$4 a head ($3 for children) to the Arizona State Fairgrounds and is the only source of funds for the club's far-reaching service activities. Designed nine years ago to replace the many and scattered fund-raising events that sapped the Kiwanians' time and energy throughout the year, the Bar-B-Q has been a huge success. During the past three years the event has raised $11,000, $17,000, the $19,500 for the club and has evolved into an eagerly awaited spring tradition. More than $100,000 has been raised by the club through this one activity over the past nine years.

"Advance ticket sales are the key to the Bar-B-Q's success," explains this year's project chairman Bob Trehearne. "No-shows among the advance sales are responsible for 80 to 90 percent of the profits." The 1975 version, for example, took in money from thirteen thousand tickets sold, but only nine thousand people actually came to the Bar-B-Q. "Advance ticket sales also avoid competition with other events that might fall on the same day," says Bob.

The feast is catered by Walter Jetton of Fort Worth, Texas, the man who made the LBJ Ranch barbecues famous. Jetton supplies the food and cooks it according to his own secret recipe with the help of five or six assistants. Kiwanians man the serving lines and drink stands, collect tickets, and clean up afterward. Twenty-five Key Clubbers from North and Central high schools in Phoenix also assist on the big day. The event runs from 11 am to 4 pm.

About eight weeks before the Bar-B-Q ticket-selling teams are set up and spirited competition among the Kiwanians ensues. Weekly prizes are given for ticket sales, and the members and wives who sell one hundred tickets are awarded free dinners. "Recognition is a key motivator for good ticket sales," says Bob.

Publicity includes radio spots giving details of time and place, a "dinner bell" contest by one radio station in which the first caller following the ring of the bell gets two free tickets to the feast and his name on the air waves, and announcements in newspapers and local magazines. A publicity plus this year came from the Goodyear blimp, which was in Phoenix about a week before the Bar-B-Q. The blimp carried aloft a free, lighted advertisement for the Kiwanians two nights in a row.

Money accumulated from the Bar-B-Q has gone to many community activities over the years: the juvenile rehabilitation fund ($5000), the juvenile detention facility ($5000), the Boys Scouts ($6500), Dope Stop ($7300), the Salvation Army ($5900), and Junior Achievement ($5900). Most recently the club helped finance the Australian Bush Country Exhibit for kangaroos and emus at the Phoenix Zoo with a $15,000 donation.

SHOULD S. 1 BE JUNKED?

Mr. CRANSTON. Mr. President, it is expected that the Committee on the Judiciary will take up S. 1, the Criminal Justice Reform Act of 1975, for consideration sometime this fall. As many know, S. 1 recodifies and systematizes the present hodgepodge of Federal criminal statutes.

I have been very much concerned with those provisions of S. 1 which I believe threaten first amendment rights and give to the Federal Government too much power over what information will be made known to the American people. I have outlined the case against these provisions in appearances before the American Society of Newspaper Editors, the Newspaper Guild, and other press organizations. I have urged that these provisions be eliminated or totally revised.

The threats to freedom of information are not the only problems with S. 1, but these have been the subject of my direct concern with the bill.

Other critics of S. 1 argue that the bill should not pass even with amendments. They say that it is incapable of being improved by amendment and should be junked in toto.

The Los Angeles Times, in its lead editorial for September 15, has urged that S. 1 be thrown out. I ask unanimous consent that this editorial be printed in full at this point in my remarks.

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

Putting Freedom Against the Wall

Legislation now pending in Congress to revise the federal criminal code should be junked.

Senate Bill 1, a massive and complicated measure 753 pages long, is so pervasively and fatally flawed that it lies beyond the scope of any rational amending process.

Known as the Criminal Justice Reform Act of 1975, the bill, and companion legislation in the House, purports to standardize federal criminal law. It does that to an extent—but far more. It proposes revolutionary change that would vastly enhance the power of government and sharply decrease the freedom of the American people.

Federal law is a hodgepodge of discrepancies that need revision and codification. That was the purpose of the National Commission on Reform of Criminal Laws appointed in 1966, with former Gov. Edmund G. Brown as chairman. After five years of study, the commission presented its report to President Nixon and Congress in 1971.

In the next two years, the bipartisan commission's effort was undercut. The three Senate members of the commission, often dissenting from its recommendations, embodied their views in a bill (S 1) introduced in 1973. They were John L. McClellan (D-Ark.), Roman L. Hruska (R-Neb.) and Sam J. Ervin Jr. (D-N.C.) Even this did not satisfy Nixon, who had the Brown commission report thoroughly revised and presented as the administration-backed Criminal Code Reform Act of 1973 (S 1400). McClellan and Hruska held hearings to consolidate both bills, and what emerged was the present legislation, which far exceeds the goal of the Brown commission.

The American Bar Assn. house of delegates recognized this last month by voting nearly unanimously that codification should not go beyond present law. And the board of governors of the Society of American Law Teachers concluded recently that 'the bill is so riddled with defects" that it is doubtful whether it is "amenable to piecemeal improvements."

Its most drastic provisions would virtually give ownership to the government of all public information. The legislation would accomplish this by creating a new felony: unauthorized disclosure of "classified" official data. With some 15,000 government employes authorized to classify documents, this provision, with its severe penalties, would permit the government to engage in unprecedented suppression of information.

The sections dealing with "national defense information" would make government employes and news reporters vulnerable to prosecution that would be limited only by the imagination of the prosecutor.

One section would make it a crime to collect or communicate "national defense information" with the "knowledge that it may be used to the advantage of a foreign power . . ." Is there any information, defined as a prosecutor may want to define it, that could not be "used" by a foreign power or would not be related in some way to national defense?

Government employes who revealed information and reporters who received and published it would be liable under the law. Only the official version of events would be available to the public. The government would be able to operate behind a screen of secrecy.

This attempt to scuttle the First Amendment is the most dangerous aspect of S 1, and naturally has drawn the most fire from the press. As a result, some modifications of sections relating to control of government information may be accepted by the bill's sponsors. Even so, the legislation should be rejected, because freedom is not a commodity to be parceled out in varying degrees to the American people, and S 1 contains a long array of hazards to a free society. The bill would:

Protect federal officials from criminal prosecution for illegal acts as long as they believed "the conduct charged was required or authorized by law"; this clause, dubbed the "Watergate defense," would provide a rationale for almost any kind of abuse of authority.

Reaffirm authorization of domestic wiretapping for 48 hours without court order and require landlords and companies to cooperate "forthwith" and "unobtrusively" with government agents.

Impose restrictions on demonstrations by making the picketing of government buildings illegal; also illegal would be interstate travel to assemble 10 or more persons who "create a grave danger of imminently causing" damage to property.

Outlaw demonstrations that would take place adjacent to wherever authorities say is the "temporary residence" of a President.

Receive in part the Smith Act by making it a crime to incite others to engage in conduct that then or at some future time would facilitate the dstruction of the government.

Define sabotage broadly as activity that "damages" or "tampers with" almost any property, facility or service "that is or might be used" in the national defense of this country or "an associate nation."

Permit entrapment by government agents, and place the burden on a defendant to prove he was "not predisposed" to commit the crime.

Broaden the conspiracy law by eliminating the requirement of proof of an "overt act"; substituted is "any conduct" that shows intent to effect a criminal agreement.

Reaffirm limited "use" immunity in criminal proceedings and congressional hearings—a procedure that weakens the Fifth Amendment protections against self-incrimination.

These provisions do not by any means exhaust the list; worse, the legislation is marked throughout by a chronic vagueness of definition that would insure decades of battles in the courts.

Whatever this bill is, it is not simply an effort to pull together and rationalize existing federal law. It is, rather, a reflection of an authoritarian view of the way government should function, and a radical departure from the letter and spirit of the Constitution.

In this bicentennial year, Congress could honor the founding fathers in no more effective way than by throwing out this legislation in its entirety.

Mr. CRANSTON. Mr. President, the American Civil Liberties Union of southern California states that S. 1 "is so riddled with defects" as to be "unamenable to piecemeal improvements; many provisions must be redrawn from scratch."

Prof. Louis B. Schwartz, however, who was the draftsman for the Brown Commission report, on which S. 1 is based, has said that S. 1 can be amended to

prochement is being discussed. The trade embargo which the United States imposed upon Cuba will soon terminate. Cuba needs our spare parts for all its equipment; understandably, American manufacturers want to take advantage of the available market.

Yet there is so very much to be resolved before the United States considers the resumption of diplomatic relations with Cuba while it is being governed by a ruthless Communist dictator who hates the United States and has abolished all personal freedom and human rights.

EARL E. T. SMITH.

NERVE GAS STORIES

Mr. GARY HART. Mr. President, in an August 9, 1975, editorial, the St. Louis Post-Dispatch pointed out the incongruities in U.S. policy toward the use of lethal gases as weapons of war. Despite our sponsorship of the Geneva Protocol in 1925, the treaty resulting from this prohibition of use of these particularly indiscriminate and inhumane weapons was only ratified this year. The reason for 50 years of hesitation on the part of the United States has been the desire of the military and the several Presidents to maintain an "option" to use lethal or disabling gases either in retaliation or on our own initiative.

Ratification of the Geneva Protocol does not mean, however, that the Nation is now firmly committed to do away with poison gas stocks or even that the Pentagon will hereafter be satisfied with the enormous stockpiles on hand. On the contrary, the Department of Defense is well down the road toward making an entire new generation of nerve gas weapons. These have the feature of being more safely transportable, but they remain indiscriminate and inhumane. Furthermore, the very portability of these weapons argues that their use is more likely, not to mention that a new arms race will likely be started if the Pentagon's plans are allowed to proceed.

Congress has in past years attempted to put some limits on the nerve gas modernization plans, but these efforts have been regularly frustrated when this body gave in to Pentagon and White House pressures. This year, however, the Senate passed firm restrictions in the fiscal 1976 authorization bill. Now that that legislation has been returned to conference, we have a new opportunity to insist on our position against development and production of a new generation of poison gases. I call upon the conferees to hold firm on the position the Senate has taken because it makes no military sense to proceed with proliferation of new terror weapons.

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:

NERVE GAS STORES

The Army is storing bombs of a nerve gas known as BZ at its Pine Bluff, Ark. arsenal, which is a reminder of the confusing situation in which the United States finds itself as to chemical and biological warfare.

In 1969 former President Nixon renounced all use of biological weapons and first use of chemical weapons, and stocks of biological weapons and toxins at Pine Bluff were to be destroyed. The Nixon order still left room for use of nonlethal, incapacitating agents such as tear gas and the new BX nerve gas, as well as for continuation of a "defensive" chemical warfare program that had cost 2.5 billion dollars in the 1960s alone.

Early this year the Senate and President Ford finally completed the process of ratifying the Geneva Protocol against poisonous gas or bacterial warfare. The United States had sponsored the protocol 50 years earlier and was the last major nation to ratify it. Even so, the ratification left room for use of deadly nerve gases in retaliation if they were first used against the United States, and the Army has since sought "modernization" of nerve gas stocks.

So, in view of all the loopholes left, where does this country stand? It no longer has nay need or excuse for biological weapons. It can stockpile nonlethal gases such as those at Pine Bluff but these cannot be used without presidential approval. It can also stockpile other chemical weapons and, indeed, the Pine Bluff arsenal is said to contain both white phosphorous and mustard gas, but the United States is committed not to use them unless they are used against it.

That has been an unlikely prospect ever since World War I, and it should seem even less likely today when the ultimate weapons are nuclear and not chemical. Still the United States remains involved in the costly preparation for a kind of warfare it said it wanted to renounce in 1925.

KIWANIS CLUBS

Mr. FANNIN. Mr. President, our Nation is blessed with a number of outstanding organizations which perform public service, and none does any greater job than the Kiwanis.

I am especially proud that the Kiwanis clubs in my own State of Arizona are extremely active and the projects they undertake are of tremendous benefit to people who need aid.

Mr. President, the Kiwanis magazine in its September 1975 edition features the work of division 6 of the Southwest district in southern Arizona and of the Valley of the Sun club in the Phoenix area. I ask unanimous consent that these articles be printed in the RECORD so that my colleagues will have an opportunity to know what is being accomplished by these dedicated members of the Kiwanis in Arizona.

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

PROJECT ARK

The scene is right out of Sesame Street. The Cookie Monster stalks his favorite treat. Big Bird is his usual stumbling witty self and Oscar the Grouch snarls from inside his trash-can home. But the colorful characters are not on a television scene. They adorn a ten by thirty foot trailer and serve as silent, larger than life greeters to the preschoolers who come to the trailer for learning disabilities testing.

The traveling testing center, a joint project of the ten Kiwanis clubs of Division 6 of the Southwest District, spends a few days each week at different spots in the division and tests three to five year old children for vision, hearing, and coordination development. Dubbed Project ARK (Assessment and Referral through Kiwanis), the trailer is an effort to provide the best possible testing and to avoid duplication of work. Lieutenant Governor Bob Preble and project chairman Lou Cate, of the Tucson Sunshine club, feel Project ARK could serve as a model for other divisions seeking learning disability projects. The clubs participating in the sunny southwest are Sunshine, Conquistador, Desert Palo Verde, Roadrunner, Rincon, San Xavier, and Tucson, all in the Tucson area; and Green Valley and Ambos Nogales, just this side of the Mexican border.

The trailer is designed to be a pleasant, efficient testing center with paneled walls, tiled floors, heating and cooling apparatus, and fluorescent lighting. The reception area consists of a small, clay box play space in the same room where vision is tested. The Kiwanians use the standard "E" vision examination chart. A small room houses a sound booth large enough for a tester and a child. A glass window allows the child to see his parents during the testing so that he will feel at ease. A third room contains facilities for testing coordination in two parts: gross and fine motor, concept and comprehension.

Following the tests the parents receive a letter that explains the examination and its results. In effect the letter states: "Your child was given several tests designed to detect any possible problems in the areas of vision and hearing and to see that he or she is developing normally in all respects." The letter goes on to list the results. If normal reactions occur during all the tests the letter so states and explains that the testing was not comprehensive but is designed only to discover major difficulties. If serious problems are revealed, the parents are urged to contact a learning disabilities expert.

Project ARK began with an exploratory meeting held in conjunction with the local chapter of the Association for Children with Learning Disabilities and three professional educators from the University of Arizona: Dr. Jeanne McRae McCarthy, professor of special education and director of the Leadership Training Institute in Learning Disabilities; Cissie Dietz, education specialist; and Dr. Michael W. Cohen, assistant professor and director of the AMC Pediatric Clinic at the University's College of Medicine. This panel soon became active advisors to the project.

After outlining the plan and receiving help from the advisory panel, Kiwanians approached other service organizations such as the Junior Women's Club and the Junior League of Tucson to serve as volunteers and help the trailer reach more kids. Other volunteers have included teachers, retired persons, and Kiwanians.

The better staffed the trailer is, the more days a week it can operate and the more good it will do, says Allen Simpson, president of Sunshine Kiwanis and a prime mover in the project.

Yet to be solved are the problems of testing children on the Papago Indian Reservation, for which bilingual personnel will be needed. The Papago dialect became a written language only twenty years ago.

But the eight Tucson clubs, along with Green Valley and Ambos Nogales, report great interest in the screening operation and feel a tremendous responsibility to fill the gap in learning disabilities testing that existed before Kiwanis stepped in.

The gap is now closing thanks to the strong desire of Division 6 Kiwanians to serve and their belief that all children are special.

PHOENIX'S BIG FEED

They call it the big feed, and they come in droves to the annual Kiwanis Bar-B-Q in Phoenix to eat and drink beneath the hot Arizona sun. And eat they do: five thousand pounds of beef, two thousands pounds of chicken, forty-eight gallons of barbecue sauce, nineteen hundred pounds of cole slaw, four thousand sliced onions, nine thousand biscuits, nine thousand pies. And drink they do: more than one hundred gallons of "six-shooter" coffee, two hundred gallons of tea, and seven hundred gallons of lemonade.

Put on each year by the Kiwanis Club of the Valley of the Sun, the massive picnic draws nine thousand hungry townspeople at

cure the defects spelled out by the ACLU. I ask unanimous consent that the ACLU memorandum furnished me be printed in full at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. CRANSTON. Mr. President, certainly we should not pass S. 1 in its present form. As to whether it should be approved in any form at this time, I suggest we wait to see if the Judiciary Committee accepts much-needed improvements to the bill and succeeds in reporting to the Senate, with solid committee support, a bill which mitigates the unnecessary harshness of our present Federal criminal statutes and reduces, rather than enhances, the power of government over our lives. If it turns out that the bill is not improved substantially in committee and if there are only slim prospects for improving the bill on the floor, then I will oppose S. 1 outright.

EXHIBIT 2

AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA—POSITION PAPER ON S. 1

S. 1 purports to provide a more rational, uniform, and precisely stated federal criminal law. The ACLU believes that the federal criminal code requires such revision. Criminal legislation has proliferated in an unsystematic fashion over the past several decades. Court decisions necessary to fill in substantive gaps have not been standardized by the Supreme Court. Nevertheless, the ACLU finds serious fault with the codification offered in S.1. The bill disregards many of the sound recommendations of legal experts embodied in the Report of the National Commission of Reform of Criminal Laws (Brown Commission), particularly those relating to the structure of criminal sentences, the availability of defenses, and the crime of conspiracy. Moreover, since S. 1 was drafted by high-placed members of the Nixon Administration, it reflects that Administration's now-discredited philosophy of mistrust for expressions by the American press and people, particularly in those sections concerned with national security, classified information, rioting, and wire-tapping. The bill is so riddled with defects, that the ACLU of Southern California finds it unamenable to piecemeal improvements; many of the provisions must be redrawn from scratch. Some of the worst problems concern:

SENTENCING STRUCTURE

(a) Length of sentences: According to the Brown Commission, existing maximum sentences are much too high for the ordinary offender, and produce unnecessarily long sentences that destroy any hope of rehabilitation. The Commission therefore recommended lower maxima, accompanied by a "mandatory parole component" within the maximum, and reservation of the upper ranges within the ordinary maximum for "dangerous special offenders." By contrast, S. 1 provides for maxima higher than current penalties in some cases and higher than the Brown Commission's in all, a parole component in addition to the prison maxima, and extended terms that add to the regular maxima. In addition, for minor offenses S. 1 ignores the Brown Commission's preference for jail terms just long enough to accomplish deterrence (since rehabilitation is impossible), and for categorization of the most minor offenses (including possession of small quantities of marijuana) as "nonjailable infractions". Misdemeanor sentences can be for as long as one year under § 2301 of S. 1, and "infractions" are punishable by five days in jail.

(b) Consecutive sentences: The Brown Commission attempted to confine imposition of consecutive sentences for the same transaction to a few exceptional situations and to limit the length of such sentences even in those cases. Nevertheless, S. 1 permits cumulation wherever the criteria for imposing a sentence rather than granting probation are satisfied, and imposes a high ceiling on such sentences (as high as the maximum for offenses one grade higher than the most serious offense of which the defendant is found guilty).

(c) Death penalty: In an attempt to satisfy the requirements for imposition of capital punishment set forth in *Furman v. Georgia*, 408 U.S. 238 (1972), S. 1 mandates the death penalty for certain classes of treason, sabotage, espionage, and murder. Apart from moral and political objections to imposition of this form of punishment, it is vulnerable as authorized in S. 1 on grounds of vagueness and irrationality in the delineation of suitable offenses. Murder, for example, is a capital offense if committed in the course of espionage, kidnapping or arson, but not in the course of robbery, burglary, or rape. It is also capital if committed in a "specially heinous, cruel, or depraved manner," a category which allows unfettered exercise of discretion. Finally, like all mandatory sentences, a mandatory death sentence vests prosecutors with excessive behind-the-scenes control in the course of drawing up and bargaining over charges.

(d) Mandatory Minima and Probation Discretion: Whereas the Brown Commission advocated availability of probation for all offenders unless the judge specifically found there were sound reasons for choosing incarceration, S. 1 excludes all Class A felonies and certain other offenses from probation (including any offense in which a gun or simulated gun is possessed), and makes it much less clear that probation ought to be granted unless prison is the better alternative. The exclusion of probation contradicts expert opinion that mandatory minima interfere with judicial discretion vital to fairness in our criminal justice system, and inordinately disadvantage the defendant in the plea-bargaining process.

(e) Discretion to Grant Parole: Just as the Brown Commission recommended probation rather than incarceration unless the judge finds that some specific purpose (e.g. deterrence, rehabilitation, protection of society) will be served by sending the offender to prison, so it also recommended mandatory grant of parole for almost all offenders after a year has passed unless the judge finds that specific risks are involved or release would unduly depreciate the seriousness of his crime. Although S. 1 establishes parole eligibility for almost all offenders after six months, the parole may only be granted if the judge finds that certain risks do *not* exist (much more difficult to demonstrate). By making parole much harder to obtain and more discretionary that the Brown Commission would authorize, S. 1 exacerbates the problems resulting from its high maximum sentences.

(f) Appellate Review of Sentences: This innovation has substantial support among judges and legal scholars, and the Brown Commission favored its institutions. S. 1 does provide for appellate review of sentences, but the procedure would be greatly improved if it 1) included the guidance of judicial discretion in a general policy statement that actual sentences be related to specific goals (e.g. deterrence, rehabilitation, incapacitation); 2) required judges to state findings and reasons for the record; 3) allowed such review of *all* sentences longer than a minimal length, without S. 1's exclusion of all drug and gun cases, all misdemeanors, and all sentences where the sentence is less than one-fifth of the authorized maximum (making some sentences of six or more years unreviewable); 4) eliminated the provision for appeal of certain sentences and all probation awards by the government, with the possibility of a higher sentence if the government succeeds. The provision for higher sentences upon a successful appeal by the government may well violate the constitutional guaranty against double jeopardy.

DEFENSES

(a) Insanity: S. 1 would allow a defense of insanity only where insanity caused by an absence of "the state of mind required as an element of the offense charged." This standard is more restrictive than existing law, the Brown Commission's recommendations, and the ALI model code's insanity provision, in that it denies the defense to individuals who "lacked substantial capacity to appreciate the character of his conduct or to control his conduct." Given the purposes and moral underpinnings of the criminal law, S. 1's refusal to afford such individuals the insanity defense makes no sense at all.

(b) Entrapment: S. 1 reaffirms existing law on this subject, but rejects the thinking of the Brown Commission, by allowing this defense only where the defendant was not "predisposed" to commit the offense charged. This standard improperly focuses on the character and past misconduct of the defendant rather than on the propriety of the police behavior. An objective test, focusing on whether the police activity would be likely to cause normally law-abiding persons to commit the offense, "would permit law enforcement officers to set up the opportunity to commit the offense, without making the propriety of police behavior vary according to the past criminality of the suspect."

(c) Public Duty: S. 1 allows a new defense for illegal acts by a federal official if he or she "believed . . . that the conduct charged was required or authorized," unless his or her belief was reckless or negligent. § 544(b) This provision will dilute individual responsibility for public actions, and encourage federal officials to perceive themselves as accountable first to their superiors, and only second to the American public. It is startling, so soon after the rejection of such defenses in Watergate-related prosecutions, that Congress might introduce such a justification for otherwise patently illegal acts.

CRIME OF CONSPIRACY

The Brown Commission proposed to alter current laws of conspiracy by making it more difficult to establish the commission or an "overt act," tailoring the penalty to the target offense, and barring consecutive sentences for conspiracy and the target offense. These alterations were responses to severe and widespread scholarly criticism of conspiracy laws on first amendment grounds and on grounds of susceptibility to abuse. Nevertheless, under § 1002 of S. 1 an "omission" or "possession" suffices to establish that the plotting has gone beyond the talking stage, even if it does not satisfy the Brown Commission's requirement of being "a substantial step . . . strongly corroborative of the actor's intent to complete commission of the crime." Furthermore, the sentence for conspiracy can run as high as 30 years (compared with a maximum under Brown Commission recommendations of 15 years in some cases, and five years under existing law); and the sentence under S. 1 can be consecutive with the target offense sentence.

OFFENSES DIRECTED AT NATIONAL SECURITY AND GOVERNMENTAL EFFICIENCY WHICH JEOPARDIZE FREE SPEECH AND PRESS

S. 1 contains a collection of laws that threaten beneficial dissemination of information to the American public, all in the name of an inflated view of the requirements of national security and governmental efficiency. While not all of these provisions are innovations, they all step boldly into realms of speech and publication clearly protected by the first amendment. They must be completely rewritten with greater sensitivity to

the need—so painfully reaffirmed in recent years—for vigorous public scrutiny of governmental activity. The most objectionable of these provisions in S. 1 relate to:

(a) Espionage: Section 1121 penalizes the knowing collection or communication of "national defense information" with the "knowledge that it may be used, to the prejudice of the safety or interest of the United States, or to the advantage of a foreign power. . . ." The absence of any requirement of specific intent to injure the interests of the United States or any likelihood of such injury, coupled with the extremely broad definition of "national defense information" and the vague reference to the "safety or interest of the United States", takes this section far into protected first amendment territory. "National defense information", for example, includes "any . . . matter involving the security of the United States that *might* be useful to the enemy." An effective espionage law can be drafted which reaches only the narrow class of conduct which genuinely endangers the public welfare, such as communication to hostile governments of information about weapons development or military contingency plans. Similar objections are appropriate to the sections of the act forbidding disclosure of "national defense information" to anyone who is known not to be authorized to receive it by Act of Congress or Executive Order, and requiring any unauthorized person who receives it to deliver it promptly to a federal public servant who is entitled to receive it (§ § 1122–23).

(b) Disclosing Classified Information: Section 1124 makes communication of classified information to "unauthorized" persons a felony, even if the individual has neither the purpose nor the capacity to harm real national defense interests. Under the original version of the bill, it was no defense that the information was improperly classified unless the individual had exhausted elaborate, potentially time-consuming administrative proceedings seeking declassification.

Recently agreed upon amendments improve the section somewhat by barring prosecution where the information was not lawfully subject to declassification or no administrative procedures for securing declassification or no administrative procedures for securing declassification exist. Especially if the words "lawfully subject to classification" are interpreted broadly, enactment of this provision will put Congress in the position of sanctioning an unfortunate bureaucratic tendency to excessive secrecy, as well as restricting the ability of news reporters to provide the American public with anything other than what the government decides they should know. Since official and unofficial "leaks" are a news-gathering fact of life, it is likely that this provision will be used selectively to harass independent-minded, public-spirited officials. Certainly there are other actions the government could take (e.g. dismissal) if an official disclosed properly classified information recklessly, with culpable intent, or for personal gain.

(c) Sedition: Recent United States Supreme Court precedent permits the government to proscribe advocacy of force or of law violation only when such advocacy "is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." (*Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969)). By contrast, § 1103 of S. 1 (as amended in Committee) punishes one who "with intent to bring about the forcible overthrow or destruction of the government of the United States or of any state," "incites other persons to engage in imminent lawless conduct that would facilitate the forcible overthrow or destruction of such government." By penalizing words that incite conduct which merely "facilitates" forcible overthrow of the government and by failing to require a substantial likelihood that the incitement will result in such conduct, this section flouts the protection granted by the First Amendment. This disregard for rights of free speech is even more glaring when the sections prohibiting conspiracy and solicitation are linked with the anti-sedition law itself: for agreeing with or persuading another to engage in seditious incitement at some time in the indefinite future would be a crime. The substantive offense should be rewritten to conform with Supreme Court doctrine, and a bar on cumulative inchoate offense should be imposed.

(d) Obstruction Government Functions and Impairing Military Effectiveness: Sections 1301 and 1302, prohibiting obstruction of government functions through fraud or physical interference, and §§ 1112 and 1114, penalizing impairment of military effectiveness through false statements and otherwise, all provide heavy penalties for broadly and vaguely defined categories of conduct. They could be used against public officials and media organizations whose aim is to inform the American people about unlawful actions such as the My Lai massacre, as well as against large but peaceful demonstrations that interfere with the free flow of traffic to and from government buildings. As such, they obstruct and impair vigorous debate in the press and on the streets. Unless such sections are amended to require specific intent to interfere with governmental or military effectiveness and to single out the most serious functions and military activities that might be impaired, these sections should be dropped, and reliance placed in other crimes such as sabotage, rioting and espionage.

(e) Rioting: While S. 1's anti-rioting provisions are more precise than current law in defining a riot, they are deficient in several respects. First, they penalize urging participation in a riot during the riot (§ 1831(a)(2)). Given that a riot is defined as "a public disturbance . . . that involves violent and tumultuous conduct . . and . . . creates a grave danger of imminently causing injury or damage to person and property" (§ 1934), and given that there is no requirement that the defendant's "urging" be likely to produce activity in furtherance of the riot, the sections do not satisfy the Supreme Court's criteria for appropriate punishment of "mere speech" (see discussion of "Sedition"). Second, when the definition of a riot to include any disturbance of ten (recently amended from five) or more persons is considered in conjunction with jurisdictional provisions encompassing situations where any government function is obstructed, it becomes apparent that the federal government is intruding into areas more properly of local concern. The Brown Commission strenuously endeavored to avoid just such over-extensions of federal power.

(f) Wire-tapping: S. 1 largely restates the controversial and much abused wire-tapping provisions of the Omnibus Crime Control and Safe Streets Act of 1968. In view of the most recent Supreme Court and Circuit Court of Appeals decisions restricting Congress's power to authorize warrantless searches in domestic national security matters (*United States* v. *United States District Court*, 407 U.S. 297 (1972); *Zweibon* v. *Mitchell* (No. 73–1847, D.C. Cir., June 28, 1975)), the provisions in S. 1 authorizing taps without a court order whenever a law enforcement officer "reasonably determines that an emergency situation exists with respect to conspiratorial activities threatening the national security" (§ 3104(b)(2)) and exempting the President from all liability for wiretapping instituted, *inter alia*, "to protect the United States against the overthrow of the government by force or other unlawful means," (§ 3108) are wholly inappropriate. Inherent in these sections is a potential for abusive surveillance of political dissidents or other disfavored groups.

FEDERAL RECORDKEEPING REQUIREMENTS

Mr. RIBICOFF. Mr. President, the Federal Government has attempted to cope with the ever-increasing growth of Government records of personal data by the use of computers and related technology. Because of the mounds of records maintained by the Federal Government, it becomes even more difficult to make sure that security and confidentiality standards for personal records apply.

Congress has examined and demonstrated the need for better control of technology and the overall management of automated record systems of the Federal Government by its enactment of the Privacy Act of 1974. The act is designed to provide safeguards to insure individual privacy against the misuse of Federal records. Provisions of the act which require changes in agency recordkeeping—disclosure, collection, maintenance, access, dissemination, et cetera—become effective September 27. Agencies will also be required to notify Congress of their intention to establish or alter systems of personal records as required by the Privacy Act.

The Washington Post, in an editorial published Friday discusses some of the ramifications of the recordkeeping requirements. I ask unanimous consent that it be printed in the RECORD for the interest of my colleagues.

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

[From the Washington Post, Sept. 19, 1975]

FOCUSING ON FEDERAL FILES

A new era in federal record-keeping will officially begin Sept. 27 when the Privacy Act of 1974 goes into effect. The law gives citizens the right to inspect many kinds of government files about themselves, and sets down strict rules for the collection, use and exchange of information about individuals. The principles involved—accuracy, relevance, fairness and need-to-know—are elementary. But applying them to the great volume and variety of federal records has proved to be, as expected, quite a monumental task.

The part of the law that has generated the most work and grumbling in many agencies is the requirement for full disclosure of the nature of all files involving individuals. This provision, in effect an annual public inventory of the government's information stock, was enacted because Congress found that nobody knew the full extent of federal record-keeping about citizens. Some agencies were maintaining secret files and concealing some abusive practices from Congress and the public. The broader difficulty, however, was simply that the government's data demands had grown so fast, and had been answered in so many uncoordinated ways, that not even the agencies themselves had a firm grasp of all their information practices.

The inventory is now nearing completion. The results are staggering, to put it mildly, even to those who have long suspected that the government has a file on everything. So far, over 8,000 records systems have been summarized in fat volumes of the Federal Register totaling 3,100 pages and more. The entries range from the controversial to the commonplace. There are listings for the sensitive files of the Defense Investigative Service; for records of the participants in National Security Council meetings since Jan. 20, 1969 (classified "SECRET"); for HEW's roster of licensed dental hygienists; for the

Agriculture Department's list of people interested in forestry news, and for the Export-Import Bank's roster of employees who want parking spaces. There are outlines of huge computerized networks such as the Air Force's Advanced Personnel Data System, summarized in 11 columns of small print; there are earnest entries for little lists such as the key personnel telephone directory of the Administrative Office, Assistant Secretary of Defense (Intelligence)—a roster kept, according to the Aug. 18 Federal Register (Part II, section 1, page 35379), on "8 x 10½ Xerox plain bond sheets."

The huge pile of records and lists of lists may seem to reach new heights of regulatory overkill. Indeed, there are bound to be jokes and complaints about the agencies that keep so many files—and about the Congress that required such detailed, indiscriminate reports. But such an inventory, however tedious to prepare—and however trivial parts of it may be—is a useful and necessary step. For the first time, the awesome range of government records has been catalogued. For the first time, all agencies have been compelled to define what they collect on individuals, how the materials are used, who has responsibility for what, and which records, primarily in law enforcement fields, are so sensitive that they should be withheld from inspection by the citizens involved.

The catalogs and related agency regulations merit scrutiny on a number of grounds. Many citizens will no doubt want to inspect various records on themselves. Congressional committees and interested groups in many fields may wish to challenge some uses of data and some exceptions from disclosure, notably the extensive withholding proposed by the Justice Department on law enforcement grounds. Congress may now be able to sharpen the focus of the Privacy Act and modify the reporting requirements for mundane records systems such as internal telephone lists. And federal administrators, given some time to review their reports, may well start questioning some of their offices' data-collecting practices and weeding out their files. Indeed, it is quite possible that some bureaucrats, faced with the chore of cataloguing marginal or redundant files, may have already employed a very unbureaucratic strategy: throwing some records out. If that has happened even in one agency, the Privacy Act has already done some good.

"HATCHING" SECOND-CLASS NONSENSE

Mr. FANNIN. Mr. President, several bills have been introduced this year in both the Senate and House, including S. 372 and H.R. 8617, which would repeal the Hatch Act.

As my colleagues know, Federal civil service employees are "hatched," that is, they are prevented by law from engaging in political activities or making political contributions in election campaigns. The purpose of the Hatch Act is to prevent the use of Federal bureaucrats in political election campaigns at taxpayers' expense, without their approval. In addition, the law is designed to preserve the political independence of civil servants so that political pressures will not keep them from acting in the public interest. It would also prevent a situation where elected officials would be beholden to Government employees for support. In light of the recent lobbying efforts of many bureaucrats and public employee unions in behalf of Government pay raises, I can foresee tremendous problems for the public if the Hatch Act is repealed.

The Supreme Court, in its opinion upholding the constitutionality of the Hatch Act, stated that—

Its decision would no more than confirm the judgment of history, a judgment made by this country over the last century that it is in the best interest of the country, indeed essential, that federal service should depend on meritorious performance rather than political service.

This statement, expressed more eloquently, sums up my position against repeal or relaxation of the Hatch Act.

Those who would change the law contend that Federal civil servants are being treated as second-class citizens because they cannot engage in politicking to the same extent as private employees. As Howard Pfliger demonstrates in the U.S. News & World Report of September 22, this argument is "second-class nonsense."

Mr. President, I ask unanimous consent that the article be printed in the RECORD.

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

[From U.S. News & World Report, Sept. 22, 1975]

SECOND-CLASS NONSENSE

(By Howard Flieger)

As often occurs before a presidential election campaign, Congress is being asked to repeal, or soften, the Hatch Act.

In case you've forgotten, that is a law making it illegal for Government employes to take an active role in political campaigns, to ring doorbells, raise money or rally support for any party or candidate.

Advocates of repeal—they include politically active unions—claim now, as they have in the past, that the Act, which dates back to 1939, puts strictures on the freedom of federal employees; that it relegates them to the status of second-class citizens.

This is plain nonsense.

Government workers have the same right to register and vote as anyone else has.

They are free to express their political preferences and to support the candidate of their choice with cash if they want.

They can be—and usually are—as politically minded and outspoken as the next person. Their franchise is unfettered. Anyone who thinks there is no politicking among Civil Service employes is naive.

Nobody argues that the Hatch Act is perfect. But it does effectively prevent that which it was designed to prevent: It makes certain that no candidate or party can convert the huge federal bureaucracy into a political machine.

The Act has sheltered the rank and file from any spoils system of patronage rewards for the party faithful. No officeholder can go through the Government hiring and firing at will on the basis of politics. No one can tell Civil Service employes how to vote and keep them in line with threats of payday reprisals.

They cannot be coerced into party work. They cannot perform the nuts-and-bolts jobs of a campaign such as soliciting funds, manning headquarters telephones or serving as chauffeurs to ferry the voters to the polls on behalf of any ticket.

Does this make them second-class citizens? Hardly. The odds are that those public servants who are sincerely interested in Government performance—and that means the vast majority of them—welcome the shield that stands betwen them and party affairs.

It was a fear the federal payrolls would be used to perpetuate political control that produced the law in the first place.

The U.S. Supreme Court, in upholding the constitutionality of the Hatch Act two years ago, said Congress had concluded when it passed the original "that the rapidly expanding Government work force should not be employed to build a powerful, invincible and perhaps corrupt political machine.

"The experience of the 1936 and 1938 campaigns convinced Congress that these dangers were sufficiently real that substantial barriers should be raised against the party in power—or the party out of power, for that matter—using the thousands or hundreds of thousands of federal employes, paid for at public expense, to man its political structure and political campaigns.

"A related concern, and this remains as important as any other, was to further serve the goal that employment and advancement in the Government service not dependent on political performance, and at the same time to make sure that Government employes would be free from pressure and from express or tacit invitation to vote in a certain way or perform political chores in order to curry favor with their superiors rather than to act out of their own beliefs."

Congress felt safeguards against politicizing the bureaucracy were prudent back when federal employes were counted in "the hundreds of thousands."

It is difficult to follow the reasoning of those who argue such insurance is no longer needed—now that the number of Government workers (not counting the military) has grown to more than 2.5 million.

A FARMER'S CREED

Mr. McGEE. Mr. President, as I have said so many times before, we can ill afford to have isolationist attitudes regarding the industry of agriculture in America. It is not to be separated from the mainstream of life in the United States nor from the role it plays in relationships with other countries.

Sometimes, however, we fail to realize both the economic and humanitarian contributions the farmer makes. Lately, his contributions have been greater than what he makes, but what the farmer is made of, Mr. President, is best expressed in what is called the Farmer's Creed as was published recently in Wyoming Rural Electric News.

I ask unanimous consent that the Farmer's Creed be printed in the RECORD.

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

[From the Wyoming Rural Electric News]

A FARMER'S CREED

I believe a man's greatest possession is his dignity and that no calling bestows this more abundantly than farming.

I believe hard work and honest sweat are the building blocks of a person's character.

I believe that farming, despite its hardships and disappointments, is the most honest and honorable way a man can spend his days on this earth.

I believe farming nutures the close family ties that make life rich in ways money can't buy.

I believe my children are learning values that will last a lifetime and can be learned in no other way.

I believe farming provides education for life and that no other occupation teaches so much about birth, growth and maturity in such a variety of ways.

I believe many of the best things in life are indeed free; the spendor of a sunrise, the rapture of wide open spaces, the exhilarating sight of your land greening each spring.

I believe true happiness comes from

watching your crops ripen in the field, your children grow tall in the sun, your whole family feel the pride that springs from their shared experience.

I believe that by my toil I am giving more to the world than I am taking from it, an honor that does not come to all men.

I believe my life will be measured ultimately by what I have done for my fellowman and by this standard I fear no judgment.

I believe when a man grows old and sums up his days, he should be able to stand tall and feel pride in the life he's lived.

I believe in farming because it makes all things possible.

CONCORDE TRAFFIC PROBLEM SEEN

Mr. BAYH. Mr. President, nearly 2 months ago, on July 25, this Chamber rejected by only two votes a measure to prohibit commercial supersonic aircraft from using U.S. airports until they could comply with existing Federal Aviation Administration noise standards which apply to current-generation subsonic commercial airplanes.

The purpose of that measure, which I introduced along with Senator PROXMIRE and Senator CASE, was primarily to protect the healthy, safety, and comfort of the people living in the vicinity of airports which—in the near or more distant future—would be used by SST's.

Much of the debate revolved around the noise issue, and I continue to believe that this Congress has a responsibility to protect citizens from excessive noise levels, and that that responsibility is not lessened by the fact that a regulatory agency may be proceeding on a different course toward a different conclusion. I refer here to the FAA's consideration of applications by foreign SST's to utilize two U.S. airports despite the fact that these planes generate ear-splitting noise and low-frequency vibrations sufficient to rattle windows and dishes in nearby dwellings.

Another issue in the debate was the inequity of a double standard which required U.S. planes to comply with noise regulations while permitting an exception for the foreign-made SST.

Several other disadvantages of SST use of American airports were cited, notably the aircraft's inefficient uses of fuel compared to other planes and the high cost of SST travel.

Today, I would like to call the attention of the Senate to an article which appeared in the Washington Post on September 15 regarding yet another aspect of the SST problem: the traffic control problem. The article, based on internal FAA document, indicates that the proposed Concorde landings at Dulles and John F. Kennedy International Airports may well require adjustment in air taffic control procedures some of which could cause delay of other flights.

This position is in contradiction to the draft environmental impact statement prepared by the FAA in March 1975. On page 52 of that statement, the following paragraph occurs.

The Concorde does not require any unique air traffic procedures in which to operate in the approach, cruise or departure phases of flight or in ground maneuvering. The air traffic control procedures currently applied to subsonic aircraft are generally applicable to the Concorde.

Mr. President, I ask unanimous consent that the Washington Post article by Douglas Feaver 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, Sept. 15, 1975]

CONCORDE TRAFFIC PROBLEM SEEN

(By Douglas B. Feaver)

The Federal Aviation Administration's claim that the Concorde supersonic jet transport would not require "unique" air traffic control procedures *if introduced* in the United States "is not completely accurate," according to an internal FAA document.

The document, obtained by the nonprofit Environmental Defense Fund, cites five specific situations that could require at least an adjustment in air traffic control procedures, some of which could create delays for other flights. An FAA official said yesterday he was confident the Concorde could fly "within the system."

The Concorde, a joint Anglo-French venture, will be flying regularly scheduled service to Dulles International Airport here and JFK Airport in New York in early 1976 if current FAA recommendation stands.

That recommendation was contained in a draft environmental impact statement. The FAA has been holding public hearings and taking written testimony on that draft, and is expected to issue a final recommendation and impact statement within the next few weeks. Six Concorde fligts a day—four into New York and two here—would begin early next year.

According to the draft statement, "The Concorde does not require any unique air traffic procedures in which to operate in the approach, cruise, or departure phases of flight or in ground maneuvering . . ."

But a memorandum signed by Walter D. Kies, the chief of the planning staff for the FAA's eastern region says: "The statement made [in] the subject draft . . . is not completely accurate."

The memo was, in part, a report on a meeting with British Airways officials at FAA headquarters to discuss operating characteristics of the Concorde, which would cut Transatlantic travel time from about 7 hours to about 3½ hours.

The most important point appears to concern the amount of fuel reserve the Concorde will have. "Special procedures must be set up if delays of 30 minutes or more are expected at destination airport," the memo said.

The memo also said operation of the Concorde would require that broad bands of airspace be assigned exclusively to the planes as it climbed or descended, and that a band of altitudes from 43,000 to 48,000 feet would have to be reserved for it while cruising. Top speed would be about 1,400 miles per hour.

Further, the memo questioned whether the Concorde could fly a holding pattern in existing airspace reserved for that purpose and suggested that changes in takeoff and departure sequence with other aircraft might be necessary because of Concorde's higher speeds.

William M. Flener, the FAA's associate administrator for air traffic and air facilities, confirmed the authenticity of the memorandum yesterday, but said, "As far as I'm concerned, the aircraft is going to fit in with other traffic."

Concerning the fuel question Flener said, "If he gets into a critical fuel situation, he gets priority—but so does anybody else. If it happens time after time, however, then we would have to re-examine it."

He stressed that a final decision to permit the Concorde to land in the United States has not been made.

Most of the attacks against the Concorde have been mounted for environmental reasons. At public hearings here and elsewhere, persons have primarily complained about the superjet's noise, and of possible damage to the stratosphere because of the high altitudes it flies.

The Federal Energy Administration has said that the Concorde will not be fuel efficient, because it will use as much petroleum to carry 120 people across the Atlantic as a slower Boeing 747 would use to carry 340.

THE PROPOSED FEDERAL ENERGY CORPORATION

Mr. HARRY F. BYRD, JR. Mr. President, President Ford announced today that he is recommending the establishment of a $100 billion Federal Energy Corporation.

In the plan, the Federal Government would borrow money, and then loan it to private business.

Before making a firm decision on the President's proposal, I will want to study it carefully.

But I fear that it may be a device similar to those that helped get New York State into such grave financial difficulties.

In this connection, William M. Ringle, chief Washington correspondent for the Gannett News Service, developed a highly informative article on the creation of public authorities in New York by then Gov. NELSON A. ROCKEFELLER, now Vice President of the United States.

Mr. Ringle has an intimate association with the subject, as he covered the Rockefeller administration from Albany for many years.

I ask unanimous consent to have printed in the RECORD, an article by William Ringle published in the Washington Star, captioned "How Rockefeller's Midas-Touch Trick Went Sour."

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

HOW ROCKEFELLER'S MIDAS-TOUCH TRICK WENT SOUR

(By William Ringle)

In Nelson A. Rockefeller's baggage when he came to Washington was a formula for his equivalent of the philosopher's stone and the universal solvent rolled into one.

Like the philosopher's stone, this wonder-working device seemed to turn baser substances (in Rockefeller's case, paper bonds) into gold, or at least money.

Like the universal solvent, it seemed to dissolve obstacles—especially public debt, the need for more taxes, troublesome legislators, recalcitrant voters, reluctant union bosses and political liabilities.

This magic device was called the public authority.

Almost any time Rockefeller had a major money problem in New York of how to provide university or mental hospital buildings, housing for those of low and middle incomes, or commuter railroad cars—he created a public authority.

Last spring, the public authority turned out to have still another, political advantage: If it goes belly up, it does so after the creator is long gone and it gives big trouble to his opposition.

In April one of Rockefeller's pet authorities, the Urban Development Corporation, became the first major public agency in New York State ever to declare itself unable to

meet its debts. "The Impossible Happens: UDC Goes Broke," said a *New York Times* headline. By that time Rockefeller was comfortably ensconced far away in Washington. His Democratic successor, Gov. Hugh Carey, who by then had scarcely had time to learn the way to his office, was forced to pick up the pieces.

Republicans in New York have yet another bonus in prospect. The UDC was bailed out, to the tune of a half billion dollars, but only temporarily (until Nov. 1, 1976): The odds are that Carey next year again will be forced into the time-consuming, distracting and embarrassing business of cleaning up another UDC mess.

In addition, New York State's Housing Finance Agency, still another Rockefeller public authority (it is the agency that markets bonds for public authorities) which needs to borrow $100 million a month just to tread water, served notice on the state just last week that it has no reliable source of funds in sight.

Yet, with the smoke from UDC still on the horizon and the HFA troubles looming, Vice President Rockefeller—whose sense of timing in the past has been less than exquisite—has been pushing for the same general kind of answer to the nation's energy problems: a public authority that would float bonds and raise up to $100 billion.

Rockefeller's idea was to create a "new government corporation" that would:

Guarantee loans for private industry, or

Raise money by selling its own government-guaranteed bonds and then make direct loans in industry.

"Theoretically," explained *The Wall Street Journal*, which first revealed the scheme, "Washington would be able to steer great quantities of private money into vital areas without tying up great quantities of public money."

Because this is almost exactly the language Rockefeller used in promoting his authorities in New York State, it may be worthwhile to look at how and why these developed and what has happened to them.

The public authority—sometimes called the "public benefit corporation"—in its pristine form is simply a means of letting the users of public projects pay for them.

For example, an authority might be set up to build and operate an expressway or a bridge. To raise the money, it would sell bonds. Over the years, to pay off the bonds with interest, and to pay for operating the road or bridge, it would charge tolls. The project successfully financed by an authority would literally pay for itself—be "self liquidating," in the government lingo.

The authority classically is used to do a job that has an extra dimension or is not in the state's usual line of work. For example, an authority might operate power plants to generate and sell electricity in partnership with a foreign government. Or it might provide a facility that transcends ordinary political boundaries (such as building and operating a sports stadium to serve two counties, or a farmer's market serving a vast region of many cities and counties; or a seaport or airport serving a wide region).

The members of an authority, often three to six in number, operate as a kind of free-wheeling board of directors. They combine the flexibility and independence of a private business with the power of government.

In any narrative of Rockefeller's enchantment with public authorities, two men loom large. One is his former all-purpose brain truster, William J. Ronan. The other is John N. Mitchell, once one of the nation's leading municipal bond lawyers who was later to become President Nixon's attorney general.

In the early 1950s, Ronan, then dean of the New York University Graduate School of Public Administration and Social Science, directed a state commission's pioneering study of public authorities. It is still somewhat of a collector's item among students of government. In 720 pages it described the uses and abuses of public authorities.

They operate—in secret, if they wish—outside the conventional controls by elected officials.

And they can, by selling bonds, run up debt without the approval of the voters or the legislature. This is perhaps the most important aspect of the authority because many state governments are forbidden by their constitutions to go into debt (that is, to borrow by selling bonds or notes) without obtaining the voters' aproval The public authority is a way around that obstacle

(A few may recall that Rockefeller became governor in 1958 after taking the hide off his predecessor for running up an $879 million debt, all approved by the voters. Fifteen years later, when Rockefeller left office, the state debt was listed as $11 billion, with only $3 billion of it approved by the voters. The The rest had been run up by public authorities.)

Ronan's study also noted that the debt acquired by authorities is not subject to those early-warning systems, state or municipal debt ceilings. A public authority's debt is its own obligation and is not lumped in with total state debt. ". . . Many public authorities in New York have been created to avoid debt limits," said the Ronan-directed study.

Despite the authorities' freedom from state restrictions, Ronan's study conjectured that if an authority could not meet the payments of its bonds and went broke, the state's taxpayers would have a tacit obligation to pay its debts. This, he said in 1956, could be a "moral obligation." (Prophetic words: That is exactly that happened after the UDC declaed insolvency in April.)

Rockefeller laid the foundation for public authority financing in 1960 with the Housing Finance Agency. By then, Ronan, the old maestro of the public authority, was Rockefeller's administrative alter ego. And Mitchell generally gets credit for drafting the HFA legislation, of which more will be said later.

Gradually, authorities proliferated. In 1962, confronted with the need for hundreds of millions, perhaps billions, to enlarge the state university, Rockefeller created the State University Construction Fund.

Then, there was the Mental Hygiene Facilities Improvement Fund to erect buildings at mental hospitals (in those days a big part of every state's budget). Both sold their bonds through the HFA.

The UDC came along in 1968, after voters had defeated two low-income housing bond issues. By then even the legislature was balky. An angry Rockefeller—who had hoped to get the "revolutionary" legislation enacted to counter black hostility after the assassination of Martin Luther King Jr.—threatened to withhold patronage and veto bills the legislative rebels were interested in. The UDC bill passed.

Rockefeller's authorities had a twist. The projects they financed did not exactly pay for themselves—they were not "self-liquidating," although he continues to insist they were.

What Rockefeller did was to spin off some conventional state responsibilities, such as the construction of college buildings or mental hospitals, and give the job to a public authority.

Since these kinds of structures did not themselves generate any new revenues, as a new toll road or a bridge would, he then earmarked students' fees and mental hygiene patients' fees to pay off the bonds.

Because such fees previously had been going into the state's general funds, this meant the slack would have to be taken up by tax revenues. So, the bonds indirectly were being repaid by the taxpayers, even though the debt technically had been shifted from the state's books to the authorities.'

Besides the bookkeeping sleight of hand, the authority device provided a number of advantages.

One, whether he intended it or not, was political. Rockefeller was then running for president and trumpeting "pay as you go." The authority gimmick enabled him to go around the nation and claim that he was doubling the size of the state university or adding $300 million in mental hospital space without adding to the state's debt and without raising taxes. This claim, a legal truth but a practical misrepresentation, made Rockefeller seem like some kind of administrative miracle worker, an aura that he retains in some quarters today.

Another was that authorities enabled Rockefeller to avoid the cumbersome, time-consuming process of government—the approval by legislators, whom Rockefeller does not hold in high esteem at any level, and the voters, who were demonstrably against more public housing and might have resisted the badly needed state university expansion. The authorities enabled Rockefeller to exercise his considerable "papa-knows-best" instincts.

Finally, the authorities had the benefit of postponing, if only for a while, the need to raise taxes.

It was not long after Rockefeller's first venture into public authorities that his tactics began to draw fire.

As early as 1963, two corporations that rated state bonds—Dun & Bradstreet and Moody's Bond Survey—were warning of the consequences. ". . . The state, in a shower of politically oriented slogans, is resorting to borrowing through special agencies and is increasingly earmarking revenues for this new debt," said D&B. "A continuation of these policies could eventually affect the state's credit standing . . ."

After several years, D&B and Moody's, followed by Standard & Poor's, lowered New York's triple-A credit rating a notch.

Instead of acting to curb Rockefeller, the pliant legislature turned on the bond-rating companies with threats to outlaw them.

The dour state comptroller, Arthur Levitt, repeatedly lambasted Rockefeller's "backdoor financing" "fiscal legerdemain" and "phantom debt."

Robert Morgenthau, the Kennedy-picked Democrat who ran against Rockefeller in 1962, articulated the case against the authorities. But he proved such an insipid campaigner that no one listened. Besides, his criticism, like Levitt's, was discounted as coming from a Democrat.

The fledgling Conservative party, made up largely of apostate Republicans, also had the authority issue pinned down in 1962, but its strident across-the-board objections to any government spending all but drowned it out.

Mitchell played a major role in making the authority bonds more palatable to bond buyers. Since the bonds were issued by public authorities alone—mainly the UDC or HFA—they did not have the "full faith and credit" of the state behind them.

Obaining that would require the approval of the voters, which Rockefeller, after his setbacks, was reluctant to seek.

Mitchell is given credit for language in the HFA law acknowledging the "moral obligation" of the state to make good on bonds should an authority collapse. Other states adopted the same language.

Theoretically, this would reduce the risk so that buyers would accept them at a lower interest rate. However, since the collapse of UDC and New York City's latest insolvency, that hope is somewhat beside the point. New York's "moral obligation" is indeed being called upon—to the tune of $285 million of the taxpayers' money for UDC bonds, to date.

The other money to meet UDC's debts was borrowed last spring from such places as a state fund that pays claims when there's no insurance after an accident, from the state employes' retirement system and from a consortium of savings banks. Thus, it is possible that the taxpayer will have to reimburse them and may end up paying the entire half billion. Yet the UDC was to have been a device, like Rockefeller's proposal for a federal energy agency, to avoid "tying up great quantities of public money."

How did New York State get in such a pickle?

One reason was that the legislature was not only tractable, but found the hazards of authority borrowing, although simple in concept, beyond its narrow attention span.

Many other contributed to the mess. They include: A subservient State Budget Division; a trusting and adulatory press (with the exception of the *New York Times*, which spoke out early and often against the backdoor borrowing); a neutralized band of liberals who didn't question the means so long as they approved of the ends; and trade unionists who savored the good jobs that the subsequent construction generated.

Rockefeller's new federal proposal—for an Energy Resources Financing Corporation—seems to be getting more scrutiny than he was accustomed to in Albany.

Alan Greenspan, chairman of the Council of Economic Advisers, blasted draft proposals because of the "virtually unconstrained" scope of the corporation's operations. The corporation itself could get into almost any aspect of the energy business, or could bankroll others.

The corporation coud avoid dealing with those persnickety bond buyers who were such a nuisance in Albany. The draft legislation would permit it to sell bonds to trusts and fiduciaries that are under federal control.

That means that money going into the Social Security "trust fund" or other retirement money could be "invested" in ERFCO. And if ERFCO performed in the manner of UDC or HFA, pension money would be lost and the United States would have to step in and make up the difference.

With his new corporation, Rockefeller wouldn't have to resort to John Mitchell-inspired sugestions of "moral obligation" in order to make the bonds attractive. The bills say they'd be backed by the "full faith and credit" of the United States.

HOW THE OIL COMPANIES HELP THE ARABS TO KEEP PRICES HIGH

Mr. CHURCH. Mr. President, an excellent article by Anthony Sampson appeared in New York magazine, September 22, 1975. Mr. Sampson concludes that the oil companies are willing tools of OPEC in OPEC's effort to continuously raise oil prices. As Mr. Sampson succinctly states:

There is one obvious answer to the question of how to break up OPEC. It is to break up the giant oil companies. . . .

I recommend this article to my colleagues and to the members of their staffs who are responsible for oil policy, and ask unanimous consent that it be printed in the RECORD.

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

HOW THE OIL COMPANIES HELP THE ARABS TO KEEP PRICES HIGH

(By Anthony Sampson)

On September 24 in Vienna, the members of the Organization of Petroleum Exporting Countries will meet once again to settle the world price of oil, while the consuming countries will watch helplessly, waiting to see what they must pay for the fuel which is their lifeblood.

It is two years since the crisis first began, a time in which the price of crude oil first doubled, and then doubled again, and which revealed to the world the existence of an effective international cartel of producing countries. Since then there have been a succession of twists and turns of policy and attitude in the Western capitals: first outright disbelief at the existence of the cartel; then patient expectation that it could never survive; then (at least from Washington) a determination to confront it with a solid front of consumers; then total disarray among the Western nations, each with a different attitude toward oil and the Arabs; then a gradual acceptance, at least in the United States and Britain, of the idea that the price of oil might remain where OPEC had fixed it.

At the same time the consuming governments have tried to apply themselves, with equal lack of success, to the problem of the international oil companies, the "Seven Sisters," to whom they had given so much responsibility for maintaining the supplies of cheap oil over the last four decades. First the politicians, goaded by the consumers, were simply outraged by the fact that the companies had lost, overnight, all their bargaining power and leverage to keep prices down, and were powerless to ensure crude supplies. Then they were still further enraged by the vast increases in the company profits, and determined to cut them back and control them. Then they were confused by the need to develop their own national oil resources, which were largely in the hands of the same Seven Sisters. Then they were slowly resigned to the notion that there was no practical alternative to leaving their oil in those hands.

The companies, in the meantime, have emerged, much more clearly, as the most powerful corporations in the history of the world. In Fortune's annual list of the biggest companies, the ten biggest American industrial corporations include five of the Seven Sisters, led by Exxon, which has now overtaken General Motors as the biggest company (by sales) in the world. The six others are: Royal Dutch-Shell, Texaco, Mobil, British Petroleum, Standard Oil of California, and Gulf.

And the sinister side of this financial power has emerged in a succession of spectacular revelations about the extent of oil bribes. Oil companies have a unique reputation for large-scale bribery ever since the turn of the century, when John D. Archbold, who succeeded the first John D. Rockefeller as the head of Standard Oil, set up a network of bribes of senators and congresmen to ensure his company's monopoly. Some evidence of the continuing underground rivers of oil money emerged in the Watergate hearings, when Gulf Oil confessed to having secretly paid $100,000 to Nixon's election fund through cash raised in its Bahamas subsidiary. But the full dimensions did not emerge until Senator Frank Church's investigations this year. They revealed, among other instances, that Gulf had paid $4 million from 1966 to the ruling party of South Korea, and still more sensationally that Exxon had made secret political payments totaling $51 million over eight years in Italy alone.

What is disturbing about these huge payments is not only their capacity to corrupt and subvert foreign governments, but the evidence they provide that giant corporations, supposedly responsible to shareholders and controlled by auditors and rigorous internal accounting, are able to conceal such large sums and direct them secretly for their own purposes. They powerfully suggest that the oil companies, in both the technical and the general sense, are unaccountable.

But a more serious and enduring doubt about the great companies concerns their relationship with the OPEC cartel. Are they genuinely concerned to break up the control by this group of sovereign states, and to bring down the world price? Or are they in fact helping to underpin the oil producers' cartel? On these questions I have tried to assemble the evidence that has emerged in the last two years, and have talked with the leading participants within OPEC and the companies. The story that emerges is an extraordinary one which, I believe, raises great doubts about the role and loyalties of the oil companies.

In looking back at the first crisis of two years ago, it is necessary to bear in mind two crucial factors. First, that OPEC had been essentially the creation of the Seven Sisters. Not at all in the sense that they wanted it, but in the sense that OPEC was from the moment of its foundation in 1960 conceived (as one delegate put it) as "a cartel to confront the cartel." Without the past history of connivance of the companies, OPEC would never have happened. Nor could it ever have solidified without a single extraordinary blunder in the board room of Exxon.

In July, 1960, the Exxon directors agreed—against the advice of their Middle East expert, Harold Page—unilaterally to reduce the "posted price" for Middle East oil, a decision which was swiftly followed by the other six sisters. Thus, all their revenues from oil taxes, which were based on this "posted" price, drastically reduced overnight by the actions of a group of private companies. It was a certain recipe for Arab unity, as many experts had warned: and it worked. The key producers clubbed together to form OPEC, and even the shah swallowed his resentment of Arab radicals in his anger at not being consulted by the companies, and joined the new club.

Secondly, in spite of this crass mishandling of the oil producers, and many other errors that followed, the oil companies were permitted by the Western governments, and particularly by Washington, to maintain effective control over international oil policy over the next thirteen years, so that when the crisis eventually came, both governments and the public were totally unprepared for it. To be fair, a few oilmen, notably in Shell and Mobil, had issued warnings to governments, and governments were at least as much to blame as the companies. But most of the company men were arrogant enough to suppose that they could handle the situation on their own.

Thus, in the critical October of 1973, the confrontation with OPEC was once again left in the hands of the Seven Sisters (now joined by a few independents), in spite of the fact that only two days before, the Middle East war had broken out, which transformed the whole political equation. The negotiation about the oil price, not surprisingly, quickly broke down; but the actual nature of the breakdown, only very briefly recorded at the time, is important to reconstruct, for it marked the historic turning point when the West suddenly lost its once-absolute ability to settle the price of oil.

By the night of October 11, with the war raging across the Suez Canal, the oil-company delegates had failed to reach any agreement with the Arabs about the new price of oil. The oilmen were already well aware, through price warnings from Saudi Arabia, of the likelihood that the Arabs would enforce an embargo of oil to the United States (as they did nine daye later). At midnight George Piercy, the director of Exxon responsible for the Middle East, paid a call on Sheik Zaki Yamani, the Saudi Arabian oil minister, in his suite at the top of the Intercontinental Hotel in Vienna. Piercy, a rugged engineer with bushy eyebrows who had worked his way up in the oil business through the "Texas pipeline," was a technician, not a diplomat, and he had decided, advised by his colleagues,

Gallery of the Senate daily. He reported the deliberations of the Senate—a very difficult job, I know.

Jack Bell was the type of newspaperman who had the confidence of the Members of the Senate. He had the confidence of the political leaders, including Presidents, with whom he had much contact over the years. I think one of the finest tributes paid to Jack Bell came from a longtime associate, who some years ago was chief of bureau for the Associated Press in Washington; namely, Paul Miller, now chairman of the Associated Press and chairman of the Gannett newspapers.

Mr. Miller, in a tribute yesterday, made this comment:

Jack Bell, my life-long friend and coworker, landed on the Washington scene from Oklahoma before World War II and from the first and throughout his brilliant career was recognized as one of the most able newsmen ever.

He knew politics as well as most of those actively involved and was trusted and respected by all. As a columnist for Gannett News Service afer his retirement from the Associated Press, he drew on his background and wide acquaintanceship for comment that was admired for depth and incisiveness as his reporting had been admired for completeness and balance.

COAL CONVERSION ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT AMENDMENTS OF 1975

Mr. RANDOLPH. Mr. President, I ask unanimous consent that a bill I am introducing be considered as having been read twice and placed on the calendar.

The ACTING PRESIDENT pro tempore. Is there objection. The Chair hears none, and it is so ordered.

QUORUM CALL

Mr. RANDOLPH. Mr. President, I suggest the absence of a quorum.

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

The second assistant legislative clerk proceeded to call the roll.

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

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

Under the previous order, the Senator from Pennsylvania (Mr. HUGH SCOTT) is recognized for not to exceed 15 minutes.

THE CRIMINAL JUSTICE REFORM ACT OF 1975

Mr. HUGH SCOTT. Mr. President, I have requested this time to discuss the Criminal Justice Reform Act of 1975 (S. 1) of which I am a cosponsor, along with numerous other Senators.

Several weeks ago I supported the chairman of the Judiciary Subcommittee on Criminal Laws and Procedures (Mr. MCCLELLAN) when he urged that the bill be reported to the full committee. In doing so, however, I reserved my right to revise several controversial aspects of the bill that I found troublesome. In particular, I am concerned about several portions of the bill that seemingly impinge upon our constitutionally protected freedom of the press.

Following these remarks, I would expect certain comments to be made by the distinguished Senator from Indiana (Mr. BAYH) who shares my concern over these vital matters and who has announced his intention to offer certain amendments, which I intend to support.

We are not alone in our desire to amend the proposed legislation in order to remove the portions that offend the first amendment to the Constitution. My distinguished colleague from Nebraska (Mr. HRUSKA) has also recently introduced far-reaching amendments that seek to remedy these shortcomings. His amendments—thoughtfully considered and skillfully drafted—reflect a statesman's sensitivity to, and appreciation of, the constitutional issues at stake. I know that his proposed amendments will be given the closest attention by the Committee on the Judiciary when it hammers out the final version of the legislation.

I understand that other Senators on the committee also plan to offer amendments in addition to those of Senator BAYH, Senator HRUSKA, and myself, that will further safeguard the constitutionally protected freedoms that we value so highly in this country. The Senator from Massachusetts (Mr. KENNEDY) and the Senator from Maryland (Mr. MATHIAS) will address themselves to the wiretap provisions. Senator TUNNEY insanity defense, Senator BURDICK sentencing and parole, and Senator PHILIP A. HART drug abuse. With such careful scrutiny, I expect that the final version of the proposed legislation will avoid the constitutional pitfalls contained in the earlier draft.

I hope that either now or subsequently, today, we will have the comments of the Senator from Indiana (Mr. BAYH). Meanwhile, I wish to recount briefly the major areas relating to the proper functioning of a free press in which I find amendment necessary. Though other changes are necessary, time limitations preclude a discussion of them at this time.

DISCLOSURE OF NATIONAL DEFENSE INFORMATION

This section relates to the control of information held by the Government. The bill as originally drafted creates a new offense that punishes the disclosure of classified information held by a Government employee or Government contractor to anyone not authorized to receive it. Senator BAYH proposes that the bill limit the offense to the transfer of classified information to a foreign power or agent of this foreign power with an intent that it be used to the injury of the United States or the advantage of any foreign power. Senator HRUSKA would seemingly narrow the ambit of the provision still further, by requiring only an intent to prejudice the safety of the United States or its Armed Forces.

As drafted, this section also fails to define with precision the type of information that falls within the meaning of "national defense information." Senator BAYH would require that the information pertain to "vital defense secrets," those that if revealed would pose a "direct, immediate, and irreparable harm to the security of the United States." These would be limited to four categories: Code or cryptographic information, specific information on war plans, specific information on weapon systems, and certain specific atomic secrets. Otherwise the penalties for disclosure are substantially lower, often only job-related.

In effect, Senator BAYH's amendment adopts for the criminal law the same constitutional standard that the Supreme Court requires before it allows the President to impose a prior restraint on the publication of national defense information.

This draft of S. 1 specifically exempts journalists from prosecution if they receive classified information from persons authorized to have it. However, this exemption does not specifically extend to the disclosure of the above-mentioned "national defense information." I consider this a major oversight, and one that the Senate must correct. Although Senator BAYH does not specifically exclude the press from liability as an accomplice, conspirator, or solicitor to offenses under this section, he would do so by implication unless the disclosure caused direct, immediate, and irreparable harm to the security of the United States. Senator HRUSKA would also exempt the press unless it has actual intent to imperil the safety of the United States or its Armed Forces.

THE DISCLOSURE OF OTHER CLASSIFIED INFORMATION

Senator BAYH and I are in total agreement that the press and media must be specifically exempted from liability for crimes under these provisions.

OTHER FIRST AMENDMENT CONSIDERATION

A number of other sections of the proposed legislation require revision to eliminate the possibility that in enforcing the law an overzealous official will not intrude on the media's first amendment prerogatives. Briefly, these are the sections that deal with theft, obstructing the Government by fraud, tampering with a Government record, obstructing a Government function by physical interference, instigating the overthrow of the Government, obstructing military recruitment, or induction and interception of mail.

Senator BAYH has addressed several of these issues, as has Senator HRUSKA.

To summarize, I think that the Committee on the Judiciary has a great deal more work to do on this bill. Under no circumstances will I support legislation that runs counter to the first amendment or interferes with freedom of the press.

My own office has been considering revisions similar to those of Senators BAYH and HRUSKA for some time, but since the proposed language of the BAYH and Hruska amendments has met with the approval of various concerned groups, I believe that I would best promote the adoption of these needed changes by supporting the Bayh amend-

ments, the Hruska amendments, or a combination of the two.

Out of an abundance of caution, we on the Judiciary Committee must be certain that two interests are served—the preservation of the rights of our free press and the protection of our national security. I know that Senator BAYH and Senator HRUSKA have similar concerns, and their amendments, which I generally support, or a combination of them, achieve this proper balance.

I repeat that I hope that Senator BAYH will have an opportunity to comment later in the session.

I would be glad to yield to the Senator from Montana.

Mr. MANSFIELD. Mr. President, there has been a good deal of misconception about S. 1, and I merely wish to take this means to aline myself with the remarks made by the distinguished Republican leader.

There are two sections of that bill in which I am vitally interested. One has to do with compensation for the victims of crime, which passed this Chamber five separate times, and which has not even as yet considered in the House.

Another section has to do with the carrying of a gun during the commission of a crime and the strengthened penalties for such an offense which also passed this Chamber on at least one occasion, I believe, but received no action in the other body.

What this latter provision would do would be to make the penalty for carrying a gun in the commission of a crime absolute and so severe as to deter the gun offender. The act of carrying a gun would be truly treated as a separate offense for which there would be a separate and distinct sentence. That sentence would not run concurrently but would be meted out in addition to the sentence, imposed for the underlying crime. In addition the sentence for carrying the gun would be a true mandatory sentence. I think this is one way to get at the gun people—those who use that weapon in carrying out their crimes of violence. I think it would be most salutary and an effective way to deal with and deter the use of such weapons of violence.

As far as the other parts of S. 1 are concerned, it should be pointed out that the major thrust of the measure concerns the revision of the entire criminal code to eliminate inconsistencies—a reform which is long overdue. However, as the distinguished Republican leader has pointed out, it was my understanding that there would be a good deal of amending by the committee; that the proposal, S. 1, would not come out in its original form simply because as introduced it contained certain items that unless modified strike at the heart of rights and protections safeguarded by the Constitution. As far as I am concerned, for example, I am opposed to those provisions which affect freedom of the press and so-called national defense issues. I am also concerned about the wiretap provisions, the insanity defense provision, and other matters, and I do not intend to support them nor have I ever intended to do so. In our modifying and perfecting efforts, however, we should not lose sight of the basic purpose of this measure or of its other meritorious features.

I am deeply interested in compensation for victims of crimes. The President has now exhibited similar interest in such a program. I am interested as well in strengthening penalties against gun criminals. The act of carrying a gun in the commission of a crime is a separate offense; courts must be compelled to treat it separately, to improve the separate sentence, to make it mandatory and to let the gun offenders know that there is no escape from his wanton act of violence in choosing such a weapon to perpetrate his wrongful acts.

I am delighted that the Republican leader has on this occasion made his position clear and I concur with him completely.

Mr. HUGH SCOTT. I thank the distinguished Senator. I also support, as the Senator knows, both of the provisions to which he has referred.

I yield now to the distinguished senior Senator from Nebraska.

Mr. HRUSKA. I thank the Senator from Pennsylvania.

I take this opportunity to say the statement he has made on this bill well describes the issues and the procedures to which resort will be had in processing S. 1 to final enactment.

There is general agreement, Mr. President, between the amendments which I have proposed and those referred to by the Senator from Pennsylvania, as well as the amendments proposed by the Senator from Indiana.

On June 27 of this year I stood on the floor of the Senate to expound in that same direction and with those same issues in mind.

Then, on August 15, I made an announcement and released specific amendments which were followed later by those from the Senator from Indiana and by the Senator from Pennsylvania, with the same thoughts in mind, that there would be in the final processing, consideration given to changes along these lines, insuring freedom of expression in this country. Mr. President, I ask unanimous consent that my remarks of June 27 and my August 15 release with the attached appendix of specific amendments be inserted in full at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HRUSKA. May I also say to the Senator from Montana that I am in favor of both of the sections in which he has expressed interest. He knows of my support on previous occasions and that support will be constantly forthcoming.

Mr. MANSFIELD. Mr. President, if the Senator will yield, I do certainly know of his support, and he has been one of the most ardent supporters of those two sections of the bill.

Mr. HRUSKA. Mr. President, this entire and encyclopedic bill will be processed by considering and carefully examining competing positions in intensive committee sessions. It has over 750 pages, and this method has been successfully used in other bulky and controversial bills. It is a matter of a constant forming and reforming and reamending.

In June 1973, the Senator from Arkansas, in introducing the original S. 1, said:

S. 1 is far from a final penal code, but I am satisfied that its structure, form and general outlines are sound. We view it only as a preliminary and immediate work product.

He goes on to say:

I know that some provisions will be controversial. Indeed, there is much room for debate on this bill. I have not reached firm judgments on a number of the provisions as they are now drafted. There is much that I wish to study further. My mind is not made up definitely on everything the bill contained.

The Senator from Pennsylvania referred to several issues that will be in the controversial area such as the matter of wiretapping, the matter of parole and sentencing, and other matters.

We have already engaged in that process, Mr. President, on one portion of S. 1. I refer to one of the more controversial points in the bill, capital punishment in certain cases. There was great controversy about it and, by agreement between the Senator from Arkansas and this Senator, there was a separate bill, S. 1401, introduced on the subject in the last Congress. It was thoroughly and vigorously debated on the floor here, as it had been on various occasions, and the vote was in favor of the reinstatement of the death penalty as limited. The vote was 54 in favor and 33 against it. There are 30 some odd States that have done the same thing.

The Senate and the country-at-large can be assured that in the main some 80 to 85 percent of the text and the body of S. 1 is a reenactment, recodification, a restatement, of present law.

I thank the Senator for having yielded.

EXHIBIT 1

FLOOR STATEMENT, JUNE 27, 1975, OF ROMAN L. HRUSKA

Mr. President, in President Ford's Message on Crime to Congress on June 19, 1975, laudatory reference is made to pending Senate Bill S. 1, the Criminal Justice Reform Act of 1975, a bill with which I have been connected for the past ten years, and which is a massive effort to codify and revise the criminal laws of the United States.

In view of its broad purposes, S. 1 necessarily touches upon many areas of the Federal criminal law which are of great concern to the people of this country. In any attempt to deal with such volatile issues as capital punishment, the insanity defense, appropriate lengths of sentences, increased sentences for special dangerous or repeat offenders, new sentencing treatment of certain marijuana offenses, and parole and probation, to mention just a few, some opposition to any position taken is to be expected. Indeed, it is even welcomed in the interests of informed debate so that the crucible of Congress, representing the people, may decide. It should be remembered that in addition to the controversial provisions, there are also dozens and dozens that are unquestionably advances: expanded recognition of civil rights; compensation for victims of violent crimes; increased fines for regulatory offenses currently inadequately deterred; prohibition of "dirty tricks" and other political tactics of Watergate fame; and a tighter crackdown on organized crime, to name only some.

The controversial provisions must not be

considered in a vacuum: for example, the increased sentences for some crimes must be considered together with the lowered sentences for others (including the lowered sentence for non-commercial possession of small amounts of marijuana) and together with S. 1's innovative concept of appellate review of sentences.

One particular area of controversy needs special mention, as it has been the area of some press criticism. I mention it to avoid the impression of intractability on my part. That is the area of punishing those who "leak" secret government information. Let me hasten to assure the press and others, that this is still an area open to change in the bill. We are still attempting to define that area where disclosure of government information may be made permissibly without undue harm to the nation—indeed, perhaps with benefit to the nation—and to differentiate that area from the area where disclosure would be unduly injurious in terms of the national defense. I am sure all will recognize what a difficult endeavor this is. We have been receiving much helpful information from many sources in this regard, and hope to continue to receive it. Already since May of this year, a new tentative draft of these provisions has been under consideration, which strikes the balance in a way more favorable to disclosure than the preceding draft against which much of the criticism seems to be directed.

Similarly in the process of being worked out in the bill, with changes already in the process of drafting, is the difficult problem of when interference with government functions, and conduct or exhortations presenting a risk of violence, should and should not be permitted, having due regard for considerations of free speech and the benefits and dangers that may flow from the conduct.

On these and other matters in the bill, I wish to make it clear that I retain an open and receptive mind. The arguments brought out in the hearings over the preceding four years, and in the extensive work of the National Commission on the Reform of the Federal Criminal Laws, upon which S. 1 builds, and by others, have been, and will continue to be, enormously helpful in this regard.

S. 1 has several hundred provisions. Several, as I mentioned, are still in flux. Several may still need improvement. Most, however, are unquestionably sound. We should not lose sight of the fact that stating the federal criminal laws all in one place, in a rational fashion, for the first time, is beyond doubt something that is long overdue. S. 1 will accomplish that objective, to the immeasurable benefit of all in the criminal justice system and the country generally.

PRESS RELEASE, AUGUST 15, 1975, FROM THE OFFICE OF SENATOR ROMAN L. HRUSKA

Senator Roman L. Hruska (R-Neb) said today he would propose changes to controversial sections of a Senate criminal law codification bill, "in order to spell out more particularly some of the guarantees of free expression that, while perhaps inherent in the bill, did not clearly emerge in the text read by a non-expert."

Hruska, one of the principal sponsors of the bill, S. 1, which would codify virtually all federal criminal laws, noted that in June he made a statement in the Senate which indicated the bill is "open to change."

That statement, he said today, "recognized the need for tempering some of the provisions in the interest of giving greater recognition to the freedom to report governmental information and to engage in certain forms of non-violent conduct against actions of the government, while at the same time protecting the functioning of government, safeguarding the valid interests of other individuals, and affording protection to those state and military secrets that are vital to the survival of this nation."

The Nebraska Senator said his remarks in June "were framed with reference to a set of amendments to S. 1 along these lines, already drafted and awaiting only detailed consideration and perfecting.

"With the advent of the August recess, I have now had the opportunity to consider them in detail and I intend to urge their consideration by the Senate Judiciary Committee."

Hruska said he intended to press for moving the bill, which contains more than 1,000 other provisions, forward "so that the legal system will not have to wait too long to benefit from this desirable codification."

Hruska, as he had in earlier statements, noted that "it should be remembered that in addition to the controversial provisions in this extensive bill, there are hundreds that are unquestionably advances, for example expanded recognition of civil rights; compensation of victims of violent crimes; increased fines for regulatory offenses which are currently inadequately deterred; prohibition of 'dirty tricks' and other political tactics of Watergate fame, to name only a few."

Referring to the endorsement "in principle" of S. 1 by the American Bar Association's House of Delegates meeting this week in Montreal, Hruska said "The ABA reached some of the same decisions I had when it withheld its approval of those provisions which I am seeking to amend."

A summary of the Hruska changes:

Espionage; and Disclosing National Defense Information: These provisions are narrowed to require intention to prejudice the safety of the U.S. or its armed forces. The amendment also narrows the conduct that may be called espionage, and excludes the recipient of the information from criminal liability as an accomplice, conspirator, etc., unless he, too, has the intention to prejudice U.S. safety. In addition, the definition of "National Defense Information", which it is a crime to disclose, its narrowed so as to cover only critical or vital sensitive information.

Tampering with a Government Record: This provision is redrafted to exclude mere leaks of government information, and include only cases where the physical absence or alteration of a document demonstrably interferes with a government function.

Obstructing a Government Function by Fraud: This section is narrowed to include only substantial interference, and to exclude conduct which involves the release of national defense or classified information.

Obstructing a Government Function by Physical Interference: This provision is narrowed to exclude indirect interferences and insubstantial ones.

Instigating Overthrow of the Government: This provision is narrowed so that conduct which is meant to express a point of view and presents no serious threat, is not made criminal.

Sabotage: This provision is narrowed to exclude indirect, insubstantial, or nonphysical obstructions, and obstructions resulting from advocacy alone.

Obstructing Military Recruitment and Induction: This provision is modified in accord with the principles above.

In addition to the above, there are several more technical corrections the Senator will propose to S. 1.

He is also considering whether the classified information provisions should draw a distinction between classified information the disclosure of which should have only job-related consequences, and classified information the disclosure of which should bear criminal sanctions.

NOTE TO EDITORS AND CORRESPONDENTS

Attached is the precise language of the amendments to be proposed by Senator Hruska. They should be viewed against the May 16, 1975 draft of S. 1.

APPENDIX (AUG. 15, 1975)

NATIONAL SECURITY AND RELATED OFFENSES

Amendments to the May 16, 1975 Draft of S. 1; proposed by Senator Roman Hruska:

A. § 1103—INSTIGATING OVERTHROW ETC. OF GOVERNMENT

Amendment:

1. Define "incites" up front in § 111 (definitions) or in a new section to mean "directly urges, with success".

2. Subsection (a)(1) of § 1103: change "would facilitate" to "calculated to facilitate".

Comment: Senator Hruska's purpose is to narrow the scope because of considerations akin to free speech—to get at only dangerous conduct. In fact, his definition of incite is inherent in the cases, but we should strive to make the bill somewhat self-explanatory, he believes.

B. § 1111—SABOTAGE

Amendment: Subsection (a)(3): change "delays or obstructs" to "physically, directly and materially delays or obstructs, other than by mere advocacy".

Comment: Same type of considerations as A above.

C. § 1116—OBSTRUCTING MILITARY RECRUITMENT OR INDUCTION

Amendment: Subsection (a)(3): definition of "incites" as discussed under § 1103 above.

Comment: Same.

D. § 1121—ESPIONAGE

Amendment: Recast (a) and add new (b) as follows (move present (b) to become (c)):

(a) Offense—A person is guilty of an offense if, with the intention to prejudice the safety of the United States or its armed forces, he

(1) communicates national defense information to a foreign power;

(2) obtains or collects such information knowing of a substantial risk it may be communicated to a foreign power; or

(3) enters a restricted area with intent to obtain or collect such information, knowing of a substantial risk that it may be communicated to a foreign power.

(b) Liability as accomplice, conspirator, or solicitor—A person to whom information is communicated or to be communicated in the circumstances set forth in subsection (a), other than one acting for a foreign power, is not subject to prosecution as an accomplice to an offense under this section, and is not subject to prosecution for conspiracy to commit or for solicitation to commit an offense under this section, unless he acts with the intention required of the principal in order to commit the offense.

Definition change relevant to § 1121: Also, change definition of "National Defense Information" in section 1128 (f), by adding, at the end of the definition, as applicable to all 9 categories, the following:

"in such a degree or fashion as to indicate (without exploration of material that would itself present such danger) a substantial danger to the safety of the United States or the armed forces thereof."

Comment: The changes are designed to suppress leaks only where sensitive information is being leaked, as opposed to information respecting cost overruns, abuses, crimes, or inefficiencies having little impact on national safety; without, however, getting the court into all sorts of secrets in deciding whether it is sensitive. The changes respond to criticism that some leaks may be more beneficial than harmful. The narrowing takes place by (1) narrowing the definition of the protected "national defense information"; (2) striking out "prejudice to the interests" of the U.S., requiring instead "prejudice to the safety of the U.S. or armed forces" in subsection (a); (3) requiring intention (desire) to so prejudice, rather than mere knowledge it would so prejudice (knowl-

edge would sweep into the prohibition, newspapers and others motivated by public interest in disclosing abuses); (4) in (a)(2) and (3) requiring knowledge of a "substantial risk" it may be communicated to a foreign power, rather than just knowledge that it "may"; (and (5) exempting the media from accomplice and conspirator liability unless the media has the intent (desire) to prejudice U.S. safety as opposed to a motive to inform. This exemption is similar to the one already appearing in 1124 (classified information) and should appear here in modified form. Otherwise a newspaper would be guilty of aiding and abetting if its source in fact had the bad intent, regardless of whether the newspaper knew of that intent, and even thought the newspaper was motivated by a motive to inform.

The change in the definition of "national defense information" requires the court to ascertain if there is national danger without, however, the court getting into secret material. (This is similar to the court's task in another field: when the self incrimination privilege is raised, the court must decide if there is a danger of incrimination, without getting into the allegedly privileged material itself. See McCormick, Evidence, under Self-Incrimination.)

E. § 1122—DISCLOSING NATIONAL DEFENSE INFORMATION

Amendment: Subsection (a): strike "or interest". Strike "or to the advantage of a foreign power" and substitute "or the armed forces thereof".

Comment: Analogous to same change above under § 1121.

F. § 1301—OBSTRUCTING A GOVERNMENT FUNCTION BY FRAUD

Amendment: Subsection (a): change "intentionally obstructs or impairs" to "intentionally and materially obstructs or impairs."

Add new (b) and move present (b) and (c) down to form (c) and (d) respectively.

New (b):

Bar to prosecution. It is a bar to prosecution under this section that the defrauding that is the subject of the offense consists solely of the unauthorized obtaining, copying, or release, of national defense information or classified information as those terms are defined in Section 1128, whether or not in the form of a record, document, or other data compilation.

Comment: The new subsection (b) is analogous to the bar to prosecution that was previously added to the theft provisions (§ 1738(e)) to be certain that theft of governmental information would be governed by the careful provisions of Chapter 11 respecting unauthorized disclosure (provisions designed to balance the need for public information against the dangers of unauthorized disclosure of secret governmental information), rather than the meat-axe treatment that would result if handled under theft. For the same reasons, an anti-overlap provision is needed here. The notion of "defraud" is a vague term and could encompass the kinds of things dealt within Chapter 11 respecting unauthorized disclosure. Senator Hruska suggests also that we require some material obstruction or impairment. As "defraud" could cover all sorts of things from the trivial to the consequential, as could "obstruct or impair," it seems to him it should be limited to sizeable matters. To have a bill that punishes trivia invites selective enforcement based on other criteria.

G. § 1302—OBSTRUCTING A GOVERNMENT FUNCTION BY PHYSICAL INTERFERENCE

Amendment: Subsection (a): change "intentionally obstructs or impairs" to "intentionally and materially obstructs or impairs". Also change "by means of physical interference or obstacle" to "by means of direct physical interference or obstacle".

Comment: The first change above is analogous to the same changes suggested for 1301 above. The second change arises from fears that physical interference with some governmental function may result as an indirect by-product of some essentially harmless or even beneficial activity (say giving a speech, or carrying a sign, and a modest crowd gathers, interfering somewhat with access to a building by some government workers). A fact-finder could possibly find the requisite intention. Such conduct should be prohibited only if the casual connection is direct and the obstruction is serious or substantial.

H. § 1344—TAMPERING WITH A GOVERNMENT RECORD

Amendment: Subsection (a): change "alters, destroys, mutilates, conceals, removes, or otherwise impairs the integrity or availability of a government record" to "alters, destroys, or mutilates, or conceals or removes during a period when it is sought to be used, or otherwise impairs, or impairs the availability of, a government record."

Comment: What does "impairs the integrity of" mean? This, and the use of the word "removes," present the possibility that this provision, rather than the carefully balanced provisions of Chapter 11 respecting unauthorized disclosures, might be used to prosecute government leaks. It seems that the separate and distinct evil this section is designed to hit, is where the physical absence of the document, or its alteration, gets in the way of someone doing his job, rather than the evil of government secrets getting out. It is redrafted accordingly.

I. § 1345—GENERAL PROVISIONS FOR THE SUBCHAPTER

Amendment: Omit (b)(2) (definition of and proof of materiality)—leave it to courts.

Comment: The whole purpose of a "materiality" requirement in crimes of false statement, is to avoid punishing the trivial; and avoid the burdens on resources and courts, and the invitation to selective enforcement, that punishing the trivial would entail. Yet S. 1's definition of materiality makes practically anything material, even if it has trivial effect.

J. INTERRELATIONSHIP OF § 330(p)(1)(A) (KNOWLEDGE OR OTHER STATE OF MIND NOT REQUIRED AS TO EXISTENCE OF STATUTE OR REGULATION) AND §§ 122-23 (OFFENSES RELATING TO DISCLOSING DEFENSE INFORMATION).

There is a potential conflict between § 303(d)(1)(A) and §§ 1122-23. § 303(d)(1)(A) states that no knowledge or other state of mind is required as respects the fact that something contravenes a statute or regulation. Yet §§ 122 requires knowledge that the disclosure of national defense information is to an "unauthorized" person ("unauthorized" means in violation of or without express statutory or regulatory authority—see § 1129(a) defining "authorized"). § 1123 requires recklessness with regard to the same thing. There are also other provisions in S. 1 like this).

To avoid this conflict, Hruska adds to § 303(d)(1), just after its heading, the words "Unless otherwise required by the context." (While the opening sentence of entire § 303 states "Except as otherwise expressly required," the word expressly is the problem: § 1123 does not *expressly* otherwise require. It implicitly otherwise requires. This is so because the element of "unauthorized" is an element as to which no culpability is specified in 1123, and therefore, pursuant to 303(b), recklessness is the applicable culpability.)

Mr. HUGH SCOTT. I thank the distinguished Senator.

I am most pleased by his summary of the situation. Too much jumping of the gun has been involved in regard to S. 1; too many wild allegations; too much hysteria and too much unauthorized concern.

I now yield to the distinguished Senator from Indiana.

Mr. BAYH. Mr. President, I appreciate the courtesy of my colleague from Pennsylvania in yielding to me, as well as the support he has offered for the amendments which I will introduce.

In listening to the remarks of the able minority leader, the distinguished Senator from Nebraska and our distinguished majority leader, it appears there is a great deal of willingness in this body to move toward reconciliation of some of the really important differences on S. 1. In a measure as critical as code fraction of those laws which bear on the freedom of each individual to talk and to walk on the streets, or the threat of incarceration for talking and saying the wrong things, we have to tread very carefully.

Our individual rights guaranteed in the Bill of Rights must be inviolate. That is the reason why I feel, despite my desire to take an active part in codification of our criminal laws, that certain provisions of S. 1 must be changed. I said some time ago, these provisions would be so repressive, along with others that, very frankly, have either intentionally or unintentionally been misrepresented to be even more repressive, that they must be removed from the bill. The Senator from Indiana, as one who has tried his very best to stand up and be counted in defense of our individual liberties, did not want to associate himself in any way with a measure that had become such a symbol of repression.

Working together, I hope we can accomplish the goal of codification. But, in the meantime, I think it is very important for us to be on guard and to be winning to stand up and fight those efforts that, indeed, erode those basic individual liberties for which so many Americans have made the supreme sacrifice. Again, I appreciate the willingness of the Senator from Pennsylvania to join in this effort.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from West Virginia (Mr. ROBERT C. BYRD) is recognized for not to exceed 15 minutes.

ORDER FOR RECESS UNTIL 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 10 o'clock tomorrow.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomor-