service attorneys, I am greatly disturbed by this one. Will this member, or members come from those who want to use taxpayers' money for legal and social reform or from the many truly dedicated, qualified lawyers who have performed admirably in serving the poor in processing their individual cases? The last criteria is "organizations involved in the development of legal assistance for the poor. Again, this one is suspect from my viewpoint.

Mr. President, page 10, sections 1004 (c), (d) and (e) takes us into some extremely controversial matters. Section 1004(c) provides that Board members shall not be deemed Federal officers or employees. Section 1004(d) gives the Board the power to elect its own Chairman after the initial Chairman. Section 1004(e) provides that the Board has the sole power to remove a member.

#### APPOINTMENT OF THE CHAIRMAN

Mr. President, there is a serious constitutional question raised by the committee bill in its provision that the Board of the Corporation "shall annually elect a Chairman from among the rotating members" article 11, clause 2 of the Constitution reads "He (the President) shall have the power, by and with the advice and consent of the Senate \* \* \* and all other Officers of the United States \* \* \*".

In *Myers v. United States* 272 U.S. 52, 118, the Supreme Court stated "The requirement of the second section of article 11 that the Senate should advise and consent to the Presidential appointments, was to be strictly construed." Furthermore, the Constitution prescribes two modes of appointment of the officers of the Government—appointed by the President with the advice and consent of the Senate, and appointment by the President alone, the courts, or heads of departments. In *United States v. Germain* 99 U.S. 508 the Supreme Court stated "That all persons who can be said to hold an office under the Government about to be established under the Constitution were intended to be included within one or the other of these modes of appointment there can be but legal doubt."

Mr. President, is this why the committee chose to make the Legal Services Corporation a District of Columbia Corporation rather than give it a Federal charter? Is this the reason why the committee provided "members of the Board shall not, by reason of such membership, be deemed officers or employees of the United States?"

There is no judicial precedent existing upon the exact point of what the committee has done. The same may be said about the removal powers. The committee bill provides that "a member of the Board may be removed by a vote of seven members for malfeasance in office or persistent neglect of or inability to discharge duties, or offenses involving moral turpitude and for no other cause." My quarrel with this is in giving that con-

trol to seven members of the Board. The committee is here carrying out that part of its policy statement "insulated from political pressures" with a vengeance. The executive is to have no power—Congress is to have no power. The Corporation's Board is given final power of removal of a fellow member no matter what the degree of his offenses may be.

Section 10004(f) gives the Governor of each State the power to appoint a nine-member advisory council for his State. When I started to read this section, I had a glimmer of hope. The States were to have something to say and do about Legal Services. The glimmer faded when I read on to find that the Governors' power of appointment is limited by the same type of criteria used for appointment to the Corporation's Board. All my hopes for State's rights were extinguished when I read, "The sole function of such—State—advisory councils will be to notify the Corporation of any apparent violations of this legislation."

On page 11, Mr. President, section 1004(i) provides for a National Advisory Council. The committee bill is extremely vague as to just what purpose this National Advisory Council is to serve except to say that there has always been one. Here again, I am more disturbed by some of the qualifications for membership upon this Council. I have no objection to the various American Bar Association groups and the Association of American Law Schools, but why the project advisory group, the Organization of Legal Back-Up Centers, the National Clients Council, and individual legal assistance attorneys?

On page 12, subsections 1005(e) (2) (f) provide that employees of the corporation are to be treated as private employees. I am curious as to the reason for inserting "those concerning labor relations." Does this mean that the new Corporation is to take all of the incumbent Legal Service employees and attorneys and be saddled with the existing union contract which I understand leaves much to be desired?

Again on page 12, section 1006(a) authorizes the continuation of the so-called "back-up centers." While I have commented at length upon this in prior remarks during this debate, I was somewhat startled to read the unqualified endorsement of their past activities and the statement, "They are of utmost importance for the continuation of first rate quality legal services." The committee commends "clinical legal education, research, specialized litigation and the training in the area of paraprofessional personnel." The committee is blind to the stories of illegal, unauthorized, and misuse of taxpayer's money by legal services attorneys over the last 5 years or chooses to ignore them.

On page 13, section 1006(b) (1) (2) is a meaningless section in that it simply requires compliance with the guidelines and extensive requirements that the law requires. I agree that they are "extensive" but there always appears a loophole or exception which renders them meaningless. The same may be said of section 1006(b) (3).

Section 1006(b) (4) uses the words "au-

thorized to provide legal assistance." In my opinion, if we are to provide the best legal services to the poor, I believe lawyers performing the services should be "admitted to the bar of the State."

On pages 13 and 14, section 1006(b) (5) prohibits employees of any recipient from engaging or encouraging others to engage in public demonstrations, picketing, boycotting or striking. I agree, but here again we find an exception which may or may not render the prohibition meaningful. Also, the accused employee gets all the hearing and other rights which may end up with the caution, "don't do it again."

On page 14, section 1006(b) (6), in telling the Corporation to meet the needs of recipients who speak a language other than English would apparently insure legal services to the many Spanish speaking citizens of my State of Arizona. With this provision, I am in entire agreement.

Section 1006(d) (3) and 1007(a) (6) prohibit political activity. But, here again we find the exception: "These provisions do not limit the right of attorneys to provide necessary legal advice and representation to eligible clients with respect to such clients' legal rights and responsibilities." I must confess that I am not sure what this means or how it would be interpreted.

Section 1006(d) (4) provides that the Corporation may not make funds or personnel available for use in advocating or opposing any ballot measures, initiatives, or referendums. So far, so good. But again the exception appears, "except as necessary to provide legal advice and representation by attorneys to eligible clients to their legal rights and responsibilities in connection with such matters." Mr. President, it is my understanding that Legal Service lawyers had plenty to do with labor boss Caesar Chavez' attempt to recall the great Governor of my State of Arizona. Is Mr. Chavez an eligible client? Possibly, if the salary he takes from his union is what he says it is. If so, does he have a right to advice as to how to go about recalling the Governor now that his first attempt failed? Does Mr. Chavez have a legal right based upon how the signing into law of a farm bill might affect his union? I do not know. What I do know is that taxpayers' money should not be used as it was used in that instance. Mr. President, the more I read the committee's report, the more evident it is to me that there is a determination to continue, unchanged, a Legal Service program that has existed for 5 years, devoting a great part of its time and money to projects which we would not authorize.

Section 1007(a) (2) attempts to determine who is eligible for legal services. The Corporation will establish "maximum eligibility levels" in consultation with the Director of the Office of Management and Budget. Note, this does not give OMB any veto power. OMB's authority is limited to one of consultation. What if OMB does not agree or believes the eligibility standard is too high? I assume that the Corporation would set it where it wished. OMB has been consulted.

Again, we have some criterion, the

principal one being that the recipient is financially unable to afford legal assistance. Remember the Texas case to which I have previously referred. The publisher of an underground newspaper had been disinherited by his father, a wealthy manufacturer. The legal services lawyer said that made the young publisher financially unable to afford legal assistance.

The report states:

But each recipient should be given latitude to develop its own eligibility standard so as to assure . . . maximum services to those most in need. I am confident that the recipients are going to seize upon this language in making its eligibility standards extremely high.

The final paragraph of this subsection states:

It is expected that client eligibility information will be obtained at the outset from each client on a simple form. . . .

Where is the check upon this? Is it enough to say, "I cannot afford to pay lawyer A or lawyer B whose fees are very high?" That was sufficient under the existing program. Are we being asked to embark upon another welfare program where the recipient's word is accepted as completely true and honest?

In this section, the committee lays out some factors to be considered by the recipients in eligibility criteria. They are "the maximum income levels of families, the size of such families, differences in urban and rural living costs, and substantial cost-of-living variations from one area to another." Some of this sounds reasonable, but why is Congress ducking its responsibilities in fixing eligibility? We have had no great difficulty in doing so with respect to other laws.

Section 1007(a)(3): The committee again demonstrates its complete approval of the existing legal service program and its determination that it will be continued without change. It does this when it states:

The Committee expects that the Corporation will fully utilize the experience that has been developed by existing legal service programs.

Section 1007(a)(4): This subsection permits full time legal service attorneys to do a lot of legal work for free for non-poor people. They are given express authority to perform outside legal work for clients such as family members, friends, religious groups, community charities, and court assignments. Of course this is limited by the phrase, "so long as it does not interfere with their responsibilities to the poor," but who is to tell whether or not it interfered?

Section 1007(a)(5) gives lip service to prevention of lobbying which the committee chooses to call "legislative representation." Like in the other prohibitions, we find the exceptions. The wide open exception is where it is permitted when requested by a legislative body, a committee, or a member of a legislative body. A legal service lawyer can always find a cooperative member to invite him to come in and lobby.

Section 1007(a)(7): Here we find real delegation:

The Corporation will require all recipients to establish guidelines for a system of reviewing appeals taken by attorneys.

The recipient, not the corporation, formulates the guidelines. Mr. President, how far are we being asked to go? Congress delegates all its power to the corporation, the corporation delegates its responsibility to the recipient. Somewhere along that line we have completely left out the client who I always thought was to be the judge of whether he or they wanted a case appealed.

Section 1007(b)(6): This subsection says funds may not be used to assist, to organize, or to plan for the creation or formulation of any organization, association, coalition, alliance, federation, confederation, or any similar entity except for the provision of legal advice and representation by any attorney as an attorney for eligible clients. This one sure covers the waterfront and the usual "except" clause is present. Quite frankly, I can see no justification or need for this subsection.

Section 1007(d): This subsection requires the corporation to do its own monitoring and evaluation, but it is also required to grant funds for independent evaluations. I had wondered how all the money was to be used up. Now, I am beginning to wonder whether there will be any money left to give the poor some legal assistance.

Section 1007(f): Mr. President, here is some more lip service for the States, their Governors, and bar associations. They will be notified 30 days in advance of a grant or grants for legal assistance, and then permitted to make comments and recommendations. Lucky States, I wonder if any of them will take advantage of this gratuity?

Section 1007(g): The corporation is to pay someone or some organization to make an independent study and comparison of the existing staff-attorney program with supplementary methods of legal services rendered by judicare, vouchers, prepaid legal insurance, et cetera. This could be the most important use of funds which the bill provides depending upon who makes the independent study.

#### SECTION 2(b)—TRANSITION PROVISION

All legal service personnel—except schedule A attorneys—are to be transferred to the corporation. The existing collective bargaining agreements shall remain in effect until their termination. These provisions were to be expected. They insure the continuation without change of every practice which the House passed bill found so objectionable.

Mr. President, this is a bad bill and should be rejected.

#### LEGAL SERVICES CORPORATION

Mr. President, even a cursory examination of the committee bill demonstrates that we are being asked to create a monster which is not accountable to Congress and the Executive. We are being asked to do this in the midst of heated debate upon the accountability of a Special Prosecutor for the "Watergate." I have been under the impression that the liberals who support this bill have been in the forefront in advocating more accountability.

Section 1013(a) "Prohibition of Federal Control" states:

Nothing contained in this title shall be deemed to authorize any department, agency, officer or employee of the United States or of the District of Columbia to exercise any direction, supervision, or control over the Corporation or any of its recipients or employees, or over the bylaws, Rules, regulations or guidelines of the Corporation, or over the attorneys providing legal assistance under this title, or over eligible clients receiving legal assistance under this title.

In fact, the only control is found in subsection (b) of the same section, which provides:

Nothing in this section shall be construed as limiting the authority of the Office of Management and Budget to review and submit comments upon the Corporation's annual budget request at the time it is transmitted to the Congress.

Mr. President, the authority "to review and submit comments upon the budget request" amounts to almost no control whatsoever.

The committee bill creates a District of Columbia Corporation with a board of directors consisting of 11 voting members appointed by and with the advice and consent of the Senate which is the sum total of control over this corporation by Congress or the Executive. This being a bill reported by the Senate Committee on Labor and Public Welfare, I assume it would be that committee which would first pass upon nominations to the board of directors. The section creating the governing body then goes on to provide that "A majority shall be members of the bar of the highest court of any State." I confidently predict that in order to receive confirmation or even receive a recommendation for confirmation by the Senate Labor Committee the other five members must be social scientists, labor leaders, or professors of extremely liberal convictions.

Subsection (c) of the same section provides:

The members of the Board shall not, by reason of such membership, be deemed officers or employees of the United States.

This not only confirms the section I have previously read upon "Prohibition of Federal Control" and my argument that we are asked to create a completely uncontrolled corporation, but also raises other questions as to its meaning.

One immediately wonders how a member could be removed from office? The answer to that is provided by subsection (2):

A member of the Board may be removed by a vote of seven members for malfeasance in office or persistent neglect of, or inability to discharge duties, or offenses involving moral turpitude and for no other cause.

In other words, not Congress, not the Executive, just the corporation shall have the power to judge or remove a member.

Mr. President, we all know the powers of a chairman. If there is any other board, commission, or agency in Government which does not give the President the authority to name the chairman, I am unaware of it. True, this bill provides that the President select the first chairman, but that chairman may only serve for 3 years. Thereafter the board of the corporation annually elects a chairman.

The problem of nonaccountability to the public is compounded by the creation of a National Advisory Council. This Council is given a very substantial role. It will consult with the board and its executive director on all matters regarding the activities of the corporation, especially on all rules, regulations, and guidelines proposed to be established.

The Advisory Council shall be comprised of 15 members. Who appoints them? The board. Not the President and no advice and consent of the Senate.

The bill sets forth the qualifications of the advisory board members. They "shall be representative of the organized bar, legal education, legal services project attorneys, the population of eligible clients and the general public." What is the "organized bar"? Does this mean the American Bar Association, the Federal Bar Association, the National Lawyers Guild or what? "Legal education" is a broad term. I would expect it would be a person or persons who have actively promoted "back up counters" and grants to liberal colleges and universities. The greatest shock to me was putting legal service project attorneys on the Council. They are to help make the rules, regulations and guidelines for their own conduct.

In a further effort to avoid political accountability, the Board is denied in section 1006(2) (1) (22) authority to fund State and local governments except for "supplemental assistance which cannot be adequately provided through non-governmental arrangements."

Whoever drafted this bill was determined to go to the ultimate limit. Keep the Federal Government out except for supplying the money. Keep Congress out of it, keep the President out of it. Finally, keep out State and local governments.

Mr. President, I ask why this Legal Service Corporation was not set up under a Federal charter? The bill states the Corporation "shall exercise the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act. If the District is to obtain greater "home rule," does this mean the ground rules of government could be changed by the District of Columbia government rather than the U.S. Congress?

Mr. President, the committee bill pays lip service to the many horror stories of the present and past legal service lawyers in section 1006(b) (5) and 1007(b) (5). The Corporation shall insure that its employees who receive a majority of their annual professional income from legal assistance under the act shall refrain from rioting, civil disturbance, picketing, boycott, or strike, or encouraging others to do so. The Corporation is told to issue rules and regulations to carry out these restrictions and the appropriate penalty for violation. If this bill becomes law, I predict that legal service employees will give aid to demonstrations, picketing, strikes, boycotts, et cetera, and the penalty will be a slap on the wrist. When legal service lawyers use taxpayers' money for these activities and many others which the House bill prohibits, there is only one remedy—discharge.

Mr. President, the same type of lip service is provided for lobbying. Legal service employees may testify before any legislative body. It would be a mighty poor lawyer who could not dig up a single legislator to request his testimony. Corporation attorneys may advocate or oppose ballot measures, initiatives and referendums "as necessary to the provision of legal advice and representation by an attorney as an attorney for any eligible client with respect to such client's legal rights and responsibilities."

Mr. President, I call these "weasel" words. As this bill is reported, a legal service lawyer 1 month after passing the bar examination could find a way to lobby or advise others on how to do such. Throughout the committee bill, the force of apparent prohibitions on improper activity is negated by language establishing exceptions. Another illustration is contained in section 1007(2) (4) which bars uncompensated outside practice of law except when "deemed appropriate" in guidelines which would be adopted by the Corporation. Why does Congress not write the guidelines? Under the existing legal service program, which this bill seems to perpetuate, otherwise prohibited activity is often excused on grounds that it is performed on the attorney's free time.

Section 1007(2) (6) (c) in effect permits any political activity, transportation to the polls or voter registration activity if "necessary to the provision of legal advice and representation" or done while not "engaged" on official business.

Section 1006(a) (1) (a) provides the authority for the Corporation to make grants to the so-called "backup-centers." This provision was eliminated from the House-passed bill by the Green amendment—EDITH GREEN, Oregon, Democrat. I have read Mrs. GREEN's statement in support of her amendment and find myself in such complete accord with her statement that I take the liberty of quoting at length from it:

The stated purpose of this bill is to provide needed legal services for those who could not otherwise afford them. Certainly I support the right of a poor person to have legal counsel. I think that is fully justified, and I do not know of any Member of the House who would not support that concept. But when we pass a bill to provide legal aid for the poor, does it mean that we should also finance, using millions of dollars research centers aimed solely at changing social policy? That is, unless my amendment is adopted, precisely what we would be doing by this legislation.

At the present time, we have at least 12 and, I believe, 16 so-called legal aid backup centers located in various parts of the country funded primarily by OEO. Let me mention a few of the things which are being done in these centers at the present time and which the committee bill would allow to continue.

At Harvard there is a Center for Law and Education. But this Harvard research center actually had attorneys, who were paid with OEO funds, doing research which led to their joining as co-sponsors with the NAACP in the Detroit segregation case. We have memos from the Harvard Center to that effect.

My question is, How does the NAACP qualify as a "poor person"? If the NAACP qualifies, then it is my guess the city of Detroit qualifies. The real point is that OEO

funds once again, as so often in the past, are not going to the poor but for other purposes.

Mr. Chairman, there are two quotations about consistency which come to mind. One is:

Consistency, thou art a jewel.

The other is:

A foolish consistency is the hobgoblin of little minds.

In this case, I believe a consistent position is both necessary and advisable.

Last year the House of Representatives voted, by an overwhelming majority, to prohibit the use of Federal funds for busing. I think no one would suggest that there was not a great deal of feeling about the Detroit case, the Richmond case and other busing cases reflected in that vote.

Now, while we are overwhelmingly opposed to busing, we are asked to take Federal funds and finance the back-up center at Harvard so that their attorneys can go off to Detroit and pursue the suit against the Detroit schools.

This is the kind of backup center authorized in this bill that makes no sense to me.

Also, Mr. Chairman, there are other such centers in other States. For example, there is one doing research on national health program proposals. This may or may not be a worthy purpose. But I suggest the research does not seem to me to qualify as legal aid to the poor.

The gentleman from Georgia and the gentleman from Alabama, I believe, referred to some of the activities in which these attorneys are engaged. It is not to provide legal aid for a poor person. These offices have become the cutting edge for social change in this country. If we want to fund these proposals—let us do it in another piece of legislation, but not as legal aid for the poor.

For example, we have the center doing research on housing and economic development. We have cases where legal aid attorneys have urged people to participate in tenant strikes.

Mr. Chairman, we have documentation that shows cases where the legal aid employees are trying to change the abortion laws of this country. Regardless of what your stand is on abortion, is this what we really mean by providing legal aid to the poor? Do we mean to provide legal aid to change the abortion laws of our country? If so, let us finance various groups who have opposing views on this issue.

There is another large group working on national health insurance. I believe in a national health insurance program. I believe this legislation should be one of highest priority in this Congress. I also believe that there might be individual cases where a poor person would need an attorney to make it possible for him to have health services. However, I must contend that it should not be the intent of the law to finance these research centers—these federally funded lobbies—so that they will change all of the laws and public policy in this regard.

That should be our responsibility.

From one of the legal aid groups there is another interesting statement that the control of the police is critical. They say legal services attorneys can assist in carefully planned exposure of police harassment against any law-abiding persons if they are prepared to offer advice and to represent those who take part in violating the law and protect them from false charges.

Now, I do not have any particular objection to the idea of that paragraph, but as to whether or not it is providing legal aid for the poor, that is something I question.

Also, I suggest if we give one group free legal aid, we should also give free legal advice to the policemen in these cases.

I could cite case after case, if there were time, documenting the millions of dollars being spent for nothing but efforts to change

social policy. I suggest that responsibility for changing policy belongs to State legislatures and to the Congress of the United States. I have listened many long hours—and share in the complaints—of those who object to the executive usurpation of legislative prerogative. I find it incredible now to find myself confronted with a bill which would create another body to perform that constitutionally mandated function of the Congress. I cannot, nor will not legislate away the responsibilities of the Congress to some federally funded corporation under the guise of providing legal aid to the poor.

The issue is are we going to use Federal tax dollars to finance lobby groups who advocate social changes about which the Congress—the elected Representatives of the people—have taken an opposite or neutral view? Should not these groups, if financed by public funds, at least be neutral? In all of the documents I have read, for instance, on the research centers on abortion, they take only one position and that is pro-abortion. They do not represent the poor person who favors a "right to life" constitutional amendment or the poor person who, on the basis of religious conviction, finds abortion morally objectionable. The same one-sided advocacy is true of all the cases about which I have read. For instance, in Detroit, Federal funds were not made available to the Detroit school board to defend itself against the charge of racial discrimination.

Mr. President, I am always interested in the cost of legislation. This bill authorizes the appropriation of \$71,500,000 for the first year, \$90,000,000 for the second year, and \$100,000,000 for each subsequent year. If we truly are confining our interest to providing legal services to the poor, it can be much better accomplished by the Brock-Helms bill for greatly reduced cost.

Mr. President, at the beginning of these remarks, I stated that the lack of control provided by the committee bill was my greatest concern. I finish by stating that my second greatest concern is that this bill is a pure and simple ratification of present abuse. The first page of the committee bill contains the findings and policy statement upon which Federal bureaucracy loves to rely. Sticking out like a sore thumb I read "there is a need—to continue the present vital legal services program." This implies carte blanche congressional approval of current grantees, current guidelines, and current personnel. With that statement I could not be in more disagreement.

In conclusion, Mr. President, I ask unanimous consent to have printed in the RECORD a letter which I have just received from the American Farm Bureau Federation in support of the Brock-Helms substitute. The letter refers to a recent study by the American Bar Association Foundation which supports *judicare*—a principle of Brock-Helms—rather than the staff lawyer made all powerful by the committee bill.

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

AMERICAN FARM BUREAU FEDERATION,  
Washington, D.C., January 23, 1974.  
Re. Legal Services Corporation bill, S. 2686.  
HON. PAUL J. FANNIN,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR FANNIN: A major recent development is highly relevant to the Senate's consideration of S. 2686. This is the

conclusion of a two year study by the American Bar Foundation. This study is scheduled to be published in February, 1974.

A summary was published in the December, 1973, issue of the American Bar Association Journal. The author of the Journal article is Samuel J. Brakel, Director of the American Bar Foundation's study of *judicare*. A copy of this article is enclosed.

The major thrust of the study is "... that the national legal services program preference for the staffed office system is neither well founded nor well conceived ..."

The study, as summarized in the Journal article, asserts that:

"... the *judicare* system is more responsible to the problems of delivering legal services to the poor than the staffed office."

"The choice of lawyers that clients have under *judicare* is a very significant advantage over the choiceless staffed office."

"Poor clients themselves exhibit a pronounced preference of *judicare* over the staffed office."

"There is no credible evidence that *judicare* is more costly than the staffed office."

We submit that S. 2686 should not be enacted. If any legislation is to be enacted it is our view that it should provide:

(1) Maximum opportunity for state governments to have a responsible role in the establishment, design, and administration of legal services programs.

(2) Really effective and enforceable provisions to insure that legal assistance program funds are not used by the administering agency or by grantees to promote, assist, or encourage civil disturbances, strikes, boycotts, attacks on state or federal statutes, or political or legislative action.

(3) Authority for the courts to award costs and attorney's fees to successful defendants. Such a provision would minimize the harassing legal actions by grantees which have been such a prominent aspect of the legal assistance program as administered in recent years by the Office of Economic Opportunity.

(4) Provision that all available administrative procedures must have been exhausted before suits are filed by the Corporation or grantees. In too many instances in the past OEO-funded agencies have filed suits without first availing themselves of administrative remedies. Often the first notice a defendant has had has been the filing of legal action.

We understand that many amendments to S. 2686 have been filed. The Brock-Helms substitute would assign major responsibility to the states for the design and administration of state legal services programs. We believe this is clearly preferable to S. 2686 in its present form. We support the Brock-Helms substitute. However, in view of the fact that it is difficult to write legislation on the floor it would appear preferable for the bill to be set aside at this time to permit the appropriate committees to reconsider this whole issue including the recommendations of the American Bar Foundation.

Sincerely,

JOHN DATT,

Director, Congressional Relations.

Mr. McCURE. Mr. President, I ask unanimous consent that Margo Carlisle of my staff be permitted the privilege of the floor at all stages of the proceedings today.

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

Mr. KENNEDY. Mr. President, once again, we find ourselves considering S. 2686, the compromise bill to establish a public, nonprofit, Legal Services Corporation. This bill represents the distillation of 9 years of experience with the legal services program established under the Economic Opportunity Act of 1964. This bill represents the experience gained

by both a Democratic and a Republican administration in providing legal services to the poor.

This bill, or one similar to it, has been before this body in each of the last 4 years and in both the 92d and the 93d Congresses. There were extensive hearings on it in both 1971 and 1972.

In 1971, it formed part of the OEO bill which was debated for 2 days prior to a 49 to 12 vote in favor of its final passage. There was a third day of debate prior to the adoption of the conference report on this measure.

In 1972, it was debated for 5 days, the vast majority of that time spent on discussion of the Legal Services Corporation provisions. Eleven amendments were adopted. One amendment to delete the legal services section was defeated soundly after substantial debate. A motion to send the measure to committee for the deletion of legal services provision also was defeated by a substantial margin. Subsequently the entire bill was adopted by a 75-to-13 vote.

The continuing opposition of the administration to restrictions on the President's power of appointment was a major factor in the veto of the original bill and in the inability of the conference committee to reach agreement in 1972.

S. 2686 now has emerged from the Committee on Labor and Public Welfare after careful amendment and with the unanimous support of the committee members. The White House was directly and heavily involved in the drafting of the committee bill, and supports quick action on it. The majority leadership supports the bill. The minority leadership supports it. The leading associations of lawyers, including both the American Bar Association and the National Legal Aid and Defender Association support it. It should have been voted into law long before now. But it was not.

It was not because there has been extended debate. We have all had an opportunity to listen to this debate, and what we have learned from the debate is that all of the arguments which are being advanced against it are old arguments, arguments which have been raised and raised again, considered by the administration, considered by the committee, and considered by this body in the past. And rejected.

But we will continue to hear from those who are against this bill. Some opponents of S. 2686 will tell us that while they oppose the legal services program and they oppose the legal services bill, they are nonetheless very, very much in favor of providing legal service to the poor. Many who oppose the legal services program tell us that they are actually in favor of offering attorneys to the poor, but only if the attorneys agree not to represent clients who wish to sue local officials or bring actions which might delay the expenditure of public funds. They say they are in favor of legal services, but only if attorneys agree not to educate their clients about their rights as citizens to exercise the franchise and participate in the political life of America. They favor legal services to the poor if attorneys agree not to represent controversial clients.

They want a program of legal services to the poor, but only if attorneys agree not to present private bills to the legislature on behalf of their clients, or not to represent their clients in regard to legislation in such areas as food programs, energy regulation, welfare, health, and education, and only if the attorneys agree not to represent the interests of a group or class of clients in regard to a particular dispute. And they support legal services but only if attorneys do not have available backup legal research into problems which are faced by their counterparts in many parts of the country.

I personally do not think that Washington should be deciding what legal issues local attorneys may raise on their client's behalf; I do not think Washington should be deciding what forums they can raise them in; and I most emphatically do not think we have any business telling a lawyer that the touchstone of whether or not to represent a client should be a measure of how controversial or how popular the issue.

I am not afraid of permitting the program to operate on a free lawyer-client basis and to rely on the professional ethics of the legal profession to check whatever random abuses might someday arise. I am not afraid because I have seen this program operate responsibly and with the highest standards for 9 years.

The legal services program, costs the Government only \$71.5 million a year. Its budget has been frozen for the last 3 fiscal years.

Nonetheless, the program has been remarkably successful in helping those its limited budget permits it to serve. This program, run through local offices of salaried professionals, is highly efficient. Its caseload climbed in 5 years from approximately 291,000 to some 1,200,000 cases. In 1967, the average Legal Services lawyer was handling 242 cases at an average cost to the Government of \$97 each. By 1971, each attorney was handling roughly 545 cases and the cost had fallen to \$51 per case. That track record of falling dollar costs in a time of soaring inflation has come about because the model which the program has used is so efficient and because of the dedication of the attorneys themselves.

But the tragedy is that this program—which has been publicly endorsed by a series of ABA presidents, by the unanimous Senate Committee on Labor and Public Welfare, and by the President of the United States—this program was harassed and sniped at from within OEO for the first 9 months of last year.

We saw projects with excellent professional records placed on month-to-month funding. In Massachusetts, we are proud to have two of the national backup centers: the Center on Law and Education at Harvard and the National Consumer Law Center which has been associated with Boston University. Both of these programs have earned repeated praise from lawyers, legislators, and program evaluators alike. For months they were subjected to the burden of never knowing from one week to the next

whether they would have funds sufficient to meet salaries and outstanding obligations. They were unable to sponsor training conferences for Legal Services attorneys. They were unable to make commitments of personnel and time to assist with solutions to the problems faced by local attorneys. They were unable to offer employment to new personnel. And all of this was because of harassment from Washington.

All over the country we saw local legal services projects that were being forced to close their doors for want of funds, turning away clients, disrupting court dockets, disappointing State legislators, and dissipating professional staffs that had been painstakingly assembled and trained. And this was not being done because these legal services projects had violated the law, misused funds, or exceeded program guidelines. It was being done for ideological reasons.

That is what we saw a year ago and now as the future of this program remains tied to the future of this bill, those opponents are seeking to delay and frustrate its passage. Neither we nor the poor that this program serves can afford that delay.

More than 2,250 lawyers in 900 neighborhood offices across the country are attempting to provide an avenue for the poor to obtain the same access to legal counsel as the more affluent. The Legal Services program is an attempt to offer them an option to seek a redress of their grievances through the legal system not crippled by the absence of competent counsel, but with the full rights to an adequate representation of their interests that our legal system promises.

This measure must no longer be delayed or sidetracked. It is of the utmost urgency not only for the poor whom it will directly serve but for the system of law itself. For no society can truly pride itself on its respect and adherence to a system of law if the protections of that system are denied to any of its citizens.

Mr. BELLMON. Mr. President, while serving as Governor of Oklahoma, the concept of legal aid to the poor was introduced under the economic opportunity program. Like many of the OEO programs, there was opposition to this undertaking from the legal profession and other sources. But after it had been in operation, with the involvement of attorneys at the local level, the legal services program gradually won acceptance because it demonstrated that with a little help in the form of legal guidance, many low-income persons could become more self-reliant and productive citizens.

With the dismantling of the Office of Economic Opportunity the administration proposed the establishment of a Legal Services Corporation to take over the various legal aid programs. A bill creating such a corporation was debated and passed by the last session of Congress, but was vetoed because of White House objections regarding the appointment of board members.

Now the issue is before Congress once again in the form of a compromise measure which has the backing of the administration. However, the present bill has

some objectionable features that I strongly feel should be removed. Therefore, I am offering an amendment to eliminate some of these features and tighten up the language of the bill to prevent possible abuses of the program.

Let me make it plain that this amendment is not an effort to weaken the bill, but rather to strengthen it for the protection of all citizens. Nor is it an attempt to further stall consideration of the bill.

My amendment would make sure that employees of the Corporation or recipients of legal assistance could not engage in, or encourage others to engage in, any public demonstration, or picketing, boycott, or strike. Nor could any employee participate in or encourage any rioting or civil disturbance or any other illegal activity.

The amendment would further guarantee that no funds, program personnel or equipment could be contributed or made available by the Corporation for use in advocating or opposing any ballot measures, initiatives, or referendums.

Another provision of the amendment would insure that no funds made available through grants or contracts could be used by recipients to undertake to influence the passage of defeat of any legislation by the Congress or by any State or local legislative bodies. The only involvement in legislative matters would be in the event a legislative body requests information.

In general, my amendment removes several loopholes which, in my opinion, would permit possible illegal actions or political activities.

Mr. President, consideration of this legislation has been long delayed, and I am hopeful that a suitable compromise can be reached in order that the matter can be finally resolved.

Mr. TOWER. Mr. President, several of my colleagues and I have discussed during the last few days and weeks our continuing concern over a common practice of the OEO Legal Services program to incite litigation through its Clearinghouse Review.

A recent article entitled, "Knowledge Is Power: Poverty Law and the Freedom of Information Act," which appeared in the May 1972 issue of that publication makes our point very well.

I ask my colleagues the simple question—"Is this what we are asking the taxpayers to fund?" No provision in the current draft of S. 2686 would prohibit a continuation either of publication of these articles or the litigation which results.

I personally cannot condone this practice, which violates the spirit, if not the letter, of the Economic Opportunity Act, and have no intention of voting for a bill which makes permanent and legal this misuse of public funds.

Mr. President, I ask unanimous consent to have included at this point in the Record a copy of the aforementioned article.

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

KNOWLEDGE IS POWER; POVERTY LAW AND THE  
FREEDOM OF INFORMATION ACT

(By Stephen R. Elias and Trudy Rucker, Staff  
Attorneys, Center on Social Welfare Policy  
and Law)

INTRODUCTION

Information—public versus classified—has recently aroused widespread interest and controversy, particularly since the Pentagon papers case. The public is now keenly aware that there are literally tons of government documents withheld from the public domain in the secret preserve of government officials. Although the act of divulging such "secret" documents has become heroic, since the Freedom of Information Act<sup>1</sup> was passed in 1967 any member of the American public has been entitled to inspect millions of documents which hundreds of government agencies currently consider beyond their reach. It is conceded that the precise records obtained by Daniel Ellsberg might not be obtainable under the Freedom of Information Act.<sup>2</sup> However, vast amounts of records of the same public importance are obtainable under the Act, and the fruit, in a manner of speaking, is ripe for the picking.

This article and the Freedom of Information Act are both slanted toward the view that all government records should presumptively be disclosed. Poverty lawyers and their client groups—welfare rights, tenant and consumer organizations—have always taken the position that where a benefit exists it should be utilized, and that where a benefit might be obtained through political action or litigation, that benefit should be pursued. In the case of the Freedom of Information Act, there is a large volume of information which if made public or available to the poor would help them obtain their rights. Legal Services lawyers should seek this information aggressively.

This article is concerned with the uses of the Federal Freedom of Information Act<sup>3</sup> and the problems likely to be encountered therein. The Act identifies the type of material to be made available to the public, and the manner in which it must be made available. This includes information which must be printed in the Federal Register,<sup>4</sup> information which the agency is required to index and keep available for public inspection (such as final opinions and statements of policy interpretations which have been adopted by the agency and are not published in the Federal Register), and administrative staff manuals and instructions to staff which affect a member of the public.<sup>5</sup> Finally, the Act requires all other identifiable records to be disclosed upon request except as specifically exempted.<sup>6</sup> The Act also provides for judicial review of an agency's failure to make the requested information public; it lists the types of records exempted from the Act's coverage (nine such exemptions in all);<sup>7</sup> and it provides that no records shall be withheld except as specifically provided in the second part of the Act.<sup>8</sup>

This article will not discuss the Federal Register requirement. Further, although at times it will discuss the types of information which must be indexed and kept available in libraries, it will not examine all possible problems in the area in detail.<sup>9</sup> (This subject is appropriate for additional extensive investigation and analysis.) The primary thrust of this article, therefore, is a discussion of the Act as it relates to records which are likely to be of help to poverty lawyers.

THE ACT AND ITS HISTORY

Until the Freedom of Information Act was passed in 1967, a citizen's right of access to public documents was largely in the realm of common law equitable principles. While a public disclosure section of the Administrative Procedure Act (APA) had been in force since 1946,<sup>10</sup> the Senate Judiciary Com-

mittee concluded that this older statute usually served the purpose of non-disclosure. This statute largely depended on traditional common law concepts. For example, a person had to have a proper and legitimate interest in the document, and the agency in possession of the document was entitled to withhold the document if, in the agency's judgment, the release of the document would be contrary to the public interest. Judicial review, to the extent it existed, consisted of an equitable balancing of interests between the parties—the needs of the plaintiff as opposed to the needs of the agency and the possible harm to the public interest. Recognizing that in practice this "equitable" system favored the agency over the citizen, Congress spent 12 years formulating the present Freedom of Information Act.<sup>11</sup>

In general terms, the Freedom of Information Act eliminated the prior requirement that parties requesting the records have a direct and proper interest in them.<sup>12</sup> All identifiable records (as covered by the Act) must now be made available for inspection and copying upon request unless specifically exempted by the Act. The Act specifies nine exemptions (discussed below) and then states: "This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section."<sup>13</sup> The Senate report section pertaining to this statutory section reads: The purpose of this subsection is to make it clear beyond doubt that all materials of the Government are to be made available to the public by publication or otherwise unless explicitly allowed to be kept secret by one of the exemptions in subsection (e).<sup>14</sup>

Despite clear congressional intent that the specifically enumerated exemptions be the sole determinants as to whether records may be withheld, a threshold debate arises concerning whether Congress intended to strip the district court of its equitable powers. One commentator argues that a court may balance the equities among the parties and refuse to order disclosure of records not exempted by the Act if it finds that the harm to the public interest would be greater than the plaintiff's need for the record.<sup>15</sup> Most of the cases, however, have concluded that Congress intended to do its own balancing, and that the court's sole responsibility is to examine the exemptions (interpreting them in favor of disclosure) to see if a record has been properly withheld. The debate is most clearly presented in *Soucie v. David*,<sup>16</sup> where the majority held that the Act stripped the courts of their equitable jurisdiction (based on the legislative history indicating Congress' intent to do its own balancing)<sup>17</sup> and on the clear wording of § 552 (c) quoted above.

Judge Wilkes, while concurring, argued that the courts retain their equitable power and may, if they choose, uphold an agency's decision to withhold records even though such records are not within one of the specific exemptions.<sup>18</sup> Concerning congressional intent, the more recent case of *Wellford v. Hardin* has noted: "It is not the province of the Courts to restrict that legislative judgment under the guise of judicially balancing the same interests that Congress has considered."<sup>19</sup> *Getman v. NLRB*<sup>20</sup> has fully concurred with the conclusions of the *Soucie* and *Wellford* courts. It would seem, therefore, that despite dicta to the contrary<sup>21</sup> the weight of authority clearly requires a strict reading of the Act. There is no doubt that the burden of justification rests heavily on the agency withholding the record after a proper request.<sup>22</sup>

The Act is accompanied by a House<sup>23</sup> and Senate<sup>24</sup> report comprising 95% of the relevant legislative history<sup>25</sup> and by a contemporaneous Attorney General's memorandum<sup>26</sup> (hereafter called A.G. memorandum) which purports to be an impartial

analysis of the Act in light of the relevant legislative history. The A.G. memorandum is naturally biased in favor of the agencies, and in light of the fact that the agencies were virtually unanimous in opposing the statute, the memorandum constitutes a highly partisan statement against full implementation of the Act.<sup>27</sup> However, at least one court case has reminded us that the Attorney General is not charged with administering the Freedom of Information Act, and therefore the memorandum is not to be accorded the force and effect of law.<sup>28</sup> Furthermore, only the Senate report accompanied the bill through both houses, and this report is true to the actual language of the Act, whereas the House report (relied on almost exclusively in the A.G. memorandum) so departs from the language of the Act as to effectively "amend" it.<sup>29</sup> In light of the fidelity of the Senate report to the clear wording of the statute, conflicts between the Senate and House reports should be resolved in favor of the Senate report. Three cases have so specifically concluded.<sup>30</sup> Likewise, to the extent that the Attorney General's report conflicts with the Senate report or the clear words of the statute, the latter should prevail.<sup>31</sup> However, since the A.G. memorandum is the advice of the agency's "lawyer," the agencies should always at a minimum comply with the interpretations therein. This background, as will be seen, is extremely important to a number of issues which poverty lawyers are likely to encounter while pursuing records under the Freedom of Information Act. Of course, since the Act exempts from disclosure only those records specifically designated in the Act, the legislative history should always remain subservient to the plain meaning of the statute, and should never be resorted to except in the case of statutory ambiguity.

EXEMPTIONS

The Freedom of Information Act states essentially that all identifiable records must be made available for inspection upon proper request unless they are specifically exempted by any one of the Act's nine exemptions.<sup>32</sup> The exemptions include:

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

Of these nine exemptions, the first,<sup>33</sup> sixth, eighth and ninth do not on their face seem particularly relevant to the types of records which poverty lawyers are likely to seek. Nor is there any case authority indicating otherwise. This article will therefore be confined to those exemptions which are most likely to confront poverty lawyers.

The second exemption

Although the second exemption, which covers internal personnel rules and practices, has been the subject of litigation only

Footnotes at end of article.

twice,<sup>54</sup> it might prove relevant in the future. The actions of agency personnel often seem incomprehensible and remain unexplained. Administrators frequently act on internal instructions which the agency does not consider to be in the public domain. However, materials which must be indexed and kept available for inspection include "administrative staff manuals and instructions to staff that affect a member of the public. . . ."<sup>55</sup>

In *Polymers v. NLRB* the Second Circuit held that the second exemption applied to a staff manual entitled "A Guide to the Conduct of Elections."<sup>56</sup> The exact nature of this manual is not clear from the opinion. However, the court relied exclusively on the House report which interprets the second exemption as exempting "operating rules, guidelines, and manuals of procedure for government investigators and examiners."<sup>57</sup> The court noted that the Senate report limits the exemptions to instructions dealing with such internal matters as sick leave, and that *GSA v. Benson* had criticized the House report for going beyond the scope of the Act.<sup>58</sup> In fact, the House report absolutely contradicts the Senate report and the clear words of the Act—a point appropriate for extensive discussion and criticism.<sup>59</sup> In light of the relevant legislative history, the *Polymers* case carries its own admission of error. Because of poverty lawyers' lack of experience in this area, it is difficult to gauge the type and amount of information which they might obtain under § 552(a)(c). However, it is clear that when properly interpreted the second exemption should not stand in the way of an expanded understanding of the reason for official behavior.

#### The third exemption

The third exemption applies to all records specifically exempted by any other statute. The A.G. memorandum explains this as preserving the force and effect of any statute which restricts disclosure of records not exempted by the Freedom of Information Act itself. The A.G. memorandum refers to a house committee print entitled *Federal Statutes on the Availability of Information* which provides a list of many of the statutes prohibiting the disclosure of various types of records. A study of this document has revealed only one statute which seems to apply in any way to the poverty law context.<sup>60</sup> The committee print, however, was published in 1960, and by its own terms is not exhaustive.

The one case which has dealt with this exemption<sup>61</sup> held that a statute allowing the agency to withhold information upon the written request of the provider, where disclosure would be prejudicial to the provider, was the type of statute which exempted records through the third exemption. The case contains no real analysis of this exemption and there is clearly much room for argument as to precisely what kinds of statutes the case was referring to.

#### The fourth exemption

The fourth exemption has been the subject of some litigation, and to the extent that the information sought involves financial or commercial information or trade secrets which have been obtained from a person outside the agency under a pledge of privilege or confidentiality, the exemption may prove troublesome.<sup>62</sup> However, many courts have made it clear that the fourth exemption applies only to financial and commercial information or to trade secrets, and that the confidential or privileged information exempted must possess these characteristics.<sup>63</sup>

Although the House report and the A. G. memorandum indicate a different position, *Getman*,<sup>64</sup> for example, relied on the clear wording of the statute and adopted the position, taken by the court in *Consumer Union*,<sup>65</sup>

that only the Senate report is to be relied on.<sup>66</sup> In *Schapiro v. SEC*,<sup>67</sup> the district court for Washington, D.C. discussed the question of who determines the "confidential" nature of the records. The court, quoting *Grumman Aircraft v. Renegotiation Board*, held that the test for availability was "whether they [the records] contain commercial or financial information which the contractor would not reveal to the public."<sup>68</sup> Addressing the defendant's argument that the person giving the record to the agency should be the one to determine its confidentiality (the subjective test), the court stated:

"Regardless of whether the information was submitted on the express or implied condition that it would be kept confidential, a Court should determine, on an objective basis, that this is not the type of information one would reveal to the public."<sup>69</sup>

In short, the confidentiality of financial or commercial information is not solely dependent on the donor or the agency, but may be subjected to the independent, and final, judgment of the reviewing court.

#### The fifth exemption

The fifth exemption is by far the most common one raised by HEW, the agency with which the authors have had most of their experience. Although the subject of much litigation,<sup>70</sup> this exemption is clear enough on its face. The only records exempted are inter-agency or intra-agency memoranda which are not available by law to a party in litigation with the agency. That is, only intra-agency or inter-agency records which are not discoverable by law are exempted. Since the word "agency" is defined by § 551 of the Administrative Procedure Act to exclude state agencies,<sup>71</sup> a strong argument can be made at the outset for the proposition that no record which passes between a federal and a state agency is exempted by this section. Although this was pointed out to the House committee,<sup>72</sup> the exemption as written failed to exempt communications between the federal and state governments. Since the committee did not change the wording, the conclusion is justified that communications between such governments are not exempted from disclosure. As stated in *Getman*, "[T]he court is not free to give the statute an expansion which Congress considered and denied.<sup>73</sup> Therefore, no state plan proposals, waiver requests, conformity materials, suggestions or comments by the federal agency, or any other communication of any sort between a federal agency and a state agency or official should be considered exempt by this section. HEW has now taken the lead and recognized the availability for inspection of all such records."<sup>74</sup>

What is available by discovery is covered essentially by FRCP Rule 26b. This rule states that:

"[P]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."<sup>75</sup>

The key requisites for material to be discoverable, therefore, are relevance to the cause of action and the lack of any applicable "privilege."<sup>76</sup>

In freedom of information cases, however, there is no substantive litigation by which the relevance of the requested documents can be judged. Further, the Freedom of Information Act abolished the requirement that a person have a direct and proper interest in

a record, and therefore the agency itself would never, under the Act, have occasion to question the relevance of a record to any possible lawsuit. The conceivable relevance of records to some hypothetical lawsuit is not mentioned in the legislative history nor in the A.G. memorandum. Rather, strong evidence shows that Congress was only concerned with allowing the government to withhold those records which are subject to the privilege exception in Rule 26b(1).<sup>76</sup>

The exception of privileged materials applies to records which come within the common law privileges of doctor-patient, attorney-client, and clerical relationships. But in litigation against the government, the federal government has consistently raised a special privilege—the executive evidentiary privilege—as a defense to motions to compel production of documents. This privilege has been held to reside in the executive to protect it from disclosure of documents which would expose its actual reasoning processes as opposed to the factual bases for decision making. Thus,

"... the privilege obtains with respect to intra-governmental documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which government decisions and policies are formulated."<sup>77</sup>

The purpose of the privilege has been stated to be twofold: first, to protect and encourage a frank interchange of opinion within the agency, and second, to protect the reasoning process of the agency from public exposure.<sup>78</sup>

It is helpful to see how this executive evidentiary privilege works in practice. In *Kaiser Aluminum & Chemical Corp. v. United States*,<sup>79</sup> the court of claims held that an agency employee's internal opinion on possible agency action on a \$36 million contract between the agency and Kaiser, was the type of record which an agency could claim as privileged. In *Machin v. Zukert*,<sup>80</sup> the United States Court of Appeals for the District of Columbia held that Air Force deliberations or recommendations pertaining to a crash were privileged, even absent military secrets, but that the factual findings and conclusions of mechanics who actually examined the wreckage must be disclosed. In *Boeing Aircraft v. Coggeshall*,<sup>81</sup> a case concerning attempts to obtain records from the renegotiation board, the court held that the executive privilege applied to those records which recommended policies to be pursued by the renegotiation board, in order to preserve the integrity of its decision-making process; it also held that purely investigatory or factual reports were not within the privilege.<sup>82</sup>

When agencies invoke the privilege on judicial review, the courts are faced with the choice of accepting the agencies' characterization of the nature of the documents, or examining the records *in camera* to determine whether they fit within the privilege. In some cases the courts inspected the records *in camera*, and ordered privileged matter to be separated from non-privileged if commingling had occurred.<sup>83</sup> Such inspection was not ordered in cases where the privileged nature of the records seemed evident.<sup>84</sup>

The legislative history of the Freedom of Information Act indicates that the courts must apply the same test to the fifth exemption as they always have when the executive evidentiary privilege has been raised in discovery proceedings against federal agencies.<sup>85</sup> Certain difficulties are presented, however, by the clear wording of the statute. For example, in discovery proceedings, the executive privilege may have to yield where the requester has great need for the record. The privilege, in other words, is balanced against the requisites of justice in the courtroom. Yet in Freedom of Information cases, the need for the record is not a factor. The exemption refers to records available to a "party," rather than "the person making the

Footnotes at end of article.

request." The question, then, is whether records which are only sometimes available in litigation are available under the Freedom of Information Act.

This question was squarely dealt with in a recent District of Columbia case. In *Sterling Drug*<sup>50</sup> the plaintiffs had been charged with Section 7 Clayton Act violations involving a merger with another company. The FTC had previously approved a similar merger between one of Sterling's competitors and another company. Sterling unsuccessfully petitioned the agency to drop the charges on the ground of this approval, and then moved for production of records consisting *inter alia* of FTC staff memoranda, memoranda of individual commissioners, and memoranda prepared or adopted by the commission as a whole relating to the basis for their decision to uphold the merger in the other case. This motion was denied. A freedom of information case was then filed, seeking disclosure of the records. The plaintiffs claimed that the records were discoverable in the Clayton Act action pending against them, and were therefore not exempt under the fifth exemption. The lower court held that the records consisted of internal working papers relating to the formulation of policies and were therefore exempt under the fifth exemption. On appeal, the District of Columbia circuit court considered the question raised by the plaintiffs as to whether the discoverability of a record in litigation automatically meant that the record was not within the fifth exemption. Quoting at length from Davis, *The Information Act, A Preliminary Analysis*,<sup>51</sup> and relying on language in the House report and the A.G. memorandum that the fifth exemption does not apply to memoranda which are routinely discoverable, the court concluded that records otherwise privileged did not escape the exemption solely because they might, in special circumstances, be discoverable.

As modified by *Sterling*, then, the courts will follow the discovery cases and allow the withholding of records which would reveal the reasoning process of the agency; such memoranda would include internal working papers and drafts, in which statements of opinion and suggestions were made regarding agency decisions or action. Conversely, no memorandum which embodies data relied on by the decision maker, no report, statistical workup, computer printout or any other factual data should be considered exempt.<sup>52</sup>

*Sterling*, however still leaves open the question of what is or is not exempt from disclosure. The court held that the memoranda prepared by the commission staff and individual commissioners were exempt, while the memoranda prepared by the commission as a whole were not. The court reasoned that memoranda which comprised operative agency law were disclosable, whereas opinions and recommendations which did not necessarily comprise the whole of an agency policy did not constitute such agency law and were therefore within the exemption comprising internal opinions and recommendations.

However, 5 U.S.C. § 552(a) (2) (B) requires that agencies index and have available for inspection those "statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register." In a powerful and well reasoned dissent,<sup>53</sup> Judge Bazelon has pointed out that to the extent that the staff and commissioner memoranda provide the basis for all or part of a final agency decision, they then fall within the classification of § 552(a) (2) (B) and should be made available. Judge Bazelon reminds us that although the purpose of the exemption was to encourage discourse at the policy formulation stage, Congress intended to prevent the development of

"secret law" within an agency. The dissent points out that the Ninth Circuit had previously decided in *GSA v. Benson*<sup>54</sup> that the kind of opinions and recommendations sought in *Sterling* were not within the exemption to the extent that the agency ultimately adopted them expressly or implicitly. In any event, even the majority in *Sterling* leaves no doubt that memoranda constituting the working law of an agency are not within the exemption.

When there is a dispute as to the characterization of a record, or when a record contains both types of material, the court has a duty, as in discovery proceedings, to examine the records *in camera* to decide which material is disclosable.<sup>55</sup>

It seems reasonably clear that Congress intended bureaucrats to be able to engage in frank interchange of opinion without the world knowing their individual views, and that without the privilege this might be inhibited. Therefore, in deciding whether the privilege should apply, courts should look to see whether the specific record in question will or will not expose the agency's reasoning process to public view. In the discovery case of *Machin v. Zuckert*,<sup>56</sup> the court decided that disclosure of the mechanic's opinions as to the causes of the accident would not expose the agency's reasoning process, and that such opinions were actually in the nature of a factual summary. This approach protects the government against having to disclose documents which will harmfully reveal its thinking process while at the same time providing for full disclosure of all records which contain the basis for government action.

The Senate and House reports and the A.G. memorandum express the belief that the fifth exemption prevents premature disclosure.<sup>57</sup> This refers to situations where disclosure would make nugatory the purpose for the records or would prejudice contractual negotiations in progress.<sup>58</sup> Clearly, only where parties are actually negotiating in a contractual sense should prematurity be considered an issue. Thus, where the federal government is performing a function concerning a state government, such as deciding whether to grant a state's request for a § 1115 waiver, the alleged prematurity aspect would not apply, regardless of the present stage of the federal agency action. HEW's example in its regulations exempting records "of correspondence between Federal and state or local officials, privileged through custom and usage or where disclosure might prejudice negotiations in progress," is thus without merit.<sup>59</sup>

#### The seventh exemption

Although the seventh exemption has been held applicable to areas not generally of concern to poverty lawyers, some discussion of this exemption is nevertheless in order. The Senate report refers to the investigatory files in the seventh exemption as follows: "These are the files prepared by Government agencies to prosecute law violators."<sup>60</sup> This language indicates that Congress had in mind proceedings of regulatory agencies with power to mete out punishment for law violations by court prosecution. In *Bristol Myers Co. v. FTC*<sup>61</sup> the court concluded that "Congress intended to limit persons charged with violations of the Federal regulatory statutes to the discovery available to persons charged with violations of Federal criminal law." Such actions would be brought by the FDA in food adulteration cases, the FTC in anti-trust actions, the SEC in financial institutions regulations, the FPC in oil and gas cases, and the CAB in airlines regulations.

Quite recently, the Fourth Circuit held that the seventh exemption "should not be enlarged . . . to include records of administrative action taken to enforce the law." In so holding, the court determined that letters of warning of non-compliance with federal law were disclosable.<sup>62</sup> Finally, in interpreting this exemption, Judge Skelly Wright in *Get-*

*man v. NLRB*<sup>63</sup> concluded that the purpose of the exemption was to ensure that agencies' court cases would not be harmed by the disclosure. To the extent that an agency's activities do not involve judicial enforcement as an affirmative matter, then materials collected to implement the law should not be excluded from disclosure by this exemption.<sup>64</sup>

Even where the seventh exemption may be applicable, however, withholding is justified only when the files are in fact compiled and maintained for such judicial law enforcement purposes. Thus, a long lapse of time without any intervening "law enforcement" activity between the compilation of the files and the date they are requested would indicate that the files are no longer being maintained for "law enforcement" purposes.<sup>65</sup> Further, when the files, or records therein, have been disclosed to the parties subject to the agency's "law enforcement" actions, it is obvious that further disclosure to the public cannot hurt the agency's case in court.<sup>66</sup>

#### BEYOND THE EXEMPTIONS

Although it might be argued that agencies can lawfully withhold any record which falls within the exemptions, a number of agencies have adopted regulations which compel them to disclose any record, exempted or not, unless there are compelling reasons to the contrary. Thus, in *GSA v. Benson*<sup>67</sup> the agency refused to release the records of certain business transactions between it and the person requesting the records. The court, *inter alia*, noted that the agency required disclosure in the absence of a compelling reason to the contrary, and that since the court could discern no compelling reason for the agency to withhold the records, the records must be disclosed, notwithstanding the fact that they might fit within one of the exemptions. Other examples of such regulations are: (1) the Department of Interior regulations which require disclosure unless the records fit within an exemption and "sound grounds exist which require the invocation of the exemption" or disclosure is prohibited by statute or executive order;<sup>68</sup> (2) HEW regulations which provide that "disclosure of particular items of such [exempt] kinds will nevertheless be made when this can be done consistently with obligations of confidentiality and administrative necessity";<sup>69</sup> (3) HUD regulations which prohibit a record from being withheld unless it both comes within an exemption and "there is need in the public interest to withhold it";<sup>70</sup> and (4) DOT regulations which provide that notwithstanding the exemptions the department will release a record "unless it determines that the release of that record would be inconsistent with a purpose of the [exemption] section covered."<sup>71</sup> These types of regulations are binding on the agency and provide a means to obtain otherwise exempted records.<sup>72</sup>

A number of agencies also attempt to define and interpret the exemptions in the Freedom of Information Act further. These regulations give examples of the types of records which the agency considers exempt. These interpretations and examples are often broader than the statutory exemption. If these interpretative regulations exempt from disclosure items which are not exempted by the governing statute, they conflict with the statute,<sup>73</sup> they are outside the official's scope of authority,<sup>74</sup> and are hence invalid. A federal administrative regulation must comport with the enabling legislation, including the congressional mandate as it is "ascertainable in underlying policy."<sup>75</sup> In any freedom of information case the underlying policy of Congress is to interpret the exemptions strictly, in favor of the fullest possible disclosure.<sup>76</sup>

The exemptions, therefore, refer to a limited class of materials. Moreover, the Act expressly requires that all other records shall

Footnotes at end of article.

be disclosable. Although some courts have gone astray and used their own judgment as to whether or not certain records should be disclosed, the great majority of courts have looked only to the exemptions for possible justification of agency withholding. And as records are more aggressively pursued under the Act in the future, the exemptions should, under proper court interpretation, become increasingly narrow, veering away from the old, broad equitable principles toward the clear statutory intent of total possible disclosure of government records.

#### APPLICATION OF THE ACT

From the cases which poverty lawyers have filed against federal agencies, it appears that the following agencies are most often involved: Health, Education and Welfare; Housing and Urban Development; the Bureau of Indian Affairs; the United States Department of Agriculture; the Department of Labor; the Department of Transportation; the Environmental Protection Agency; and the Department of Justice. Each of these agencies administers programs which involve some degree of federal-state cooperation; most of the programs also involve federal-state shared funding schemes. The federal agencies are responsible for assuring that federal law is fully complied with. If it is not, then no federal money should theoretically be provided for the program's operation.<sup>63</sup> Whether or not federal agencies choose to take any action in the event of non-compliance, most of them collect considerable data concerning compliance (or lack thereof) with applicable federal laws. All such data compiled by any of the agencies and programs specified above should be obtainable under the Freedom of Information Act on the ground that the one possibly applicable exemption—the fifth—does not apply either because the material was obtained from the state or some other non-agency source and is thus not within the exemption, or because such data does not in any way expose the reasoning process of the agency, but rather constitutes factual summaries and reports. To the extent that conformity materials include recommendations to higher officials based on factual data or summaries, such recommendations might also prove disclosable especially if the recommendation is later adopted by the agency head. Even if the recommendation were in a privileged form, however, the administrator could excise the privileged materials from the rest of the materials, or, if the administrator contests the request, the court could do so.

Another type of record consists of the communications between a federal agency and the state agency. Lengthy correspondence often goes on between them concerning either state plans to take certain actions in the future, or state practices of the recent past. These records are not exempted by the fifth exemption, which only refers to communications involving federal agencies.<sup>64</sup> Also, such communications would be discoverable in litigation because their disclosure would not expose the agency's reasoning process. As already mentioned, HEW has recently changed its policy and now allows disclosure of all such correspondence.<sup>65</sup>

Another type of record which should be available for inspection under the Freedom of Information Act consists of the formal and informal opinions which are constantly handed down in response to state agency queries and requests. For example, within the past year California sought HEW's opinion on some administrative changes it desired to make in California's welfare programs. HEW put its opinion in the form of a letter stating that some of the changes were permissible while others would violate the Social Security Act and would need waivers. Re-

gardless of how HEW might wish to characterize such a communication, under the Act it should have been characterized as an agency opinion or decision, indexed, and made available for inspection in the agency library. Another type of decision making is the agency response to each public information request received by the office. These decisions should also be in the library. General policy decisions are often made by regional federal officials and then sent to the agency head for final approval.<sup>66</sup> These intra-agency opinions and decisions, no less than the opinions and decisions sent out of the agency, should be on file and readily available.

Finally, the large number of decisions made by federal agencies which seem to conflict with the governing statute or even the agencies' own regulations is an area of increasing concern to poverty lawyers.<sup>67</sup> In other cases, it appears that the reasons for certain agency decisions are either purely political or have no basis in fact. Recent examples of the latter include the New York regional SRS commissioner's determination that New York had an adequate utilization review procedure in its Medicaid program,<sup>68</sup> and HUD's decision to allow various redevelopment projects to proceed based on a HUD certification of a workable program,<sup>69</sup> where no basis in fact existed for either decision.<sup>70</sup> At the time the decision is made it is often unknown what kind of record exists and what is before the decision maker. Clearly, except for internal staff opinions, suggestions and recommendations it is permissible to obtain the factual and analytical record on which the decision is based. It would seem that a request for the documents, reports, memoranda, computer printouts, charts, graphs and surveys on which an administrator relied to make his decision (i.e., the administrative record) would be sufficient identification and such records would therefore be obtainable under the Freedom of Information Act except for those records which consisted of agency debates over policy matters.

There are many uses to which the types of information outlined above can be put. Groups of poor persons have always had to face the explanation from bureaucrats that the bureaucrat is acting on information which "unfortunately" is unavailable to the public. Clearly, the obtaining of all or most of the same information which the bureaucrat has will greatly help these organizations in their efforts to attain power in relationship to the government agencies with which they deal. Second, as has been tragically proven in the case of the Pentagon Papers, governments can go awry absent public accountability. The harder it is for bureaucrats to conceal their errors, hopefully the fewer they will make. The more the administrative decision making process is brought to light, the less likely it is that political deals will be made.

The aftermath of a recent case filed by NWRO<sup>71</sup> to obtain copies of waiver applications submitted by the States of California and New York provides a good example of the uses which an organization can make of the type of information discoverable under the Freedom of Information Act. The purpose of the suit was to obtain the waiver applications as early as possible in order to have a chance to provide HEW with comments and criticisms, and to be able to mount a political campaign prior to any HEW approval of the applications. The suit was settled on the basis of an agreement by HEW to release the applications at least 30 days prior to taking any formal action on them.<sup>72</sup> The first application received was from California, which was seeking to run a demonstration project whereby Medicaid recipients would be charged a certain amount for aid and services. During these 30 days, CWRO prepared and submitted an extensive comment and criticism of the project. The next

applications received under this agreement were two applications submitted by New York. One of them sought a waiver of Social Security Act provisions so as to allow New York to operate forced work programs, without pay, for all welfare recipients. The second application was for waivers permitting New York to operate a program in which the grant would be reduced to \$2,400 for a family of four from the approximate current average level of \$3,760. The family would then be given an opportunity to work itself back up to the current grant level by accruing such "brownie points" (which were assigned a dollar value) by among other things cooperating with school authorities, joining the boy or girl scouts, participating in birth control programs and joining forced work projects. NWRO and various community and professional groups mounted an attack on the demonstration projects and HEW eventually informed New York that the project's proposals were unapprovable as submitted. (This was after HEW had told New York that the applications would certainly be approved.) New York submitted new proposals, which HEW approved shortly thereafter. A lawsuit is currently pending challenging this approval on the grounds that the agreement to give 30 days lead time was violated. The New York community is still alerted to many problems in the new proposals, and it is quite possible that because of the political opposition the projects will never be carried out. In any event, the community, by being forewarned, is forearmed.

In addition to the use of records for purposes of political mobilization, records obtainable under the Act can prove valuable in litigation. Although many records would be obtainable by discovery upon the filing of a lawsuit, it is often important first to compile information in order to put the lawsuit together. In one type of litigation in which poverty lawyers are becoming increasingly involved—judicial review of federal administrative action—it is of the utmost importance to ascertain the scope and extent of the "administrative record" on which the decision maker relied in making the decision.<sup>73</sup> Much of the decision-making power which is subject neither to adjudicatory nor rule-making public hearings is committed to federal agencies by statute. Thus, the Secretary of HEW may grant certain waivers of Social Security Act provisions, the Secretary of HUD may certify the existence of a workable plan for redevelopment, and the Secretary of Transportation may decide to release federal funds for a highway. In each case there is no formal record, nor is there generally a requirement for formal findings. Such decision making, although carried out pursuant to a governing statute, is called "informal."

The scope of judicial review for such informal decision making has recently been described by the Supreme Court,<sup>74</sup> in *Citizens to Preserve Overton Park v. Volpe* under which the court is to review the administrative record. However, if there is no such record (as is often the case in informal decision making), then the administrator may make *ex post facto* findings which will themselves be subject to judicial review. In the absence of any *ex post facto* findings, the plaintiffs may discover the basis for the administrative decision. (Such discovery is not necessarily precluded by the existence of findings, however.)

Since the filing of a lawsuit seeking judicial review gives the administrator a chance to devise *ex post facto* rationalizations in light of the complaint's allegations, the plaintiffs are in an infinitely stronger position if the administrative record can be ascertained and established prior to the filing of the suit. Most of the data on which such informal decisions should be based is obtainable under the Act, and therefore a request for the documents which comprise the administrative record in respect to a particu-

Footnotes at end of article.

lar decision will prove invaluable in these types of lawsuits.

It is also valuable to have the records prior to filing a suit, for possession of information indicating a relatively sure victory may well be enough to settle the matter out of court. Alternatively, the information obtained may indicate that a lawsuit would not be appropriate in the first place.

#### HOW TO REQUEST A RECORD

The operative words of the statute in respect to procedure are:

"Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute and procedure to be followed, shall make the records promptly available to any person."<sup>105</sup>

Although the information sought must be in the form of records within the meaning of the Act, the Act does not define the word "records." The A.G. memorandum, however, adopts the definition of records used in a 1943 statute:

"[T]he word "records" includes all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by any agency of the United States Government in pursuance of Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data contained therein. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of the word "records" as used in this Act."<sup>106</sup>

The question of what constitutes identifiable records has been litigated.<sup>107</sup> It is clear that while the courts may not look favorably on a broad fishing expedition, the agencies must make a reasonable attempt to search out and find the records which are requested, regardless of the comprehensiveness of the request.<sup>108</sup> In this connection, the Senate report states:

"It is contemplated by the committee that the standards of identification applicable to the discovery of records in court proceedings would be appropriate guidelines with respect to the identification of agency records, especially as the courts would have jurisdiction to determine any allegations of improper withholding."<sup>109</sup>

"The records must be identifiable by the persons requesting them, i.e., a reasonable description enabling the Government employee to locate the requested records. This requirement of identification is not to be used as a method of withholding records."<sup>110</sup>

That it may be inconvenient for the agency to search out and compile records for inspection is no excuse for the failure to produce non-exempted materials.<sup>111</sup>

In many cases the existence of specific records will come to light by word of mouth and specific identification is easy. In other cases it may not be known whether certain documents exist, but their existence can be deduced. Requests for such deduced records should be framed in an affirmative manner on the assumption that the records do exist, rather than as a question as to whether the records exist. This tactic will also prevent the agency from concealing the existence of a record.<sup>112</sup> However, the request should also

specify that the agency either give you what is asked for, or state the reasons for non-disclosure, including the alleged non-existence of any of the records requested. If the agency answers that no such record exists, such an answer may prove to be invaluable. For example, in one case currently being litigated involving judicial review of federal administrative action, the plaintiffs asked for all reports, surveys, memoranda, etc., on which the defendants based their decision. The agency answered that no such records existed. In establishing the arbitrariness of the defendant's decision the plaintiffs have a headstart. In any event, every request for records should include a request that the agency immediately contact the requesting party if it has any question whatsoever about the identification of the records. This obviates the possibility of a later defense, should judicial review become necessary, that the records were not identifiable.

The records should be described as thoroughly as possible, for experience has shown that agencies will interpret the request as narrowly as possible. Although the Act requires the courts to interpret the exemptions strictly,<sup>113</sup> on judicial review they are not under a duty to order the production of a record not properly requested in the first instance.<sup>114</sup> And if the first request is not complete, the requesting party may have to re-exhaust the administrative remedy.

Each agency is required to publish rules stating the time, place, fees and procedure to be followed in requesting records.<sup>115</sup> The rules, according to the statute, designate the proper person or persons to whom a request should originally be made, the form of such request, and the fees, if any, involved for searches and copying.<sup>116</sup> Such rules also establish an intra-agency appellate process, designating the person to whom an appeal may be made (usually the head of the agency or operating agency) and the form of the appeal. The rules established by the agency should be followed as closely as possible to obviate the defense, should judicial review be necessary, that the request "was not in accordance with the agency's rules" and that administrative remedies were therefore not properly exhausted.

The Act also requires that if a proper request is made the records must be made available promptly. In the case of the agencies with which poverty lawyers usually deal, there is no specific time period designated within which a request must be answered or an appeal decided. This loophole means that an agency may sit on a request virtually forever; only the department of transportation expressly provides for an intra-agency appeal in the event a request is not initially answered within a reasonable time.<sup>117</sup> It would seem that the failure of the agencies to specify time periods, both for response to an initial request and/or for an appeal in case records are denied clearly violates the requirement that the agency "shall make the records promptly available."<sup>118</sup> The question, of course, is what constitutes a reasonable time within which the agency must act.

One commentator suggests that a ten-day limit be set for an initial response;<sup>119</sup> one agency has adopted such a time limit.<sup>120</sup> In some cases, however, ten days may be a longer period than is really necessary in light of the request, whereas a complicated request involving retrieval from different sources might take more than ten days. One possible practice is to note in a request that the rules have no time limit, that the records are needed immediately (or at a particular time) and that if there is any problem immediate contact should be made. After ten days (unless the agency has been given a longer period in the request), if no response has been received another letter should be

sent placing a time limit of an additional week or two on the agency's response. If there is still no response, or if a response is of an obviously dilatory nature, then the delay would be treated as a denial,<sup>121</sup> and a letter of appeal should be sent to the appropriate official. In the letter of appeal the time limit should be approximately 30 days. If there is still no adequate response, then the case can be considered ripe for review. This is only one tactic; undoubtedly there are many more. The main point is that delay is the agency's one predictable defense to a request which it doesn't wish to honor, and a good record should be made in the event that judicial review is sought of a final agency decision implied by delay, for exhaustion of administrative remedies becomes a problem in such a case. Unreasonable delay, however, has been held to provide an exception to the exhaustion rule.<sup>122</sup> Furthermore, the absence of any time period in the statute should help overcome the exhaustion doctrine. Finally, exhaustion is not required when the outcome of the request or appeal is pre-ordained.<sup>123</sup>

The Act provides that the records be made promptly available to "any person." This means that any person may request a record, without any evident connection between the record and the person and without any particular necessity for the record.<sup>124</sup> "Person" is defined in § 551 to include associations, corporations and partnerships, as well as individuals, and therefore requests can be made by poor persons' groups as well as by any individual.

Finally the request for identifiable records must be made of an agency as that term is defined by § 551 of the Administrative Procedure Act.<sup>125</sup>

#### JUDICIAL REVIEW

Theoretically it should not often be necessary to go to court to get identifiable non-exempted records. The Act and its legislative history make clear that all questions of doubt should be resolved by the agencies in favor of disclosure. From the beginning, however, the comments on the Act and its operation have concluded that agencies are most reluctant to part with records even though they are clearly outside any of the exemptions.<sup>126</sup> Because of this reluctance (anticipated by Congress), judicial review is available. The operative section states:

"On complaint, the district court of the United States in the District in which the complainant resides, or has his principal place of business, or in which the agency records are situated, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo and the burden is on the agency to sustain its action. In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member. Except as to causes the court considers of greater importance, proceedings before the district court as authorized by this paragraph, take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practical date and expedited in every way."<sup>127</sup>

Since most actions against a government agency involve a presumption in favor of the agency, poverty lawyers may be at a loss as to how to litigate under a statute which throws the burden on the other side. A suggested tactic is that the complaint should simply cite the facts without going into too much detail (depending on the circumstances), that what is requested are in fact identifiable records, the facts of the denial, and that the records do not fall within any of the statutory exemptions and are therefore disclosable. The prayer, outlined in the stat-

Footnotes at end of article.

ute, is to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

The provision providing for de novo review means that the court is obliged to make its own examination of the records and the agency's reasons for withholding them, and to render a decision based on its independent judgment. This means that the agency must justify its action in court, without being able to rely on its administrative reasons for withholding the records.

Concerning litigation strategy, much depends on whether a preliminary injunction is sought, and what kind of administrative record has been made with the agency prior to judicial review. If such an injunction is sought, or if all the agency's reasons for nondisclosure have previously been brought into the open, it might be well to argue the merits of the case fully in the opening brief without waiting for the agency to justify in court its decision to withhold the record. On the other hand, if no preliminary injunction is sought, or if the agency has not yet fully presented its reasons for withholding the records, it might be wise to make the defendants first justify their action, saving the major arguments and discussion for a reply brief. In any event, it is important to remember that legally a presumption runs in favor of disclosure and that the burden is on the agency to justify its action.

Preliminary injunctions are somewhat hard to obtain in freedom of information litigation due to the problem of establishing irreparable injury and the statutory calendar preference.<sup>128</sup> A preliminary injunction would also be seeking the same relief as a final injunction, unless the preliminary injunction were to prevent some other agency action from occurring until the freedom of information issue was resolved.<sup>129</sup> The sole purpose of the Freedom of Information Act is to obtain records. To the extent that the preliminary injunction would result in the disclosure of the records at issue, full relief would be accomplished prior to a final judgment in the matter. However, a preliminary injunction was granted affording full relief in *Shapiro v. SEC*, presumably on the grounds that the probability of success upon a final adjudication was virtually a certainty.<sup>130</sup>

Since federal agencies have 60 days in which to answer, having to wait for a trial might result in the need for the records becoming moot, notwithstanding the statutory trial preference. Perhaps the most promising way to obtain speedy relief is to move for summary judgment 20 days after the complaint is filed, pursuant to Rule 56 of the Federal Rules of Civil Procedure, and for an order shortening time for the hearing on the motion. Since witnesses are usually not relevant to this type of action, and since the facts are either unlikely to be materially disputed, or if so, capable of resolution by *in camera* inspection rather than by trial, freedom of information cases seem ideally suited for summary judgment proceedings. The sole issue is likely to be whether a particular record is or is not exempted by the Act.

#### CONCLUSION

The Freedom of Information Act has been used remarkably infrequently, considering the millions of people whose lives are dependent upon the proper functioning of government agencies. Although the small number of lawsuits seeking judicial review of agency withholding does not necessarily mean that thousands of requests made daily of agencies are not met satisfactorily, the initial experience of poverty lawyers in their attempts to obtain information bearing on their clients' problems has been less than satisfactory. Even a cursory examination of agency regulations indicates that large areas

of potentially useful information are considered exempt by the agencies, notwithstanding the clearly contrary language of the Act and the Senate Judiciary Committee Report. Congress deliberately made judicial review of agency withholding an easily manageable form of proceeding, anticipating that the agencies would be reluctant to yield anything whatsoever for public scrutiny, let alone the types of records made disclosable by the Act. Given the amount and types of information which are currently unavailable to poor people by agency misinterpretation of the Freedom of Information Act (stimulated by the A.G. memorandum, in fairness to the agencies), it is hoped that vigorous action will be taken to convey the information to the people most affected by the federal agencies in question. As poverty lawyers and organizations assert the rights of the people they represent, it is expected, along with increased litigation, that a number of agencies will begin to rethink their position. This is apparently the case with HEW, as evidenced by its new policy of disclosing federal-state communications. Perhaps no more fitting conclusion to this article can be made than to quote the HEW memorandum implementing the new policy, in the hope that other agencies will adopt the same reasoning and take the same action concerning the disclosable records in their possession.

"In order to respond intelligently to these requests, we have had to review carefully our past policies regarding the release of information to the public and to the news media. We have found that the biggest need is to reemphasize the SRS and the Department position that information and records should be made readily available unless there are overriding reasons to the contrary. It is not the intention of the Freedom of Information Act or the Department's Public Information Regulation that all records falling into an exempt category are for that reason to be withheld from disclosure. On the contrary, both clearly subscribe to the concept of fullest possible disclosure."

"In keeping with the concept of fullest possible disclosure, SRS will henceforth consider that correspondence and documents between SRS and State and local agencies, and internal SRS letters, memorandums or documents furnished to a State or local agency, are in the public domain and are available to news media representatives and members of the public. This includes Section 1115 project proposals and State plan material which will be considered available for release on request when received at the SRS office having approval authority."

"Communications from officials of SRS to State officials, and internal communications furnished to a State, will be considered available for release when sufficient time has elapsed to insure receipt by the addressee."

"Communications from State officials to officials of SRS will be considered available for release at the Federal level as soon as received by the addressee."<sup>131</sup>

#### FOOTNOTES

- <sup>1</sup> 5 U.S.C. § 552.  
<sup>2</sup> 5 U.S.C. § 552(b)(1) appears to exempt such records. *But see* Mink v. EPA, 40 U.S.L.W. 2233 (D.C. Cir., Nov. 2, 1971), *review granted*, 40 U.S.L.W. 3428 (U.S. Sup. Ct., Mar. 6, 1972).  
<sup>3</sup> The Act applies only to federal agencies; however, a number of states have their own freedom of information acts and in one recent case, a state court used federal case law to interpret the state statute. *Citizens for Better Care v. Reizen*, No. 13166-G (Mich. Cir. Ct., Feb. 23, 1972), available from the Clearinghouse, Clearinghouse No. 5827. For an exhaustive listing of the freedom of in-

formation laws of each state, see Hobson, *The Damned Information: Acquiring and Using Public Information to Force Social Change*, Washington Institute for Quality Education, available at a cost of \$2.00.

- <sup>4</sup> 5 U.S.C. § 552(a)(1).  
<sup>5</sup> 5 U.S.C. § 552(a)(2).  
<sup>6</sup> 5 U.S.C. § 552(a)(3).  
<sup>7</sup> 5 U.S.C. § 552(b).  
<sup>8</sup> 5 U.S.C. § 552(c).  
<sup>9</sup> See Davis, *The Information Act, A Preliminary Analysis*, 34 U. CHI. L. REV. 761 (1967), for an explanation and interpretation of these first two requirements.  
<sup>10</sup> 5 U.S.C. §§ 701 *et seq.*  
<sup>11</sup> Davis, *supra*, note 9.  
<sup>12</sup> Davis, *supra*, note 9 at 765; Skolnick v. Parsons, 397 F. 2d 512 (7th Cir. 1968); S. REP. NO. 813, 89th Cong., 1st Sess. 5-6 (1965).  
<sup>13</sup> 5 U.S.C. § 552(c).  
<sup>14</sup> S. Rep. No. 813, 89th Cong., 1st Sess. 10 (1965).  
<sup>15</sup> Davis, *supra*, note 9 at 767.  
<sup>16</sup> 448 F. 2d 1067 (D.C. Cir. 1971).  
<sup>17</sup> The Senate Report makes clear in a number of instances that the statute does the balancing. For example, in referring to phrases found in the former Act, such as "requiring secrecy in the public interest" and "required for good cause to be held confidential" the Report states:  
 It is the purpose of the present bill to eliminate such phrases, to establish a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language. S. Rep. No. 813, *supra*, note 14.  
 And, the Report continues:  
 It is not an easy task to balance the opposing interests, but it is not an impossible one either. It is not necessary to conclude that to protect one of the interests, the other must, of necessity, either be abrogated or substantially subordinated. Success lies in providing a workable formula which encompasses, balances, and protects all interests, yet places emphasis on the fullest responsible disclosure. S. Rep. No. 813, *supra*, note 14 at 3.  
<sup>18</sup> 448 F. 2d at 1080 (D.C. Cir. 1971).  
<sup>19</sup> 444 F. 2d 21, 25 (4th Cir. 1971).  
<sup>20</sup> 450 F. 2d 670 (D.C. Cir. 1971). For a comment on *Getman* and its effect on the "equity" question see 1971 U. ILL. L. FORUM 329 (1971).  
<sup>21</sup> *Epstein v. Resor*, 421 F. 2d 930 (9th Cir. 1970); *Bristol Myers Co. v. FTC*, 424 F. 2d 935 (D.C. Cir. 1970).  
<sup>22</sup> H.R. REP. NO. 1497, 89th Cong., 2d Sess. (1966).  
<sup>23</sup> S. REP. NO. 813, *supra*, note 14.  
<sup>24</sup> Davis, *supra*, note 9 at 762.  
<sup>25</sup> Att'y Gen. Memo on the public information section of the Administrative Procedure Act (1967) (hereinafter referred to as Att'y Gen. Memo).  
<sup>26</sup> See Davis, *supra*, note 9 at 761.  
<sup>27</sup> *Consumers Union, Inc. v. Veterans Administration*, 301 F. Supp. 796 (S.D.N.Y. 1968).  
<sup>28</sup> Davis, *supra*, note 9 at 809-810.  
<sup>29</sup> *Getman v. NLRB*, 450 F. 2d 670 (D.C. Cir. 1971); *Consumers Union, Inc. v. Veterans Administration*, 301 F. Supp. 796 (S.D.N.Y. 1968); and *GSA v. Benson*, 239 F. Supp. 590 (D.C. Wash., 1968), *aff'd on other grounds*, 415 F. 2d 878 (1969). For a complete discussion of this conflicting legislative history, see Davis, *supra*, note 9 at 809-810.  
<sup>30</sup> Davis, *supra*, note 9 at 809-810.  
<sup>31</sup> 5 U.S.C. § 552(b).  
<sup>32</sup> See *Epstein v. Resor*, 421 F. 2d 930 (9th Cir. 1970).  
<sup>33</sup> *Polymers, Inc. v. NLRB*, 414 F. 2d 999 (2d Cir. 1969); and see *Cuneo v. Laird*, — F. Supp. — 40 U.S.L.W. 2543 (D. D.C., Jan. 14, 1972).  
<sup>34</sup> 5 U.S.C. § 552(a)(2)(c). The Senate Committee Report stated that the purpose of this section was to allow a public examina-

tion of the basis for administration, and that the word "administrative" was in the statute to allow instructions to law enforcement personnel of the regulatory agencies to remain undisclosed. The House Report characteristically goes further and exempts instructions to staff which, if disclosed, would defeat the purpose of the agency. Examples given by the A.G. memorandum are:

... those portions of its staff manuals and instructions which set forth criteria or guidelines for the staff in auditing or inspection procedures, or in the selection or handling of cases, such as operations tactics, allowable tolerances, or criteria for defense, prosecution or settlement of cases.

The A.G. recommends that the undisclosed information be deleted from the manual. However, it should be noted that the Act itself allows deletion for matters which will constitute an unwarranted invasion of personal privacy and requires a written statement explaining such deletions. Assuming that the A.G. memorandum and the House Report are accepted, the deletions of undisclosed material should likewise be explained in writing.

<sup>35</sup> 414 F.2d 999 (2d Cir. 1969). The court also raised the spectre of relevance in respect to the application of the second exemption. Clearly, however, relevance is no longer required for disclosure. After holding that the second exemption applied, the court also considered the staff manual to be exempted by the fifth exemption. This conclusion seems preposterous in light of the history and meaning of the fifth exemption, discussed *infra*.

<sup>36</sup> H.R. Rep. No. 1497, *supra*, note 22. While the House Report would exempt,

... records which relative to ... internal rules and practices which cannot be disclosed to the public without substantial prejudice to the effective performance of a significant agency function. ...

The Report excludes from the exemption matters of internal management such as employee relations and working conditions. Thus, the House Report seems to be standing the second exemption on its head. See Atty Gen. Memo, *supra*, note 25 at 30-31. As if to demonstrate the absurdity of the House Report's interpretation of the exemption, HEW lists the following matters as being exempt from disclosure:

This exemption covers only those internal rules or instructions to personnel relating to how employees carry out their assigned functions and activities for which the department has responsibility. Thus, materials which provide guidelines or instructions to employees relating to tolerances, selection of cases, quantum of proof, and the like, are within this exemption. However, materials having only management significance, such as rules relating to work hours, leave, promotion plans, while relating to personnel may be disclosed. 45 C.F.R. § 5.72.

<sup>37</sup> See *Polymers v. NLRB*, 414 F.2d 999 (2d Cir. 1969); also see S. Rep. No. 813, *supra*, note 14.

<sup>38</sup> Davis, *supra*, note 9 at 778.

<sup>39</sup> The Social Security Act, 42 U.S.C. § 1306, prohibits disclosure of records obtained by the Secretary pursuant to the operation of the program. The legislative history indicates that this statute was meant to protect individual personal information obtained by the Secretary of HEW pursuant to the administration of Title II of the Social Security Act, 42 U.S.C. §§ 401 et seq. House Ways & Means Comm., Social Security Amendments of 1939, H.R. Rep. No. 728, 76th Cong., 1st Sess. (1939); Hearings on H.R. 6635 Before the House Ways & Means Comm., 76th Cong., 1st Sess. (1939); 1950 U.S. Code Cong. & Admin. News 3287, 3481. See also, 20 C.F.R. § 401 for the departmental regulations implementing 42 U.S.C. § 1306 and 45 C.F.R. § 5.11 for the section which incorporates 20 C.F.R. § 401 into the department's general

regulations implementing the Freedom of Information Act. Although 20 C.F.R. § 401 extends the coverage of § 1306 to the Medicare Program (Title XVIII), such an interpretation is most questionable in light of the pertinent legislative history. In any event, it is clear that § 1306 does not apply to materials generated within the agency in respect to Titles I and XVIII.

<sup>40</sup> *Evans v. U.S. Dep't of Transportation*, 446 F.2d 821 (5th Cir. 1971). As this article was going to press, a decision came down from the District of Columbia federal district court limiting this exemption to those statutes which exempt specific types of records, as opposed to statutes which "generally prohibit all disclosures of confidential information." *Schapiro & Co. v. SEC*, — F. Supp. —, 40 U.S.L.W. 2599 (D. D.C., Mar. 14, 1972).

<sup>41</sup> *Sterling Drug Co. v. FTC*, 450 F.2d 698 (D.C. Cir. 1971).

<sup>42</sup> *Consumers Union, Inc. v. Veterans Administration*, 301 F. Supp. 796 (S.D. N.Y. 1968); *Soucie v. David*, 448 F.2d at 1080 (J. Wilkey, concurring).

<sup>43</sup> 450 F.2d 670 (D.C. Cir. 1971).

<sup>44</sup> 301 F. Supp. 796 (S.D. N.Y. 1968).

<sup>45</sup> *Contra, see, Grumman v. Renegotiation Board*, 425 F.2d 578 (D.C. Cir. 1970); and see *Davis, supra*, note 9.

<sup>46</sup> — F. Supp. —, 40 U.S.L.W. 2599 (D. D.C., Feb. 28, 1972).

<sup>47</sup> 425 F.2d at 582 (D.C. Cir. 1970).

<sup>48</sup> *Supra*, note 46, — F. Supp. at —.

<sup>49</sup> *Sterling Drug, Inc. v. FTC*, 450 F.2d 698 (D.C. Cir. 1971); *Mink v. EPA*, 40 U.S.L.W. 2233 (D.C. Cir. Nov. 2, 1971); *Getman v. NLRB*, 450 F.2d 670 (D.C. Cir. 1971); *Soucie v. David*, 448 F.2d 1067 (D.C. Cir. 1971); *Bristol Myers v. FTC*, 424 F.2d 935 (D.C. Cir. 1970); *Ackley v. Ley*, 420 F.2d 1336 (D. D.C. 1969); *American Mail Line, Ltd. v. Gulick*, 411 F.2d 696 (1969); *GSA v. Benson*, 415 F.2d 878 (9th Cir. 1969); *Consumers Union v. Veterans Administration*; 301 F. Supp. 796 (S.D. N.Y. 1968); *International Paper Co. v. FPC*, 438 F.2d 1349 (2d Cir. 1971); *Polymers v. NLRB*, 414 F.2d 999 (2d Cir. 1969).

<sup>50</sup> 5 U.S.C. § 551 states:

... "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—(A) the Congress; (B) the courts of the United States; (C) the governments of the territories or possessions of the United States; (D) the government of the District of Columbia; or except as to the requirements of section 552 of this title—(E) agencies composed of representatives of the parties or representatives of organizations of the parties to the disputes determined by them; (F) courts martial and military commissions; (G) military authority exercised in the field in time of war or in occupied territory; or (H) functions conferred by sections 1738, 1739, 1743, and 1744 of Title 12; chapter 2 of Title 41; or sections 1622, 1884, 1891-1902, and former section 1641(b) (2) of Title 50, appendix.

For a broad discussion of the meaning of "agency" within the Freedom of Information Act context, see *Soucie v. David*, 448 F.2d 1067 (D.C. Cir. 1971).

<sup>51</sup> See *Davis, supra*, note 9.

<sup>52</sup> 450 F.2d at 673, fn. 7.

<sup>53</sup> Social Rehabilitation Service (SRS) Information Memorandum, AO-IM 72-10, Dec. 8, 1971, quoted at length in the conclusion to this article.

<sup>54</sup> *Boeing Aircraft v. Coggeshall*, 280 F.2d 654 (D.C. Cir. 1960).

<sup>55</sup> See H.R. REP. NO. 1497, *supra*, note 22; S. REP. NO. 813, *supra*, note 14.

<sup>56</sup> *Carl Zeiss Steftung v. VEB Carl Zeiss Jena*, 40 F.R.D. 318, 324 (D. D.C. 1966), *aff'd sub nom. Carl Zeiss Jena v. Clark*, 384 F.2d 979, *cert. denied*, 389 U.S. 952 (1967) (hereinafter referred to as *Carl Zeiss*).

<sup>57</sup> *Id.*

<sup>58</sup> 157 F.Supp. 939 (U.S. Ct. Cl. 1958).

<sup>59</sup> 316 F.2d 336 (D.C. Cir. 1963).

<sup>60</sup> 280 F.2d 654 (D.C. Cir. 1960).

<sup>61</sup> In *Davis v. Braswell Motor Freight Lines Inc.*, 363 F.2d 600 (5th Cir. 1960), the court held that communications between the NLRB and the general counsel's office were privileged and that the plaintiff's attempt to probe the reasoning process of the agency should be resisted on the grounds outlined in *United States v. Morgan*, 313 U.S. 409, 421-422 (1941), that the court should not be allowed to question or probe the administrator's mind any more than the mind of the judge. For extensive discussions of the history and scope of the execution privilege against disclosure of records under the discovery statutes, see *Freeman v. Seligson*, 405 F.2d 1326 (D.C. Cir., 1968); *Carrow, Government Nondisclosure in Judicial Proceedings*, 107 U. P.A. L. REV. 166, 184-187 (1959). For other cases in which the privileges was held not to apply, see *Bank Line Ltd. v. United States*, 76 F. Supp. 801 (S.D. N.Y. 1948); *Mitchell v. Bass*, F.2d 513 (8th Cir. 1958).

<sup>62</sup> *Boeing Aircraft v. Coggeshall*, 280 F.2d 654 (D.C. Cir. 1960).

<sup>63</sup> See *Kaiser Aluminum & Chemical Corp. v. United States*, 157 F. Supp. 939 (U.S. Ct. Cl. 1958); *Carl Zeiss*, 40 F.R.D. 318 (D. D.C. 1966), where the court was satisfied as to the privileged nature of the records and refused to inspect.

<sup>64</sup> *GSA v. Benson*, 415 F.2d 878 (9th Cir. 1969); *Sterling Drug v. FTC*, 450 F.2d 698 (D.C. Cir. 1971); and *International Paper v. FPC*, 438 F.2d 1349 (2d Cir. 1971).

<sup>65</sup> 450 F.2d 698 (D.C. Cir. 1971).

<sup>66</sup> *Davis, supra*, note 9.

<sup>67</sup> *Soucie v. David*, 448 F.2d 1067 (D.C. Cir. 1971); *GSA v. Benson*, 450 F.2d 878 (9th Cir. 1969); *Bristol Myers v. FTC*, 424 F.2d 935 (D.C. Cir. 1970); *Ackerly v. Ley*, 420 F.2d 1336 (D.C. Cir. 1969).

<sup>68</sup> 450 F.2d 698, 712.

<sup>69</sup> 415 F.2d 878.

<sup>70</sup> *Soucie v. David*, 449 F.2d (D.C. Cir. 1971); *Wellford v. Hardin*, 444 F.2d 21 (4th Cir. 1971); *Ackerly v. Ley*, 420 F.2d 1336 (D. D.C. 1969); *Bristol Myers v. FTC*, 424 F.2d 935 (D.C. Cir. 1970); *Schapiro Co. v. SEC*, — F. Supp. —, 40 U.S.L.W. 2599. However, the Supreme Court has agreed to hear argument on whether an agency must submit its memoranda to *in camera* inspection. *EPA v. Mink*, 40 U.S.L.W. 2233 (D.C. Cir., Nov. 2, 1971). The circuit court in *Mink*, ordered such inspection and the agency is appealing on the grounds that the executive evidentiary privilege is grounded in the constitutional separation of powers doctrine and that having to submit the privileged materials even to a court is violative of this doctrine.

<sup>71</sup> *Machin v. Zucker*, 316 F.2d 336 (D.C. Cir. 1963).

<sup>72</sup> See H.R. Rep. No. 1497, *supra*, note 22; S. Rep. No. 813, *supra*, note 14.

<sup>73</sup> Atty Gen. Memo, *supra*, note 25.

<sup>74</sup> 45 C.F.R. § 5 *et seq.*, Appendix A. This example may no longer be viable because of SRS's new policy of releasing all memoranda which involve federal-state communications notwithstanding any claimed prematurity of such release.

<sup>75</sup> S. REP. NO. 813, *supra*, note 14.

<sup>76</sup> 424 F.2d 935.

<sup>77</sup> *Wellford v. Hardin*, 44 F.2d 21 (4th Cir. 1971).

<sup>78</sup> 450 F.2d 670.

<sup>79</sup> But in a recent Fifth Circuit case (*Evans v. U.S. Dep't of Transportation*, 446 F.2d 821 (5th Cir., 1971)), the court held that a letter complaining of a pilot's mental stability was part of a file compiled in respect to an investigation of the complaint and thus exempt under § 552(b) (7), notwithstanding the fact that the investigation could only result in an administrative revocation of the pilot's license. This case employs no reasoning what-

soever, and betrays a misunderstanding of the Act and its history, especially in light of the persuasiveness of the other cases in the area which hold otherwise.

<sup>60</sup> *Schapiro Co. v. SEC*, ——— F. Supp. ———, 40 U.S.L.W. 2599.

<sup>61</sup> *Getman v. NLRB*, 450 F.2d 670 (D.C. Cir. 1971); *Schapiro Co. v. SEC*, ——— F. Supp. ———, 40 U.S.L.W. 2599.

<sup>62</sup> 415 F.2d 878.

<sup>63</sup> 43 C.F.R. § 2.2.

<sup>64</sup> 45 C.F.R. § 5.70.

<sup>65</sup> 24 C.F.R. § 15.21.

<sup>66</sup> 49 C.F.R. § 7.51.

<sup>67</sup> For a general discussion of agency regulations in respect to the Freedom of Information Act see Gianella, *Agency Procedures Implementing the Freedom of Information Act*, AD. L. REV. 217 (1971).

<sup>68</sup> *Koshland v. Helvering*, 298 U.S. 441, 447 (1936).

<sup>69</sup> *Addison v. Holly Fruit Products*, 322 U.S. 607 (1943); *Manhattan Gen. Equipment Co. v. C.I.R.*, 297 U.S. 129, 134 (1930).

<sup>70</sup> *United Steel Workers of America v. NLRB*, 390 F.2d 846, 851 (D.C. Cir. 1968), cert. denied, 391 U.S. 904 (1967).

<sup>71</sup> *Bristol Myers v. FTC*, 424 F.2d 935 (D.C. Cir. 1970).

<sup>72</sup> *Arizona State Dept. of Public Welfare v. HEW*, 449 F.2d 456 (9th Cir. 1971); *Rosado v. Wyman*, 397 U.S. 397 (1970).

<sup>73</sup> See note 50, *supra*.

<sup>74</sup> See note 53 *supra*, and the conclusion to this article.

<sup>75</sup> See *GSA v. Benson*, 415 F.2d 878 (9th Cir. 1969); *American Mail Line Ltd. v. Gullick*, 411 F.2d 696 (1969) and *Sterling Drug v. FTC*, 540 F.2d 698 (D.C. Cir. 1971).

<sup>76</sup> See *Rodway v. USDA*, Civ. No. 2553-71 (D. C. 1971) which alleges wholesale violations of the Food Stamp Act by USDA in promulgating new regulations under the Act; and *Rockbridge v. Lincoln*, 449 F.2d 567 (9th Cir., 1971), which held that the BIA had violated its statutory duty to regulate traders on the Navajo reservation.

<sup>77</sup> See *Bass v. Richardson*, ——— F.2d ———, 40 U.S.L.W. 2334 (2d Cir., 1971).

<sup>78</sup> *WACO v. Weaver*, 294 F. Supp. 433 (N.D. Cal., 1969).

<sup>79</sup> Another example of this type of decision-making is the waiver power granted to the Secretary of HEW by § 1115 of the Social Security Act. This power was recently exercised in allowing California to implement a policy of co-payment for Medicaid services and benefits—a practice otherwise forbidden by federal law. See *CWRO v. Richardson*, Civ. No. C-72-341 (N.D. Cal., 1972), an action filed to challenge the decision.

<sup>80</sup> *NWRO v. HEW*, Civ. No. 1042-71 (D. D.C. 1971).

<sup>81</sup> See *NWRO v. Richardson*, 334 F. Supp. 488 (D. D.C. 1972).

<sup>82</sup> *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971).

<sup>83</sup> *Id.*

<sup>84</sup> 5 U.S.C. § 552(a)(3).

<sup>85</sup> *Att'y Gen. Memo. supra*, note 25.

<sup>86</sup> *Bristol Myers Co. v. FTC*, 424 F.2d 935 (D.C. Cir. 1970).

<sup>87</sup> *Gianella, supra*, note 87 at 231.

<sup>88</sup> S. REP. NO. 813, *supra*, note 14 at 2.

<sup>89</sup> *Id.* at 8.

<sup>90</sup> *Wellford v. Hardin*, 315 F. Supp. 175 (D.C. Md. 1970), *aff'd* 444 F.2d 21 (4th Cir. 1971); *Gianella, supra*, note 87.

<sup>91</sup> See Note, *The Freedom of Information Act and the FTC: A Study in Misfeasance*, 4 Harv. Civ. Rights-Civ. Lib. L. Rev. 345 (1969); *Nader, Freedom From Information: The Act and the Agencies*, 5 Harv. Civ. Rights-Civ. Lib. L. Rev. 112 (1970).

<sup>92</sup> 5 U.S.C. § 552(c).

<sup>93</sup> *GSA v. Benson*, 415 F. 2d 878 (9th Cir. 1969).

<sup>94</sup> 5 U.S.C. § 552(b). These rules are located as follows for a number of agencies with which poverty lawyers are most likely to have contact: HEW, 45 C.F.R. § 5; HUD, 24

C.F.R. § 15.1; Dep't of Labor (DOL), 29 C.F.R. § 70.1; USDA (Consumer and Marketing Service), 7 C.F.R. § 900.513, Dep't of Immigration, 8 C.F.R. § 103.9; Dep't of Interior (Bureau of Indian Affairs), 43 C.F.R. § 2.1; Dep't of Transportation (DOT), 49 C.F.R. § 7.1.

<sup>95</sup> While nothing in the statute requires an agency expressly to copy a record as such, it would seem that the phrase "shall make the records promptly available" would include copying. This would be especially true where the request comes from a location other than where the records are physically located. Also, the A.G. memorandum assumes that copies will be made available, probably on the basis of the Senate Report which states:

The phrase . . . copying . . . was added because it is frequently of little use to be able to inspect orders or the like unless one is able to copy them for future reference. Hence the right to copy these matters is supplemental to the right to inspect and makes the latter right meaningful. S. Rep. No. 813, *supra*, note 14.

<sup>96</sup> 49 C.F.R. § 7.71.

<sup>97</sup> A case has recently been filed against HEW which, *inter alia*, seeks a declaratory judgment declaring that the absence of time limitations in the agency rules violates the Freedom of Information Act. *Dellums v. HEW* (D. D.C., Jan. 28, 1972), available from the Clearinghouse, Clearinghouse No. 7328.

<sup>98</sup> *Gianella, supra*, note 87.

<sup>99</sup> Defense Supply Agency, 32 C.F.R. § 1260.6 (b)(3).

<sup>100</sup> There is good support for this approach in *Environmental Defense Fund v. Hardin*, 428 F.2d 1093, 1099 (D.C. Cir. 1970).

<sup>101</sup> *Id.* See also, *Isbrandtsen v. United States*, 211 F.2d 51 (D.C. Cir. 1958); and *American Broadcasting Co. v. FCC*, 191 F.2d 492 (D.C. Cir. 1951). On promptness and possibilities for judicial review of unlawfully withheld agency action, see also *Gianella, supra*, note 87.

<sup>102</sup> See, e.g., *NWRO v. HEW*, Civ. No. 1042-71 (D. D.C. 1971) (order denying motion to dismiss, entered Aug. 11, 1971).

<sup>103</sup> *Skolnick v. Parsons*, 397 F.2d 523 (7th Cir. 1968); *Davis, supra*, note 9.

<sup>104</sup> See note 50, *supra*.

<sup>105</sup> Note, *The Freedom of Information Act: A Critical Review*, 38 Geo. Wash. L. Rev. 150 (October 1969); *Katz, The Games Bureaucrats Play: Hide and Seek Under the Freedom of Information Act*, 48 Tex. L. Rev. 1261 (1970). See *supra*, note 111.

<sup>106</sup> 5 U.S.C. § 552(a)(3).

<sup>107</sup> *Bristol Myers Co. v. FTC*, 24 F. 2d 935 (D.C. Cir. 1970). *But see, Ackerley v. Ley*, 420 F. 2d 1336 (D.C. Cir. 1969), where the appellate court noted its displeasure with the delay by the agency which resulted in the plaintiffs receiving the requested records well after the hearing for which the records were initially requested.

<sup>108</sup> *E.g.*, 5 U.S.C. § 705.

<sup>109</sup> See, e.g., *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), where the court preliminarily enjoined the government's seizure of the steel mills even though, under the government's analysis of the case, such an injunction effectively disposed of the case. The Supreme Court upheld such preliminary injunctions when successful outcome for the plaintiff is assured.

<sup>110</sup> *Supra*, note 53.

<sup>111</sup> Department of Health, Education, and Welfare, Social and Rehabilitation Service, Information Memorandum AO-IM 72-10 (December 8, 1971). Available from the Clearinghouse, Clearinghouse No. 7361 (3 pp.).

Mr. BAKER. Mr. President, the provision of superior legal assistance to those individuals who otherwise would be unable to secure the services of a competent attorney is an essential prerequisite for assuring equal opportunity

in a nation governed by law. Whether legal assistance is provided through a legal services corporation, as is provided under S. 2686, or through another legislative vehicle, it is clear that many citizens are able to seek legal redress and otherwise obtain the rights and privileges guaranteed to them by law only through a legal services program.

Because legal assistance is an issue of such critical national importance, however, and because of the controversy generated by the various legal assistance programs operated under the supervision of the Office of Economic Opportunity, I believe that the Senate should accord the Legal Services Corporation Act, S. 2686, more intensive consideration than is evidenced by the motion to invoke cloture before the Senate today.

As my colleagues are aware, the OEO legal services program has been criticized extensively because of the alleged professional involvement of legal assistance employees in political activities, public demonstrations, labor activities such as boycotts or strikes, and other quasi-legal or nonlegal activities.

While I am aware of and reassured by the language in S. 2686 which seemingly prohibits activities of this nature on the part of Legal Service Corporation employees and grant recipients, the nature of certain extensive amendments expected to be offered to the Legal Services Corporation Act indicates that not a few of my colleagues continue to possess substantial concern regarding the possibility of Federal financing of political and quasi-political activity under the auspices of legal services.

Furthermore, the very existence of a large number of proposed amendments to S. 2686 leads me to the conclusion that additional and unlimited opportunity for debate, negotiation and compromise is desirable in order to effect a truly representative legal assistance program.

Thus, at this early point in the second session, I am not persuaded that the Senate should limit debate on S. 2686. My vote against cloture today should not be construed as predictive of opposition to S. 2686, however, for I intend to support the bill if I remain convinced of its reasonableness and its merits.

Finally, in the event that the Senate fails to invoke cloture at this time, I wish to assure my colleagues that I will continue to possess an open mind concerning the need to proceed with final consideration of legal services legislation in the not-too-distant future.

LEGAL SERVICES CORPORATION: A COMMITMENT TO EQUAL JUSTICE

Mr. MUSKIE. Mr. President, today the Senate is once again considering legislation to continue and strengthen the legal services program, and to protect its independence, by establishing a Legal Services Corporation to administer Federal legal aid to the poor. The goal of a strong, independent legal services program—and the vehicle of a Federal legal services corporation—have the widespread support of concerned citizens, the organized legal profession, Senators and Congressmen of both parties, and the President. I hope the Senate will respond to this support with prompt and en-

thusiastic approval of S. 2686, the Legal Services Corporation Act, so that it may be brought to conference with the House and enacted into law.

The Legal Services Corporation Act before us today is a product of similar legislation which Congress has been considering for the past 3 years. The Senate passed a Legal Services Corporation Act in 1971, and again in 1972. This year, supporters of legal services have worked hard to reach agreement on the specific language contained in S. 2686, and have produced legislation which has broad support, including the support of the administration.

This bill gives protection to the legal services program's strength, flexibility, and independence, while including more than adequate safeguards against potential abuses in the use of legal services funds. S. 2686 would establish a non-profit corporation with an 11-member Board of Directors, appointed by the President subject to Senate confirmation, with 3-year terms. It also would establish nine member State advisory councils appointed by each Governor from the members of each State bar.

The act in addition would establish a National Advisory Council of 15 members, representative of the bar as well as legal services constituent groups, to consult with the Corporation's Board of Directors on rulemaking and other questions. The Corporation, under the direction of a full-time President elected by the Board, would contract with local agencies to deliver legal assistance as well as back-up assistance. Legal services attorneys would be subject to the bar association's canons of ethics and code of professional responsibility, with specific restrictions on outside remunerative work and direct participation while on duty in demonstrations, picketing, boycotts, strikes, riots, or illegal acts. The Corporation and attorneys receiving its funds would also be prevented from lobbying except when requested to submit views to a legislative body.

Mr. President, the record of legal services demonstrates that the program has made an important contribution toward attaining social justice in America. By providing the poor with access to our legal system, the legal services program has given hope that justice in America will truly be available without regard to wealth—by allowing the low-income citizen as well as his more fortunate neighbor to invoke judicial protection for his rights.

We in Maine are particularly proud of the legal services program in our State—Pine Tree Legal Assistance, Inc. Since it was established 6 years ago, Pine Tree has handled more than 34,000 cases. Most of those cases have involved problems for which citizens in our system of justice have traditionally sought recourse to civil legal remedies: Consumer problems, employment problems, problems with administrative agencies, housing problems, and family problems. And the overwhelming majority of those cases—over 80 percent—have been handled, in the best legal tradition, by settlement without recourse to court litigation. And for its work Pine Tree Legal Assistance has won congratulations and support

throughout the State, documented by editorials from the Brunswick Times Record, the Portland Evening Express, and the Biddeford-Saco Journal, which I will ask to be inserted in the RECORD at the conclusion of my remarks.

But unless the legal services program is strengthened, the "access to justice" which Pine Tree provides will be jeopardized. Since 1971, the ratio of potential low-income clients to legal services attorneys in Maine has increased by almost 40 percent—from 7,600 to 1 in 1971, to 10,520 to 1 today. According to Pine Tree's legal director, Marshall Cohen, in 1973 Pine Tree provided help to fewer people than in any year since 1968—as a result of increased costs but stable resources. And without new legislation, Pine Tree's continued existence is threatened.

The Legal Services Corporation bill we are considering today would insure that the worthwhile legal services program is continued, and would provide a vehicle for granting it increased resources while protecting its independence and professional integrity. Our commitment to equality and social justice argues for giving the bill our speedy approval.

Mr. President, I ask unanimous consent that editorials in support of the Pine Tree Legal Assistance, Inc., be inserted in the RECORD.

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

[From the Brunswick (Maine) Times Record, Feb. 18, 1973]

#### SUPPORT LAWYERS FOR THE POOR

The Office of Economic Opportunity (OEO), the agency set up by the Johnson Administration to spearhead the war on poverty, has run into a lot of snags, and the plan in Washington now is to abolish it as such and transfer the worthwhile functions it does perform to other agencies. It is a decision we have, on the whole, endorsed.

There is one component of OEO, however, that has been generally acclaimed across the nation, and that is its legal branch which provides legal services to the poor.

It has, of course, also been attacked, for government agencies in particular do not appreciate seeing public funds used to launch legal assaults against some of their practices.

But, as we say, in general this particular function of OEO has met with general approval. The Nixon Administration itself has proposed the formation of a separate corporation to run the program so that it will not be so vulnerable to political pressure.

In Maine the OEO's legal branch is represented by Pine Tree Legal Assistance, headquartered in Portland and with branch offices around the state.

It is an agency we probably don't hear about as often as we should but it has accomplished some very significant things in recent years. The cases they have won not only benefit the poor, but all of us.

Some examples:

Elimination of debtor's prison in the state. Requiring that housing units meet standards of livability.

Right of legal counsel to anyone facing imprisonment, including juveniles.

Right to a fair hearing in cases involving termination of Medicaid benefits.

Right to fair hearing in cases where the state is trying to remove children from their mother's care.

Elimination of indefinite bread and water solitary confinement in state prison.

There are more accomplishments of Pine Tree Legal Assistance in the state, but those listed provide a fair sample of what the

agency has been able to accomplish in the short time it has been organized.

The agency's federal funding for the year is \$508,000, but this is not enough to meet the almost overwhelming task of meeting the legal needs of the state's poor.

Accordingly, the agency has launched an annual fund drive to supplement this federal funding, and we were pleased to see in the news media that a major bank is one of the first organizations in the state to make a contribution.

We hope more contributions, corporate and private, will be forthcoming, for this is an agency that genuinely deserves our support.

Contributions, which are tax deductible, may be made to Pine Tree Legal Assistance, 565 Congress St., Portland.

[From the Portland (Maine), Evening Express, Mar. 1, 1973]

#### KEEP PINE TREE LEGAL ALIVE

One of the projects authorized by the White House, in its program of turning the clock back to the good old days, is dismantling of the legal assistance system organized by President Nixon's predecessor. This will cut off funds for 2,200 lawyers now employed to aid the poor in securing rights hitherto denied them, so that if the program is continued it will have to be funded by other means.

By a coincidence, although its own federal funds will be cut off before the end of the year, Pine Tree Legal Assistance, Inc., has launched a campaign to raise hopefully, \$100,000 so that it can meet the demands now put upon it. Mr. Marshall Cohen, administrative director of the project, says "we simply can't provide the same level of services," and we are pleased to find the Casco Bank, the Maine Bar Association, and a number of other organizations and individuals rallying to Pine Tree's side.

These attorneys for the poor are handling over 5,000 cases a year, nearly all of which are individual service cases. Poor people, to a larger extent than other elements of the population, have little knowledge of their legal rights. Occasionally Pine Tree Legal Assistance initiates class action suits, and it is this type of litigation that annoys the people around the President.

We hope the fund drive succeeds, all the more so since Pine Tree will run out of federal money this fall, if not sooner. The bar itself now recognizes its duty to help those less fortunately situated, and it finds many young lawyers turning from corporate law to the type of personal assistance to the underprivileged that renders Pine Tree Legal Assistance so valuable here in Maine. Even so, they cannot live without financial help.

[From the Biddeford-Saco (Maine) Journal, Feb. 19, 1973]

#### IN OUR OPINION PINE TREE LEGAL IS WORTH SUPPORTING

One worthwhile agency that will be hurt with the dismantling of the Office of Economic Opportunity (OEO) will be Maine's Pine Tree Legal Assistance program.

Since its inception in Maine in 1967 Pine Tree Legal has handled close to 25,000 legal matters for the state's estimated 200,000 poor people.

A few of the cases made dramatic headlines like the breakthrough in getting the State Health and Welfare Department to let foster children visit their parents.

However, Pine Tree's list of accomplishments goes on for pages. Some examples: elimination of debtor's prison, a consumer protection organization, the right to fair hearing if the state tries to remove children from a mother; the right of an attorney for anyone facing imprisonment including juveniles, the requirement that housing units meet standards of livability, and the right to fair hearing in cases involving termination of Medicaid benefits.

Many of its accomplishments involve class actions—making changes that affect a large number of people. But Pine Tree also handles many individual cases, too. An example: a woman was fired from her job because she refused to work on Sunday which is a religious holiday to her. Pine Tree got her job back with retroactive pay.

But Pine Tree's federal grant has been frozen at the same level for the past two years, and prospects for additional funding are dim.

So we support Pine Tree's efforts in starting its first fund-raising campaign, including an application for United Fund support and participation in federal revenue sharing.

#### LEGAL SERVICES PROVEN EFFECTIVE IN KANSAS

Mr. PEARSON. Mr. President, the Legal Services Corporation Act requires that we make a policy decision about the nature of legal assistance provided to low-income individuals in the United States. Even though this bill is controversial, no one has argued that low-income individuals are not entitled to legal assistance when they are incapable of procuring sufficient private counsel. Rather, the decision before us involves the method of providing the necessary assistance. In this framework, I suggest that the real issue is whether the poor have the right to the full range of legal protections capable of being offered by an attorney operating within the ethical boundaries of his profession. Conversely, we must determine whether an attorney will be limited in his actions simply because he is employed by a corporation which is publicly financed.

These are not easy questions. The need to account for public funds is a vitally important consideration. There have, undoubtedly, been abuses and indiscretions in the existing program. I submit, however, that the bill before us contains adequate safeguards and also provides a full and equal range of legal representation to those who must rely upon Government assistance to gain access to the courts.

Mr. President, in 1971 I was pleased to cosponsor the bill introduced by the Senator from Minnesota (Mr. MONDALE) which would have established an independent legal services corporation. The administration proposed a similar measure in May 1973. A review of the objections to the present bill coupled with the accomplishments of Kansas legal service centers, compels my continued support of an independent legal service corporation as an effective and advantageous means of providing legal assistance to the poor.

#### EFFICIENCY

One of the major objections to the existing program has been its inability to efficiently serve low-income clients. Some argue that commitments to popular social causes have detracted from this goal. Others cite inadequate reporting and statistical recordkeeping by local agencies. However, available statistics do not support the contention that a disproportionate share of the time of legal service attorneys is spent on law reform or social action. The March 1973, GAO report stated that attorneys in seven programs surveyed were fully occupied with meeting individual day-to-day needs and were unable to devote more time to economic development and law reform.

Ninety-five to 98 percent of the California rural legal assistance program total caseload was of the individual day-to-day nature. This program has often been cited as the most law reform oriented program in the country.

Nevertheless, the charges are not without some substance. Provisions in S. 2686 address this problem and provide new directions in efficiency. One section grants the corporation the authority to require any necessary reports from grantees regarding their actions and also mandates full recordkeeping with respect to the use of funds provided by the grants. It is also interesting to note that the bill, by permitting the use of class action suits where necessary, may well serve to facilitate the efficient administration of justice. Indeed, the class action suit has been permitted by courts as a measure of reducing the multitude of individual grievances which might arise around a single issue. By restricting class action suits we might well encourage additional backlogs in our courts and defeat the very reforms which have been encouraged by the judiciary.

Nowhere is the potential efficiency of a staffed legal services center more obvious than in the operation of Kansas legal aid societies. In the past year the Wichita Legal Aid Society, an OEO grantee, represented 4,321 individuals—roughly 1 attorney for each 800 clients. OEO has stated that the national case load average is approximately 1 attorney per 500 clients. This efficient operation has been made possible by the close working relationship between the Legal Aid Society and the Wichita Bar Association. The society has often made a practice of utilizing private attorneys in important cases.

I am also proud of the comparisons between the three Kansas programs and those in other cities of similar size. One city in region VII larger than Wichita received a grant of \$237,000, and served 3,742 clients. Wichita, with a population of 250,000, served its 4,321 clients with a grant of \$127,000. Similarly, the Topeka program served 1,959 clients with an OEO grant of \$53,000. Another city in region VII with a larger population served fewer clients, 1,249, with a larger budget, \$64,000. The Kansas City, Kansas office also compares favorably. The commitment of the attorneys in these offices is obvious and praiseworthy.

The programs in these cities can serve as a model of the potential for efficient legal services when a staffed center cooperates with local bar associations.

#### INDEPENDENCE

Throughout the history of the legal services program a primary concern has been the independence of attorneys serving low-income families. Independence, means not only freedom from outside political interference, but also freedom to use the full range of an attorney's tools.

The bill we are considering not only protects this freedom by creating an independent corporation, but also by allowing the attorney to utilize the legitimate means at his disposal in behalf of his client. Concomitantly, the bill provides protections to insure that an attorney's actions do not violate the public

trust which has been placed in him. He must fully abide by the canon of ethics of the disciplinary rules of the code of professional responsibility, whichever applies in his State. This means that he "shall not permit a person who recommends, employs, or pays him to render legal services for another to direct his personal judgment." It also means that he "must always be free to exercise his professional judgment without regard to the interest or motives of a third person." It would be anomalous for the Government to deny the lawyer adherence to these guidelines merely because the Government itself is the employer. The bill also guards against excessive political activism by prohibiting the corporation's employees from engaging in or encouraging others to demonstrate, picket, boycott, or strike. Finally, it specifically limits legislative representation to those occasions in which action is necessary for the provision of legal advice to a client or to responses to requests from members of the legislature.

When balancing the bill before us against the potential harms of restrictive regulations, I believe that we must come down on the side of full independence for the attorney. Surely the attorney who seeks to challenge a law which is unfair to his client or who wishes to enforce an existing law is not upsetting our legal system. Rather he is doing precisely the type of thing which that system contemplates and permits.

Kansas legal service programs provide us with an interesting focal point for this kind of action. The three local centers which handle thousands of cases a year have engaged in a total of approximately 14 class action suits in 4 years of operation. The attorneys firmly believe that this type of suit is necessary. Its limited use also indicates that the privilege has not been abused. The director of one program has indicated that he has considerable reservations about the class action suit as an effective tool for serving his clients. It is likely that other attorneys who find that excessive use of class action suits are not necessarily effective may well restrict their use in the future.

The experience in Kansas indicates that independence does not necessarily connote conflict with the law or established institutions. The reports I have received uniformly demonstrate that close cooperation between legal aid societies, which are also recipients of legal service grants, and private attorneys has been a highly desirable means of providing a full range of legal support for our citizens. Finally, not one of the three Kansas offices reports lobbying before the State legislature without an express invitation from a member.

#### COVERAGE

Another major interest which must be considered is the coverage of any legal services program. The measure before us specifies that the legislation is designed to provide equal access to the judicial system of the United States and high quality legal assistance to those who cannot afford adequate counsel. It does not speak of the espousal of social causes but of service to individual clients.

While this service should be extended to people based upon income distribution, I think we would be remiss if we did not emphasize the need to extend coverage to all geographic areas. The poor are not confined to metropolitan cities. They are in every rural county in this Nation and, as such, must also be remembered when we are enacting this legislation.

I believe that the bill before us adequately insures that only the low-income individuals will benefit from Federal assistance. The mandate of section 1007(a) (2) is explicit and proposes a criterion which states that aid should be given to those "financially unable to afford legal assistance." S. 2686 also proposes a broad range of eligibility for grantees of Corporation funds. I would also hope that any administration of the program takes full cognizance of the committee language which emphasizes that the needs for adequate local assistance exist both in metropolitan and rural areas.

Again I think it would be helpful to look to Kansas for examples of effective coverage in the existing program. The Topeka Legal Aid Society in the past year worked with a total of 2,500 low-income individuals out of a total poverty population of 15,000. This is particularly significant in light of the limited level of funding provided by OEO.

The grantee received \$53,000 in the past year and, in addition to serving individual clients also conducted counseling for a variety of low-income groups. While the Kansas program exists in the three major metropolitan areas in the State, I am hopeful that this can be expanded to include rural areas in the future.

#### CONCLUSION

Mr. President, the time has come for the Federal Government to make a commitment to the adequate provision of legal services for low-income individuals. In so doing we must not create a system which handicaps attorneys by restrictive rules and limitations on the range of tools which they can employ. Such action would provide second-class legal representation. I do not believe that action by attorneys to enforce laws is undesirable, nor do I believe that public funds are misspent when an attorney challenges a law which unreasonably discriminates against his client. While we cannot support social protests, we can and must promote equal protection under the law. The Legal Services Corporation Act makes strides in this direction and deserves our support.

Mr. BROOKE. Mr. President, this issue has been before Congress in various forms for 8 years. We have debated and discussed the merits of a Legal Services Corporation for 3 years. In January of 1971, the President's Commission on Executive Organization—the Ash report—called for a public corporation to provide legal services for America's poor.

This bill is similar to two separate bills passed by the Congress within the last 2 years. All of the issues raised now were raised then. The issues were debated and considered at those times.

Let the Corporation begin. Give those

unable to afford counsel the chance to receive legal services from a competent professional. Our system of justice must be open to rich and poor alike.

There can be no further delay. Many of the amendments that have been introduced are repetitious. They add nothing to what we know now: The provision of legal services to America's poor is necessary and can best be accomplished by a Legal Services Corporation as proposed by the committee.

The White House has urged prompt approval of this bill in its current form. The committee report was unanimous.

Let us move on this bill. The President wants a Legal Services Corporation bill. The Senate wants a Legal Services Corporation bill. The American people want and need a Legal Services Corporation bill. It is time to act.

Mr. ROBERT C. BYRD. Mr. President, I yield myself such time as I may require from the 1 hour allotted to me under the cloture rule.

The PRESIDING OFFICER. The Senator from West Virginia may proceed.

Mr. ROBERT C. BYRD. Mr. President, discussion has been had with representatives on all sides on the question pending before the Senate. I think that an agreement has been reached tentatively which would permit the Senate to work its will on the Senate bill tomorrow without any additional rollcall votes today, with the Senate coming in at 10 a.m. tomorrow and beginning to vote perhaps by 11 a.m. on amendments, and reaching a final vote tomorrow evening on the Senate bill.

This agreement, of course, does not envision a substitution of the language in the Senate bill for the language of the House bill. That would be matter that would still confront the Senate after action is completed on the Senate bill. That matter would confront the Senate in any event, however, whether we reach an agreement today or not. If we were to go into the middle of next week to complete action on the Senate bill, we would still have the problem of substituting the language of the Senate bill for that in the House bill, and that means that the opponents of the legislation, acting within their rights, could force the Senate down the cloture route again at that time on the House bill.

So the agreement entered into would not take away from them any of their rights, nor would it convey any additional rights to those who support the legislation. The only thing it would do would be to expedite final action on the Senate bill by tomorrow evening. Then, the Senate, on Friday, if Senators are agreeable, could discuss the Genocide Convention and next week come back to the House version of the legal services bill.

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

Mr. ROBERT C. BYRD. I yield.

Mr. JAVITS. First, Members may have amendments, and the cloture route is not adapted to our usual consent rule on amendments, but it is understood among all active parties that we will do our utmost to accommodate Senators with

amendments, so the arguments may be made pro and con and votes may be had on each amendment.

The second point is, it must be understood we will move, within the limited time, to substitute—if we should decide to do that; we may not decide to go that route, but if we do, we will move to substitute—the Senate text in the House bill.

If the Senator will allow me, I would like to make a parliamentary inquiry.

Mr. President, if that motion is made, and that motion is adopted, is it amendable unless there are amendments on the desk?

The PRESIDING OFFICER. If it is proposing to strike out all after the enacting clause in the House bill and substitute the Senate language, that substitute would be open to amendment.

Mr. JAVITS. But when adopted, that would be the end of it?

The PRESIDING OFFICER. When adopted, no further amendments would be in order.

Mr. JAVITS. And a subsequent cloture motion would apply to the whole substitute. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. JAVITS. And only amendments to that substitute on the desk would be in order. Is that correct?

The PRESIDING OFFICER. That had been submitted between the time the cloture motion had been filed and that time.

Mr. JAVITS. I thank my colleague.

I have no objection.

Mr. ROBERT C. BYRD. Mr. President, by way of further explanation, as I have indicated already, the cloture rule would still be followed on the Senate bill, even though we agree upon a time certain for a vote on tomorrow, insofar as the requirement is concerned that all amendments at the desk be germane and that they meet the requirement of having been read, which requirement has already been met by unanimous consent.

Mr. ALLEN. Mr. President, will the Senator yield in order that I might make an inquiry?

Mr. ROBERT C. BYRD. I yield.

Mr. ALLEN. Mr. President, a parliamentary inquiry. As long as cloture has been invoked on S. 2686, it would not be in order, except by unanimous consent, to bring up the House bill dealing with the same subject. Would it?

The PRESIDING OFFICER. Not under the cloture motion.

Mr. ALLEN. In other words, under the cloture rule, cloture having been adopted, S. 2686 remains the unfinished business until disposed of. So it would either have to be killed or passed before the Senate could turn to the House bill, except by unanimous consent. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. ALLEN. I thank the Senator.

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

Mr. ROBERT C. BYRD. I yield.

Mr. CRANSTON. What is the plan on getting up the House version once we go through the process of passing the Senate version?

Mr. ROBERT C. BYRD. The cloture which has now been invoked applies only to the Senate bill. Once the Senate bill has passed—if it is passed—the cloture which has been invoked thereon will have run its course. At that point Senators may move to strike all after the enacting clause of the Senate bill and substitute the House bill, but at that point cloture is off. Cloture will have worked its way once the Senate bill is passed. From that point on, the opponents of the legislation have a clear way, within their rights under the rule, to continue argument without limit against the House bill. The Senate may wish again to attempt cloture on the House bill, but the cloture which has been invoked on the Senate bill does not go to the House bill. It goes only to the Senate bill and to the final disposition of that bill one way or the other, up or down.

Mr. President, am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. NELSON. Mr. President, if the Senator will yield for a correction, he said strike out all after the enacting clause of the Senate bill and substitute the House bill. I think he meant to strike out the House language and insert the Senate language.

Mr. ROBERT C. BYRD. Yes, of course. I thank the Senator for calling my error to my attention.

Mr. CRANSTON. Mr. President, is the motion to bring up the House bill a privileged motion?

Mr. ROBERT C. BYRD. Not until after action has been completed on the Senate bill, except by unanimous consent.

Mr. CRANSTON. And after that—

Mr. ROBERT C. BYRD. After that, the motion would be in order.

Mr. CRANSTON. After 9 o'clock tomorrow evening, assuming the Senate bill is passed, a motion could be made to bring up the House bill; is that correct?

Mr. ROBERT C. BYRD. That motion would be in order, but it would also be debatable.

Mr. CRANSTON. Yes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a vote occur on the final passage of the pending legal services bill—with paragraph 3 of rule 12 being waived—at no later than the hour of 9 o'clock tomorrow evening, with the understanding that any motion or amendment—that is, any motion other than a motion which would prevent up or down action on the Senate bill—which may be pending at that time be voted on prior to the vote on the passage of the bill.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? None being heard, it is so ordered.

Does the Senator expect nothing other than divisions relative to debate in the cloture motion to be sustained? This one changes the time for debate.

Mr. ROBERT C. BYRD. This agreement only sets a time limitation for the final passage of the Senate bill. It does not otherwise suspend the operations of the cloture rule. I can think of nothing in the cloture rule that would conflict with the setting of an hour for final disposition. Senators will each have 1

hour, under the rule, except that final action must occur no later than 9 p.m. tomorrow.

The PRESIDING OFFICER. Each Senator is entitled to 1 hour. A Senator is entitled to bring up his amendment.

Mr. ROBERT C. BYRD. Exactly.

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

Mr. ROBERT C. BYRD. I yield.

Mr. NELSON. A Senator would not be entitled to use the hour of another Senator, would he?

Mr. ROBERT C. BYRD. That is correct. Each Senator would be entitled to use his own hour; but to be yielded another Senator's time would require unanimous consent.

Only qualified amendments already at the desk would be in order.

So, Mr. President, I believe we all have a clear understanding as to what the agreement comprehends. I thank all Senators.

With the agreement now having been entered into, there will be no more roll-call votes today. We will come in at 10 o'clock tomorrow morning. Also, there will be no votes tomorrow prior to 11 a.m.

Further—and I should like to have the attention of the Chair—I should like to make sure that this is clear: If we reach the hour of 9 p.m. tomorrow, and an amendment or a motion that is in order—in other words, a motion to table the bill would not be in order under this agreement—but if a motion or an amendment is pending at the hour of 9 p.m., there would first be a vote on that matter or those matters then pending, and the vote on final passage would immediately follow.

The PRESIDING OFFICER. Without objection, that is the understanding.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ROBERT C. BYRD. Mr. President, I yield myself 1 minute after order is restored in the Senate.

The PRESIDING OFFICER. There will be order in the Senate.

The Senator from West Virginia is recognized.

#### ORDER FOR ADJOURNMENT TO 10 A.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate adjourns tonight, it stand in adjournment until the hour of 10 a.m. tomorrow.

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

Mr. ROBERT C. BYRD. Mr. President, I believe that the previous order was for the convening of the Senate at 12 o'clock tomorrow.

The PRESIDING OFFICER. The Senator from West Virginia is correct.

Mr. ROBERT C. BYRD. Mr. President, under the order entered yesterday, the

Senate will recess at some point this afternoon until the hour of 8:30 p.m. tonight. After the President delivers his state of the Union message, the Senate will stand adjourned until tomorrow.

I am merely arranging the time now for convening tomorrow.

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. I thank the Chair.

#### ORDER FOR RECOGNITION OF SENATORS GRIFFIN AND ROBERT C. BYRD AND FOR THE CONSIDERATION OF THE LEGAL SERVICES BILL TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, after the two leaders or their designees have taken recognized on tomorrow under the standing order, the minority whip, the Senator from Michigan (Mr. GRIFFIN), and the majority whip, the Senator from West Virginia (Mr. ROBERT C. BYRD), each be recognized for not to exceed 10 minutes and in that order; after which the Senate resume the consideration of the unfinished business, the legal services bill.

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

#### ORDER THAT THERE BE NO VOTES PRIOR TO 11 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be no rollcall votes on tomorrow prior to the hour of 11 a.m.

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

The 1 minute of the Senator has expired.

Mr. ROBERT C. BYRD. Mr. President, I yield myself 1 additional minute.

#### VITIATION OF SENATE ACTION ON S. 921

Mr. ROBERT C. BYRD. Mr. President, at the request of the distinguished Senator from Washington (Mr. JACKSON), I ask unanimous consent that the action taken by the Senate yesterday on S. 921, to amend the Wild and Scenic Rivers Act, whereby the Senate receded from its amendment to the House amendment, be vitiated.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

#### REFERRAL OF NOMINATION OF JAMES M. DAY TO BE ADMINISTRATOR OF THE MINING ENFORCEMENT AND SAFETY ADMINISTRATION

Mr. ROBERT C. BYRD. Mr. President, on behalf of the distinguished Senator from Washington (Mr. JACKSON), I ask unanimous consent that the Committee on Interior and Insular Affairs be discharged from the further consideration of the nomination of James M. Day, of Virginia, to be Administrator of the Mining Enforcement and Safety Administration, and that the nomination be

referred to the Committee on Labor and Public Welfare, since that committee has the preponderance of jurisdiction over matters relating to mining safety.

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

Mr. MANSFIELD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow is as follows:

The Senate will convene at the hour of 10 a.m. After the two leaders or their designees have been recognized under the standing order, the minority and majority whips will each be recognized for not to exceed 10 minutes and in that order; after which the Senate will resume the consideration of the unfinished business, the legal services bill.

Yea and nay votes will occur on amendments thereto throughout the day. A final vote will occur on the bill not later than the hour of 9 p.m. tomorrow.

It is the understanding, Mr. President, that after the passage of the bill or whatever the disposition of the bill is on tomorrow, the Senate will resume consideration of the Genocide Convention, on Friday, and that if the House bill deal-

ing with legal services has not been disposed of on tomorrow, the Senate will likely take up the House bill at some point next week.

#### RECESS UNTIL 8:30 P.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move in accordance with the previous order that the Senate stand in recess until the hour of 8:30 p.m. today, at which time Senators will assemble to go in a body to the Hall of the House of Representatives where they will receive the President's state of the Union address, on the completion of which the Senate will stand in adjournment until the hour of 10 a.m. tomorrow.

The motion was agreed to; and, at 4:45 p.m., the Senate took a recess until 8:30 p.m.; at which time the Senate reassembled when called to order by the Presiding Officer (Mr. CLARK).

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed in a body to the Hall of the House of Representatives to hear the President deliver his state of the Union address, after which, under previous order, the Senate stands adjourned until the hour of 10 a.m. tomorrow.

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

#### JOINT SESSION OF THE TWO HOUSES—MESSAGE OF THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 93-206)

The PRESIDING OFFICER. Under the previous order, the Senate will now pro-

ceed to the Hall of the House of Representatives for the joint session.

Thereupon (at 8:40 p.m.), the Senate preceded by the Assistant Secretary of the Senate (Darrell St. Claire), the Sergeant at Arms (William H. Wannall), and the Vice President, proceeded to the Hall of the House of Representatives to hear the address by the President of the United States on the state of the Union.

(The address by the President of the United States, this day delivered by him to the joint session of the two Houses of Congress, appears in the proceedings of the House of Representatives in today's RECORD.)

#### ADJOURNMENT

At the conclusion of the joint session of the two Houses, and in accordance with the order previously entered, at 9:57 p.m., the Senate adjourned until tomorrow, January 31, 1974, at 10 a.m.

#### NOMINATIONS

Executive nominations received by the Senate, January 30, 1974:

##### DEPARTMENT OF STATE

L. Douglas Heck, of the District of Columbia, a Foreign Service Officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Niger.

##### DEPARTMENT OF JUSTICE

Earl J. Silbert, of the District of Columbia, to be U.S. attorney for the District of Columbia vice Harold H. Titus, Jr., resigned.

## HOUSE OF REPRESENTATIVES—Wednesday, January 30, 1974

The House met at 12 o'clock noon.

Rev. Wladimir Borowsky, executive secretary of the Ukrainian Evangelical Alliance of North America, offered the following prayer:

Our Heavenly Father, we thank Thee for this land of the United States of America, which has always been a refuge for those who have been persecuted. We realize that true religious and political freedom for man and nations has not yet been realized everywhere. Among those still deprived of it are the Ukrainians. They need our understanding, prayers, and help. Our Lord, we beseech Thee to be their strength and refuge. Help them to regain their freedom. Bless our President, the members of his Cabinet, and the Members of the Senate and House here congregated. Help them to be good servants of our people and mankind.

In the name of Jesus, our Lord, hear us. 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.

#### ARAMCO AND THE LOGAN ACT

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

Mr. KOCH. Mr. Speaker, Senator Jackson's Permanent Investigations Subcommittee now investigating the oil companies has adduced evidence which shows that Aramco, a U.S. corporation, at the direction of King Faisal of Saudi Arabia, withheld oil from our armed services and in particular the U.S. fleet in the Mediterranean. The oil was in Aramco's possession—in storage outside of Saudi Arabia. According to the subcommittee, Aramco's action occurred at a very sensitive time: during the recent war between Israel and the Arab States when our own Defense Department was concerned about the worldwide ramifications of the Middle East hostilities and our own defenses were on alert. Pivotal to our own national security interests was the Mediterranean fleet.

Others have said, and I concur, that at the very least this was an immoral act, detrimental to the vital interests of the United States. But I believe that it is more than that. I believe that Aramco, which is owned by Exxon, Mobil, Standard of California, and Texaco, violated

among other laws of the United States, the Logan Act by having discussions with a foreign power and executing the instructions of that foreign power, in this case Saudi Arabia, on matters relating to U.S. foreign policy. I have asked the Department of Justice to advise me as to what action it is undertaking in this matter. American corporations, large as they may be and powerful as they are, must not be permitted to violate with impunity the laws that govern all of us.

#### REV. WLADIMIR BOROWSKY

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

Mr. BLACKBURN. Mr. Speaker, it is my very great pleasure to have brought to the House today for the opening prayer the Reverend Wladimir Borowsky. Reverend Borowsky is a native of the Ukraine, having been born there.

Mr. Speaker, I am going to insert in the RECORD a biography of Reverend Borowsky for the purpose of advising my colleagues in more detail of his full history and background. The biography of Reverend Borowsky tells vividly of the brutality and lack of human rights