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PROCEEDINGS AND DEBATES OF THE 93d CONGRESS, FIRST SESSION

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Senate

By Mr. MONDALE (for himself and Mr. JAVITS):

S. 5. A bill to promote the public welfare. Referred to the Committee on Labor and Public Welfare.

THE FULL OPPORTUNITY AND NATIONAL GOALS AND PRIORITIES ACT

Mr. MONDALE. Mr. President, I introduce for myself and the Senator from New York (Mr. JAVITS) a bill, entitled "The Full Opportunity and National Goals and Priorities Act." This bill has had wide, bipartisan cosponsorship during the last three Congresses. We are asking our colleagues to cosponsor the measure again and I hope that a number of Senators will join us in supporting it.

Title I of the bill stems from S. 843 which I introduced almost 6 years ago and is identical to title I of S. 5, which was passed by the Senate on September 10, 1970 and, again, on July 25, 1972. Title II was first offered as an amendment to the bill by the Senator from New York (Mr. JAVITS) and was included as title II in the bill which the Senate has passed twice.

Title I of the bill establishes full social opportunity as a national goal. The goal is more fully described in the bill as embracing such areas as educational and vocational opportunities, access to housing and health care, and provision of special assistance to the handicapped and other less fortunate members of society. It establishes institutions and procedures for advancing this broad social goal, including a new Council of Social Advisers in the Executive Office of the President, and a requirement for an annual social report to be submitted by the President to the Congress.

The bill is patterned generally after the Employment Act of 1946 which, for the first time, established as a national goal the achievement of maximum employment, production, and purchasing power. To assist in achieving that goal, the Employment Act established the Council of Economic Advisers, provided for the annual Economic Report of the President, and established a Joint Economic Committee in the Congress.

It is my belief that this legislation will accomplish for the broad range of social policies what the Employment Act has done so well in the economic sector. By declaring a new national objective and increasing the quantity, quality, and visibility of information needed to pursue should markedly advance our prospects for effective social action.

Mr. President, by now we have had a series of studies by prestigious commissions which have told us about the gap which remains in our society between the promise of full opportunity and the realities of deprivation, powerlessness, and poor fortune into which millions of our citizens are born.

The increasing affluence of great segments of our society has merely sharpened the division between them and those who have not yet benefited from the phenomenal growth in our economy, in our technological and scientific base, and in our educational systems. As a result, the demands of the deprived for their fair share in the benefits of our society and the responsiveness of our political institutions have both increased dramatically. At the same time, however, we have also become acutely aware of the fundamental inadequacy of the information upon which social policies and programs are based.

Because of our information gaps, national problems go nearly unnoticed until they suddenly are forced upon us by some significant development. Thus, we learn of widespread hunger in America, of the rapid deterioration of our environment, of dangerous tensions and unrest in our great urban centers, of the shocking conditions under which migrant farmworkers live, and of the absence of decent medical care for tens of millions of our citizens. We desperately need ways to monitor our social health and to identify such problems before they destroy our society.

Another tremendously expensive consequence of our lack of adequate information is that we devise and operate programs based on myth and ignorance. The Congress has been groping with the problem of welfare reform, but it is painfully evident that we lack some of the basic information which we need in order to design a system in which we could all have confidence. Similar problems are presented with respect to urban renewal, mass transportation, air and water pollution, and health delivery systems.

Finally, after years of experimenting with such techniques as program planning and evaluation systems, we are still quite ill equipped to measure what our existing programs do accomplish. And we have no adequate means to compare the costs and effectiveness of alternative programs.

A Council of Social Advisers, dedicated to developing indicators of our social problems and progress, could well be a source of enormous savings to the taxpayer as well as of more effective solutions to the problems we face. Such a council, taking full advantage of new developments in planning, programing, and budgeting systems, in computerized data collection and statistical methodology, in systems analysis and social accounting, could unlock the enormous potential of the social sciences to assist the Congress and the executive in developing and administering public policy.

A Council of Social Advisers would not, itself, be a new decisionmaking forum. Rather, as a social monitoring, data gathering, and program evaluation agency, it would provide the Domestic Council with much of the information which that body needs to make its policy and program recommendations to the President. The Domestic Council has available to it the broad range of economic information now furnished by the Council of Economic Advisers. The Council of Social Advisers would fill a significant gap in the information system which is needed to buttress the policymaking apparatus established in 1970 under the President's reorganization authority.

While title I of the bill, with its new Council of Social Advisers and its new social report, should greatly augment the capacity of the Congress to make intelligent policy decisions, title II of the bill is even more significant with respect to strengthening the Congress.

I was delighted to cosponsor the amendment to the bill which was offered by the Senator from New York (Mr. JAVITS) in 1970 to create a new congressional staff office of goals and priorities analysis. By now, the need for some such additional staff arrangements in the Congress has become abundantly clear.

This office would be an arm of the Congress serving it in its examination of budget proposals, program costs and effectiveness, appropriations, and national priorities.

The appropriations process is the mechanism through which the Congress seeks to reflect its views on budgetary priorities. But there remains a great need to equip Congres with the kind of manpower, data, and technology that would furnish it with the information necessary if it is to fully examine and evaluate appropriations measures with regard to the relative needs of the Nation. The office would not supplant the efforts of the Appropriations Committees to determine the Nation's expenditures. Rather, it would further explain, coordinate and compare the various budgetary proposals so as to provide the overview so necessary to responsible fiscal planning. The program information it would collect and interpret would be made available to other committees and individual Members of Congress.

These services should, in concert with the other work of the office, serve to improve the legislative process. Too often, congressional procedures result in each appropriation's being considered in a piecemeal fashion.

In committees, on the floor, and in conference—over a period of months—the Government's spending priorities take shape. Yet this is done in virtual ignorance of total alternative budgets by which other priorities might be expressed. Revisions and other amendments are made, often on the floor of the Senate, each of which affects a vast range of alternatives.

Yet these alternatives are seldom really identified. An appropriation increase, for example, may be offered with excellent justification, but with no clear idea of what other equally worthwhile projects are precluded by this additional expenditure.

Currently, the Congress has only one complete, coherent budget with which to work—that submitted by the President. There is no reason, of course, why the Congress should accept this budget, item by item. The new office would, in providing Congress with hard cost-benefit and sound, need-projection data, improve the chances that the inevitable deletions, additions, and other revisions of the budget would occur as a result of informed and considered analysis of the merits of each budget proposal, and of how all spending decisions influence, and are influenced by, the condition of the total economy.

The Congress needs its own office to provide this kind of ongoing analysis and to generate comprehensive budget alternatives which could be examined in a totality. The executive branch is quite well equipped to function in such matters. With the Domestic Council and the Office of Management and Budget, and with the extensive facilities of the National Security Council, the Council on Environmental Quality, the Council of Economic Advisers—and with a new council of social advisers, the White House is formidably equipped to present a given budget and make its case.

Meanwhile, the Congress—coequal in policymaking, and supposedly preeminent in the control over spending—has far too little resources, even in its Appropriations Committees, and has no established mechanism to help individual Senate or congressional staffs examine the

policy and program evaluations reflected in the budget. The President said, when announcing his proposal to establish the Domestic Council and the Office of Management and Budget:

A President whose programs are carefully coordinated, whose information system keeps him adequately informed and whose organizational assignments are plainly set out, can delegate authority with security and confidence.

Certainly the Congress, the branch of Government which shares with the Executive the responsibility to determine national priorities and delegate authority, should be so organized and informed. Such an office in the Congress could do much to restore the growing erosion of congressional power and give substance to the admittedly ill-defined contentions about national priorities, peace and growth dividends, and fiscal responsibility.

Last year, the Congress recognized the need to equip itself better to deal with the overall Federal expenditure issue in a coordinated manner. It established a special joint committee to make recommendations for improving congressional control of budgetary outlay and receipt totals, including procedures for establishing and maintaining an overall view of each year's budgetary outlays which is fully coordinated with an overall view of the anticipated revenues for that year.

I hope that the joint committee will consider title II of this measure as one approach to meeting the need for improved congressional control of expenditures.

Mr. President, I have now served in the Senate for over 8 years. Along with many of my colleagues, I spend most of my time dealing with the human problems with which the average American is confronted.

I never cease to be amazed by the abundance of evidence about how little we seem to know at the Federal level about what is really going on.

As one person observed, we have a natural strategy of suboptimization at the Federal level where we do better and better at little things and worse and worse at big things.

Thus, something as elementary as good nutrition, something as essential to a sound body and a sound mind—adequate and decent nutrition—was something about which the Federal Government was almost totally ignorant in 1967. We knew how many soybeans were grown. We knew how much money was being spent on the direct commodity distribution program, the food program, and so on. But no one had the slightest idea whether there was widespread hunger, and if there was, where it was to be found and why, what the cost of feeding the hungry was, what the cost of not feeding them was, or any of the other fundamental questions directly related to the issue of the most basic necessity of American life itself. The same thing was true with decent housing.

In 1967, even though we should have been warned earlier, the major American cities began to explode in our faces. Newark, Detroit, and one community after another literally blew up in an astonishing and cataclysmic explosion causing the widespread loss of human life, and human injury, and millions and millions of dollars in property damage—and an emotional and cultural shock to Americans which we are still in the throes of. None of this was anticipated by the Government.

When hearings were started, this Nation was thrashing around; Congress and the Senate were thrashing around; members of the Cabinet and leading members of the executive branch were thrashing around, all trying to find out what was causing such a fundamental occurrence as this outrageous, heartbreaking phenomenon in American life.

We could go on from this example to other examples. In the federal system we lack an institution which takes not a tactical approach but a strategic approach to human problems which this society faces. We need to chart the social health of this country and seek to go forward; not, as John Gardner said, stumbling into the future, but trying to come up with the analysis, facts, and figures, and, as someone said, the "hot data" to help us understand our society and what we must do to make it more effective than it is in meeting this Nation's human problems.

One of our most impressive witnesses was Mr. Joseph Califano who formerly served as adviser on domestic programs to President Johnson. More than any other man he was in the Nation's "hot seat" trying to develop a program to advise the highest official in the land on domestic programs.

He recounted several instances of the phenomena to which I have made reference. For example, on one occasion, the Secretary of Health, Education, and Welfare was in conference with Mr. Califano. He was asked how many people were on welfare, who they were, and all the rest. Since we are spending several billions of dollars, one would have thought that information would be immediately at hand. The Secretary thought the information would be available to him as soon as he returned to his office and that he would send it right back. As a matter of fact, it took HEW a year and a half to find out who was on welfare. Mr. Califano said this was a common experience with basic and fundamental human problems, to find that not even the President would have available to him the basic data necessary to make the choices upon which our very civilization depends.

He commented in this way about the issue of hunger:

The even more shocking element to me is that no one in the federal government in 1965 knew how many people were hungry, where they were located geographically, and who they were. No one knew whether they were children, elderly Americans, pregnant mothers, black, white, or Indian.

He continued:

Moreover, unless something of which I am unaware has been done since January 20, 1969, I believe that we still do not know who and where the hungry in America are with the kind of precision essential for an intelligent, effective program to feed all the hungry among us.

Then Mr. Califano concluded with this statement:

The disturbing truth is that the basis of recommendations by American Cabinet officer on whether to begin, eliminate, or expand vast social programs more nearly resembles the intuitive judgment of a benevolent tribal chief in remote Africa than the elaborate sophisticated data with which the Secretary of Defense supports a major new weapons system. When one recognizes how many and how costly are the honest mistakes which have been made in the Defense Department, despite its sophisticated information systems, it becomes frightening to think of the mistakes which might be made on the domestic side of our Government because of lack of adequate data.

Since this bill was first proposed, it has attracted strong support from a broad spectrum of leading public figures in the Nation. Among them have been two former Secretaries of Health, Education, and Welfare—John Gardner and Wilbur Cohen. Significantly, two principal officials in the Johnson administration, who had opposed the bill in 1967 as premature, have now joined in its support. These are Charles Zwick, former Budget Director and Joseph A. Califano, Jr., former Special Assistant to President Johnson. Former Secretary of the Treasury, Joseph Barr, has testified in favor of the bill. Former Secretary of Labor Willard Wirtz has also urged enactment of the bill.

Three prominent study groups have also made recommendations along the lines of the bill. In October 1969, the Behavioral and Social Sciences Survey Committee of the National Academy of Sciences and the Social Science Research Council recommended the investment of substantial Federal funds in developing social indicators. It also proposed the preparation of an annual social report, initially outside the Government, and the eventual establishment of a council of social advisers, as a Government agency.

In December 1969, the National Commission on the Causes and Prevention of Violence, headed by Dr. Milton Eisenhower, issued its final report. I was pleased to note that among its recommendations were proposals for the development of social indicators and for the establishment of a counterpart to the Council of Economic Advisers to produce an annual social report.

Last year, the Commission on Population Growth and the American Future recommended approval of this legislation.

For more than 5 years now, I have been assured repeatedly that the executive branch favored the objectives of this legislation. However, the promising efforts of the Department of Health, Education, and Welfare, with the publication of "Toward A Social Report" in January 1969, have not been continued. Almost a year and a half ago, a witness from the Office of Management and Budget referred to a forthcoming social indicators report by that agency. It has still not been received. It now appears clear that the Congress will have to insist on a more sophisticated system for social measurement and evaluation. I hope that the House will join the Senate in this Congress in approving this measure.

Mr. President, I ask unanimous consent that the text of the proposed Full Opportunity and National Goals and Priorities Act be printed in the RECORD.

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

S. 5

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Full Opportunity and National Goals and Priorities Act."

TITLE I—FULL OPPORTUNITY

DECLARATION OF POLICY

SEC. 101. In order to promote the general welfare, the Congress declares that it is the continuing policy and responsibility of the Federal Government, consistent with the primary responsibilities of State and local governments and the private sector, to promote and encourage such conditions as will give every American a full opportunity to live in decency and dignity, and to provide a clear and precise picture of whether such conditions are promoted and encouraged in such areas as health, education and training, rehabilitation, housing, vocational opportunities, the arts and humanities, and special assistance for the mentally ill and retarded, the deprived, the abandoned, and the criminal, and by measuring progress in meeting such needs.

SOCIAL REPORT OF THE PRESIDENT

SEC. 102. (a) The President shall transmit to the Congress not later than February 15 of each year a report to be known as the social report, setting forth (1) the overall progress and effectiveness of Federal efforts designed to carry out the policy declared in section 101 with particular emphasis upon the manner in which such efforts serve to meet national social needs in such areas as health, education and training, rehabilitation, housing, vocational opportunities, the arts and humanities, and special assistance for the mentally ill and retarded, the deprived, the abandoned, and the criminal; (2) a review of State, local, and private efforts designed to create the conditions specified in section 101; (3) current and foreseeable needs in the areas served by such efforts and the progress of development of plans to meet such needs; and (4) programs and policies for carrying out the policy declared in section 101, together with such recommendations for legislation as he may deem necessary or desirable.

(b) The President may transmit from time to time to the Congress reports supplementary to the social report, each of which shall include such supplementary or revised recommendations as he may deem necessary or desirable to achieve the policy declared in section 101.

(c) The social report, and all supplementary reports transmitted under subsection (b) of this section, shall, when transmitted to Congress, be referred to the Committee on Labor and Public Welfare of the Senate and the Committees on Education and Labor and Interstate and Foreign Commerce of the House of Representatives. Nothing in this subsection shall be construed to prohibit the consideration of the report by any other committee of the Senate or the House of Representatives with respect to any matter within the jurisdiction of any such committee.

COUNCIL OF SOCIAL ADVISERS TO THE PRESIDENT

SEC. 103. (a) There is created in the Executive Office of the President a Council of Social Advisers (hereinafter called the Council). The Council shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate, and each of whom shall be a person who, as a result of his training, experience, and attainments, is exceptionally qualified to appraise programs and activities of the Government in the light of the policy declared in section 101, and to formulate and recommend programs to carry out such policy. Each member of the Council, other than the Chairman, shall receive compensation at the rate prescribed for level IV of the Executive Schedule by section 5315 of title 5 of the United States Code. The President shall

designate one of the members of the Council as Chairman who shall receive compensation at the rate prescribed for level II of such schedule.

(b) The Chairman of the Council is authorized to employ, and fix the compensation of such specialists and other experts as may be necessary for the carrying out of its functions under this Act, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of relating to classification and General Schedule pay rates, and is authorized, subject to such provisions, to employ such other officers and employes as may be necessary for carrying out its functions under this Act, and fix their compensation in accordance with the provisions of such chapter 51 and subchapter II of chapter 53 of such title title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of relating to classification and General Schedule pay rates, and is authorized, subject to such provisions, to employ such other officers and employees as may be necessary for carrying out its functions under this Act, and fix their compensation in accordance with the provisions of such chapter 51 and subchapter III of chapter 53.

(c) It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the social report;

(2) to gather timely and authoritative information and statistical data concerning developments and programs designed to carry out the policy declared in section 101, both current and prospective, and to develop a series of social indicators to analyze and interpret such information and data in the light of the policy declared in section 101 and to compile and submit to the President studies relating to such developments and programs;

(3) to appraise the various programs and activities of the Federal Government in the light of the policy declared in section 101 of this Act for the purpose of determining the extent to which such programs and activities contribute to the achievement of such policy, and to make recommendations to the President with respect thereto;;

(4) to develop priorities for programs designed to carry out the policy declared in section 101 and recommend to the President the most efficient way to allocate Federal resources and the level of government—Federal, State, or local—best suited to carry out such programs;

(5) to make and furnish such studies, reports thereon, and recommendations with respect to programs, activities, and legislation to carry out the policy declared in section 101 as the President may request.

(6) to make and furnish such studies, reports thereon, and recommendations with respect to programs, activities and legislation as the President may request in appraising long-range aspects of social policy and programing consistent with the policy declared in section 101.

(d) Recognizing the predominance of State and local governments in the social area, the President shall, when appropriate, provide for the dissemination to such States and localities of information or data developed by the Council pursuant to subsection (c) of this section.

(e) The Council shall make an annual report to the President in January of each year.

(f) In exercising its powers, functions, and duties under this Act—

(1) the Council may constitute such advisory committees and may consult with such representatives of industry, agriculture, labor, consumers, State and local governments, and other groups, organizations, and individuals as it deems advisable to insure the direct participation in the Council's planning of such interested parties;

(2) the Council shall, to the fullest extent possible, use the services, facilities, and information (including statistical information) of Federal, State, and local government agencies as well as of private research agencies, in order that duplication of effort and expense may be avoided;

(3) the Council shall, to the fullest extent possible, insure that the individual's right to privacy is not infringed by its activities; and

(4) (A) the Council may enter into essential contractual relationships with educational institutions, private research organizations, and other organizations as needed; and

(B) any reports, studies, or analyses resulting from such contractual relationships shall be made available to any person for purposes of study.

(g) To enable the Council to exercise its powers, functions, and duties under this Act, there are authorized to be appropriated (except for the salaries of the members and officers and employees of the Council) such sums as may be necessary. For the salaries of the members and salaries of officers and employees of the Council, there is authorized to be appropriated not exceeding $900,000 in the aggregate for each fiscal year.

TITLE II—NATIONAL GOALS AND PRIORITIES

DECLARATION OF PURPOSES

SEC. 201. The Congress finds and declares that there is a need for a more explicit and rational formulation of national goals and priorities, and that the Congress needs more detailed and current budget data and economic analysis in order to make informed priority decisions among alternative programs and courses of action. In order to meet these needs and establish a framework of national priorities within which individual decisions can be made in a consistent and considered manner, and to stimulate an informed awareness and discussion of national priorities, it is hereby declared to be the intent of Congress to establish an office within the Congress which will conduct a continuing analysis of national goals and priorities and will provide the Congress with the information, data, and analysis necessary for enlightened priority decisions.

ESTABLISHMENT

SEC. 202. (a) There is established an Office of Goals and Priorities Analysis (hereafter referred to as the "Office") which shall be within the Congress.

(b) There shall be in the Office a Director of Goals and Priorities Analysis (hereafter referred to as the "Director") and an Assistant Director of Goals and Priorities Analysis (hereafter referred to as the "Assistant Director"), each of whom shall be appointed jointly by the majority leader of the Senate and the Speaker of the House of Representatives and confirmed by a majority vote of each House. The Office shall be under the control and supervision of the Director, and shall have a seal adopted by him. The Assistant Director shall perform such duties as may be assigned to him by the Director, and, during the absence or incapacity of the Director, or during a vacancy in that office, shall act as the Director. The Director shall designate an employee of the Office to act as Director during the absence or incapacity of the Director and the Assistant Director, or during a vacancy in both such offices.

(c) The annual compensation of the Director shall be equal to the anual compensation of the Comptroller General of the United States. The annual compensation of the Assistant Director shall be equal to that of the Assistant Comptroller General of the United States.

(d) The terms of office of the Director and the Assistant Director first appointed shall expire on January 31, 1977. The terms of office of Directors and Assistant Directors appointed shall expire in January 31 every four years thereafter. Except in the case of his removal under the provisions of subsection (e), a Director or Assistant Director may serve until his successor is appointed.

(e) The Director or Assistant Director may be removed at any time by a resolution of the Senate or the House of Representatives. A vacancy occurring during the term of the Director or Assistant Director shall be filled by appointment as provided in this section.

(f) The professional staff members, including the Director and Assistant Director, shall be persons selected without regard to political affiliations who, as a result of training, experience, and attainments, are exceptionally qualified to analyze and interpret policies and programs.

FUNCTIONS

SEC. 203. (a) The Office shall make such studies as it deems necessary to carry out the purposes of section 201. Primary emphasis shall be given to supplying such analysis as will be most useful to the Congress in voting on the measures and appropriations which come before it, and on providing the framework and overview of priority considerations within which a meaningful consideration of individual measures can be undertaken.

(b) The Office shall submit to the Congress on March 1 of each year a national goals and priorities report and copies of such report shall be furnished to the Committee on Apropriations of the Senate and of the House of Representatives, the Joint Economic Committee, and other interested committees. The report shall include, but not be limited to—

(1) an analysis, in terms of national goals and priorities, of the programs in the annual budget submitted by the President, the Economic Report of the President, and the Social Report of the President;

(2) an examination of resources available to the Nation, the foreseeable costs and expected benefits of existing and proposed Federal programs, and the resources and cost implications of alternative sets of national priorities; and

(3) recommendations concerning spending priorities among Federal programs and courses of action, including the identification of those programs and courses of action which should be given greatest priority and those which could more properly be deferred.

(c) In addition to the national goals and priorities report and other reports and studies which the Office submits to the Congress, the Office shall provide upon request to any Member of the Congress further information, data, or analysis relevant to an informed determination of national goals and priorities.

POWERS OF THE OFFICE

SEC. 204. (a) In the performance of its functions under this title, the Office is authorized—

(1) to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of the operations of the Office;

(2) to employ and fix the compensation of such employees, and purchase or otherwise acquire such furniture, office equipment, books, stationery, and other supplies, as may be necessary for the proper performance of the duties of the Office and as may be appropriated for by the Congress;

(3) to obtain the services of experts and consultants, in accordance with the provisions of section 3109 of title 5, United States Code; and

(4) to use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

(b) (1) Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed, to the extent permitted by law, to furnish to the Office, upon request made by the Director, such information as the Director considers necessary to carry out the functions of the Office.

(2) The Comptroller General of the United States shall furnish to the Director copies of analyses of expenditures prepared by the General Accounting Office with respect to any department or agency in the executive branch.

(3) The Office of Management and Budget shall furnish to the Director copies of special analytic studies, program and financial plans, and such other reports of a similar nature as may be required under the planning-programing-budgeting system, or any other law.

(c) Section 2107 of title 5, United States Code, is amended by—

(1) striking out the "and" at the end of paragraph (7);

(2) striking the period at the end of paragraph (8) and inserting in lieu thereof a semicolon and the word "and"; and

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

"(9) the Director, Assistant Director, and employees of the Office of Goals and Priorities Analysis.".

JOINT ECONOMICS COMMITTEE HEARINGS

SEC. 205. The Joint Economic Committee of the Congress shall hold hearings on the national goals and priorities report and on such other reports and duties of the Office as it deems advisable.

PAYMENT OF EXPENSES

SEC. 206. All expenses and salaries of the Office shall be paid by the Secretary of the Senate from funds appropriated for the Office upon vouchers signed by the Director or, in the event of a vacancy in that Office, the Acting Director.

Mr. JAVITS. Mr. President, I am pleased to join the Senator from Minnesota (Mr. MONDALE) in reintroduction of S. 5, the "Full Opportunity and National Goals and Priorities Act." This act has been passed by the Senate on two occasions, most recently on July 25, 1972 by a vote of 51 to 40, but unfortunately action has not been taken by the other body.

This bill consists of two principal parts: title I, authored by Senator MONDALE, would establish a Council of Social Advisers in the Executive Office of the President, with a requirement for an annual "Social Report" by the President to the Congress.

In essense, title I would create a procedure to deal with our social problems, parallel to that which exists in the economic field in the form of the Council of Economic Advisers. As the ranking minority member of the Committee on Labor and Public Welfare, I have seen very clearly where the Council of Economic Advisers falls short. The fact is that they are magnificient on the whole. We have had much fine experience with them on the Nation's economy but they tie into the country's social responsibilities only insofar as it bears on the economy.

We need quite clearly to have a similar focus on the crucial matters of our social needs.

Title II, which I authored, would establish within the Congress an Office of Goals and Priorities Analysis. The Director and Assistant Director of the Office are to be appointed jointly by the majority leader in the Senate and the Speaker of the House. Drawing from the social data and program evaluations generated by the Council of Social Advisers and other sources, the Office of Goals and Priorities Analysis would submit an annual report to the Congress setting forth goals and priorities in the general context of needs, costs, available resources, and program effectiveness. It would also

provide information to members of the Congress on an ongoing basis.

At a time when the ability of Congress to carry out its responsibilities even in its own domain of power over the purse has been challenged, it is essential that those of us who serve in the public trust have at our disposal more adequate means of making enlightened priority decisions.

Of course, the appropriations process is the vital mechanism through which the Congress seeks to reflect its views on budgetary priorities. But there remains a great need to equip Congress with the kind of manpower, data and technology that would furnish it with the information necessary if it is to fully examine and evaluate each appropriations measure, separately and—perhaps most crucially—in view of all other aupropriations measures, with regard to the relative needs of the Nation. The office proposed in title II would not supplant the efforts of the Appropriations Committees to determine the Nation's expenditures. Rather, it would further explain, coordinate and compare the various budgetary proposals so as to provide the overview so necessary to responsible fiscal planning. The program information it would collect and interpret would be made available to other committees and individual Members of Congress.

The Congress needs such an institution in order to attempt to redress the imbalance that exists in the information available to the legislative, as opposed to the executive branch, in the essential matter of expenditures.

Mr. President, since the Senate's adoption of S. 5, Public Law 92–599, the debt ceiling bill, has established a Joint Committee to Review Operation of Budget Ceilings and to Recommend Procedures for Improving Congressional Control over Budgets. Under that authority, the joint committee is required to report the results of its study and review to the Congress no later than February 15, 1973. As we proceed to consider S. 5, we will want to have the benefit of the recommendations of the joint committee in moving toward the establishment of an office along the lines that are provided under title II.

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Vol. 119 WASHINGTON, THURSDAY, JANUARY 4, 1973 No. 2

Senate

THURSDAY, JANUARY 4, 1973

S 56 – S 58

S 357 – S 359

S. 6. A bill to provide financial assistance to the States for improved educational services for handicapped children. Referred to the Committee on Labor and Public Welfare.

THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

By Mr. WILLIAMS (for himself, Mr. MAGNUSON, Mr. RANDOLPH, Mr. PELL, Mr. STEVENSON, Mr. MONDALE, Mr. HUGHES, Mr. STAFFORD, Mr. JAVITS, Mr. BROOKE, Mr. SCHWEIKER, Mr. HUMPHREY, Mr. BENTSEN, Mr. MCGEE, Mr. MOSS, Mr. STEVENS, Mr. HART, Mr. CHILES, Mr. BIBLE, Mr. PASTORE, Mr. CANNON, Mr. HOLLINGS, Mr. TUNNEY, and Mr. KENNEDY):

Mr. WILLIAMS. Mr. President, I am introducing a bill entitled "The Education for All Handicapped Children Act" for myself and others. On August 1, 1972, in the District of Columbia U.S. District Court Judge Joseph C. Waddy handed down a landmark decision on the right to education of handicapped children. In that decision Judge Waddy declared that handicapped and emotionally disturbed children have a constitutional right to a public education, and ordered the District of Columbia to make available to all handicapped children within the District appropriate education services. Judge Waddy's opinion encompassed all children within the District of Columbia excluded from public schools, and carried the full weight of a U.S. District Court. His decision is the most sweeping of cases which extend the right to education for handicapped children; an earlier consent decree in the State of Pennsylvania ordered the State to provide education and full due process to all mentally retarded children.

These decisions do not stand alone. In the last year 22 cases in 16 States were filed or completed on the right to education for handicapped children. In at least four more States cases are presently being prepared, and this trend will undoubtedly continue.

One of the most recent cases, Benjamin Harrison against the State of Michigan, the judge dismissed the complaints of the plaintiffs arguing that there was a State law which insures the right of all handicapped children to a free public education by September of 1973, and that ruling on the case would cast too early a judgment on the State's compliance. But the important point in the judge's argument is this: he indicated that he would have no hesitation in ruling on the rights of the plaintiffs if the State law did not exist, that handicapped children have a constitutional right to a free public education and that the State must provide that education.

This case raises a point which is important for us here today. The public education system in this Nation is one of the strongholds of this democracy, and has been in existence for over a century. As a route to knowledge, as the delivery system for the development of skills to be used in jobs and other opportunities later in life, the public education system plays a role unsurpassed by any other institution in our society.

Yet the simple facts are that this system has not provided a free public education to all children, nor has it been subtle in its exclusion. Most statutes which declare that it is the policy to provide a free public education have an exclusionary clause which exempts handicapped children. Whether or not this exemption in the past has been for good reason, its results are patently clear: It implies that handicapped children cannot be educated. Most importantly, it has denied thousands of handicapped children their right to an education, and resulted in a situation of separate but unequal treatment. And the courts have begun to make clear that this is unconstitutional discrimination and its effects must be remedied.

Presently, there are 7 million handicapped children in the United States. Close to 60 percent of these children are denied the educational programs they need to have full equality of opportunity. One million of these children have been excluded entirely from public schools, and will not go through the educational process with their peers. For most of these children educational services are something they will receive only through the perseverance and sacrifice, at prohibitive cost, of their parents. The education that they are likely to receive will in no way prepare them for a life of independence, and in most cases their exposure to learning opportunities will be so irregular that it may have been better not to have made the effort at all.

It is inaccurate to suggest that there has been no action taken by the States to correct this horrifying disparity. In 1971 alone, some 799 bills were introduced in State legislatures which sought to provide educational services for handicapped children, and 237 of these bills were passed. States have increased their commitment to this education and have sought to improve programing for handicapped children. Yet, despite these laudable efforts we continue to operate on an outmoded philosophy of charitable deeds: of doing for handicapped children out of the goodness of our hearts rather than in recognition of their rights as members of this society. As a result of this attitude, only 40 percent of the handicapped children in the United States receive appropriate education suited to their needs, and this education varies greatly within the 50 States, and within particular disability groups.

In the 1971–72 school year, there were seven States where less than 20 percent of the population of handicapped children were provided educational services. In 19 States, 31 percent or less of the population was served. Only 17 States served more than 50 percent of all handicapped children. If we examine this data by disability group, we find the disparities more discouraging. In 1971: 57 percent of all trainable mentally retarded children; 52 percent of all speech impaired children; 14 percent of all hard of hearing children; 13 percent of all seriously emotionally disturbed children; 45 percent of all deaf children; 35 percent of all crippled or orthopedically handicapped children; 2 percent of all children with other health impairments; and 26 percent of all children with multiple handicaps received an education. These figures are national figures; figures are lower by disability for particular States. For example, in 30 States, less than 11 percent of all emotionally disturbed children are provided educational services.

It is impossible to justify these figures. Our charitable attitude toward the education of handicapped children would be rejected flatly if we were talking about any other group of children. The excuses that: "We do not have enough money," "we are extending our program so that we will be able to serve all children by," "we cannot cut into services we are providing to other children," and "there have been improvements in the last few years, and, if you just give us time" are clearly discriminatory.

The blunt truth behind these words is that too many of us are willing to condemn an entire generation of handicapped children to a life with no hope and no help. It is time for us to face up to the truth of this statement, to change our attitudes, to rid ourselves of the old myths and to begin dealing with realities. Handicapped children are children. They have the same rights as any other child to hope, to learn, and to be free. They happen to have disabilities that require certain kinds of treatment in order to be free. But in the final analysis they are children. We should be providing that treatment so that they can overcome their disabilities. And we should be providing them with services that will enable them to deal effectively with their living environment.

Adequate education services for the handicapped are available in certain schools and in certain classrooms throughout the United States. What is perhaps the most depressing, however, is that in the same city, even in the same school, you can observe classrooms in which it is obvious that the children are learning, that their disabilities are being treated, and that they are receiving education and training which will enable them to leave the school and go out into society more independently.

Yet, only a few blocks away, indeed, even a few classrooms away, the situation is the reverse. It would be perhaps a little easier to accept our failure to provide for these children if these contrasts were not so obvious and if so much could not be done. It also makes clear that the age-old arguments that our schools and institutions are not presently equipped to deal appropriately with handicapped children has no basis in fact. The schools and institutions can be changed and they must be changed. The courts are not listening to arguments of "convenience," and it is time that our public laws caught up with the courts.

Mr. President, we have made significant improvements in the education of handicapped children in the past few years, but these improvements are not enough. We have increased Federal assistance to the States for these purposes from $45 million 5 years ago to $215 million in the past fiscal year. But this has been token expenditure. Nowhere in our public law, in our public philosophy or in our budget figures do we find recognition for the right of all handicapped children to a free public education. It has been the courts who have forced us to this realization that we can delay no longer in making such a commitment.

The recent cases in Pennsylvania, Michigan, and the District of Columbia have made it absolutely clear that, if the States have in fact provided for the education of all children, they must provide an education for handicapped children. Those courts have ruled that it is up to the State to find the resources and the way to implement this challenge.

Mr. President, last May Senators MAGNUSON, RANDOLPH, and I introduced a bill which recognized that the Federal Government has a responsibility in this area which is no less than that of the States. This bill, S. 3614, provided a basic Federal commitment to assist the States and localities in providing a free and appropriate education for all handicapped children. By the time the Congress had adjourned, we were joined on this bill by 20 cosponsors, and received strong support from throughout the United States in favor of this bill. We are reintroducing this bill today on behalf of ourselves and other Senators, as a commitment to all handicapped children and their parents in the United States that their rights to a free and appropriate public education is recognized by the Congress.

Through this bill we recognize the responsibility of the States in this area. But in recognizing this responsibility we also are making a commitment to the States to assist them in providing this education. Under the bill, the Federal Government will underwrite 75 percent of the excess cost required in educating a handicapped child. This amount will be determined on the basis of the aggregate current expenditures for the education of handicapped children within the State divided by the number of handicapped children to whom the States are providing a free and appropriate education. The difference between this amount and the amount spent on a nonhandicapped child will be the State's excess cost. Thus, if the State is currently educating a handicapped child at a cost of $1,800, $1,000 of which is excess cost in a fiscal year, this bill would pay to that State $750. If in the following fiscal year, the State provides an education for two handicapped children at an excess cost of $1,000 per child, the bill would pay to the State $1,500. The State would be required to continue its full expenditure on both those children, but the bill would pay to the State $1,500 in order to extend its services to other handicapped children. The State however must guarantee that it will provide a free appropriate public education to all handicapped children by 1976.

In recognizing that the States have a responsibility to provide an education for handicapped children, the bill extends its commitment beyond the provision of financial assistance to the State to protection of the rights of handicapped children and their parents. I look on these provisions as key to providing a mechanism of oversight and accountability of the educational system. Too many cases have been brought to my attention where children have been improperly tested, excluded from schools, and improperly labelled. The result of this conduct has been great emotional hardship for the parents and children and requires the greatest of perservance on the part of the parents to see that their children receive services appropriate to their special disability.

The costs of these mistakes are imposed fully on the child, and only somewhat less directly on the Public Treasury which has undertaken to provide appropriate services. I believe that we must allow discretion to the States and the localities in providing services in the way they deem fit. But I also believe that we must be sure that the services which we are paying for are appropriate to the needs of each chlid, and will provide that child with the best services that current knowledge can envision.

This bill therefore contemplates that the school system will set down its evaluation of the child in writing, the goals and objectives of educational services, the services to be provided, and the estimated time frame for reaching these goals and objectives. As a companion provision, the bill as a condition of eligibility for assistance requires the States to establish well-defined due process procedures if the school system contemplates a change in educational placement for the child and if the parents or guardian objects to such a change.

These requirements are nothing more than what is required if we are to implement the guarantees of the 14th amendment. They are nothing more than what our educational system ought to be providing right now, and what many are providing in an informal way. They are nothing more than what the courts have ordered the schools system to provide. And they are nothing less than what we should want for our children.

The education that this bill can make possible is going to cost money. It is hard to argue to the States that the Federal Government is serious about full educational opportunity when we are not willing to invest funds to make this goal a reality. If we are going to make a real commitment to free an appropriate education, and expect the States to carry through on this commitment, we will have to be willing to undertake the necessary expense. One study of education programs in five States in which have exemplary programs has indicated that the education of a handicapped child will cost on an average of 1.87 times as much as the education of a child who is not handicapped. At the very least this means that it will cost from $400 to $800 more for education if the child is handicapped. That study, done by Richard Rossmiller for the Bureau of Education for the Handicapped, estimated that the total cost of this education will be at least an additional $3 billion to State and local governments. That figure is a full 60 percent of all funds provided to the States last year under general revenue sharing.

If you consider the many other pressing fiscal needs within the States, and the constraints placed on the use of the revenue-sharing dollar for the area of education, it is clear that substantial Federal assistance to the States for the education of handicapped children is needed. That assistance is forthcoming in the bill I am introducing. Under this bill, estimated first year assistance will be in the neighborhood of $1.7 billion.

Yet, this expense is minimal compared to what it has cost this society to deny appropriate services and maintain handicapped children at a level which is far less than their potential. We must remember that these are children whose needs can be met, and who can be freed from the nuisances that are their disabilities. They are children who will go through the same pains and sufferings of growing up, as do your children and mine. Yet, the answers they often receive are not answers that we would give to our own children. They are not answers which our own children would accept, nor are they answers of which we can be proud in this Nation today. I believe that this bill provides a long needed answer to those questions. That answer must be that all children have the right to an education which meets their needs.

TABLE 1: EXCESS COST ESTIMATES BY STATE AND ESTIMATED GRANTS TO STATES UNDER WILLIAMS BILL, S. 6

State	Estimated average pupil expense for handicapped children	Excess cost for handicapped children	Handicapped aged 0-21 served	Percent handicapped children served	Total cost excess	75 percent excess cost Williams bill
Alabama	$948	$474	22, 384	20	$10, 610, 016	$7, 957, 512
Alaska	2, 122	1, 061	1, 975	37	1, 989, 375	1, 592, 032
Arizona	1, 362	681	12, 678	32	8, 633, 718	6, 475, 288
Arkansas	962	481	12, 492	10	6, 008, 652	4, 506, 489
California	1, 570	785	321, 765	59	252, 585, 525	189, 439, 143
Colorado	1, 412	706	37, 566	50	26, 521, 596	19, 891, 197
Connecticut	1, 830	915	35, 544	40	32, 522, 760	24, 392, 070
Delaware	1, 688	844	8, 351	53	7, 048, 244	5, 286, 183
District of Columbia	1, 822	911	9, 568	44	8, 716, 448	6, 537, 336
Florida	1, 402	701	105, 021	75	73, 619, 721	55, 214, 790
Georgia	1, 054	527	65, 061	50	34, 287, 147	25, 715, 360
Hawaii	1, 632	816	9, 106	46	47, 430, 496	35, 572, 872
Idaho	1, 134	567	8, 395	23	4, 759, 965	3, 569, 973
Illinois	1, 756	878	180, 877	71	158, 810, 006	119, 107, 504
Indiana	1, 392	696	86, 599	60	60, 272, 904	45, 204, 678
Iowa	1, 576	788	36, 521	39	28, 778, 548	21, 583, 11
Kansas	1, 468	734	27, 713	51	20, 341, 342	15, 256, 006
Kentucky	1, 064	532	24, 336	31	12, 946, 752	9, 710, 064
Louisiana	1, 166	583	45, 056	37	26, 267, 648	19, 700, 736
Maine	1, 310	655	6, 758	22	4, 426, 490	3, 319, 867
Maryland	1, 748	874	66, 259	54	57, 910, 366	43, 432, 774
Massachusetts	1, 570	785	63, 460	58	49, 816, 100	37, 362, 075
Michigan	1, 752	876	165, 018	57	144, 555, 768	108, 416, 826
Minnesota	1, 788	894	70, 423	57	62, 958, 162	47, 218, 621
Mississippi	862	431	16, 587	14	7, 148, 997	5, 361, 747
Missouri	1, 340	670	65, 110	29	43, 623, 700	32, 717, 775
Montana	1, 498	749	5, 358	23	4, 013, 142	3, 009, 856
Nebraska	1, 406	703	23, 734	25	16, 685, 002	12, 513, 751
Nevada	1, 482	741	6, 300	46	4, 668, 300	3, 501, 225
New Hampshire	1, 388	694	6, 070	31	4, 212, 580	3, 159, 435
New Jersey	1, 982	991	99, 189	43	98, 296, 299	73, 722, 224
New Mexico	1, 270	635	8, 655	16	5, 495, 925	4, 121, 943
New York	2, 530	1, 265	221, 219	59	279, 842, 035	209, 881, 526
North Carolina	1, 092	546	73, 739	43	40, 261, 494	30, 196, 120
North Dakota	1, 242	621	8, 947	19	5, 556, 087	4, 167, 065
Ohio	1, 406	703	175, 300	52	123, 235, 900	92, 426, 925
Oklahoma	1, 158	579	23, 746	16	13, 748, 934	10, 311, 700
Oregon	1, 746	873	26, 274	55	22, 937, 202	17, 202, 901
Pennsylvania	1, 074	837	156, 830	59	131, 266, 710	98, 450, 032
Rhode Island	1, 788	894	13, 475	34	12, 046, 650	9, 034, 987
South Carolina	1, 032	516	38, 275	36	19, 749, 900	14, 812, 425
South Dakota	1, 262	631	4, 414	25	2, 785, 234	2, 088, 925
Tennessee	1, 010	505	49, 173	37	24, 832, 365	17, 124, 273
Texas	1, 166	583	175, 662	23	102, 410, 946	76, 808, 209
Utah	1, 224	612	27, 079	61	16, 572, 348	12, 429, 761
Vermont	1, 470	735	4, 612	22	3, 389, 820	2, 542, 365
Virginia	1, 316	658	44, 768	31	29, 457, 344	22, 693, 008
Washington	1, 654	827	64, 223	81	53, 112, 421	39, 834, 315
West Virginia	1, 218	609	15, 161	19	9, 233, 049	6, 924, 786
Wisconsin	1, 704	852	66, 230	43	56, 427, 960	42, 320, 970
Wyoming	1, 652	826	5, 665	31	4, 679, 290	3, 509, 467
Not available:						
American Samoa						
Bureau of Indian Affairs						
Guam						
Puerto Rico						
Virgin Islands						
Trust Territory						
Total	73, 500	67, 961	2, 846, 721		2, 277, 507, 383	1, 707, 230, 523
Average	1, 470					

S. 6

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Education for All Handicapped Children Act."

STATEMENT OF PURPOSE

SEC. 2. (a) The Congress finds that

(1) there are more than seven million handicapped children in the United States today;

(2) close to 60 percent of these children do not receive appropriate educational services which would enable them to have full equality of opportunity;

(3) one million of these children are excluded entirely from the public school system and will not go through the educational process with their peers;

(4) the States have a responsibility to provide this education for all handicapped children; but are operating under increasingly constrained fiscal resources; therefore

(b) It is the purpose of this Act to insure that all handicapped children have available to them not later than 1976 a free appropriate public education, to insure that the rights of handicapped children and their parents or guardian are protected, to relieve the fiscal burden placed upon the States and localities when they provide for the education of all handicapped children, and to assess the effectiveness of efforts to educate handicapped children.

DEFINITIONS

SEC. 3. As used in this Act—

(1) the term "handicapped children" means mentally retarded, hard-of-hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health-impaired children, or children with specific learning disabilities who by reason thereof require special education, training and related services;

(2) the term "Commissioner" means the Commissioner of Education;

(3) the term "per pupil expenditure for handicapped children" means, for any State, the aggregate current expenditure during the fiscal year preceding the fiscal year for which the computation is made, of all local educational agencies in that State, plus any direct current expenditure by the State for the operation of any such agency for handicapped children, and the additional cost to the State or local educational agencies within that State for the provision of education to handicapped children in homes, institutions, and other agencies other than public elementary and secondary schools, divided by the aggregate number of handicapped children in attendance daily to whom such agency has provided free appropriate public education, and such expenditure shall not include any financial assistance received under the Education of the Handicapped Act the Elementary and Secondary Education Act of 1965, or any other Federal financial assistance;

(4) the term "per pupil expenditure for all other children" means, for any State, the aggregate current expenditure during the fiscal year preceding the fiscal year for which the computation is made, of all local educational agencies in that State, plus any direct current expenditure by the State for operation of any such agency for all other children not included in the determination made under paragraph (6) of this section, divided by the aggregate number of all other children in attendance daily to whom such agency has provided free appropriate public education, and such expenditure shall not include any financial assistance received under the Elementary and Secondary Education Act of 1965, or any other Federal financial assistance;

(5) the term "free appropriate public education" means education, training and related services which shall be provided at public expense, under public supervision and direction and without charge, meeting the standards of the State educational agency, which shall provide an appropriate preschool, elementary, or secondary school education in the applicable State and which is provided in conformance with an individualized written program.

(6) the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

(7) the term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law;

(8) the term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools, and such term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school; and

(9) The term "individualized written program" means a written educational plan for a child developed and agreed upon jointly by the local educational agency, the parents or guardians of the child and the child when appropriate, which includes (A) a statement of the child's present levels of educational performance, (B) a statement of the long-range goals for the education of the child, and the intermediate objectives related to the attainment of such goals, (C) a statement of the specific educational services to be provided to such child, (D) the projected date for initiation and anticipated duration of such services, and (E) objective criteria and evaluation procedures and schedule for determining whether intermediate objectives are being achieved.

AUTHORIZATION

SEC. 4. (a) The Commissioner is authorized to make grants pursuant to this Act for the purpose of assisting the States in providing a free appropriate public education for handicapped children at the preschool, elementary and secondary school levels.

(b) There are authorized to be appropriated for the fiscal years beginnng July 1, 1973, and endng June 30, 1977, such sums as may be necessary for carryng out the purposes of this Act.

BASIC GRANTS AMOUNT AND ENTITLEMENT

SEC. 5. (a) (1) From the sums appropriated pursuant to section 4 of this Act for each fiscal year each State is entitled to an amount which is equal to the amount by which the per pupil expenditure for handicapped children, aged three to twenty-one years, inclusive, exceeds the per pupil expenditure for all other children, aged five to seventeen years, inclusive, in the public elementary and secondary schools in that State, multiplied by the Federal share specified in section 8(a)(2) for each handicapped child for which the State is providing free appropriate public education during the current fiscal year. Funds so allotted shall be used by the State to initiate, expand and improve educational services for handicapped children in conformance with a State plan.

(2) The per pupil expenditure for handicapped children, aged three to twenty-one years, inclusive, and the per pupil expenditure for all other children, aged five to seventeen years, inclusive, in any State shall be determined by the Commissioner on the basis of the most recent data available to him.

(b) The portion of any State's entitlement under subsection (a) for a fiscal year which the Commissioner determines will not be required, for the period such entitlement is available, for carrying out the purposes of this Act shall be available for reallotment from time to time, on such dates during such period as the Commissioner may fix, to other States in proportion to the original entitlements to such States under subsection (a) for such year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum which the Commissioner estimates such State needs and will be able to use for such period for carrying out such portion of its State plan approved under this Act, and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts are not so reduced. Any amount reallotted to a State under this subsection during a year shall be deemed part of its entitlement under subsection (b) for such year.

ELIGIBILITY

SEC. 6(a). In order to qualify for assistance under this Act in any fiscal year, a State shall demonstrate to the Commissioner that the following conditions are met.

(1) A State has in effect a policy that assures all handicapped children the right to a free appropriate public education.

(2) The State has a plan which details the procedures and implementation strategies for ensuring that a free appropriate public education will be available for all handicapped children within the State not later than 1976, and which includes a detailed timetable for accomplishing such a goal, and the necessary facilities, personnel, and services.

(3) The State has made adequate progress in meeting the timetable of its plan.

(4) Each local educational agency in the State will maintain an individualized written program for each handicapped child and review at least annually and amend when appropriate with the agreement of the parents or guardian of the handicapped child; that in the development of the individualized written program, parents or guardian are afforded due process procedures which shall include (A) prior notice to parents or guardian of the child when the local or State educational agency proposes to change the educational placement of the child, (B) an opportunity for the parents or guardian to obtain an impartial due process hearing, examine all relevant records with respect to the classification or educational placement of the child, and obtain an independent educational evaluation of the child and, (C) procedures to protect the rights of the child when the parents or guardian are not known, unavailable or the child is a ward of the State, including the assignment of an individual, not to be an employee of the State or local educational agency involved in the education or care of children, to act as a surrogate for the parents or guardian; and that when the parents or guardian refuse to agree to the provisions of the individualized written program that the decisions rendered in the impartial due process hearing are binding on all parties pending appropriate administrative or judicial appeal.

(5) Tests and other evaluation procedures utilized for the purpose of classifying children as handicapped are administered so as not to be racially or culturally discriminatory.

(6) To the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(7) An advisory panel broadly representative of individuals involved or concerned with the education of handicapped children, including teachers, parents or guardian of handicapped children, administrators of programs for handicapped children, and handicapped individuals, has (A) advises the State educational agency of unmet needs within the State in the education of handicapped children, (B) assists the State educational agency in determining priorities within the State for educational services for handicapped children; (C) reviews the State plan and reports to the State educational agency and the public on the progress made in the implementation of the plan and recommends needed amendments to the plan, (D) comments on any rules or regulations proposed for issuance by the State regarding the education of handicapped children and the procedures for distribution of funds under this Act, and (E) assists the State in developing, conducting and reporting the evaluation procedures required under section 7 of this Act.

(8) To the extent consistent with the number and location of handicapped children in the State who are enrolled in private elementary and secondary schools, provisions is made for the participation of such children in the program assisted or carried out under this Act.

(9) Federal funds made available under this Act will be so used as to supplement and increase the level of State and local funds expended for the education of handicapped children and in no case supplant such State and local funds.

(10) The State educational agency will be the sole agency for administering or supervising the preparation and administration of the State plan, and that all educational programs for handicapped children within the State will be supervised by the persons responsible for educational programs for handicapped children in the State educational agency and shall meet educational standards of the State educational agency.

(11) The State has identified all handicapped children with the State and maintains a list of the local educational agency within the State responsible for the education of each such child (whether the child remains in the area served by the local educational agency or is sent out of the jurisdiction for services), the location of the child, and the services the child receives.

(b) Any State meeting the eligibility requirements set forth in subsection (a) and desiring to participate in the program under this Act shall submit to the Commissioner and at such time, in such manner, and containing or accompanied by such information as he deems necessary. Each such application shall——

(1) set forth programs and procedures for the expenditure of the funds paid to the State under this application, either directly or through individual local educational agencies or combinations of such agencies to initiate, expand, or improve programs and projects, including preschool programs and projects, which are designed to meet the educational needs of handicapped children throughout the State;

(2) provide satisfactory assurance that the control of funds provided under this Act, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this Act, and that a public agency will administer such funds and property;

(3) provide for (A) making such reports in such form and containing such information, as the Commissioner may require to carry out his functions under this Act, including reports of the objective measurements required by paragraph 9 of subsection (A) and (B) keeping such records and for affording such acsess thereto as the Commissioner may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this Act;

(4) provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this Act to the State, including any such funds paid by the State to local educational agencies;

(5) provide for procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children, in accordance with such criteria that the Commissioner shall prescribe pursuant to section 7.

(c) The Commissioner shall approve an application and any modification thereof which—

(1) is submitted by an eligible State in accordance with subsection (a);

(2) complies with the provisions of subsections (b);

(3) provides for the distribution of funds under this Act in such a way which reflects the relative percentage contribution within each State of funds spent within the State on education of handicapped children by State and local educational agencies; and

(4) provides that the distribution of assistance under this Act within each State is made on the basis of consideration of (A) the relative need for special educational services in certain geographical areas within the State as developed under the State plan, and (B) the relative need for special educational services for certain subgroups of the population of handicapped children within the State as developed under the State plan. The Commissioner shall disapprove any application which does not fulfill all such conditions, but shall not finally disapprove a State application except after reasonable notice and opportunity for a hearing to the State.

(d) As soon as practicable after the enactment of this Act, the Commissioner shall prescribe basic criteria to be applied by State agencies in submitting an application for assistance under this Act. In addtion to other matters, such basic criteria shall include—

(1) uniform criteria for determining the handicapped children to be served;

(2) uniform criteria to be used by the State in determining categories of expenditures to be utilized in calculating State and local expenditures for the education of handicapped children.

EVALUATION AND REPORTING

SEC. 7. (a) The Commissioner shall measure and evaluate the impact of the program authorized under this Act, and shall submit annually to the Congress a report on progress being made toward the goal of making available to all handicapped children a free appropriate public education by 1976. Such report shall include a detailed evaluation of the education programs provided in accordance with individualized written programs, and shall include an evaluation of the success or failure of the State and local educational agencies to meet the long-range goals and intermediate objectives for education, to deliver specific services detailed in the individualized written program and to comply with the projected timetable for the delivery of such services.

(b) The Commissioner shall also include in the report required by subsection (a)—

(1) an analysis of the procedures undertaken by each State to insure that handicapped children are to the maximum extent appropriately educated with children who are not handicapped, pursuant to paragraph (6) of subsection (a) of section (6) of this Act;

(2) an evaluation of the State's procedures for the institutionalization of handicapped children, including classification and commitment procedures, services provided within institutions, and an evaluation of whether institutionalization best meets the educational needs of such children; and

(3) recommended changes in provisions under this Act, and other Acts which provide support for the education of handicapped children which will encourage education of such children in public preschool, elementary, and secondary schools where appropriate and improve programs of instruction for handicapped children who require institutionalization.

PAYMENTS

SEC. 8. (a) (1) The Commissioner shall pay to each State from its allotment determined pursuant to section 3, an amount equal to its entitlement under that section.

(2) (A) From funds paid to it pursuant to paragraph (1) each State educational agency shall distribute to each local educational agency of the State the amount for which its application has been approved except that the aggregate amount of such payment in any State shall not exceed the amount allotted to that State pursuant to section 5(a).

(B) To the extent that any State in which the State educational agency is wholly or partially providing free appropriate public education for handicapped children, the provisions of subparagraph (A) of this paragraph shall not apply.

(b) For each fiscal year the Federal share shall be 75 per centum.

(c) (1) The Commissioner is authorized to pay to each State amounts equal to the amounts expended for the proper and efficient performance of its duties under this Act, except that the total of such payments in any fiscal year shall not exceed—

(A) 1 per centum of the total of the amounts of the grants paid under this Act for that year to the State educational agency; or

(B) $75,000, or $25,000 in the case of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands, whichever is greater.

(2) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this subsection.

(d) Payments under this Act may be made in advance or by way of reimbursement and in such installments as the Commissioner may determine necessary.

WITHHOLDING

SEC. 9. Whenever the Commissioner, after reasonable notice and opportunity for a hearing to any State educational agency, finds that there has been a failure to comply substantially with any provision of section 6, the Commissioner shall notify the agency that payments will not be made to the State under this Act (or, in his discretion, that the State educational agency shall not make further payments under this Act to specified local educational agencies whose actions or omissions caused or are involved in such failure) until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, no payments shall be made to the State under this Act, or payments by the State educational agency under this Act shall be limited to local educational agencies whose atcions did not cause or were not involved in the failure, as the case may be.

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PROCEEDINGS AND DEBATES OF THE 93d CONGRESS, FIRST SESSION

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Senate

By Mr. MONDALE (for himself, Mr. MANSFIELD, Mr. PROXMIRE, Mr. MCGOVERN, Mr. HUMPHREY, Mr. PELL, Mr. BURDICK, Mr. WILLIAMS, and Mr. HASKELL):

S. 637. A bill to protect the free flow of information coming into the possession of the media of communication. Referred to the Committee on the Judiciary.

Mr. MONDALE. Mr. President, last August, when I introduced the Free Flow in Information Act of 1972, a major threat to the freedom of our Nation's press was looming on the horizon. On June 29, 1972, the Supreme Court in the case of Branzburg versus Hayes had determined that the first amendment does not afford newsmen protection from answering a grand jury's questions, even though these answers may require the disclosure of confidential information and sources.

In August, much of the danger posed by this decision lay in the future. Today, these threats have become realities, and the need for effective action has grown even more urgent.

The American educator Zechariah Chaffee, Jr., in 1947 accurately uncovered the primary reason why we must be concerned with these threats to press freedoms. He stated:

In many subjects the complexity of the pertinent facts increases. Equal access to the facts becomes more and more difficult. The power of government over the sources of information tends to grow. Hence the misuse of this power by government becomes a more and more serious danger. What is significant is the enormous recent expansion of the subjects which officials are seeking to hide from publication until they give the signal.

If action is not taken to reverse the trend toward the harassment and imprisonment of newsmen, we will find ourselves with only one source of information—the Government official. We will find ourselves without the information on corruption or waste or inefficiency in Government which is so often provided by a source who does not want his identity revealed. Indeed, in many such instances, these sources are themselves Government employees and, for them, revelation of their identity would mean almost certain dismissal.

As Mr. Justice Stewart noted in his dissent in Branzburg:

The full flow of information to the public protected by the free press guarantee would be severely curtailed if no protection whatever were afforded to the process by which news is assembled and disseminated.

This fear expressed by Mr. Justice Stewart is by no means unique. Two years ago, Dan Rather, CBS News White House reporter, submitted an affidavit in the Ninth Circuit case of United States versus Caldwell—one of the cases ultimately decided by the June 29 Branzburg decision. In it, he referred to a longtime friend and confidential news source:

This decent, honest citizen, who cares deeply about his country, has now told me that he fears that pressure from the Government, enforced by the courts, may lead to violation of confidence, and he is therefore unwilling to continue to communicate with me on the basis of trust which existed between us.

Instances such as this are multiplying since the Supreme Court ruling of last June.

Recently, CBS wanted to interview a welfare mother who had been cheating by collecting welfare payments while her husband was living with her. The interview was to help dramatize how some current welfare regulations have actually encouraged the breakups of families. Producer Ike Kleinerman agreed to disguise the woman's voice and appearance. The woman, however, feared prosecution, and demanded a pledge that the network not reveal her name if demanded to do so through a Government subpena. Kleinerman called CBS legal counsel in New York, and was told that the network simply could not guarantee its ability to protect the woman's identity. The interview was canceled.

This is not an isolated instance. As columnist James J. Kilpartick recently noted:

Newsmen across the country, at considerable personal danger, are undertaking to report on the extent of the traffic in marijuana and narcotic drugs. It is a big story. This is news the people are entitled to have if they are to make wise policy decisions on a major social problem. But the story cannot be reported fully. Subjects who might have cooperated a couple of years ago have clammed up now. They have read the papers, and they know that investigative reporters are being jailed or hard-pressured to reveal their sources.

Numerous other similar examples could be cited. The essential point, however, is that we are facing a major crisis in the ability of the press to report the type of news that we need to know, if we are to maintain our status as a democracy in which there is a free and open exchange of ideas. We are face-to-face with the dangerous situation of reporters and other newsgatherers being unable to uncover news of waste in Government, or the extent of the hard-drug traffic, or the attitudes and plans of extremist groups of either the right or the left.

At the same time, we are also facing an unprecedented expansion of governmental use of "background briefings," in which the Government leaks the information it desires to reporters on the condition that the source of such information not be revealed.

The practical effect of these twin trends is that we are getting more and more of what the Government wants us to know—and less and less of the other side of the facts. We are being fed Government information on a confidential basis, at the same time that our reporters are finding it increasingly difficult to obtain information in confidence which would prove corruption or waste in Government.

The spectre of this one-sided relationship has aroused the interest of people of all political persuasions, including many of the very Government officials who respect the press for the function which they play in keeping Government honest.

Governor Nelson Rockefeller of New York, in supporting the concept of shield legislation recently, noted that without it that:

The kind of resourceful, probing journalism that first exposed most of the serious scandals, corruption and injustices in our nation's history would simply disappear. . . . I would far prefer a society where a free press occasionally upsets a public official to a society where public officials could ever upset freedom of the press.

Gov. Wendell Anderson, of my State of Minnesota, noted in his State-of-the-State message this year that:

Reporters are being prosecuted not because they are irresponsible, but precisely because they have been responsible to their basic function of publishing the truth.

Everyone in public life occasionally disagrees with some article or coverage. But government officials who fear the press, and seek to suppress it, are very short-sighted indeed. For our system of government itself would die without the freedom of speech and freedom of the press guaranteed us in the First Amendment.

Since the ruling of the Supreme Court in Branzburg v. Hayes, the attack on the ability of reporters to protect their sources and information has been steadily mounting.

In New Jersey, reporter Peter Bridge was jailed for 21 days for refusing to answer five specific questions from a grand jury regarding an article he had published on corruption in the Newark Housing Authority. This, in spite of the fact that he had already answered 80 questions from the grand jury before refusing to answer those which would have required him to violate a confidence.

In California, reporter William Farr has spent over a month in jail for refusing to tell a Los Angeles Superior Court judge which of six attorneys in the Charles Manson murder trial gave him incriminating information he published in a Los Angeles paper, in violation of the judge's order banning all publicity in the trial. This, in spite of the fact that, when the article was published, the jury had been sequestered, and could not have been prejudiced by publication of the information which Mr. Farr revealed.

In Washington, D.C., John Lawrence, Washington bureau chief of the Los Angeles Times, was jailed briefly on December 19 for refusing to produce tapes of an interview held by two Times reporters with Alfred Baldwin, a key Government witness in the Watergate bugging case. This, in spite of the fact that an appeal had been lodged. As Lawrence stated:

I am deeply shocked that in America a journalist can be put behind bars even for a few minutes while his case is still subject to appeal.

In addition, to these jailings, and the brief jailing of Harry Thornton in Chattanooga, Tenn., for failing to reveal a source, there have recently been about a dozen other attempts by courts, prosecutors, and legislators—through contempt citations, subpenas, and other devices—to obtain confidential information and sources.

The legislation which I am introducing today, along with Senators MANSFIELD, PROXMIRE, MCGOVERN, HUMPHREY, PELL, BURDICK, WILLIAMS, and HASKELL, would seek to put an end to the jailings and harassment of newsmen which we have witnessed for the past months. This is needed both to protect newsmen and their sources, but more importantly to insure that these sources continue to come forth with the type of information on which an informed populace must rely.

While we, in Congress, must carefully study the exact contours of any legislation we ultimately enact, we must utilize the public concern over this encroachment of freedom of the press to mobilize effective and quick action.

The legislation I am introducing today would provide a strong, qualified protection for news gatherers, consistent with the legitimate right of the Government to secure certain very limited types of information. Part of this bill owes its origin to an ad hoc drafting committee of media organizations, which studied various alternative sets of language, and to which I am grateful.

This legislation would apply in all Federal and State proceedings, including courts, grand juries, legislative committees, and administrative tribunals.

The great majority of the recent jailings and harassment of news gatherers since the Branzburg decision have resulted from State proceedings. Protection is needed now to insure uniformity among the States, to provide protection for news gatherers in each of the 50 States. There is now a good deal of interest at the State level in protecting newsmen. However, the degree of interest varies from State to State, and the provisions of proposed State statutes also vary widely.

If we are to secure the continued free flow of information from those sources who are now refusing to speak because of the events of recent months, we must provide a mechanism for uniformity of standards nationwide. We need one approach, with tightly drawn standards and procedures, to provide as much certainty as possible.

This bill will protect both the source of any published or unpublished information and any unpublished information obtained in the gathering, receiving or processing of information for any medium of communication to the public.

Consistent with historical Supreme Court rulings on first amendment rights, the media of communication covered by the act are defined broadly, to include newspapers, magazines or other periodicals, books, wire services, news or feature syndicates, broadcast stations or networks, or cable television systems.

While providing strong protection for newsmen, the bill does allow the Government—in certain, very limited circumstances—to obtain sources of information. However, the showing which the Government must make is a very stiff one indeed, and this showing must come at the earliest possible procedural point in any trial or inquiry.

It is the opinion of many in the news media—an opinion in which I concur—that the degree of protection offered by any qualified bill increases directly in proportion to the procedural difficulty the Government must face in order to obtain divestiture of the protection. Therefore, unlike the qualified shield legislation of the past, my bill makes it clear that no subpena will be issued until the Government has made its showing. This places the burden of going forward entirely on the Government, where this burden belongs.

Under terms of my legislation, a reporter or other newsgatherer could not be compelled even to appear inside a closed grant jury or committee room until the Government had made its showing of need.

This showing would require the person seeking divestiture to prove:

First, that there is probable cause to believe that the person from whom disclosure is sought possesses information or source identities relevant to a specified probable violation of law;

Second, that the Federal or State proceeding in question has clear jurisdiction over this probable violation of law;

Third, that the information or source cannot be obtained by alternative means; and

Fourth, that there exists an imminent danger of foreign aggression, espionage, or threat to human life, which cannot be prevented without disclosure.

The Government would be required to show by clear and convincing evidence the existence of all four conditions before divestiture of the protection could be ordered by the court.

These conditions together insure that the only types of information or source identities which the Government or any other party seeking disclosure could obtain would be limited to absolutely essential matters. In particular, condition 2 would prevent unauthorized grand jury "fishing expeditions," and condition 4 by requiring "imminent danger" makes divestiture substantially more difficult than in earlier qualified newsman's shield legislation. In addition, substitution of this type of language for the more general "compelling and overriding national interest" insures that court interpretations will not emasculate the protection which the act is designed to afford.

Finally, my legislation specifically states that should the Government succeed in making the required showing at the trial court level, the protection of the act would remain in full force until all appeals are exhausted.

The need for legislation of the type I am introducing today is urgent. The interests at stake are no less than the survival of the system of free inquiry and expression as the basis of our democracy.

Justice William O. Douglas has placed these interests in a broad and eloquent perspective.

> Free speech and free press—not spaceships or automobiles—are the important symbols of Western civilization. In material things, the Communist world will in time catch up. But no totalitarian regime can afford free speech and a free press. Ideas are dangerous—the most dangerous in the world because they are haunting and enduring. Those committed to democracy live dangerously for they stand committed never to still a voice in protest or a pen in rebellion.

This is what is at stake in our fight to preserve the press freedoms we have all come to take for granted. If we do not act, we will witness these freedoms slowly but steadily drifting away, leaving each one of us so much the poorer as a result.

Mr. President, I ask unanimous consent that the text of this legislation be printed in the RECORD at the conclusion of my remarks.

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

S. 637

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be entitled "The Free Flow of Media Information Act".

SECTION 1. The Congress hereby finds and declares that—

(a) those who gather, write, or edit information for the public or disseminate information to the public can perform a vital function which can only be properly exercised in a free and unfettered atmosphere, marked by the absence of direct or indirect governmental restraint or sanction imposed by governmental process;

(b) such persons must be encouraged to gather, write, edit, or disseminate information vigorously and freely so that the public can be fully informed;

(c) such persons, to properly exercise their freedom to gather, write, edit, or disseminate such information must rely on a wide variety of sources for information;

(d) compelling such persons to disclose a source of information or disclose unpublished information is contrary to the public interest, and inhibits the free flow of information to the public;

(e) the inhibition of the free flow of information through any medium of communication to the public adversely affects interstate commerce; and

(f) the purpose of this Act is to implement the urgent need to provide effective measures to halt and prevent this inhibition and insure the free flow of news and other information to the public.

SEC. 2. Except as provided in section 4, no person shall be required to disclose in any Federal or State proceeding either—

(a) the source of any published or unpublished information obtained in the gathering, receiving, or processing of information for any medium of communication to the public, or

(b) any unpublished information obtained or prepared in the gathering, receiving, or processing of information for any medium of communication to the public.

SEC. 3. For the purpose of this Act, the term—

(a) "Federal or State proceeding" includes any proceeding or investigation before or by any Federal or State judicial, legislative, executive or administrative body;

(b) "Medium of communication" includes any newspaper, magazine or other periodical, book, news service, wire service, news or feature syndicate, broadcast station or network, or cable television system;

(c) "Information" includes any written, oral or pictorial news or other material;

(d) "Published information" means any information disseminated to the public by the person from whom disclosure is sought;

(e) "Unpublished information" includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated and includes, but is not limited to, all notes, outtakes, photographs, tapes, or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated;

(f) "Processing" includes compiling, sorting, and editing of information;

(g) "Person" means any individual, and any partnership, corporation, association, or other legal entity existing under, or authorized by, the law of the United States, any State or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any foreign country.

SEC. 4. (a) In any Federal proceeding where a person seeks information or the source of information protected by section 2, no subpoena *ad testificatum*, subpoena *duces tecum*, or any other compulsory process demanding disclosure of sources of information or information protected by section 2 shall be issued unless such person applies to the United States district court for an order divesting such protection. Such application shall be made to the district court in the district wherein the proceeding in which the information sought is pending. Timely notice of such application shall be served by the applicant on the person from whom disclosure is sought.

(b) In any state proceeding where a person seeks information or the source of information protected by section 2, no subpoena *ad testificatum*, subpoena *duces tecum*, or any other compulsory process demanding disclosure of sources of information or information protected by section 2 shall be issued unless such person applies to the state trial court of general jurisdiction for an order divesting such protection. Such application shall be made to the state trial court in the judicial district or division wherein the proceeding in which the information is sought is pending. Timely notice of such application shall be served by the applicant on the person from whom disclosure is sought.

(c) Such application shall allege:

(1) the name of the person from whom disclosure is sought,

(2) the specific information sought or the identity of the source sought and its direct relevancy to the proceeding,

(3) the following conditions:

(A) that there is probable cause to believe that the person from whom the information or source of information is sought possesses information or knowledge of the identity of a source of information which is clearly relevant to a specific probable violation of law;

(B) that the Federal or state proceeding has clear jurisdiction over the specific probable violation regarding which such information or the source of such information is sought;

(C) that the information or source of information sought cannot be obtained by alternative means; and

(D) that there exists an imminent danger of foreign aggression, of espionage, or of threat to human life, which cannot be prevented without disclosure of the information or source of information.

(d) The court may issue an order requiring disclosure in whole or in part if, after hearing the parties, it finds that the person seeking divestiture of the protection of section 2, by clear and convincing evidence, has demonstrated the existence of conditions (c) (3) (A), (B), (C) and (D).

SEC. 5. Any order divesting the protection of section 2 shall be subject to appeal. During the pendency of any such appeal, the protection of section 2 shall remain in full force and effect.

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Vol. 119 WASHINGTON, THURSDAY, FEBRUARY 1, 1973 No. 18

Senate

EXCESSIVE POSTAL RATES

Mr. MONDALE. Mr. President, in the closing days of 1972, everyone in the publishing world was saddened to learn that Life magazine was ceasing publication. Over the course of more than three decades, Life had become an American institution, chronicling our progress and setbacks, our serious and comic moments as a nation.

Tragically, the demise of Life magazine may be only the beginning of a new wave of closings at a wide variety of publications. For the end of Life magazine is only a mirror-image of what may well happen to hundreds upon hundreds of smaller publications, who can afford the proposed increase in second-class postal rates even less than could a giant publishing company such as Time-Life, Inc. When Life announced that a part of its reason for ceasing publication was the prospect of a 170-percent increase in mailing costs over the next 5 years, it was only a small initial taste of many similar announcements which almost certainly will follow.

Last June, when I cosponsored the proposal of the Senator from Wisconsin (Mr. NELSON) to bring these postal rate increases under control, I quoted the great jurist Learned Hand:

> The mutual confidence on which all else depends can be maintained only by an open mind and a brave reliance upon free discussion. I do not say that these will suffice; who knows but we may be on a slope which leads down to aboriginal savagery. But of this I am sure; if we are to escape, we must not yield a foot upon demanding a fair field, and an honest race, to all ideas.

This is even more applicable today than it was last summer. Every time a magazine or newspaper is forced to abandon publication because of soaring postal costs, the "honest race to ideas" of which Learned Hand spoke becomes a little less honest. Every time a publication—large or small, liberal or conservative—ceases printing because of postal costs, we move a little further along the road toward that day when the free and vigorous exchange of ideas will only be a memory of the distant past.

The need for the legislation which the Senator from Wisconsin (Mr. NELSON) has reintroduced—and which I am again proud to cosponsor—is greater today than at any time in the past. Last July, the St. Paul Dispatch indicated their view of the importance of this legislation when they noted that—

> The most immediate threat to a free press in this country is not subpoenas, government secrecy or Spiro Agnew. It is what has been called "death by postal rate."

And the Catholic Bulletin, in St. Paul, noted that—

> If each class within the Postal Service has to pay for itself it will mean the end of countless small, free-wheeling, independent newspapers, magazines, newsletters and publications of all kinds which have made this nation what it is today.

These statements do not unduly overdramatize the problem we are facing. With Postal Service increases of 127 percent now already partially in effect—and with much more to come—the ability of hundreds of publications to survive is seriously questioned.

More ominously, it is the small magazines of thought, opinion, and ideas—of every political perspective—which will least be able to bear the burden of the proposed postal rate increases.

These proposed increases, by bearing more heavily on editorial content than on advertising content, hit most heavily those magazines and newspapers which emphasize editorial material over advertising pages. In addition, by adding a per piece mailing surcharge, the proposed increases penalize those magazines and newspapers whose bulk is small, but whose content often looms large in the form of American public opinion.

These are the periodicals which serve the crucial function of refreshing our thinking and restoring our creativity. As Learned Hand has stated:

> As soon as we cease to pry about at random we shall come to rely upon accredited bodies of authoritative dogma; and as soon as we come to rely upon accredited bodies of authoritative dogma, not only are the days of our liberty over, but we have lost the password that has hitherto opened to us the gates of success as well.

Without the small publications of every description which are threatened by these postal rate increases we will come to rely even more than we must now on "authoritative dogma." For the more voices of dissent and differing opinions which are shut off, the more we will be forced to rely on the Government briefing and the "authorized" press release for our information.

The bill introduced by the Senator from Wisconsin (Mr. NELSON), S. 630, which I am cosponsoring, would allow smaller circulation magazines and newspapers a considerable measure of relief—while still affording some benefits to magazines of larger circulation and heavier advertising content. By freezing postal rates at the June 1, 1972, levels for the first 250,000 copies of each issue of any magazine or newspaper, the bill would insure the continued vitality of the Nation's free press. Yet this increase would leave second-class rates at levels roughly 33 percent above those of 1970. The bill thereby offers relief without offering an unnecessary windfall.

Second, by phasing in the increase on editorial content over 10 years, instead of the currently proposed 5 years—for all copies over 250,000—the bill would recognize the vital position of the Nation's magazines of opinion in keeping our people well informed.

Finally, and of greatest importance to the smaller publications, this bill would implement long-standing congressional policy against per piece surcharges on individual issues of second-class publications.

Almost 200 years ago, Thomas Jefferson stated that he cared not who made a country's laws, so long as he could write its newspapers. Today, the function of disseminating ideas is entrusted to all our communications media. No segment of the media plays a more vital role than do the small magazines and newspapers of opinion and ideas. If we fail to enact legislation to help save these publications an important part of our freedom will slowly and silently drift away, robbing our entire Nation of its most precious legacy.

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Senate

THURSDAY, FEBRUARY 1, 1973

EXTENSION OF AUTHORIZATION FOR PROGRAMS UNDER THE ECONOMIC OPPORTUNITY ACT OF 1964—AMENDMENT

AMENDMENT NO. 5

(Ordered to be printed and referred to the Committee on Labor and Public Welfare.)

AN AMENDMENT TO ESTABLISH A NATIONAL LEGAL SERVICES CORPORATION

Mr. MONDALE. Mr. President, on behalf of myself, and Senators CRANSTON, KENNEDY, WILLIAMS, and JACKSON, I submit for printing and appropriate reference an amendment to S. 706, which I submitted earlier today.

This amendment, known as the National Legal Services Corporation Act, is designed to assure that legal representation for the poor will be independent and free of politics, and also responsive to the communities it must serve. This legislation has been developed jointly by all those sponsoring the introduction of this proposal today.

In its basic provisions, this amendment is essentially similar to the provisions contained in section 27 of the conference report to accompany H.R. 12350, Report No. 92-1246, of July 26, 1972.

In particular, the composition of the board of directors of the Corporation conforms to that which emerged from the conference committee which considered this legislation last year. The President appoints all members of the Board of Directors, by and with the advice and consent of the Senate.

Ten of these appointees are from the general public, and of the remaining nine members:

Five members must be representative of the organized bar and legal education—respecting whom the American Bar Association, the American Trial Lawyers Association, the Association of American Law Schools, the National Bar Association, and the National Legal Aid and Defender Association may submit recommendations to the President.

Two members must be from among individuals eligible for assistance under the act—regarding whom the Clients Advisory Council created by the Act may submit recommendations to the President.

Two members must be from among former legal services project attorneys—regarding whom the Project Attorneys Advisory Council created by the act may submit recommendations to the President.

Other provisions of the amendment are also designed to insure that the Corporation meets the twin tests of independence and accountability.

There are strong prohibitions against conflicts of interest on the part of any board member.

The Executive Director of the Corporation is limited to a 6-year term.

Congress provides yearly appropriations. The legislation would authorize appropriations of $121.5 million for fiscal year 1974 and $171.5 million for fiscal year 1975 for the Corporation. The present appropriations level for legal services programs is $71.5 million, with a similar amount included in the President's fiscal 1974 budget request.

GAO has full audit authority, and annual independent audits are required.

Continuing oversight of program operations can be carried out by the appropriate committees.

In these and many other provisions, the legislation we are submitting provides for a responsible Legal Services Corporation.

Of even greater importance, is the need for an independent Corporation, free from the political pressures which in the past have often hampered the operations of individual legal services programs around the Nation.

Mr. President, Jerome B. Falk, Jr. and Stuart R. Pollack, writing in a recent issue of the American Bar Association Journal, have accurately balanced the interests which the amendment we are submitting seeks to preserve.

There is no dispute as to the propriety—or, indeed, the necessity—of ensuring that attorneys operating with public funds comply with the highest professional standards and with the guidelines of the legal services program. . . . But it is also imperative that those to whom the attorneys account respect the relationship between the legal services attorneys and their clients, grant appropriate latitude for the exercise of independent professional judgment, and most important, assure that there is insulation from undue political pressures from those whose interests are adverse to the interests of the attorneys' clients.

The amendment we are submitting is designed to assure that the poor gain effective and on-going legal representation, and that the Corporation representing them meets the highest standards of the legal profession.

Mr. President, I ask unanimous consent that the full text of this amendment and two recent articles on the legal services program, be printed at this point in the RECORD.

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

AMENDMENT NO. 5

Add the following sections at the end thereof:

SEC. 3. (a) The Economic Opportunity Act of 1964 is further amended by adding at the end thereof the following new title:

"TITLE IX—NATIONAL LEGAL SERVICES CORPORATION

"DECLARATION OF POLICY

"SEC. 901. The Congress hereby finds and declares that—

"(1) it is in the public interest to provide greater access to attorneys and appropriate institutions for the orderly resolution of grievances and the peaceful settlement of disputes within the system of justice;

"(2) many low-income persons are unable to afford the cost of legal services or of access to appropriate institutions;

"(3) access to legal services and appropriate institutions for all citizens of the United States not only is a matter of private and local concern, but also is of appropriate and important concern to the Federal Government;

"(4) the integrity of the attorney-client relationship and of the adversary system of justice in the United States require that there be no political interference with the provision and performance of legal services;

"(5) existing legal services programs have provided economical effective, and comprehensive legal services to the client community so as to bring about the peaceful settlement of disputes within the system of justice; and

"(6) a private nonprofit corporation should be created to encourage the availability of legal services and legal institutions to all citizens of the United States, free from extraneous interference and control.

"ESTABLISHMENT OF CORPORATION

"SEC. 902. (a) There is established a nonprofit corporation, to be known as the 'National Legal Services Corporation (hereinafter referred to as the 'Corporation') which shall not be an agency or establishment of the United States Government. The Corporation shall be subject to the provisions of this title, and, to the extent consistent with this title, to the District of Columbia Nonprofit Corporation Act. The right to repeal, alter, or amend this title is expressly reserved.

"(b) No part of the net earnings of the Corporation shall inure to the benefit of any private person.

"(c) The Corporation, and legal services programs assisted by the Corporation, shall be eligible to be treated as an organization described in section 170(c)(2)(B) of the Internal Revenue Code of 1954 or as an organization described in section 501(c)(33) of the Internal Revenue Code of 1954 which is exempt from taxation under section 501(a) of such Code.

"PROCESS OF INCORPORATION AND ORGANIZATION

"SEC. 903. (a) There shall be a transition period following the date of enactment of the National Legal Services Corporation Act of 1973 for the process of incorporation and initial organization of the Corporation.

"(b) There is established an incorporating trusteeship composed of the following persons or their designees: the president of the American Bar Association, the president of the Association of American Law Schools, the president of the American Trial Lawyers Association, the president of the National Bar Association, and the president of the National Legal Aid and Defender Association. The incorporating trusteeship shall meet within thirty days after the enactment of the National Legal Services Corporation Act of 1973 to carry out the provisions of this section.

"(c)(1) Not later than sixty days after the enactment of the National Legal Services Corporation Act of 1973, the incorporating trusteeship, after consulting with and receiving the recommendations of national organizations of persons eligible for assistance under this title, shall establish the initial Clients Advisory Council to be composed of eleven members selected, in accordance with procedures, which meet the requirements of section 905(a)(2), established by the incorporating trusteeship, from among individuals eligible for assistance under this title.

"(2) Not later than sixty days after the enactment of the National Legal Services Corporation Act of 1973, the incorporating trusteeship, after consulting with and receiving the recommendations of associations of attorneys actively engaged in conducting legal services programs, shall establish the initial Project Attorneys Advisory Council to be composed of eleven members selected, in accordance with procedures, which meet the requirements of section 905(b)(2), established by the incorporating trusteeship, from among attorneys who are actively engaged in providing legal services under any existing legal services program.

"(3) To assist in carrying out the provisions of this subsection, the Director of the Office of Economic Opportunity shall compile a list of all legal services programs publicly funded during the fiscal year ending June 30, 1971, and the three subsequent fiscal years and furnish such list to the incorporating trusteeship. In order to carry out the provisions of this subsection, the Director of the Office of Economic Opportunity shall make available to the incorporating trusteeship such administrative services and financial and other resources as it may require.

"(d) Not later than ninety days after the enactment of the National Legal Services Corporation Act of 1973, all recommendations as provided in section 904(a) for persons to serve on the initial board of directors shall be submitted to the President.

"(e) During the ninety-day period of incorporation of the Corporation the incorporating trusteeship shall take whatever actions are necessary to incorporate the Corporation, including the filing of articles of incorporation under the District of Columbia Nonprofit Corporation Act, and to prepare for the first meeting of the board of directors, except for the selection of the executive director of the Corporation.

"(f) The responsibilities of the incorporating trusteeship shall terminate upon the first meeting of the board of directors, such meeting to occur following appointment of all members of such board.

"(g) During the ninety-day period immediately following the meeting referred to in subsection (f) of this section, the board shall take whatever action is necessary to prepare to begin to carry out the activities of the Corporation pursuant to section 906 of this Act.

"DIRECTORS AND OFFICERS

"SEC. 904. (a) The Corporation shall have a board of directors consisting of nineteen individuals appointed by the President, by and with the consent of the Senate, one of whom shall be elected annually by a majority vote of the board to serve as chairman. Members of the board shall be appointed as follows: (1) ten members shall be appointed from among individuals in the general public, not less than six of whom shall be members of the bar of the highest court of a State; (2) five members who are representative of the organized bar and legal education; (3) two members from among individuals eligible for assistance under this title; and (4) two members from among former legal services project attorneys. The American Bar Association, the Association of American Law Schools, the American Trial Lawyers Association, the National Bar Association, and the National Legal Aid and Defender Association may submit recommendations to the President with respect to members to be appointed as provided in clause (2), the Clients Advisory Council may submit recommendations to the President, with respect to members to be appointed as provided in clause (3), and the Project Attorneys Advisory Council may submit recommendations to the President with respect to members to be appointed as provided in clause (4).

"(b) The directors appointed under subsection (a) shall be appointed for terms of three years except that—

"(1) the terms of the directors first taking office shall be effective on the ninety-first day after the enactment of the National Legal Services Corporation Act of 1973;

"(2) the terms of the directors first taking office shall expire, as designated by the President at the time of appointment, as follows—

"(A) in the case of directors appointed under clause (1) of section 904(a), three at the end of three years, four at the end of two years, and three at the end of one year;

"(B) in the case of directors appointed under clause (2), of section 904(a), two at the end of three years, one at the end of two years, and two at the end of one year;

"(C) in the case of directors appointed under clause (3) of section 904(a), one at the end of three years and one at the end of one year;

"(D) in the case of directors appointed under clause (4) of section 904(a), one at the end of three years and one at the end of two years; and

"(3) any director appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

"(c) The Corporation shall have an executive director, who shall be a member of the legal profession, and such other officers, as may be named and appointed by the boord of directors at rates of compensation fixed by the board, who shall serve at the pleasure of the board. No individual shall serve as executive director of the Corporation for a period in excess of six years. The executive director shall serve as a member of the board ex officio and shall serve without a vote.

"(d) No political test or qualification shall be used in selecting, appointing, or promoting any officer, attorney, or employee of the Corporation. No officers or employees of the Corpration shall receive any salary from any source other than the Corporation during the period of employment by the Corporation.

"(e) All meetings of the board, executive committee of the board, and advisory councils shall, whenever appropriate, be open to the public, and proper notice of such meetings shall be provided to interested parties and the public a reasonable time prior to such meetings.

"(f) (1) No person who is a paid employee or consultant of the Corporation or of any grantee of the Corporation may serve on the board of directors.

"(2) No member of the board may participate in any decision, action, or recommendation with respect to any matter which directly benefits that member or any firm or organization with which that member is then currently associated.

"(g) The board, in consultation with the respective advisory councils, shall provide for rules with respect to meetings of the Clients Advisory Council and the Project Attorneys Advisory Council.

"ADVISORY COUNCILS; EXECUTIVE COMMITTEE

"SEC. 905. (a) The board, after consulting with and receiving the recommendations of national organizations of persons eligible for assistance under this title, shall provide for the selection of a Clients Advisory Council subsequent to the first such council established under section 903(c)(1) to be composed of not more than eleven members selected in accordance with procedures established by the board, including terms of office, qualifications, and method of selection and appointment, from among individuals who are eligible for assistance under this title.

"(2) Procedures for selecting the Clients Advisory Council must insure that all areas of the country and significant segments of the client population are represented, and in no event may more than one representative on such council be from any one State. The Clients Advisory Council shall advise the board of directors and the executive director on policy matters relating to the needs of the client community and may act as liaison between the client community and legal services programs through such activities as it deems appropriate, including informational programs in languages other than English. The Clients Advisory Council may submit to the President recommendations as provided in section 904(a) for persons to serve on the board of directors.

"(b) The board, after consulting with and receiving the recommendations of associations of attorneys actively engaged in conducting legal services programs, shall provide for the selection of a Project Attorneys Advisory Council subsequent to the first such council established under section 903(c)(2) of this title to be composed of not more than eleven members selected in accordance with procedures established by the board, including terms of office, qualifications, and method of selection and appointment, from among attorneys who are actively engaged in providing legal services under this title.

"(2) Procedures for selecting members of the Project Attorneys Advisory Council must insure that all areas of the country are represented, and in no event may more than one representative on such council be from any one State. The Project Attorneys Advisory Council shall advise the board of directors and the executive director on policy matters relating to the furnishing of legal services to members of the client community. The Project Attorneys Advisory Council may submit to the President recommendations as provided in section 904(a) for persons to serve on the board of directors.

"(c) The board shall provide for sufficient resources for each Advisory Council in order to pay such reasonable travel costs and expenses as the board may determine.

"(d) The board may establish an executive committee of five members of the board, which shall include the chairman of the board, and at least one director appointed pursuant to clause (2) of section 904(a), and one appointed pursuant to clause (3) or (4) of such section. Not less than three of the members of the executive committee shall be from among those members of the board appointed pursuant to clause (1) of section 904(a) of this title. The chairman of the board shall serve as the chairman of the executive committee. The chairman of the executive committee may designate another member of the executive committee to act in his absence. The executive director of the Corporation shall serve as an ex officio nonvoting member of the executive committee.

"ACTIVITIES AND POWERS OF THE CORPORATION

"SEC. 906. (a) Effective ninety days after the date of the meeting referred to in section 903(f), in order to carry out the purposes of this title, the Corporation is authorized to—

"(1) provide financial assistance to qualified programs furnishing legal services to members of the client community;

"(2) provide financial assistance to pay the costs of contracts or other agreements made pursuant to section 903 of this title;

"(3) carry out research, training, technical assistance, experimental, legal paraprofessional and clinical assistance programs, and special emphasis programs to provide legal services to migrant or seasonal farmworkers, Indians, and the elderly poor;

"(4) through financial assistance and other means, increase opportunities for legal education among individuals who are members of a minority group or who are economically disadvantaged;

"(5) provide for the collection and dissemination of information designed to coordinate and evaluate the effectiveness of the activities and programs for legal services in various parts of the country;

"(6) offer advice and assistance to all programs providing legal services and legal assistance to the client community conducted or assisted by the Federal Government including—

"(A) reviewing all grants and contracts for the provision of legal services to the client community made under other provisions of Federal law by any agency of the Federal Government and making recommendations to the appropriate Federal agency;

"(B) reviewing and making recommendations to the President and Congress concerning any proposal, whether by legislation or executive action, to establish a federally assisted program for the provision of legal services to the client community; and

"(C) upon request of the President, providing training, technical assistance, monitoring, and evaluation services to any federally assisted legal services program;

"(7) establish such procedures and take such other measures as may be necessary to assure that attorneys employed by the Corporation and attorneys paid in whole or in part from funds provided by the Corporation carry out the same duties to their clients and enjoy the same protection from interference as if such an attorney was hired directly by the client, and to assure that such attorneys adhere to the same Code of Professional Responsibility and Canons of Ethics of the American Bar Association as are applicable to other attorneys;

"(8) establish standards of eligibility for the provision of legal services to be rendered by any grantee or contractee of the Corporation with special provision for priority for members of the client community whose means are least adequate to obtain private legal services;

"(9) establish policies consistent with the best standards of the legal profession to assure the integrity, effectiveness, and professional quality of the attorneys providing legal services under this title; and

"(10) prescribe criteria to be used in determining the level of income (considering family size and other relevant factors) which will result in a person's being unable to obtain private legal counsel because of inadequate financial means, and hence a member of the client community; and

"(11) carry on such other activities consistent with the provisions of this title as would further the purposes of this title.

"(b) In the performance of the functions set forth in subsection (a), the Corporation is authorized to—

"(1) make grants, enter into contracts, leases, cooperative agreements, or other transactions, in accordance with bylaws established by the board of directors appropriate to conduct the activities of the Corporation;

"(2) accept unconditional gifts or donations of services, money, or property, real, personal, or mixed, tangible or intangible, and use, sell, or otherwise dispose of such property for the purpose of carrying out its activities;

"(3) appoint such attorneys and other professional and clerical personnel as may be required and fix their compensation in accordance with the provision of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule rates;

"(4) promulgate regulations containing criteria specifying the manner of approval of applications for grants based upon the following considerations—

"(A) the most economical, effective, and comprehensive delivery of legal services to the client community in both urban and rural areas;

"(B) peaceful settlement of disputes within the system of justice; and

"(C) maximum utilization of the expertise and facilities of organizations presently specializing in the delivery of legal services to the client community

"(5) establish and maintain a law library;

"(6) establish procedures for the conduct of legal services programs assisted by the Corporation containing a requirement that the applicant will give assurances that the program will be supervised by a policy-making board on which the members of the legal profession constitute a majority (except that the Corporation may grant waivers of this requirement in the case of a legal services program which, upon the date of enactment of the National Legal Services Corporation Act of 1973, has a majority of persons who are not lawyers on its policy making board) and members of the client community constitute at least one-third of the members of such board.

"(c) In any case in which services, otherwise authorized, are performed for the Federal Government by the Corporation, the Corporation shall be reimbursed for the cost of such services pursuant to an agreement between the executive director of the Corporation and the head of the agency of the Federal Government concerned.

"(d) The Corporation shall ensure that attorneys employed full time in programs funded by the Corporation refrain from any outside practice of law unless permitted as pro bono publico activity pursuant to guidelines established by the Corporation.

"(e)(1) The Corporation shall establish and publish procedures and guidelines to ensure that no funds or personnel made available by the Corporation shall be used to undertake to influence the passage or defeat of any proposed convention, constitutional amendment, code, statute, executive order, ordinance, regulation, rule, or similar enactment or promulgation considered in any form by any legislative body by representations to such body (or committee or member thereof) or any similar activity except where—

"(A) an attorney representing an eligible member of the client community is requested by such member to make such representation or undertake such activity and such representation or activity is carried out in a manner which does not identify the Corporation or any legal services program assisted by the Corporation with such representation or activity;

"(B) personnel of the Corporation or any legal services program assisted by the Corporation are requested by a legislative body (or committee or member thereof) to make such representation or undertake such activity.

"(2) Procedures and guidelines established by the Corporation under paragraph (1) of this subsection shall ensure that, where applicable, representations or activities permitted under that paragraph are undertaken in a manner which is consistent with the Code of Professional Responsibility and Canons of Ethics of the American Bar Association.

"(3) No funds provided by the Corporation shall be utilized for any activity which is planned and carried out to disrupt the orderly conduct of business by the Congress or State or local legislative bodies, for any demonstration, rally, or picketing aimed at the family or home of a member of a legislative body for the purpose of influencing his actions as a member of that body, and for conducting any campaign of advertising carried on through the commercial media for the purpose of influencing the passage or defeat of legislation.

"(f) The Corporation shall insure that no attorneys or other persons employed by it or employed or engaged in programs funded by the Corporation shall, in any case, solicit the client community or any member of the client community for professional employment; and no funds of the Corporation shall be expended in pursuance of any employment which results from any such solicitation. For the purpose of this subsection, solicitation does not include mere announcement or advertisement, without more, of the fact that the National Legal Services Corporation is in existence and that its services are available to the client community, and does not include any conduct or activity which is permissible under the Code of Professional Responsibility and Canons of Ethics of the American Bar Association governing solicitation and advertising.

"(g) The Corporation shall establish guidelines for consideration of possible appeals to be implemented by each grantee or contractee of the Corporation to insure the efficient utilization of resources. Such guidelines shall in no way interfere with the attorney's responsibilities and obligations under the Canons of Professional Ethics and the Code of Professional Responsibility.

"(h) At a reasonable time prior to the Corporation's approval of any grant or contract application, the Corporation shall notify the State bar association of the State in which the recipient will offer legal services. Notification shall include a reasonable description of the grant or contract application, and request the State bar association for comments and recommendations on such grant or contract application.

"(i) No funds or personnel made available by the Corporation pursuant to this title shall be used to provide legal services with respect to any criminal proceeding.

"NONPROFIT AND NONPOLITICAL NATURE OF THE CORPORATION

"SEC. 907. (a) The Corporation shall have no power to issue any shares of stock, or to declare or pay any dividends.

"(b) No part of the income or assets of the Corporation shall inure to the benefit of any director, officer, employee, or any other individual except as reasonable compensation for services.

"(c) The Corporation may not contribute to or otherwise support any political party or candidate for elective public office.

"(d)(1) The Corporation shall insure that all employees of the Corporation or of legal services programs assisted by the Corporation, while engaged in activities carried on by the Corporation or by such programs, refrain (A) from any partisan or nonpartisan political activity associated with a candidate for public or party office, and (B) from any voter registration activity other than legal representation in civil judicial or administrative proceedings or in connection with legal advice as to adherence to applicable, local State or Federal registration requirements, and (C) from any activity to provide voters or prospective voters with transportation to the polls. Employees of the Corporation or of legal services programs assisted by the Corporation shall not at any time identify the Corporation or the program assisted by the Corporation with any partisan or nonpartisan political activity associated with a candidate for public or party office.

"(2) Employees of the Corporation shall be deemed to be State or local employees for purposes of chapter 15 of title 5 of the United States Code.

"(3) Legal services programs assisted by the Corporation shall be deemed to be State or local agencies for purposes of clauses (1) and (2) of section 1502(a) of such title.

"(4) The Board of Directors shall set appropriate guidelines for the private political activities of full-time employees of legal services programs assisted by the Corporation.

"(e) The Corporation shall insure that all employees of the Corporation or of legal services prgrams assisted by the Corporation, while engaged in activities carried on by the Corporation or, by such programs, assisted by the Corporation, refrain from participation in, and refrain from encouragement of others to participate in, any of the following activities:

"(1) any illegal demonstration, picketing, boycott, or strike; or

"(2) any form of direct action which is in violation of an outstanding injunction of any Federal, State, or local court; or

"(3) any form of direct action which is designed to involve physical violence, destruction of property, or physical injury to persons.

"(f) The board of directors of the Corporation shall issue rules and regulations to provide for the enforcement of this section, which rules shall include as one available remedy, but not be limited to, provisions, in accordance (as to both employment and assistance) with the types of procedures prescribed in the provisions of section 914 of this Act, for emergency suspension of assistance to a legal services program assisted by the Corporation, summary suspensions of an employee of the Corporation or of any legal services program assisted by the Corporation, and the termination of assistance and employment as deemed appropriate for violations of this section.

"ACCESS TO RECORDS AND DOCUMENTS RELATED TO THE CORPORATION

"SEC. 908. (a) Copies of all records and documents pertinent to each grant and contract made by the Corporation shall be maintained in the principal office of the Corporation in a place readily accessible and open to public inspection during ordinary working hours for a period of at least five years subsequent to the making of such grant or contract.

"(b) Copies of all reports pertinent to the evaluation, inspection, or monitoring of grantees and contractees shall be maintained for a period of at least three years in the principal office of the Corporation subsequent to such evaluation, inspection, or monitoring visit. Upon request, to the extent authorized by the Corporation the substance of such reports shall be furnished to the grantee or contractee who is the subject of the evaluation, inspection, or monitoring visit and may be available for inspection to the President of the United States and Members of Congress.

"(c) The Corporation shall afford notice and reasonable opportunity for comment to interested parties prior to issuing regulations and guidelines, and it shall publish in the Federal Register on a timely basis all its bylaws, regulations, and guidelines.

"(d) The Corporation shall be subject to the provisions of the Freedom of Information Act.

"FINANCING OF THE CORPORATION

"SEC. 909. In addition to any funds reserved and made available for payment to the Corporation from appropriations for carrying out the Economic Opportunity Act of 1964 for any fiscal year, there are further authorized to be appropriated for payment to the Corporation such sums as may be necessary for any fiscal year. Funds made available to the Corporation from appropriations for any fiscal year shall remain available until expended.

"RECORDS AND AUDIT OF THE CORPORATION AND THE RECIPIENTS OF ASSISTANCE

"SEC. 910. (a) The accounts of the Corporation shall be audited annually in accordance with generally accepted auditing standards by any independent licensed public accountant certified or licensed by a regulatory authority of a State or political subdivision. Each such audit shall be conducted at the place or places where the accounts of the Corporation are normally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation and necessary to facilitate the audit shall be made available to the person conducting the audit, and, upon request, to the President of the United States and to Members of Congress, consistent with the necessity of maintaining the confidentiality required by the best standards of the legal profession, and full facilities for verifying transactions with the balance, or securities held by depositories, fiscal agents, and custodians shall be afforded to any such fiscal agents, and custodians shall be afforded to any such person. The report of each such independent audit shall be included in the annual report required under this title. The audit report shall set forth the scope of the audit and include such statements as are necessary to present fairly the assets and liabilities, and surplus or deficit of the Corporation, with an analysis of the changes therein during the year, supplemented in reasonable detail by a statement of the income and expenses of the Corporation during the year, and a statement of the sources and application of funds, together with the opinion of the independent auditor of those statements.

"(b)(1) The accounts and operations of the Corporation for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited annually by the General Accounting Office in accordance with principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States, consistent with the necessity of maintaining the confidentiality required by the best standards of the legal profession. Any such audit shall be conducted at the place or places where accounts of the Corporation are normally kept. The representative of the General Accounting Office shall have access to all books, accounts, records, reports, files, and all other papers, things, or property belonging to or used by the Corporation pertaining to its accounts and operations, including the reports pertinent to the evaluation, inspection, or monitoring of grantees and contractors required to be maintained by section 908(b) and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, records, reports, files, papers, and property of the Corporation shall remain in the possession and custody of the Corporation.

"(2) A report of each such audit shall be made by the Comptroller General to the Congress. The report to the Congress shall contain such comments and information as the Comptroller General may deem necessary to inform the Congress of the operations and conditions of the Corporation, together with such recommendations with respect thereto as he may deem advisable. The report shall also show specifically any program, expenditure, or other transaction or undertaking observed in the course of the audit, which in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the executive and to each member of the board at the time submitted to the Congress.

"(c)(1) Each grantee or contractee, other than a recipient of a fixed price contract awarded pursuant to competitive bidding procedures, under this title shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(2) The Corporation or any of its duly authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this title. The Comptroller General of the United States, or any of his duly authorized representatives, shall also have access thereto for such purpose during any fiscal year for which Federal funds are available to the Corporation, consistent wtih the necessity of maintaining the confidentiality required by the best standards of the legal profession.

"REPORTS TO CONGRESS

"SEC. 911. The Corporation shall prepare an annual report for transmittal to the President and the Congress on or before the 30th day of January of each year, summarizing the activiteis of the Corporation and making such recommendations as it may deem appropriate. This report shall include finding and recommendations concerning the preservation of the attorney-client relationships and adherence to the Code of Professional Responsibility and Canons of Ethics of the American Bar Association in the conduct of programs assisted by the Corporation. The report shall include a comprehensive and detailed report of the operations, activities, financial condition, and accomplishments of the Corporation, together with the additional views and recommendations, if any, of members of the board.

"DEFINITIONS

"SEC. 912. As used in this title, the term—

"(1) 'State' means the several States and the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

"(2) 'Corporation' means the National Legal Services Corporation established pursuant to this title;

"(3) 'client community' means individuals unable to obtain private legal counsel because of inadequate financial means;

"(4) 'member of the client community' includes any person unable to obtain private legal counsel because of inadequate financial means;

"(5) 'legal services' includes legal advice, legal representation, legal research, education concerning legal rights and responsibilities, and similar activities (including, in areas where a significant portion of the client community speaks a language other than English as the predominant language, or is bilingual, services to those members of the client community in the appropriate language other than English);

"(6) 'legal profession' refers to that body composed of all persons admitted to practice before the highest court of at least one State of the United States; and

"(7) 'nonprofit', as applied to any foundation, corporation, or association, no part of the net earnings of which issues, or may lawfully inure to the benefit of any private shareholder or individual.

"PROHIBITION ON FEDERAL CONTROL

"SEC. 913. (a) Except as provided for in subsection (b) of this section, nothing contained in this title shall be deemed to authorize any department, agency, officer, or an employee of the United States to exercise any direction, supervision, or control over the Corporation or any of its grantees or contractees or employees, or over the charter or bylaws of the Corporation, or over the attorneys providing legal services pursuant to this title, or over the members of the client community receiving legal services pursuant to this title.

"(b) Nothing in this section shall be construed as limiting the authority of the Office of Management and Budget or the Office of Economic Opportunity to initiate and to conclude necessary reviews respecting adherence to the provisions of this title, and to review and submit comments upon the Corporation's annual budget request at the time it is transmitted to the Congress.

"(c) Reviews under subsection (b) of this section shall be conducted in accordance with the Code of Professional Responsibility and Canons of Ethics of the American Bar Association governing the confidentiality of the attorney-client relationship.

"SPECIAL LIMITATIONS

"SEC. 914. The board shall prescribe procedures to insure that—

"(1) financial assistance shall not be suspended for failure to comply with applicable terms and conditions, except in emergency situations, unless the grantee or contractee has been given reasonable notice and opportunity to show cause why such action should not be taken; and

"(2) financial assistance shall not be terminated, an application for refunding shall not be denied, and an emergency suspension of financial assistance shall not be continued for longer than thirty days, unless the grantee or contractee has been afforded reasonable notice and opportunity for a timely, full, and fair hearing.

"COORDINATION

"SEC. 915. The President is authorized to direct that particular support functions of the Federal Government, such as the General Services Administration, the Federal telecommunications system, and other facilities, be utilized by the Corporation or its grantees or contractees to the extent not inconsistent with other applicable law.

"TRANSFER MATTERS

"SEC. 916. (a) Notwithstanding any other provision of law, effective ninety days after the date of the meeting referred to in section 903(f), all rights of the Office of Economic Opportunity to capital equipment in the possession of legal services programs assisted pursuant to sections 222(a)(3), 230, 232, or any other provision, of the Economic Opportunity Act of 1964, shall become the property of the National Legal Services Corporation.

"(b) Effective ninety days after the date of the meeting referred to in section 903(f), all personnel, assets, liabilities, property, and records as determined by the Director of the Office of Management and Budget to be employed, held, or used primarily in connection with any function of the Director under section 222(a)(3) of this Act shall be transferred to the Corporation. Personnel transferred (except personnel under schedule A of the excepted service) under this subsection shall be transferred in accordance with applicable laws and regulations, and shall not be reduced in classification or compensation for one year after such transfer. The Director shall take whatever action is necessary and reasonable to seek suitable employment for personnel who would otherwise be transferred pursuant to this subsection who do not wish to transfer to the Corporation.

"(c) Collective bargaining agreements in effect on the date of enactment of the National Legal Services Corporation Act of 1973 covering employees transferred pursuant to subsection (b) of this section shall continue to be recognized by the Corporation until altered or amended pursuant to law.

"(d)(1) The Director of the Office of Economic Opportunity shall take such action as may be necessary, in cooperation with the executive director of the National Legal Services Corporation, to arrange for the orderly continuation by such Corporation of financial assistance to legal services programs assisted pursuant to sections 222(a)(3), 230, 232, or any other provision, of the Economic Opportunity Act of 1964. Whenever the Director of the Office of Economic Opportunity determines that an obligation to provide financial assistance pursuant to any contract or grant agreement for such legal services will extend beyond six months after the date of enactment of this Act, he shall include in any such contract or agreement provisions to assure that the obligation to provide such financial assistance may be assumed by the National Legal Services Corporation, subject to such modifications of the terms and conditions of that contract or grant agreement as the Corporation determines to be necessary.

"(2) Effective ninety days after the date of the meeting referred to in section 903(f), section 222(a)(3) of Economic Opportunity Act of 1964 is repealed.

"(3) Notwithstanding any other provision of law, after the enactment of this Act but prior to the enactment of appropriations to carry out the Economic Opportunity Act of 1964 for the fiscal year ending June 30, 1974, the Director of the Office of Economic Opportunity shall, out of appropriations then available to him, make funds available to assist in meeting the organizational expenses of the Corporation and in carrying out its activities.

"(4) Title VI of the Economic Opportunity Act of 1964 is amended by inserting after section 622 thereof the following new section:

"'INDEPENDENCE OF NATIONAL LEGAL SERVICES CORPORATION

"'SEC. 623. Nothing in this Act, except title IX, and no reference to this Act unless such reference refers to title IX, shall be construed to affect the powers and activities of the National Legal Services Corporation.'"

SEC. 4. In addition to the amounts authorized, by section 3(c)(3) of the Economic Opportunity Amendments of 1972, to be appropriated for the purpose of carrying out legal services programs under section 222(a)(3) of the Economic Opportunity Act, there are further authorized to be appropriated $50,000,000 for the fiscal year ending June 30, 1974, for carrying out the legal services program under title IX of the Economic Opportunity Act of 1964, as amended by this Act, and there are authorized to be appropriated $171,500,000 for the fiscal year ending June 30, 1975, for carrying out such program.

SEC. 5. This Act may be cited as the "National Legal Services Corporation Act of 1973".

LEGAL SERVICES PROGRAM: REPLY TO VICE PRESIDENT AGNEW

(By William R. Klaus)

The national legal services program was created only seven years ago. As federal programs go, it has been comparatively small, both in personnel and budget. Nevertheless, this innovative, courageous and historic experiment in social justice aroused substantial commentary and criticism. Controversy has swirled around it, particularly when the vigorous representation of indigent clients interfered with the progress of the powerful. In America, when a federally financed program interfers with powerful people and powerful groups, the repercussions soon resounds in the halls of the Capitol. Reaction came swiftly in a series of political moves to restrict or redirect the program; the battle to maintain independence from political pressure has been continuous.

Through the years, the program has had few champions. It is, after all, a program which helps only poor people. But it is intimately connected with the law, with the American system of jurisprudence as it affects our citizens, and thus it is of immediate concern to lawyers. Lawyers therefore are in the forefront of those who perceive its value. At the national level, that interest is reflected in the activities of the elected leadership of the American Bar Association, which has from the beginning embraced this fledgling program, helping daily to direct it, nurture it and mold it into an effective adjunct to a modern system of justice. One would think that the evidence of its value to the poor community for the last seven years has been so overwhelming as to command complete acceptance for its continuation under its original mandate: "The use of the judicial system and the administrative process to effect changes in laws and institutions which unfairly and adversely affect the poor."[1]

But the battle is never-ending. In the September issue of the *American Bar Association Journal* (page 930), Vice President Agnew criticized the program in a manner which, with all due respect, requires rejoinder: first, because the issues raised must be restated not in current political phraseology but in terms of the professional responsibility of the lawyer to his client and the validity and importance of that obligation in our society; second, because his emphasis on minor imperfections in the program is really an attempt to discredit the whole; and third, because the basic concepts upon which the Bar of the nation has supported the program from its beginning are being seriously challenged in a way that carried to its logical conclusion, would threaten the independence of the entire profession.

The Vice President suggests that the professional independence of the lawyer who is employed to represent the poor should give way to "control at the top", and this control should be exercised to ensure that legal services lawyers are responsible and accountable to the public. The premises underlying this suggestion must be studied with care.

The proposal conflicts with the lawyer's professional independence mandated by the Code of Professional Responsibility, which requires that a lawyer exercise professional judgment without regard to the interests or motives of third persons, be they lay intermediaries or government officials (EC 5-23 and EC 2-28). Add to this the requirement that a lawyer is obligated "to represent his client zealously within the bounds of the law" (EC 7-1). The code knows no distinction between rich and poor clients with respect to the zealousness of representation or to kinds of cases and theories they can press.

And it is this duty of the lawyer, both to his client and to the legal system, which renders so objectionable the Vice President's suggested incursion into the lawyer's independence and professional judgment that it bears quoting: "In our government of laws and not of men, *each* member of our society is entitled to have his conduct judged and regulated in accordance with the law; to seek any lawful objective through legally permissible means; and *to present for adjudication any lawful claim, issue, or defense*" (EC 7-1; emphasis added). The suggestion that a censorship be established to determine whether a lawyer representing a low-income client is truly representing the client's interest is incompatible with these provisions. It is even more disturbing to note the lack of confidence in the legal profession and the judiciary that is implicit in this proposal.

Underlying the Vice President's call for greater controls on legal services lawyers are the premises: (a) that as a group they have acted against the best interests of their clients and the nation as a whole, and (b) that bar associations and their representatives on local governing boards and indeed the entire judiciary have failed to prevent this. Neither of these premises is sound, and facts to support them do not appear in the Vice President's article. Indeed, these facts do not exist.

The professional record of legal services lawyers as a group has been exemplary. This record, far from showing that these lawyers have been irresponsible or unresponsive to their clients' needs, shows that they have vigorously and, in the preponderance of cases, successfully represented their indigent clients. There is no support for the innuendo that the program has typically served middle-class dropouts in esoteric legal matters while a "destitute mother of five can't get legal help with an eviction notice". The facts are otherwise. A significant portion of all legal services matters concern housing problems, most of which, in fact, involve eviction. The Vice President would attempt to leave the impression that much of the work of staff attorneys has "nothing to do with poverty and the problems peculiar to the poor". This should be compared with his further contention that the program "expends much of its resources on efforts to change the law on behalf of one social class—the poor".

But the important point is that this suggestion is misleading. In fact, almost 80 per cent of legal services matters deal with four well-recognized poverty law areas; consumer or employment problems, 15.9 per cent; administrative problems (primarily welfare), 11.2 per cent; housing problems, 14.4 per cent; and family problems, 36.6 per cent.[2]

At least 5,000 lawyers have served in the legal services program during its seven years of operation. In any group of lawyers of this size, there will be a few bad apples and a few who engage in conduct or activities which do not meet the highest standards of the profession. But these isolated examples should not be used to condemn a whole segment of the Bar. This obviously is unfair criticism.

An even more disturbing premise underlying the entire article is that courts are not able to judge fairly the merits of cases they hear. Mr. Agnew criticizes the "imaginative use of ever-expanding constitutional concepts" by legal services attorneys in court cases on behalf of the poor. If this truly can be a criticism, it means that the Vice President questions the ability of the courts to decide between well-founded and ill-founded suits. Do we then confer adjudicatory power on another branch of government? Which one?

Another point is similarly perplexing. It is argued that "Instead of resolving the case at the lowest level and earliest opportunity satisfactory to the client, the legal services lawyer is inclined to take it to the highest level possible to win the legal issue and implant the emphatic legal principle he has perceived to be involved." The facts show otherwise. Legal services attorneys resolve the vast majority of matters through advice, referral, negotiation and other dispositions short of litigation 83 per cent in 1971.[3] Thus only 17 per cent of legal aid matters reached the trial court, and only a few of these were appealed. Of course, some cases lost in the trial court are appealed and, if the appeal is successful, reformation of the law might result. But these are relatively few, and it must be remembered that the client lost at the trial level, otherwise there would have been no appeal. Nevertheless, it is implied either that satisfied clients who won have their cases appealed by overenthusiastic lawyers (a very unlikely hypothesis) or that a client always consider any loss in the lower court a satisfactory resolution of his case.

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[1] Narrative Justification by OEO at Hearings of the Senate Committee on Appropriations, July 20, 1970, page 514.

[2] NATIONAL LEGAL AID DEFENDER ASSOCIATION, 1971 STATISTICS OF LEGAL ASSISTANCE WORK, at iv.

[3] *Ibid.*

A third implication of the article is that these clients, who happen to be poor individually and as a group, are like sheep—passively led by numerous ideologically misdirected lawyers. This would certainly come as a surprise to the legal services lawyers who have worked with clients in the nation's ghettos, in areas of rural poverty and on Indian reservations, in each of which there is a growing sophistication with the use of the legal process. It would also confound the clients who have felt strongly about the fairness of their claims and have relied on the professional skills of a legal services lawyer only for the development of the legal theory and strategy for dealing with the problem—exactly as more affluent clients do.

THE OBJECTION: A FULL-SERVICE PROGRAM

From its beginning, the objective of the legal services program has been to provide a full range of legal services to the poor. The full-service approach necessarily has resulted in representation of clients with grievances relating to government action or inaction or stemming from laws that operate to oppress the poor. President Nixon, in a statement on August 11, 1969, pointed out the need for this legal representation: "The sluggishness of many institutions—at all levels of society—in responding to the needs of individual citizens is one of the central problems of our time. Disadvantaged persons in particular must be assisted so that they fully understand the lawful means of making their needs known and having their needs met."

The representation of poor clients in cases challenging laws that systematically disadvantage the poor has been loosely termed "law reform." There really is no such thing in the vocabulary of the experienced staff lawyer. To him, there is only the problem of the particular client, be that client an individual or a group. If the ruling produces a needed change in the law and so protects the individual client's interest yet also spreads its effect to others in the poor community, so much the better. Thus, in *Swarb v. Lennox*, 405 U.S. 191 (1972), Pennsylvania's oppressive confession of judgment practice was ultimate struck down, as it affected the poor community, by the Supreme Court of the United States, but an injured individual client initiated the action.

In an age of significant government involvement in the lives of individuals, there has been increasing concern in the profession and in society that individuals affected by government action have a legal remedy to protect against the failure of government to follow its own laws or regulations. And legal services lawyers, like other lawyers whose clients are adversely affected by alleged improper government conduct, have asked courts to adjudicate these controversies.

For example, in *Camden Coalition* v. *Nardi*, Camden Regional Legal Services, Inc., representing a coalition of established community groups in this troubled New Jersey city, sued city agencies and officials alleging that the renewal plan presented by the officials of the city to the Department of Housing and Urban Development did not conform to the requirement of the federal statute that there be a "workable program".[4] The statute was intended by Congress to ensure that satisfactory relocation housing be provided to displaced families and to ensure representation of the poor community in these urban renewal programs. This was neither a case of "social engineering" nor an instance of a group of wild-eyed radical lawyers trying to change the world. The issue was a very simple, clear and important one: Did the local government comply with applicable federal law? Is this case not a perfect example of the experienced, informed lawyer in action? Protests began only when the federal court found sufficient merit in the complaint and decided to examine the issue.

These and similar cases have resulted in great political pressure being brought to bear by government officials seeking to interfere with the independence of legal services lawyers in the representation of their clients against government agencies. The American Bar Association has firmly supported the principle embodied in the Code of Professional Responsibility that legal services attorneys should have the independence to represent clients in matters involving government agencies. And these pressures and the response appropriate to the tradition of an independent legal profession were set forth by President Nixon in his message to Congress in May of 1971 requesting the establishment of the National Legal Services Corporation:

> Much of the litigation initiated by legal services has placed it in direct conflict with local and state governments. The program is concerned with social issues and is thus subject to unusually strong political pressures. . . . [I]f we are to preserve the strength of the program, we must make it immune from political pressures and make it a permanent part of our system of justice. . . .
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> The legal problems of the poor are of sufficient scope that we should not restrict the right of their attorneys to bring any type of civil suit.

[4] Civil No. 1128-70 (D. N.J., filed August 19, 1970).

The Vice President attacks the program in the broadest of generalities with almost no supporting reference to factual information. His rhetoric is followed by certain conclusions and recommendations. It is surprising, under these circumstances, that his conclusions and recommendations echo those of our Association, which has defended and assisted the program. But this apparent inconsistency results from an entirely different approach.

1. *Strong Central Supervision.* The Bar always has urged that the program be under the direction of a capable lawyer, committed to the precepts of the Code of Professional Responsibility. This supervision is required, not to limit the performance of the lawyers on behalf of their clients but to ensure that programs in diverse parts of the nation maintain a measure of uniformity. A poor Puerto Rican in a New York City ghetto should not receive less vigorous or less effective advocacy than a migrant farmer in Florida or California. This does not mean, however, that the Federal Government should attempt to dictate in detail to local programs. All of us are aware of the threat of federal encroachment upon local and state activities. The programs, once in conformity with federal guidelines, should be left to the supervision of their own boards of directors, which typically are composed of lawyers appointed by the local bar associations. These boards have almost invariably exercised reasonable and competent supervision over staff lawyers.

2. *Adequate Guidelines and Policies.* The office of the director of the national program published detailed and specific guidelines in early 1966 which were approved by the National Advisory Committee. From time to time that committee has amended the guidelines when necessary. The National Advisory Committee was appointed as a broad-based, policy-making group by the director of OEO at the inception of the program. On the committee are some of the nation's most respected lawyers, both in public and private practice, including the Attorney General of the United States, the general counsels of the OEO and the Department of Health, Education, and Welfare, as well as officers of the American Bar Association, the National Bar Association, the National Legal Aid and Defender Association, the American Trial Lawyers Association and the Association of American Law Schools. Ever since Lewis F. Powell, Jr., as President, led the American Bar Association in its early and vigorous support of the program, all of the Presidents of the American Bar Association, have been active on the advisory committee. It is a most dedicated team of the best minds in the legal profession who have borne their responsibilities with distinction. Yet, for the first time since the inception of the program, the advisory committee has not been convened or consulted on the important questions that arise in the administration of this program. Why?

3. *High Standards of Professional Conduct.* We must affirm the position of the organized Bar that the legal services program be held to the highest standards of ethical conduct and professionalism in zealous, unfettered and competent representation of the clients. This means: (1) that the welfare of the client must come before the rule of law to be established, no matter how important that rule may be to others; (2) that politics has no place in the program (although I submit that OEO lawyers should be permitted to be active for the party of their choice; there is no reason to make political eunuchs of legal services lawyers); (3) that only the poor who qualify under the program's already stringent standards of qualification should be represented; (4) that indigent clients should have their legal problems resolved, whether or not those problems are considered to be in a traditional poverty law area. A lawyer who refuses or otherwise fails to conform to these basic ideals should be discharged, and, conversely, any lawyer who is prevented by his superiors from adhering to these standards must consider whether the Code of Professional Responsibility requires resignation.

> The primary objective of this program has been and remains the provision of the same quality for the poor of legal representation that more affluent Americans can obtain within the ranks of the legal profession and, further, to assure that the service rendered is as free from unethical restriction as is that given by other client-paid lawyers who operate under the Code of Professional Responsibility. As a profession, we cannot tolerate a double standard of client representation—one for the disadvantaged and another for the more fortunate.

The national legal services program is a proved experiment in the advancement of justice and equality before the law, an experiment unparalleled in all of our history. Seldom before under our system of law has a highly placed government official questioned the right of citizens to examine governmental motives, acts and omissions before the impartial tribunals of the courts. It is unthinkable that this right should now be denied those who happen to be impoverished. The success of the program in containing injustice and providing effective advocacy clients has brought the present criticism.

It behooves every lawyer, regardless of the area of his practice, to contemplate the long-range effect of any severe curtailment or redirection of the legal services program on the practice of law and the quality of life in the United States in the years to come.

WHAT'S WRONG WITH ATTACKS ON THE LEGAL SERVICES PROGRAM

(By Jerome B. Falk, Jr., and Stuart R. Pollak)

Vice President Agnew's article in the September *Journal* (page 930) combines an attack on the underlying philosophy of the national legal services program with vague accusations of misconduct, excessive professional zeal and misplaced priorities on the part of legal services attorneys throughout the country. William R. Klaus, Chairman of the American Bar Association's Committee on Legal Aid and Indigent Defendants, replied in the November *Journal* (page 1178) to this latest challenge to the underpinnings of a program that has commanded the strong support of the Association since its inception. We wish to take issue with Mr. Agnew's unsupported and largely unspecified criticisms of the conduct of legal services attorneys and programs.

In 1970 the director of the California Office of Economic Opportunity, Lewis K. Uhler, levelled charges at California Rural Legal Assistance, the celebrated legal services program that provides assistance to California's rural poor. The charges purported to support Governor Ronald Reagan's veto of OEO's 1971 grant to C.R.L.A., and the director of the OEO appointed an investigatory commission. As lawyers in private practice, we participated with William F. McCabe as co-counsel to C.R.L.A. We experienced a sense of *déjà vu* in reading Vice President Agnew's allegations, for they might have been lifted bodily from the now infamous Uhler report, *A Study and Evaluation of California Rural Legal Assistance*.

Mr. Agnew's principal accusations are:

> There is considerable evidence that this social orientation has led to a widespread attitude on the part of numerous program attorneys that they can take any action regardless of its relationship to the eradication of poverty. As a consequence, program attorneys are and have been heavily involved in every social issue of the day. In Evanston, Illinois, it's draft counseling; in Texas, California, Colorado, Florida and other places, it's underground newspapers; in Boston, it's women's rights; in California, it's the rights of penitentiary inmates; in numerous other places, it's students' rights, antiwar protests, free-speech movements. The list of causes is endless.
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> But the important thing to note is that they have little or nothing to do with poverty and the problems peculiar to the poor. And equally important, while most programs now turn away individual poor clients with routine legal problems, many nevertheless find time to engage in practically every *cause célèbre* that comes along.

Is this right? Is this what legal services was meant to do? Did Congress in its enactment or the Bar in its support contemplate a program where a destitute mother of five can't get legal help with an eviction notice but a middle-class drop-out can get legal counseling in setting up his underground newspaper? Proponents of this activity by legal services attorneys suggest that these endeavors in fact do serve the interests of the poor in a larger sense. I submit that the conclusion is open to serious doubt.

We seriously dispute the accuracy of this sweeping indictment of the national legal services program. It is not possible, of course, to disprove these allegations as to every program and every project attorney throughout the nation. The California experience, however, provides a useful basis for testing the credibility of these broad charges. First, the Uhler accusations against C.R.L.A., were similar, both in tone and content, to the charges Mr. Agnew now levels at the entire national legal service program. Second, the charges against C.R.L.A. appeared (on their face, at least) to be the most serious and the most thoroughly researched and documented of any in the six-year history of the program. Third, each of those charges—and, indeed, the entire C.R.L.A. program—was reviewed in fair, open and comprehensive proceedings by an independent commission of jurists whose impartiality and eminence gives particular credence to their findings.

"BLATANT INDIFFERENCE TO THE NEEDS OF THE POOR"

The Uhler report was a 283-page document, purportedly based on an extensive investigation, and several thousand pages of supporting documents. Sounding themes now echoed by Mr. Agnew, it accused C.R.L.A. attorneys of "a blatant indifference to the needs of the poor . . . [and] a disposition to use their clients as ammunition in their efforts to wage ideological warfare". C.R.L.A. attorneys, it added, "are prone to sue, seek injunctive action, [and] in the vernacular 'do their own thing' . . .". Governor Reagan, in the same vein, publicly branded C.R.L.A. attorneys as "ideological ambulance chasers". While this rhetoric was unquestionably overblown, the Uhler report purported to document its broad allegations with specific charges of misconduct and distorted priorities.

The Reagan veto of C.R.L.A.'s 1971 funding was subject to the statutory power of the OEO director under 12 U.S.C. § 2834 to override the veto. The American Bar Association urged him to do just that, according to John D. Robb, then chairman of the Association's Committee on Legal Aid and Indigent Defendants, as did numerous other responsible leaders and members of the Bar, public officials and interested citizens. OEO's ultimate response was the appointment of a fact-finding commission, composed of three distinguished state supreme court justices: retired Chief Justice Robert Williamson of Maine (chairman), Justice Robert B. Lee of Colorado and retired Chief Justice George R. Currie of Wisconsin.

The commission held hearings throughout California—in San Francisco, Salinas, El Centro, Gilroy, Madera, Santa Rosa, Santa Maria, Modesto, Marysville and even at the correctional training facility at Soledad. It heard the testimony of 165 witnesses, several more than once. It considered not only the specific accusations of the Uhler report, which numbered more than 120, but additional charges and complaints that were presented during the course of the hearing. The transcript of the proceedings is in excess of 5,000 pages.

Strange as it may seem, Governor Reagan and Mr. Uhler refused to participate directly in the presentation of evidence to the commission. How the commission dealt with this effort to frustrate its work is a story in itself, beyond the scope of this article but to be told in a more detailed chronicle to be published in a forthcoming issue of the *Hastings Law Journal*.

The commission designed procedures intended to permit the fullest exploration of the charges against C.R.L.A. It said of these procedures: "It is the belief of the commission that the procedural rules which guided it through the evidentiary hearings were a valid mechanism by which the truth-finding function of the commission was effectively carried out."

The commission heard the testimony of the first director of OEO, R. Sargent Shriver, and of the first two directors of the legal services program who had served with Mr. Shriver, E. Clinton Bamberger, Jr., and Earl Johnson, Jr., who testified as to the history, purposes and philosophy of the national legal services program. The commission also received the testimony of Mr. Robb, who testified as to the Association's program of evaluating legal services programs such as C.R.L.A. In this regard, the testimony of Jerome J. Shestack, a former chairman of the Section of Individual Rights and Responsibilities, was especially pertinent, as he had participated in the annual evaluation of C.R.L.A. conducted only months before the Reagan veto.

The commission's findings, set forth in a 400-page report issued June 25, 1971, led to the prompt refunding of C.R.L.A. The commission bluntly disposed of the Reagan-Uhler charges:

> It should be emphasized that the complaints contained in the Uhler Report and the evidence adduced thereon do not, either taken separately or as a whole, furnish any justification whatsoever for any finding of improper activities by CRLA. . . .
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> The Commission expressly finds that in many instances the [Uhler report] has taken evidence out of context and misrepresented the facts to support its charges against CRLA. In so doing, the Uhler Report has unfairly and irresponsibly subjected many able, energetic, idealistic and dedicated CRLA attorneys to totally unjustified attacks upon their professional competence.
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> From the testimony of the witnesses, the exhibits received in evidence and the Commission's evaluation of the documents submitted in support of the charges in the [Uhler report], the Commission finds that the charges were totally irresponsible and without foundation.

The commission concluded with the finding that "CRLA has been discharging its duty to provide legal assistance to the poor . . . in a highly competent, efficient, and exemplary manner." For that reason, it recommended that C.R.L.A. be "continued and refunded."

BETTER CRITICISM THAN VICE PRESIDENT'S IS NEEDED

Vice President Agnew has asked a pertinent question: What is wrong with the legal services program? A close, objective scrutiny of perhaps the most controversial legal services program in the country suggested that precious little was wrong with it, but that a good deal of improvement in the nature of the criticism directed to the program would have been highly desirable. This is not to say, as Vice President Agnew attributes to some "ideologues," that the program is "too sacrosanct even to discuss." But surely it is not too much to ask of lawyers criticising other lawyers that the allegations be fair, precise and accurate.

Judging by the record of C.R.L.A., there are at least three fundamental respects in which Vice President Agnew's sweeping allegations misconstrue the activities of legal services attorneys.

First, he indicates that "much" of the resources of the legal services program are expended "on efforts to change the law on behalf of one social class—the poor". Mr. Agnew does not accurately picture the types of cases on which most legal services attorneys spend most of their time. While C.R.L.A.'s numerous judicial victories against the state and other governmental agencies permitted crtics like Mr. Uhler to characterize its work load as the Vice President has characterized that of the national program, the facts are otherwise. According to the Commission, "the overwhelming bulk of C.R.L.A.'s work is handling the routine problems of the poor, known in the parlance of legal assistance attorneys as 'service' cases". The report said:

> In fiscal year 1968–69, CRLA handled 15,423 separate legal matters, a yearly average of 429 problems per attorney. . . .
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> The substantial portion of these matters did not involve litigation. Indeed, in 1969–70, only 8% of the 9,705 cases closed by CRLA attorneys involved a court proceeding, and only 13% an administrative hearing. . . .
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> As would be expected, the rountine matters comprise a large percentage of the matters handled, 95–98% of the total number. Although no exact records are available as to the amount of time spent on the service cases, as opposed to impact cases, the director's estimate of 80% is reasonable.

Certainly there is no justification for the Vice President's implication that it is a common occurence when "a destitute mother of five can't get legal help with an eviction notice but a middle-class drop-out can get legal counseling in setting up his underground newspaper".

Second, Mr. Agnew erroneously implies that the cases handled by legal services attorneys are nonresponsive to the demands of their clients. He fears "we may be on the way to creating . . . a federally funded system manned by ideological vigilantes . . .". In protecting the attorney-client relationship, he asks, "must we be prohibited from inquiring into the bona fides of action by federally funded attorneys—actions that in many cases bear little relevance to the client's interest but much pertinence to the attorney's ambitions?"

Exactly these accusations were inquired into during the C.R.L.A. hearings. What was shown was that rural farmworkers and others the attorneys serve supported the priorities of the program. These priorities and caseload limitations are necessitated by the paramount fact that clients and problems far exceed what the limited number of lawyers can possibly handle.[1] In the case of C.R.L.A., priorities have been established by the organization's board of directors and by local advisory committees representative of the client community. These groups consistently have urged that the lawyers give greater priority to cases in the areas of employment rights, education, civil rights, housing, welfare and consumer problems, and less to traditional service cases, such as domestic relations and bankruptcy. As against a massive showing of clients' support for C.R.L.A.'s innovative suits, there was hardly a word of criticism. It was those against whom the litigation was directed who most strongly questioned the litigation.

Third, Vice President Agnew incorrectly suggests that the legal services program has operated without any form of governmental supervision. "As it operates now," he says, "it is a public project but without public direction or public accountability."

To the contrary, all legal services programs have been required to reapply annually for funding and to submit reports of their past year's performance. OEO conducts a program of annual evaluations by outside evaluators, in which the American Bar Association and the National Legal Aid and Defender Association participate. While C.R.L.A., for example, has received laudatory evaluation reports each year, the evaluators have often made constructive recommendations, on which C.R.L.A. has acted. Particularly with respect to controversial programs, there are additional periodic inquiries and investigations by OEO, the Government Accounting Office, and state and local bar associations.

Finally, it is simply preposterous to assert, as Mr. Agnew does, that "there has been little serious examination of [the legal services program's] philosophical underpinnings", as if the government, the organized Bar, and the legal services lawyers themselves had spent the last seven years in aimless drifting.[2]

NATIONAL LEGAL SERVICES CORPORATION IS NEEDED

Vice President Agnew, however, has provided a timely and compelling illustration of the need for the prompt adoption of legislation to transfer the management of the national legal services program to an independent, responsibly operated public corporation.

There is no dispute as to the propriety—or, indeed, the necessity—of ensuring that attorneys operating with public funds comply with the highest professional standards and with the guidelines of the legal services program. There are respects in which the guidelines and the supervision OEO has furnished can be improved.[3] But it is also imperative that those to whom the attorneys account respect the relationship between the legal services attorneys and their clients, grant appropriate latitude for the exercise of independent professional judgment and, most important, assure that there is insulation from undue political pressures from those whose interests are adverse to the interests of the attorneys' clients.

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[1] See, *e.g.*, Clark, *Legal Services Programs—The Caseload Problem, or How To Avoid Becoming the New Welfare Department*, 47 U. DET. J. URBAN L. 797 (1970); Silver, *The Imminent Failure of Legal Services for the Poor: Why and How To Limit Caseload*, 46 U. DET. J. URBAN L. 217 (1969); Note, *Neighborhood Law Offices: The New Wave in Legal Services for the Poor*, 79 HARV. L. REV. 805,822–828 (1967).

[2] The substantial thought that has been given to the philosophical and practical implications of the legal services program is reflected in extensive literature. Among the more significant articles are Cahn & Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317 (1964); Shriver, *The Availability of Legal Services*, 51 A.B.A.J. 1065 (1965); McCalpin, *The Bar Faces Forward*, 51 A.B.A.J. 548 (1965); Carlin & Howard, *Legal Representation and Class Justice*, 12 U.C.C.L.A. L. REV. 381 (1965); Sparer, *The Role of the Welfare Client's Lawyer*, 12 U.C.L.A. L. REV. 361 (1965); Cheatham, *Availiability of Legal Services: The Responsibility of the Individual Lawyer and of the Organized Bar*, 51 U.C.L.A. L. REV. 438 (1965); Rothwell, *Some Thoughts on the Extension of More Effective Legal Service to a Greater Number of the Poor*, 17 HAST L. REV. 685 (1966); Westwood, *Legal Aid's Economic Opportunity*, 52 A.B.A.J. 127 (1966); *Greenwalt, OEO Legal Services for the Poor: An Anniversary Appraisal*, 12 N.Y.L. FORUM 62 (1966); Voorhees, *The OEO Legal Services Program: Should the Bar Support It?*, 63 A.B.A.J. 23 (1967); Note, *Extension of Legal Services Under the Economic Opportunity Act*, 28 OHIO ST. L.J. 119 (1967); Note, *Neighborhod Law Offices: The New Wave in Legal Services for the Poor*, 80 HARV. L. REV. 805 (1967); Note, *Competition in Legal Services Under the War on Poverty*, 19 STAN. L. REV. 579 (1967); Note, *Beynod the Neighborhood Law Office—OEO's Special Grants in Legal Service*, 56 GEORGETOWN L.J. 742 (1968); Hannon, *Legal Services and the Local Bars: How Strong is the Bond?* 6 CALIF. WEST L. REV. 46 (1969) (refers specifically to C.R.L.A.); Green & Green, *The Legal Profession and the Process of Social Change: Legal Services in England and the United States*, 21 HAST. L.J. 563 (1969) (containing extensive discussion of C.R.L.A.); Voorhees, *Legal Aid: Past, Present and Future*, 56 A.B.A.J. 765 (1970); Robb, *Poverty Lawyers' Independence—Battle Cry For Justice*, 1 N. MEX. L. REV. 215 (1971); Sullivan, *Law Reform and the Legal Services Crisis*, 59 CALIF. L. REV. 1 (1971); Note, *The Legal Services Corporation: Curtailing Political Interference*, 81 Yale L.J. 231 (1971); Pious, *Congress, the Organized Bar and the Legal Services Program*, 1972 WISC. L. REV. 418 (1972); Cappeletti & Gordley, *Legal Aid: Modern Themes and Variations*, 42 STAN. L. REV. 347 (1972); Karabian, *Legal Services for the Poor: Some Political Observations*, 6 U.S.F. L. REV. 253 (1972).

The special circumstances of rural poverty law programs are discussed in Shriver, *Rural Poverty—The Problem and the Challenge*, 15 U. KAN. L. REV. 401 (1967); *Lorenz, The Application of Cost-Utility Analysis to the Practice of Law: A Special Case Study of the California Farmworkers*, 15 U. KAN L. REV. 409 (1967); Mittelbach & Short. *Rural Poverty in the West—Status and Implications*, 15 U. KAN. L. REV. 453 (1967); Barnick, *Legal Services and the Rural Poor*, 15 U. KAN. L. REV. 537 (1967).

[3] See Note, *The Legal Services Corporation: Curtailing Political Interference*, 81 YALE L.J. 231 (1971).

The enactment of legislation establishing a National Legal Services Corporation became ensnarled over the extent to which the President's authority to appoint the corporation's board of directors might be limited by recommendations received from professional and client organizations. More threatening were attempts to limit the scope of services legal services lawyers would be permitted to render, particularly in influencing legislation, and the activities they might conduct on their own time. But the compromise bill recommended by the House-Senate conference committee in July, 1972, contained few absolute proscriptions on the lawyers' work. Rather, the bill would have conferred on the National Legal Services Corporation broad authority to establish guidelines in most areas as to which critics of the program, like Vice President Agnew, have voiced concern. The report was recommitted to the conference committee, and (evidently because of the threat of another veto) the revised bill that emerged one month later omitted the provisions to establish the legal services corporation. The new report stated only:

> The conferees continue to strongly support the existing legal services program and the concept of a legal services corporation and intend to continue to seek appropriate means of expanding the program and insuring its independence, to provide the poor greater access to our system of justice under law.

The Vice President concluded his article by calling for "a more carefully defined legal services program". Surely the way to furnish the definition and control the claims to seek is promptly to establish the legal services corporation and to permit it to proceed with the task. The fate of both the 1971 and 1972 legislation, coupled with the appearance of the Vice President's article and his earlier attack on Camden Regional Legal Services, call into question the depth of the Nixon Administration's commitment to a truly independent and meaningful legal services program for the poor.

It is important, therefore, that the Bar continue to insist on the creation of a protected and protective institution that will permit the furnishing of dependable legal services to proceed "free", as the preamble to the proposed 1972 legislation recited, "from extraneous interference and control".

YOUTH PROGRAMS ACT

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Senate

By Mr. MONDALE (for himself, Mr. PELL, Mr. RANDOLPH, Mr. HATHAWAY, and Mr. TAFT):

S. 949. A bill to provide youth services grants, and for other purposes. Referred to the Committee on Labor and Public Welfare.

YOUTH PROGRAMS ACT

Mr. MONDALE. Mr. President, last year the Subcommittee on Children and Youth, of which I am chairman, held a hearing on youth crisis services. The witnesses who testified, and the many young people who wrote to me after the hearing, eloquently described the important services being offered by young people to young people in need.

Since the subcommittee began its study of youth services, we have learned that hundreds of hotlines, medical services, and other informal institutions are providing sorely needed assistance to young people with medical, legal, and family problems. Some of the indices of these problems are the 200-fold increase in the suicide rate for American females between ages 10 and 19 in the last 5 years; and the tripling of the suicide rate for young men in the last 10 years; and the increase in the number of young runaways to an estimated 1 million per year.

We have also learned that many youth crisis services have existed on a shoestring and that they can no longer secure the limited funds needed to operate from private, local sources.

A related concern of the subcommittee has been the role of young people in determining government policy on matters which affect them. In August 1971, the subcommittee held a hearing on the recommendations of the White House Conference on Youth. From this hearing and subsequent correspondence with Federal officials, I concluded that the Federal Government provides almost no opportunities for young people to contribute to policymaking.

In August 1972, I introduced S. 2909, the Youth Programs Act.

This legislation had two main purposes. One was to provide small grants to be used for the operation of youth crisis services. The other was to try to attack the problem of alienation of young people from Government and the political process by offering them a significant role in the administration of this grant program.

I am pleased to announce today I am reintroducing the Youth Programs Act.

I ask unanimous consent that a copy of the bill be printed in the RECORD.

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

S. 949

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Youth Programs Act".

STATEMENT OF FINDINGS

SEC. 2 (a) The Congress hereby finds that—

(1) nearly one million young Americans run away from home each year and often become the victims of an unhealthy and criminal environment;

(2) an increasingly large number of young Americans have experimented with drugs and subsequently suffered damaging physical and psychological effects from the use of such drugs;

(3) within the last ten years the suicide rate for young American males between ten and nineteen years of age has tripled, and within the last five years the suicide rate for young American females between ten and nineteen years of age has increased 200-fold; and

(4) an increasing social and cultural change together with geographical and social mobility has contributed to the alienation of many young Americans from society and established institutions, leading them to create their own institutions.

(b) It is therefore the purpose of this Act to provide youth services grants and to establish in the Department of Health, Education, and Welfare an Office of Youth Programs.

AUTHORIZATION OF APPROPRIATIONS

SEC. 3. In order to carry out the provisions of this Act, there are authorized to be appropriated $10,000,000 for the fiscal year ending June 30, 1974, and for each of the two succeeding fiscal years.

ESTABLISHMENT OF THE OFFICE OF YOUTH PROGRAMS

SEC. 4. (a) There is established in the Department of Health, Education, and Welfare the Office of Youth Programs. The Office shall be headed by a Director who shall be appointed by the Secretary within ninety days of enactment of this Act; and shall perform such duties as are delegated to him by the Secretary.

(b) To the extent practicable, the Secretary shall employ personnel in the Office so that at least 50 per centum of such personnel are individuals who have not attained twenty-five years of age and at least one-half of such per centum are individuals who have not attained twenty-one years of age.

(c) The Secretary shall carry out the provisions of this Act through the Office of Youth Programs.

GRANTS AUTHORIZED

SEC. 5. (a) The Secretary is authorized to make grants to pay the Federal share of the cost of youth service projects conducted by nonprofit private organizations, particularly organizations engaged in furnishing emergency telephone counseling, general counseling, medical service, and services for runaways.

(b) Grants under this section may be used for—

(1) training volunteers and for providing compensation for workers in such projects;

(2) monitoring the effectiveness of the services provided by such organizations;

(3) compiling, improving, and distributing lists of youth organizations within appropriate geographic areas; and

(4) operating expenses for such organizations.

(c) (1) No grant may be made under this section except upon application made therefor in accordance with regulations prescribed by the Secretary.

(2) No grant may be made under this section to any individual organization or project in an amount in excess of $10,000 in any fiscal year.

(d) (1) The Secretary shall pay to each applicant which has an application approved under section 5 an amount equal to the Federal share of the cost of the application. The Federal share for each fiscal year shall not exceed 75 per centum of the cost of such application, except that for applications from organizations located in areas of high concentration of poor people, pursuant to regulations established by the Secretary, the Federal share may be increased to an amount

not to exceed 90 per centum of the cost of such application.

(2) Payments under this section to any nonprofit organization may be made in installments, and in advance, or by way of reimbursement, and with necessary adjustments on account of underpayments or overpayments.

(e) The Secretary is authorized to establish whatever procedures he determines necessary to assure that whenever possible, applications under this section will be processed to completion within a period not to exceed ninety days from the date on which any such application is recieved.

THE NATIONAL CLEARINGHOUSE ON YOUTH SERVICES

SEC. 6. (a) The Secretary is authorized to establish and operate a National Clearinghouse on Youth Services which shall—

(1) collect, analyze, and disseminate research materials relating to the services assisted under the provisions of this Act with particular emphasis upon such materials as are developed by nonprofit organizations receiving financial assistance under this Act;

(2) conduct a thorough evaluation of the programs assisted pursuant to section 5 of this Act; and

(3) develop recommendations for a long-term approach, by the Federal Government, to the problems of young Americans.

(b) The Secretary, through the National Clearinghouse on Youth Services, may carry out the functions under this section directly, or by way of contract, grant, or other arrangement.

YOUTH ADVISORY BOARD

SEC. 7. (a) There shall be established a Youth Advisory Board within ninety days of enactment of this Act. The Board shall consist of fifteen members, at least 50 per centum of whom are individuals who have not attained twenty-five years of age and at least one-half of such per centum who have not attained twenty-one years of age. The Board shall be appointed by the Director of the Office of Youth Programs after consultation with youth who have experience in youth programs, either as providers or as recipients of such services. The Board shall—

(A) Assist in the establishment of priorities for the award of grants under this Act.

(B) Recommend general polilces for, and review the conduct of, the Office.

(C) Advise the Director of the Office on development of programs to be carried out by the Office.

(D) Conduct such studies as may be necessary to fulfill its functions under this section.

(E) Prepare an annual report to the Secretary on the current status and needs of youth programs in the United States.

(F) Submit an annual report to the Congress on the activities of the Office, and on youth programs in the United States.

(G) Meet at the call of the Chairman, except that it shall meet (i) at least four times during each fiscal year, or (ii) whenever one-third of the members request in writing that a meeting be held.

REPORT

SEC. 8 The Secretary is authorized and directed to prepare and furnish to the President and the Congress not later than July 1, 1975, a report on his activities under this Act, together with an evaluation of financial assistance provided under this Act and recommendations, including legislative recommendations, for long-term solution to the problems of young Americans.

DEFINITIONS

SEC. 9. As used in this Act, the term—

(1) "nonprofit private organization" means and organization, including unincorporated associations of individuals which the Secretary determines is capable of carrying out a program to be assisted under this Act;

(2) "Secretary" means the Secretary of Health, Education, and Welfare; and

(3) "young American" means any individual who has attained ten years of age but not twenty-six years of age.

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