said. "Higher productivity should not be the goal, although it may follow."

The conference, now going at the New York Hilton Hotel, is the second of three such meetings sponsored by Urban Research Corporation. These meetings reflect a rising interest in the issue of worker alienation among industry, Government and the academic authority.

This interest has been awakened in the last year by the rising incidence of such apparent signs of worker dissatisfaction as absenteeism, inplant crime, drug abuse, vandalism, declining productivity—or hourly output per worker—and indications of rebellion against traditional management authority.

However, a new survey presented at the conference Sunday night by George Gallup, Jr,. president of the American Institute of Public Opinion, indicated, he said, "that worker morale in the United States is not on the verge of collapse—that the typical American in both white-collar and blue-collar jobs is, by and large, content."

In the Gallup Poll of 1,520 adults conducted in late January, 77 per cent responded that they were satisfied with the work they do and 48 per cent of the sample said they were very satisfied. Only 11 per cent responded that they were dissatisfied and 12 per cent had no opinion.

But Mr. Gallup pointed out that the number of those satisfied with their work had declined by 10 per cent since the same question was asked in April, 1960. What is more, he reported, young workers under 30 years of age were substantially more dissatified with their jobs than others in the survey.

"AN ENTRENCHED SYSTEM"

Mr. Gallup asserted the results indicated "a greater degree of discontent today then we have found for a number of years—particularly among young persons. I think it is safe to say that young workers dissatisfied with their jobs pose a growing threat to United States industrial output."

Senator Percy placed much of the blame for this dissatisfaction on "an entrenched, authoritarian industrial system that has taken decades and decades to build."

"There is a strong feeling," he asserted, "that management and labor institutions have sometimes grown too rigid. Too often they have become blind to the broader needs of our society."

The Senator from Illinois contended that new forces was changing every American institution, from marriage and the family to schools and churches. But these changes, he said, have stopped at the plant gate and "the American workplace has stubbornly remained virtually the last redoubt of yesterday's values."

But experiments now going on, Mr. Percy said, suggest that there already are techniques available to solve the problems of worker dissatisfaction.

Some of these programs and experiments were described at the conference by experts of the companies involved in them. They included the Chase Manhattan Bank, Corning Glass, Donnelly Mirrors, the General Motors Corporation, the General Foods Corporation, the General Electric Company and others.

Donnelly Mirrors, which makes automobile mirrors, not only has divided its work force into teams with decision-making powers, but also shares productivity gains and guarantees that its workers will not be unemployed because of technology.

A NATIONAL SECRECY ACT?

Mr. HART. Mr. President, last evening my distinguished colleague from Maine, Senator MUSKIE, delivered a speech which raises grave questions about a recent legislative proposal of the administration. Buried deep within S. 1400, the revision of the criminal code, are proposed new criminal code provisions which, taken together, can only be described as a "national secrecy act." I commend Senator MUSKIE's speech to my colleagues and hope that the points it raises will be carefully considered in our deliberation over the criminal code revision.

Mr. President, I ask unanimous consent that Senator MUSKIE's speech, a background memorandum, and the relevant provisions of S. 1400 be printed in the RECORD.

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

REMARKS BY SENATOR EDMUND S. MUSKIE, FROSTBURG STATE COLLEGE, FROSTBURG, MD., APRIL 1, 1973

This week in Vietnam America reached the end of that famous tunnel where the light of peace flickered for eight long years. This week the last American troops flew out of Vietnam and the last officially recorded American prisoners of war were released to freedom.

This week should have been a joyous and a healing one. It should have signalled a new period in American life, a new era of good feelings such as the one that followed the War of 1812, a new time of reconstruction such as the one that should have followed our own Civil War, a new and constructive engagement with the tasks of restoring unity and advancing the quality of American life.

It was at such a time when Abraham Lincoln, over a century ago, uttered these words: "With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations."

It is such a summons to greatness and unity which Americans want to hear.

But what did they hear?

It was the week that an American official in Saigon told a reporter: "The first thing that needs to be said about the ceasefire is that the firing hasn't ceased."

It was the week that an American Secretary of Defense in Washington defended the continued daily bombing by our B–52s in Cambodia as necessary "to support our ally there against the continuing efforts to disrupt communications, to isolate Phnom Penh."

It was the week that the President in the White House vetoed legislation to provide vocational rehabilitation to Americans who are crippled, blind or otherwise disabled.

It was also the week when the President asked the Nation to "put aside those honest differences about the war which have divided us" and then sowed new division in America by claiming for himself a monopoly of wisdom about inflation, taxation and responsible government spending.

You can say, perhaps, that it was a week of politics as usual. I would say it was a week of opportunities lost. And I regard that loss as a bad omen. If we could not, in this week of joy, begin, as Abraham Lincoln wanted, "to bind up the Nation's wounds," when will we begin?

Nine years ago, Lyndon Johnson told the Congress in his first state of the Union message: "We seek to establish a harmony between man and society which will allow each of us to enlarge the meaning of his life and all of us to elevate the quality of our civilization."

President Johnson worked to create harmony through shared purpose, yet his efforts fell short. The waste of war killed his hopes.

Now that the war is over, as far as America is concerned, we should be resuming the search for harmony and be moving with new energy and purpose against the poverty, ignorance and disease Lyndon Johnson identified as the common enemies of mankind.

But instead, I fear, we are tangled still in angry and important disputes about presidential and congressional power, about spending and taxation, about social needs and governmental indifference, about the whole structure of our Federal system and about the integrity of our political process.

And to those disputes we must now add a new one brought on by this administration's latest attempt to stifle the flow of official information to the public. The attempt is hidden deep in a lengthy and complex legislative proposal introduced in the Congress this week as a revision of the federal criminal code. Five sections of that proposal, taken together, would establish in peacetime a system of government censorship that a democracy could hardly tolerate in a time of war.

The official secrets act being proposed would punish government officials who disclosed almost any kind of defense and foreign policy information, whether or not its disclosure would endanger national security.

It would punish newsmen who received such information unless they promptly reported the disclosure and returned the material to a government official.

It would punish not only reporters but all responsible officials of their publications or broadcasting companies who participated in making the unauthorized information public.

It would punish government employees who knew of a colleague's unauthorized disclosure and failed to report their co-worker's action.

The law's penalties—from three to seven years in jail, from $25,000 to $50,000 in fines—would be imposed on actions which are not now considered crimes, which are, instead, the applauded work of investigative journalists.

For instance, part of the law would make any unauthorized disclosure of what is called classified information a crime.

And the law would explicitly prevent officials who disclosed such information from defending their action by proving that the information was improperly classified.

Well, what is classified information? According to the administration proposal, it is "any information, regardless of its origin, which is marked or designated pursuant to the provisions of a statute or executive order or a regulation or rule thereunder, as information requiring a specific degree of protection against unauthorized disclosure for reasons of national security."

On its surface, that language sounds reasonable, it does what existing law already does by insuring secrecy of data about our defense codes, about our electronic surveillance techniques, about military installations and weapons, about our atomic secrets and about plans and operations which might aid our enemies. All that information is already kept secret by laws which punish its disclosure with intent to damage America and its security.

But this new law would go farther. It would prohibit and penalize disclosure of any classified information, regardless of whether or not it damaged security.

Classified information, you should know, is any document or record or other material which any one of over 20,000 government officials might have decided—for reasons they need never explain—should be kept secret? It is any piece of paper marked top secret, secret, or confidential, because someone, sometime, supposedly decided that its dis-

closure could prejudice the defense interests of the nation.

In practice, however, classified information is material which some individual in the government decides he does not want made public. He could make that decision to hide incompetence. Many have.

He could be trying to conceal waste. Many have.

He could even be attempting to camouflage corrupt behavior and improper influence. Many have.

He could simply be covering up facts which might embarrass him or his bosses. Many have.

Classified information is the 20 million documents the pentagon's own most experienced security officer has estimated to be in defense department files. Classified information is the 26-year backlog of foreign policy records in the state department archives.

And most of that information is improperly classified—not out of evil motives, but out of a mistaken interpretation by conscientious employees of what security actually requires. They do not limit the use of secrecy stamps just to information which would really affect our national defense, if disclosed. They often use them simply to keep material out of the newspapers—to make it a little harder, perhaps, for a foreign nation to get the information, whether the information is defense-related or not.

Let me give you a few examples.

Around 1960, a sign in front of a monkey cage in the national zoo explained that the monkey on display was a research animal who had traveled into space in American rockets. But at the same time the pentagon was classifying all information that showed we were using monkeys in space.

The reason given for trying to keep the information secret was someone's concern that it might damage our relationships with India where some religious sects worship monkeys.

Another example deals with India. Over a year ago when India and Pakistan were at war over the independence of Bangladesh, the Nixon administration insisted in public that it was not interfering in the conflict, that it was trying to be neutral. But Jack Anderson revealed classified information that proved that President Nixon had instructed Dr. Kissinger and others to "tilt" toward Pakistan. That information was being kept secret to conceal a lie.

India and Pakistan knew the truth. Only Americans were being deceived.

Again, back before the Korean war, the Navy Chief of Staff sent a memorandum to his colleagues complaining that too much paper was being circulated marked top secret. His memo itself was marked top secret.

In 1970, the Rand Corporation produced a document for the Defense Department listing the unclassified electronic equipment on U.S. aircraft. Nothing in the document was secret or even drew on any secret data, but the Air Force classified the listing as confidential anyway.

Similarly, a laboratory at M.I.T. prepared an assembly manual last February for a gyroscopic device used in missiles. Again the Air Force classified the manual and put the following words on its front page: "Each section of this volume is in itself unclassified. To protect the compilation of information contained in the complete volume, the complete volume is confidential."

And then in 1969 it was disclosed that someone in the Navy Department was clipping newspaper articles that contained facts that were embarrassing to the Navy, pasting those articles onto sheets of paper and stamping the paper secret. It turned out that such a practice was common throughout the Defense Department.

If newspaper articles can be stamped secret as a matter of course, what else is systematically being hidden from the public? Should this administration proposal become law, you and I will never know the answer to that question.

The examples I have given should indicate to you the folly of any blanket prohibition against the disclosure of classified information, as long as our system of classification is so erratic, arbitrary and unmanageable.

Not only would the proposed law perpetuate the widespread abuses of secrecy I have listed, it would enforce public ignorance by making criminals out of honest men and women who put the public interest above bureaucratic secrecy. Indeed, the administration's proposed secrecy law goes far beyond protection of what might be legitimate secrets as determined by a workable classification system, should one be developed.

Additionally, it would punish the unauthorized disclosure of "information relating to the national defense . . . regardless of its origin" which relates, among other things, to "the conduct of foreign relations affecting the national defense." That broad definition could bar intelligent public scrutiny of America's most significant foreign policy decisions.

What could the enactment of such a sweeping gag rule mean to the flow of information to the public?

For one thing, the proposed law would mean that Robert Kennedy, where he alive and writing now, would risk prosecution for publishing in his book, "Thirteen Days," the secret cable Nikita Krushchev sent the White House during the Cuba missile crisis of October 1962.

It would mean that Seymour Hersh of the New York Times could not write, as he did last year, about the still-classified Peers Report—the Army's own investigation of the My Lai Massacre and the responsibility of Army officers for concealing the facts of that event.

It would mean that knowledgeable and conscientious government employees could be brought to trial for telling newsmen about waste in defense contracts, or about fraud in the management of the military P.X. system.

It could mean denying the public the information necessary to understand how cost estimates on 47 weapons systems rose by over $2 billion between March 31 and June 30 last year.

Thus, the administration's official secrets act would create staggering penalties for disclosure of information even when the information is totally misclassified or classified only to prevent public knowledge of waste, error, dishonesty or corruption.

We already have the criminal sanctions we need against disclosure of true defense secrets. To expand the coverage of those penalties can only stifle the flow of important but not injurious information to the press, and therefore, to the public.

With the criminal penalties already in the law and with the proven record of responsible behavior by the great majority of government employees and newsmen, the only purpose behind further expansion of the secrecy laws would be the effort to silence dissent within the government and hide incompetence and misbehavior.

New penalities will not further deter espionage and spying. They will only harm those who want the public to know what the government is doing.

Nothing could be better designed to restrict the news you get to the pasteurized jargon of official press releases than a law which would punish a newsman for receiving sensitive information unless he returned the material promptly to an authorized official.

Nothing could damage the press more than a provision which would make a newsman an accomplice in crime unless he revealed the source of information disclosed to him.

The administration proposal carries an even greater danger in the power it would give to the officials who now determine what shall be secret and what shall be disclosed. Not only would they be abel to continue to make those decisions without regard to any real injury disclosure might cause, they would be empowered to prosecute anyone who defied their judgment. Their imposition of secrecy could not be reviewed in the courts. And a violation of their decision would be a crime involving not only government employees but journalists as well.

The Justice Department proposal goes far beyond any laws we have had, even the emergency requirements of World Was I and II. No law now gives the government such power to prosecute newsmen not only for revealing what they determine the public should know but just for possessing information the government says they should not have.

Under this proposal, a reporter who catches the government in a lie, who uncovers fraud, who unearths examples of monumental waste could go to jail—even if he could show, beyond any question, that the government had not right to keep the information secret and that its release could not possibly harm national defense.

This law then would force journalists to rely on selfserving press releases manufactured by timid bureaçrats—or risk going to jail for uncovering the truth.

It would force Government employees to spy on each other in a manner familiar in communist or fascist states but abhorrent to our concept of an open democracy.

We have had enough of that abuse of secrecy in the attempts to hide the facts about our conduct in Vietnam from the American people. Official secrecy has even been used to keep back vital facts about Government meat inspection programs or pesticide regulations or drug tests or import restrictions or rulings that interpret income tax regulations.

In a democracy there will always be a necessary tension between the right of the people to know and the requirement that Government officials be able to voice their opinions with full candor. To assure that frankness, confidential advice on grave questions of policy should be protected from disclosure. But in the balance between secrecy and disclosure, the public interest requires that the greatest weight be given to informing and involving the people in policy decisions.

Arguments made in private may be persuasive. They may even be correct. But where the public interest is at stake, argument must be open so that it can be rebutted. To be enforceable in a society built on trust, decisions must be reached in a manner that permits all those concerned to have equal access to the decision makers.

So the greatest danger in the proposal is the danger to America as a society built on law and on trust. This law would weaken the first amendment protections of free press and free speech, but it would also further isolate the American people from the information they must have to judge the conduct of Government.

In an emergency situation, censorship can be understandable and acceptable. But this effort to inaugurate a constructive period of peacetime cooperation by throttling dissent and debate is unworthy and dangerous.

Unity in America can only be built out of an informed consensus of all the people, trusting in their leaders and trusting their leaders to trust them. Extinguishing public discussion of policy will not produce har-

mony. The silence such a law would enforce would be the silence of democracy's graveyard.

MEMORANDUM: THE NIXON ADMINISTRATION'S PROPOSALS TO RESTRICT PRESS ACCESS TO GOVERNMENT CONFIDENTIAL SOURCES

On March 14, 1973, President Nixon sent to Congress his message on the federal system of criminal justice in which he proposed a sweeping reform of the Federal Criminal Code in the "Criminal Code Reform Act of 1973;" the actual bill was sent to Congress on Thursday, March 22, 1973 and introduced as S. 1400 on Wednesday, March 28. This legislation, which is approximately 600 pages long, contains some major revisions of the Federal criminal code including the near abolition of the insanity defense, an attempt to revive the death penalty, and other controversial changes in our present Federal criminal laws.

Buried in this massive legislation, and unmentioned in the President's message about it, lies four new sections to Title 18 which would, if enacted, be the equivalent of a National Secrecy Act. This memorandum discusses the scope of these proposed new federal crimes dealing with government secrecy, relates them to the present controversy regarding newspapermen's privilege, and urges that you speak to this issue in the immediate future.

I. THE PROPOSED NIXON NATIONAL SECURITY ACT

a. Limitations on the Disclosure of "Classified" Information

Two new sections of the proposed revised criminal code deal with disclosure of classified information by government employees. Section 1124 of the proposed code makes it a felony for persons having authorized possession or control of classified information to knowingly communicate such information to unauthorized persons. Classified information is broadly defined meaning "any information, regardless of its origin, which is marked or designated pursuant to the provisions of a statute or executive order, or a regulation or rule thereunder, as information requiring a specific degree of protection against authorized disclosure;" this means any information classified not only under the appropriate executive order but under any agency rule or regulation promulgated thereunder is covered.

Section 1124(b) creates an exception to criminal liability for accomplices or conspirators to such unauthorized disclosure if they are persons receiving such classified information. The ostensible purpose of Subsection (b) is to limit the offense to the illegal disclosure by the government employees and to leave the reporter or other recipient of the information without criminal liability. However, as discussed below, this exception has no meaning whatsoever since the reporter will commit a felony if he uses that information in any way whatsoever or fails to turn the information over to the government. Indeed, its purpose may well be to eliminate a Fifth Amendment defense when the government seeks from the reporter compulsory disclosure of the source of the information which he obtained. This will also be discussed below.

Section 1124(d) eliminates as a defense to prosecution under this Section the fact that the information divulged was improperly classified either at the time of its classification or at the time of its divulgence. The penalty under this Section is imprisonment of not more than three years and a fine of not more than $25,000, unless the information is communicated to an agent of foreign powers.

A companion section is Section 1125 dealing with unlawfully obtaining classified information. This Section makes it a felony for a person "being an agent of a foreign power" knowingly to obtain or collect classified information which he is not authorized to receive. This Section, to which there can be little objection, clearly exempts reporters from prosecution. The penalty for this felony is not more than seven years imprisonment and $50,000 fine.

These two Sections, on their face, appear to limit the imposition of criminal penalties to those within the government who violate security classification regulations and rules and give classified information, regardless of the reasonability of such classification or regularity of the system under which they were classified, to unauthorized persons. These Sections appear to leave the reporters free from criminal liability.

Such sweeping felony penalties for disclosure of information, even when the information is totally misclassified or classified for the obvious reason of preventing disclosure of waste, mistakes, dishonesty or corruption, should be objected to. It can be convincingly argued that present criminal sanctions against unauthorized disclosure of classified information are adequate, as experience has abundantly shown, and to increase the penalties will only severely hamper the flow of information that should be given to the press, and therefore, to the public.

Both the persons who now have access to this information and the press who could publish it are both responsible enough to avoid the public disclosure of information that would be harmful to the real security interests of the United States. There are few examples of a violation of these standards. The self-censorship of the *New York Times* and the *Washington Post* and other papers in not publishing parts of the material revealed in the Pentagon Papers is a good example of this responsible behavior.

The relevant criminal statutes now in effect dealing with disclosure of classified information are as follows:

18 U.S.C. § 952, forbidding government employees to publish or give to unauthorized persons any diplomatic or military code or any diplomatic or military material that has been encoded.

18 U.S.C. § 954, forbidding any person from knowingly making untrue statements under oath which that person has reason to believe will influence a foreign government and thereby injure the United States.

18 U.S.C. § 793, forbidding persons from stealing documents, from making copies of documents or photographs of military installations, equipment, or of photographs, blueprints, plans, maps, or models of such military installations or material, and forbidding anyone from communicating information relating to the national defense "which information the possessor has reason to believe could be to the injury of the United States or the advantage of the foreign nation" and communicates such information to any person not entitled to receive it.

18 U.S.C. § 794, forbidding people to gather or deliver defense information with the intent or reason to believe that is to be used to the injury of the United States or the advantage of a foreign government.

18 U.S.C. § 798, forbidding persons from knowingly and willfully communicating or making available to an unauthorized person any classified information which is related to codes or cryptographic systems, their design, construction, use, maintenance, etc. that may be used "in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States."

All of these Sections, which are not restricted to classified information, are limited in two ways: they deal with strictly military related matters and/or they require an intent to injure the United States or to aid a foreign nation.

With the present criminal penalties and responsibility of government employees and reporters, the only purpose that the further expansion of the secrecy laws could have is to silence dissent within the government, and to hide incompetence and waste. New penalties will not further deter espionage and spying, they will only stop those who want the public to know what is occurring in their government.

b. The Limitations on Reporters' Use of Unauthorized Classified Information

Although the two Sections of the proposed new federal criminal code discussed above appear to carefully carve out the newsmen from criminal liability for obtaining classified information, other carefully drawn sections of the criminal code make any use of that material by a reporter a felony. For example, Section 1122 makes it a felony for any person knowingly to communicate information "relating to the national defense" to a person not authorized to receive it. Thus, any reporter who communicates such information to anyone else *i.e.*, gives it to his paper, television station or causes it to be published and transmitted to the general public has committed a felony. "Information relating to the national defense" is defined as information, regardless of its origin, that relates to U.S. military capabilities, planning, communication, installation, weaponry, weapon development or weapons research, to any intelligence activities of the United States, and to "the conduct of foreign relations affecting the national defense." This sweeping definition is ever broader than the definition of classified information used in the two Sections discussed above. A felony under Section 1122 is punishable by imprisonment of not more than seven years or a fine of not more than $50,000.

If this deterrent to a reporter for using unauthorized communications from government sources were not enough, the proposed revised criminal law contains another section, Section 1123, which again makes it an offense for a person being in possession or control of information relating to national defense to communicate it to a person not authorized to receive it. (Section 1123(a)(1)). The penalty is as in Section 1122.

Thus the proposed revision of the federal criminal code makes it abundantly clear that this proposed legislation intends to make reporters directly criminally liable for any use of information obtained from the federal government by confidential sources when this information pertains to a very broadly defined concept of national defense. Attaching criminal penalties to the use of information by the press is unprecedented in American history except for the Alien and Sedition Acts. In this case, the proposed legislation is not only attempting to tighten up the retention of this information within its own bureaucracy, but is perfectly willing to jail reporters up to seven years for publishing such information, even if that information was improperly classified, related to abuses, dishonesty or waste in the federal government, and it clearly served the national interest to make it public.

When these four provisions are taken together, they can only be described as a "national secrecy act." They impose severe criminal penalties upon all unauthorized distribution of information relating to national defense and foreign relations. Any person involved with such dissemintaion would be liable, including the editors, publishers, and distributors of newspapers. It would seem that *anyone* who repeated the original publication would also be liable.

c. Methods To Force Disclosure Of the Source Of Unauthorized Government Leaks

Of course, for a national secrecy legislation to be effective, not only must government be able to prosecute the publishers and reporters involved in such dissemination of unauthorized material but also, and more

important, the political leaders of any government must be able to identify the source of such leaks promptly and eliminate them. The legislation is not unmindful of this need to identify the sources of unauthorized disclosures and has provided an effective means for so doing within the statutory framework of its "National Secrecy Act."

First, the Administration has proposed that it be made a felony for a reporter to fail to report that he has received unauthorized information, even if he does not disclose that information to anyone else. Section 1123(a)(3) makes it a felony for an unauthorized person in possession or control of information relating to national defense to "knowingly fail to deliver it promptly to a federal public service servant entitled to receive it." Thus, if a reporter receives the information on a background basis and does not intend to publish it, or he uses that information merely to obtain confirmation from other legal sources, he is still committing a felony unless he reports the illegal receipt of this information to a government official. Thus all reporters not only commit a felony when they use the information, but they commit a felony if they don't turn themselves in when they receive it.

In addition, Section 1123(a)(2)(B) makes it a felony for a person in authorized possession or control of information relating to national defense to "knowingly fail to report promptly to the agency authorizing him to possess or control such information . . . communication to a person not authorized to receive it." Thus, anybody who leaks the information or knows about a co-worker who leaks the information has committed a felony if he does not report such unauthorized disclosure. This Section makes each person in the bureaucracy a spy of all his coworkers to report any unauthorized disclosure of national security information by imposing a felony for failure to make such a report.

But most important for discovering the source of the unauthorized leak is the power that the government would have if the "National Secrecy Act" were enacted to force disclosure of the source by using the present state of the newspaperman's privilege. Under the *Branzburg* v. *Hayes* (408 U.S. 665 [1972]) decision of last summer, newsmen are not provided a constitutional protection for keeping their sources of information confidential or for failing to reveal the contents of the confidential information. Until the enactment of any newspapermen's shield legislation by the Congress, the only protection a reporter has from compulsory disclosure of his sources are those few cases following the *Branzburg* decision that try to salvage some protection from dicta in that decision and the guidelines set forth by the Attorney General in 1970 which limit the federal use of compulsory testimony of reporters to certain situations. It just so happens that if the "National Secrecy Act" were enacted in law, the dicta in the *Branzburg* decision and the Attorney General's guidelines would provide a reporter no defenses whatsoever for a refusal to divulge his sources.

Under the *Branzburg* decision, the Court clearly stated that of all the situations calling for possible constitutional protection under the First Amendment for a newsmen's privilege, the one case that merited no protection under any circumstances was the case where a reporter was protecting the identity of a person who actually committed a crime. Justice White, writing the majority decision, said:

Although stealing documents or private wiretapping could provide newsworthy information, neither reporter nor source are immune from conviction for such conduct, whatever the impact on the flow of news. (408 U.S. 665, at 691).

Insofar as any reporter in these cases undertook not to reveal or testify about the crime he witnessed, his claim of privilege under the First Amendment presents no substantial question. (*Id.* at 692).

These two sentences in the majority opinion of *Branzburg* make it almost impossible for any lower court judge to hold that a reporter's failure to divulge the source of his information is privileged when disclosure of such information was a felony under the "National Secrecy Act." The reporter who received the information, although not a conspirator or an accessory to the crime, would clearly be a witness to it. His refusal to testify would be, in no uncertain terms, the refusal to identify a felon, and it is clear that the *Branzburg* decision grants no privilege whatsoever to such a refusal.

The Attorney General's guidelines, which claimed to limit and apparently have limited the use by federal prosecutors of subpoenas for reporters' sources of information and confidential information would also clearly permit the forced disclosure of such information. Those guidelines require, in order to issue a subpoena: that a serious crime had been committed, that the information not be available from non-press sources, and that the subpoena be strictly limited in time and scope to the criminal action involved. Once again, the reporter would have no protection. He is a witness to a felony; in fact he probably is the only witness to the felony. A serious crime is under investigation, a felony involving national security. And the subpoena could clearly be limited in time or scope to the communication that was involved.

As Roger C. Crampton, Assistant Attorney General, testified before the House Judiciary Committee on September 21, 1972 about the Attorney General's guidelines: "Compulsory process is utilized only when information necessary to determine the guilt of innocence of persons under investigation for commission of serious crimes can only be obtained from the press."

Thus, once a reporter has printed information that he obtained through unauthorized disclosure, he will be subject to subpoena and can be forced to reveal the sources of his information because the fact of the information's very existence is *prima facie* evidence of a felony having been committed in his presence. In addition, by creating two distinct felonies, one for the disclosure of information (where the reporter is not liable), and the other for the distribution of that information to any other party, it is quite likely that the reporter will not have a Fifth Amendment defense when he is subpoened, for his receipt of the information itself was not criminal. The printing of the information proves that the reporter possessed it, thus making the revelation of its source in no way increasing his jeopardy of conviction of the felony of passing that information on to others. With no Fifth Amendment defense available, the reporter would face the choice of going to jail for contempt or revealing a source. Naturally, the prosecuting attorney has the availability of the other felony for bargaining purposes with the reporter.

Thus, the proposals constitute a comprehensive and effective "national secrecy act." They create a felony for the unauthorized disclosure of a broad category of information, and the publication of such information; it makes it a felony for a reporter to retain that information or for co-employees of the unauthorized source to fail to report the unauthorized disclosure. And it utilizes the present state of the law of compulsory disclosure of newsmen's confidential sources to ensure that the government could obtain the identity of the sources of information or incarcerate the reporters involved.

This situation makes the Administration's refusal to support a newspaper shield law, in either qualified or unqualified form, all the more understandable.

RELEVANT PROVISIONS OF S. 1400

"§ 1122. Disclosing National Defense Information.

"(a) Offense. A person is guilty of an offense if he knowingly communicates information relating to the national defense to a person not authorized to receive it.

"(b) Grading. An offense described in this section is:

"(1) a Class C felony if committed during time of war or during a national defense emergency;

"(2) a Class D felony in any other case.

"§ 1123. Mishandling National Defense Information

"(a) Offense. A person is guilty of an offense if:

"(1) being in possession or control of information relating to the national defense, he recklessly permits its loss, destruction, or theft, or communication to a person not authorized to receive it;

"(2) being in authorized possession or control of information relating to the national defense:

"(A) he intentionally fails to deliver it on demand to a federal public servant authorized to demand it;

"(B) he knowingly fails to report promptly, to the agency authorizing him to possess or control such information, its loss, destruction, or theft, or communication to a person not authorized to receive it; or

"(C) he recklessly violates a duty imposed upon him by a statute or executive order, or by a regulation or a rule of the agency authorizing him to possess or control such information, which statute, order, regulation, or rule is designed to safeguard such information; or

"(3) being in possession or control of information relating to the national defense which he is not authorized to possess or retain, he knowingly fails to deliver it promptly to a federal public servant entitled to receive it.

"(b) Grading. An offense described in this section is:

"(1) a Class E felony in the circumstances set forth in subsection (a)(2)(C);

"(2) A Class D felony in any other case.

"§ 1124 Disclosing Classified Information

"(a) Offense. A person is guilty of an offense if, being or having been in authorized possession or control of classified information, or having obtained such information as a result of his being or having been a federal public servant, he knowingly communicates such information to a person not authorized to receive it.

"(b) Exceptions to Liability as an Accomplice or Conspirator. A person not authorized to receive classified information is not subject to prosecution as an accomplice within the meaning of section 401 for an offense under this section, and is not subject to prosecution for conspiracy to commit an offense under this section.

"(c) Defense. It is a defense to a prosecution under this section that the information was communicated only to a regularly constituted committee of the Senate or the House of Representatives of the United States, or a joint committee thereof, pursuant to lawful demand.

"(d) Defense Precluded. It is not a defense to a prosecution under this section that the classified information was improperly classified at the time of its classification or at the time of the offense.

"(e) Grading. An offense described in this section is:

"(1) a Class D felony if the person to whom the information is communicated is an agent of a foreign power;

"(2) a Class E felony in any other case.

§ 1125. Unlawfully Obtaining Classified Information.

"(a) Offense. A person is guilty of an offense if, being an agent of a foreign power,

he knowingly obtains or collects classified information which, in fact, he is not authorized to receive.

"(b) Defense Precluded. It is not a defense to a prosecution under this section that the classified information was improperly classified at the time of its classification or at the time of the offense.

"(c) Grading. An offense described in this section is a Class D felony.

"§ 1126. Definitions for Section 1121 through 1125.

"(a) 'authorized,' when used in relation to the receipt, possession, or control of classified information or information relating to the national defense, means with authority to have access to, to receive, to possess, or to control such information as a result of the provisions of a statute or executive order, or a regulation or rule thereunder;

"(b) 'classified information' means any information, regardless of its origin, which is marked or designated pursuant to the provisions of a statute or executive order, or a regulation or rule thereunder, as information requiring a specific degree of protection against unauthorized disclosure for reasons of national security;

"(c) 'communicate' means to impart information, to transfer information, or otherwise to make information available by any means, to a person or to the general public,

"(d) 'communications intelligence information' means information:

"(1) regarding any procedures and methods used by the United States or any foreign power in the interception of communications and the obtaining of information from such communications by other than the intended recipients;

"(2) regarding the use, design, construction, maintenance or repair of a device or apparatus used, or prepared or planned for use, by the United States or a foreign power in the interception of communications and the obtaining of information from such communications by other than the intended recipients; or

"(3) obtained by use of the procedures or methods described in paragraph (1), or by a device or apparatus described in paragraph (2);

"(e) 'cryptographic information' means information:

"(1) regarding the nature, preparation, use or interpretation of a code, cipher, cryptographic system, or any other method of any nature used for the purpose of disguising or concealing the contents or significance or means of communications, whether of the United States or a foreign power;

"(2) regarding the use, design, construction, maintenance, repair of a device or apparatus used, or prepared or planned for use, for cryptographic purposes, by the United States or a foreign power; or

"(3) obtained by interpreting an original communication by the United States or a foreign power which was in the form of a code or cipher or which was transmitted by means of a cryptographic system or any other method of any nature used for the purpose of disguising or concealing the contents or significance or means of communications;

"(f) 'information' includes any property from which information may be obtained;

"(g) 'information relating to the national defense' includes information, regardless of its origin, relating to:

"(1) the military capability of the United States or of an associate nation;

"(2) military planning or operations of the United States;

"(3) military communications of the United States;

"(4) military installations of the United States;

"(5) military weaponry, weapons development, or weapons research of the United States;

"(6) restricted data as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014);

"(7) intelligence of the United States, and information relating to intelligence operations, activities, plans, estimates, analyses, sources, and methods, of the United States;

"(8) communications intelligence information or cryptographic information as defined in subsection (d) or (e);

"(9) the conduct of foreign relations affecting the national defense; or

"(10) in time of war, any other matter involving the security of the United States which might be useful to the enemy;

"(h) 'restricted area' means any area of land, water, air or space which includes any facility of the United States, or of a contractor with or for the United States, to which access is restricted pursuant to a statute or executive order, or a regulation or rule issued pursuant thereto, for reasons of national defense.

THE VETO OF THE REHABILITATION ACT

Mr. PERCY. Mr. President, I share the President's resolve to put a ceiling on spending and to hold a firm line on prices, taxes, and inflation. However, I am disappointed that the President has again found it necessary to veto the Rehabilitation Act of 1972, approved so overwhelmingly by the Senate and the House in both 1972 and 1973.

The Rehabilitation Act of 1972 is not a big spending bill that would jeopardize the taxpayers' pocketbooks or the stability of our economy. This bill, though admittedly more than the President requested, provides $900,000 less in authorization than last year's vetoed bill, a reduction of over 25 precent.

This bill should not be looked upon as a big spending measure. I would go as far as to say that it is prime investment material. For many of our physically and mentally handicapped citizens, the only alternative to rehabilitation is custodial care under public assitance, which is often costlier than rehabilitation. In 1972 alone, State vocational rehabilitation agencies served 51,084 public assistance recipients. It is estimated that the public assistance cost for those individuals would have amounted to $34,275,000 just for the first year following rehabilitation.

Vocational rehabilitation is a proven cost-effective program. A number of cost-benefit analyses of the rehabilitation program have agreed on one crucial fact—the benefits of the rehabilitation program are many times its cost. Conservative estimates of the ratio of benefits to cost have ranged from between 8 to 1 and 35 to 1. In other words, for every dollar spent on rehabilitation, $8 to $35 have been returned in welfare costs saved and income taxes paid by workers restored to usefulness.

For example, the total annual earnings of 291,272 individuals rehabilitated in 1971 totaled approximately $1 billion, a net increase of $750,000 over the earnings of these people before rehabilitation. In addition to this contribution to the GNP, the Rehabilitation Services Administration estimates that these individuals, at a minimum, contributed approximately 5 percent of their total income of $58 million to Federal, State, and local governments for taxes. In addition to this tax contribution, there are further Government savings because of the removal of these persons from welfare dependency.

The Illinois Vocational Rehabilitation Agency, I am very proud to say, is a successful example of the cost effectiveness of rehabilitation. In fiscal 1971, the agency served some 55,288 individuals, and 14,001 of them were completely rehabilitated. The total annual earnings of these people in 1971 totaled approximately $47.2 million, showing a net increase of $30 million over their earnings before rehabilitation. If these rehabilitated wage earners contribute 5 percent of their total income to Federal, State, and local governments, their tax contribution for 1 year alone would equal $2.4 million.

In fiscal 1972, the agency served some 58,922 people and completely rehabilitated 314 more persons than in 1971. Of the 14,315 individuals completely rehabilitated, 11 percent or 1,581, were public assistance recipients. Of this total, 741 were removed entirely from the public aid rolls, saving the State approximately $1.2 million in 1 year alone. Coincidentally, it cost the agency about $1.2 million to rehabilitate these people. Moreover, 1,096 of these rehabilitated individuals increased their earning power by $3.9 million per year.

Today, developments in medical science and technology have made rehabilitation cost effective even for the severely handicapped. Therefore, I applaud the major change in the concept of rehabilitation services under the Rehabilitation Act of 1972—the added emphasis on vocational rehabilitation services to the severely handicapped. Until now the severely handicapped in this country have been doomed to a kind of living death, immobilized, hidden away, and written off as beyond redemption. This shortsightedness, in addition to the cost in human agony and waste, has cost society a huge maintenance bill. Liberty Mutual estimates that the lifetime cost of maintaining one paraplegic is $150,000; and the cost jumps to $250,000 to $500,000 for a quadriplegic. HEW estimates that there are 985,000 Americans who suffer from paralysis. Without rehabilitation services, the lifetime maintenance cost for these individuals can amount to $246 billion.

I am convinced that money spent on the rehabilitation of our physically and mentally handicapped citizens is a sound investment, not only in making life more livable for our handicapped citizens but also in returning dollars to the Federal, State, and local treasuries.

Vocational rehabilitation makes good business sense. For this reason I must regretfully vote to override the President's veto of the Rehabilitation Act of 1972. We should find other areas where budget cuts can be made. I intend to sustain certain of the Presidents vetoes and to vote against other spending bills in the authorization or appropriation stage before they are ever sent to the President.

But I cannot walk away from my commitment to the important area vocational rehabilitation for the physically or mentally handicapped. It is one of the best investments, we as a society, can make in one human resources.

MANUFACTURING PRACTICES IN THE DRUG INDUSTRY

Mr. RIBICOFF. Mr. President, the GAO has released a report which states that the FDA has failed to exercise its statutory mandate to assure that drugs are processed under proper manufacturing practices. GAO found that 48 percent of the drug producers studied were found to be deviating from good manufacturing practices on successive inspections by the FDA. In one plant, 78 deviations were found in three inspections, of which 39 were deemed "critical." In spite of this appalling record, FDA failed to take legal action to insure that the requirements of law were met.

Drugs manufactured improperly may cause severe health hazards. Examples of the dangers of improperly manufactured drugs include the so-called Cutter incident in which improperly manufactured polio vaccines caused the paralysis of hundreds of people and the Abbot Laboratory case in which hundreds of people died as a result of receiving contaminated intravenous solutions.

The failure of FDA to enforce a law designed to protect consumers in unfortunately all too typical of our experience with Federal regulatory agencies. Time and again, Congress has passed laws to protect consumers, only to find that inadequate enforcement of those laws renders them useless. I have introduced legislation to establish within the Federal Government a strong and effective consumer advocate to assure that regulatory agencies enforce the laws Congress has enacted. The existence of such an advocate could help preclude the continuance of ineffective regulation.

I ask unanimous consent that a digest of the GAO report be inserted in the RECORD.

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

PROBLEMS IN OBTAINING AND ENFORCING COMPLIANCE WITH GOOD MANUFACTURING PRACTICES FOR DRUGS

WHY THE REVIEW WAS MADE

Drugs sold in the United States during recent years have been produced by about 6,400 firms. Although each is accountable for the quality of its products, the Congress placed upon the Food and Drug Administration (FDA) the responsibility that drugs, shipped across State borders, be of satisfactory quality when sold to consumers.

The Federal Food, Drug, and Cosmetic Act (FD&C Act) makes FDA responsible for insuring that adulterated drugs are prevented from reaching the market. This law defines an adulterated drug as one, among other things, which has not been produced in conformity with good manufacturing practices, and requires FDA to inspect drug manufacturers and repackers (referred to hereinafter as drug producers) at least once every 2 years.

Good manufacturing practices include (1) maintaining formula and batch-production control records and procedures, (2) establishing test procedures to insure that drug components or the finished product conform to appropriate standards of identity, strength, quality, and purity, and (3) keeping distribution records of each batch of a drug to facilitate its recall from distribution, if necessary.

In this review the General Accounting Office (GAO) has evaluated FDA's program for inspecting drug producers and enforcing compliance with good manufacturing practices. GAO reviewed the inspection records of 73 drug producers inspected during the 2-year period ended March 31, 1971, and the inspection records of 98 drug producers which were not inspected during this period.

Except for five learge drug producers, firms were randomly selected for review. The drug producers were in three FDA districts in which nearly 25 percent of the Nation's 6,400 drug producers were located.

FINDINGS AND CONCLUSIONS

Overall findings

Several factors have hindered FDA's obtaining and insuring compliance with good manufacturing practices by drug producers.

FDA has not always enforced aggressively compliance with good manufacturing practices by many of the drug producers it has inspected, even though deviations from these practices can lead to adulterated products.

Proper and timely written notification of needed corrections was not provided to drug producers' top management; and followup inspections were usually untimely, hampering, in many instances, FDA's efforts to obtain voluntary compliance with good manufacturing practices.

Some drug producers have not been inspected as often as required, although FDA considers its inspection to be an integral part of its defense against adulterated products reaching the consumer.

FDA did not have a complete and accurate list of drug producers required to be registered and inspected.

FDA has taken some steps to overcome these problems. More are needed.

According to FDA, two factors have contributed to existing conditions: (1) its limited resources and (2) its need to be concerned with good manufacturing practices for drugs posing the most significant potential health hazard.

Limited enforcement

FDA inspections have shown a large number of producers to be deviating from good manufacturing practices. Although such deviations can lead to adulterated drugs, FDA has not enforced compliance with good manufacturing practices by many of the drug producers it has inspected.

During fiscal year 1971, FDA made 7,124 inspections of drug producers. Of these, nearly 4,000 were followup inspections where deviations from good manufacturing practices had been reported previously. Over 2,174, showed that producers still were not complying with good manufacturing practices.

In reviewing inspection records of 73 drug producers, GAO found that 48 percent of the producers critically deviated from good manufacturing practices on successive inspections. FDA identifies critical deviations as those having the greatest probability of creating adulterated products.

FDA has taken relatively few legal actions to enforce compliance. During fiscal years 1970 and 1971, FDA approved only 51 seizures, 2 injunctions, and 5 prosecutions for deviating from good manufacturing practices.

GAO believes that producers chronically deviating from good manufacturing practices do not have sufficient incentive to correct their practices because FDA has not used available legal options.

For example, FDA inspected one firm's manufacturing practices three times during the 32-month period ended December 15, 1971, concluding each time that the firm was not complying with good manufacturing practices such as formula and production control records not being maintained.

The number of deviations increased from 6 in the first inspection, to 23 in the second, to 49 in the third inspection. Although 78 deviations were found, of which 39 were critical, legal action was not taken. Instead, FDA relied primarily on oral and written communications with the firm and followup inspections to promote voluntary corrective actions.

The shortcomings in FDA's enforcement are believed to stem primarily from a lack of instructions on when legal actions should be taken and the resultant confusion between district office personnel responsible for recommending legal action and FDA headquarters personnel responsible for approving it.

A February 1972 policy change indicates FDA's intention to enforce good manufacturing practices more aggressively. GAO believes that the continuing lack of guidelines to the district offices will hamper the effectiveness of this change.

Followup actions inadequate

Some drug producers have not corrected deviations from good manufacturing practices because FDA frequently did not take proper followup actions to insure that drug producers' top management was aware of inspection findings.

GAO's examination of reports and other records relating to 150 inspections of 58 producers included in the sample showed that FDA issued a post inspection letter to top management in only 75 of 150 inspections made and that such letters were often untimely.

FDA lacked guidelines for timely scheduling of followup inspections to determine whether producers take needed corrective action. GAO reviewed 83 inspection cases involving deviations from good manufacturing practices for which followup inspections were scheduled to be made during a specific month prior to December 31, 1971. GAO found that only 25 were made when scheduled, 32 were made late, and 26 were not made by December 31, 1971. The timing of followup inspections is left to the discretion of each FDA district office.

The February 1972 policy change discontinued the use of post inspection letters as a means of notifying drug producers of inspection findings. Instead, warning letters will be used for minor deviations. Action to seize products or cite firms for prosecution will be used for critical deviations. Subsequent to the completion of GAO's fieldwork FDA rescinded its policy statement of February 1972 and issued a new policy statement.

However, the policy change does not provide guidelines to insure that drug producers' replies to warning letters or citations will be properly monitored and that timely followup inspections will be made when needed.

Warning letters—unlike post inspection letters and citations—do not specify a time limit in which a drug producer must notify FDA of corrective actions planned or taken.

Inspection coverage

FDA lacks an effective means of insuring that all drug producers are inspected at least once every 2 years as required by law. In the three FDA districts reviewed, at least 213 drug producers, or about 16 percent, had not been inspected during the 2-year period April 1969 through March 1971. Another 123 firms were listed as not inspected but records were not available to substantiate that the firms were in fact subject to inspection.

Records of 98 of the 213 firms not inspected showed that an average of 36 months had elapsed (as of March 31, 1971) since 74 of these firms were last inspected.