through sober thought and constructive criticism. We need to reason together, to see new facts in the light of old principles, and evaluate old principles in the light of new facts. Democracy's need for wisdom will remain as perennial as its need for liberty. Self-examination is the perennial price of liberty. The work of self-government never ceases.

A part of this self-examination will take place here during your convention. It's up to each and every one of you to speak out.

You have one of the biggest stakes in seeing that government faces up to the hard answers. Your voice is as vital now as it ever has been. Use it wisely, but most of all, use it.

S. 1—CONSTITUTIONAL AND CRIMINAL JUSTICE SAFEGUARDS NEEDED

Mr. JAVITS. Mr. President, as the 2d session of the 94th Congress begins, we face a major legislative issue in the sound resolution of the deficiencies which exist in S. 1, the massive bill which seeks to revise and reform our Federal criminal laws. I regard the responsibility to bring the bill into line with the requirements of the Constitution and the principles of justice as among the most serious and far reaching which have faced Congress in recent years.

I support the overall goal of restructuring the Federal criminal law into a more coherent and rational code, eliminating the contradicting redundancies which practitioners and teachers of the law have properly criticized for decades. The objective of clarifying and improving present law is desirable.

More than 10 years of study, hearings and comment—starting in 1966 with the appointment of the National Commission on the Reform of the Criminal Laws by President Johnson—is now reaching its final stages as the full Senate Judiciary Committee takes up the bill in the coming weeks.

As introduced, this legislation would sharply extend the power of the Federal Government over individuals and make certain significant decreases in the freedoms of individual Americans. Some of its principal provisions reflect, I feel, a shocking insensitivity to individual rights and to comprehend the fundamental nature and limits of governmental power under the Constitution. Other sections, while not raising constitutional questions, involve issues of major social and political importance to the Nation. Several provisions, therefore, require elimination or major revision:

1. ESPIONAGE AND SECRECY PROVISIONS

In at least four areas, the bill ignores the premium which we have long placed upon public awareness and debate about national security issues. It broadly extends the field of "classified information" and establishes an "expansive purview" of espionage. Linked to a new section relating to "impairing a government function," all of these provisions create a standing challenge to the guarantees of the first amendment.

In the view of some experts, these provisions go too far in giving virtual ownership to the Government of all public information. This approach could make government employees and news reporters vulnerable to prosecution where their conduct is now lawfully protected.

2. WIRETAPPING

S. 1 would continue authorization for wiretapping on order of the U.S. Attorney General without a court order for up to 48 hours, when "an emergency situation exists with respects to conspiratorial activities threatening the national security." It would require landlords and private businesses to cooperate with Federal agents in the carrying out of surveillance activities. The difficult and dangerous issue of national security wiretapping must be resolved without further eroding constitutional protections.

3. SEDITION

A further challenge to first amendment freedom is raised in section 1103 of the bill which appears to make criminal activity which is short of that required under current law. The new language suggests that statements "inciting" others to engage in conduct that then or at some future time would facilitate the destruction of the Government would be enough. The constitutional line between punishable inchoate revolution and nonpunishable subversive speech has been expressed in the rule of the Supreme Court that "clear and present dangers" may be prosecuted. I am not persuaded that this standard should be changed.

4. CONSPIRACY

The Federal law of conspiracy has long been criticized as permitting the charging of individuals whose intent and criminal participation is corroborated by overt acts which are of questionable evidentiary significance. The bill appears further to weaken the overt act requirements by requiring the overt act not to demonstrate that the plotting has gone beyond mere talk, but rather that it constitute "conduct" that is engaged in with intent to effect an object of a criminal agreement. "Conduct" is defined to include "omission" and "possession".

5. CAPITAL PUNISHMENT

Under the bill, capital punishment for homicide is mandatory in a variety of special circumstances. In attempting to develop legislative standards, meeting the requirements set out by the Supreme Court in Furman against Georgia the drafters of the bill have failed to meet even that test by the arbitrary character of the categories which are suggested.

6. MARIHUANA OFFENSES

S. 1 continues the provisions in current Federal law authorizing prison sentences for petty marihuana offenses. This approach flies in the face of a strong movement among the States to decriminalize the personal possession and private use of small amounts of marihuana, and the recommendation of President Nixon's National Commission on Marihuana and Drug Abuse. I was persuaded as a result of my work as a member of the Commission, and by the numerous studies which have since been completed that decriminalization is appropriate and urgently necessary. My bill, S. 1450—cosponsored by Senators CRANSTON, BROOKE, NELSON, TUNNEY, and HASKELL—would accomplish this, and my pending amendment to S. 1 would change that bill accordingly.

7. FEDERAL OFFICIALS DEFENSE

Sections 541–544 of the bill appear to subject federal officials to a lower standard of culpability under the criminal law than is imposed upon other citizens. In authorizing "public servants" to assert that the conduct charged "was required or authorized by law to carry out the defendant's authority," we would relieve such individuals from the high standard of personal responsibility which public officials—at every level of government—should be held to.

8. THE INSANITY DEFENSE

The bill's handling of the insanity defense is regressive. It in effect would abolish this long recognized defense. It would admit insanity as a defense only if the insanity caused a lack of the "state of mind required as an element of the offense charged." If a defendant insanely believed that his victim sought to kill him or that God required him to kill, he would be convicted. Present law requires that the defendant be acquitted if he lacked substantial capacity to appreciate the nature or chracter of his conduct. By adopting the provision proposed in S. 1, we would remove the element of moral responsibility and cognitive choice from the equation in determining legal guilt.

Mr. President, there are numerous other provisions in S. 1, which give me cause for concern. They deal with the issues of entrapment, sentencing, riot control, demonstrations, obscenity and complicity. Some have argued that Senators should announce opposition to the entire bill now. In view of the fact that the National Commission on the Reform of the Criminal Laws and the House and Senate Judiciary Committees have devoted almost 10 years to this monumental effort, I believe that it is premature to oppose the entire bill prior to the time that the amended version is reported by the Senate Judiciary Committee to the Senate floor. I do not believe that it is reasonable or fair to deny the committee and its staff the opportunity to present for our consideration the results of more than a year of intensive work to improve the bill since its introduction in January of 1975; or to abort proposed Senate amendments to improve the bill whether or not I support it ultimately as the Senate votes on it.

U.S. RELATIONS WITH THE THIRD WORLD

Mr. GARY HART. Mr. President, during the holiday recess there appeared in the Washington Post a U.S. foreign policy analysis by Joel Dreyfuss that is one of the best pieces of writing on the subject that I have seen in a long time. Mr. Dreyfuss proposes that the American Government and people might learn a little about some of our problems with Third World countries in the United Nations and elsewhere if we looked at our policies from their point of view. I would not say this is a very radical suggestion,

and orderly way, a means of achieving our goals with available resources.

Let's take these items one at a time.

One of the most important items on the consumer agenda is to make it possible for most consumers to become involved in helping themselves.

This is happening through the growing effectiveness of state and local consumer organizations and by recent Congressional endorsement of an Agency for Consumer Advocacy. This legislation strikes a good balance between the public's right to know about products or services which may endanger their health or safety or which may cause substantial economic injury, and the right of those complained against also to be heard. The voice and interests of consumers must be heard in fact, not just in theory.

Consumer cooperatives also have become a reality and we need to promote their growth by providing loans and technical assistance, just as we did to farmers through the Farm Credit System. A national consumer cooperative bank would serve consumers interested in establishing or expanding sound business endeavors in housing, consumer goods, health services, credit and other similar consumer activities.

This could be one of the greatest economic additions to the forward look that consumers already have brought to many of our national programs and goals.

Consumers and producers alike have an interest in maintaining a strong system of cooperatives. They help the farmers compete and help assure a reliable food supply for consumers.

The erratic "boom and bust" policies advocated by this Administration are not the answer. They wrongly have set the consumer against the farmer.

For example, the food bill of American citizens has increased over $57 billion in the last three years as a result of the "doctrine of the free market" as interpreted by Secretary Butz. This Administration's policies are encouraging higher food prices while driving our farmers out of business.

We've all heard a lot of hoopla about the cost of farm subsidies. But during the last 40 years the government has paid less to the farmers for price supports, conservation, cropland adjustment and other programs than it has cost you at the cash register in the supermarket in the last three years alone.

The percent of your income going for food had actually been declining before this Administration took office. Government costs for farm programs have gone down in the last three years. But your food bill has increased by almost 50 percent. Neither the consumer nor the farmer is being served by this "boom and bust" policy of the Administration.

The time has come to make tough decisions so that our food policy is fair to farmers and consumers alike.

It simply is not a political issue or an economic problem when rising food prices mean the difference between a decent meal and gnawing hunger, between health and malnutrition for hundreds of thousands of families across America.

It is too much to ask our poorest consumer to eat only in good years.

It also is too much to ask our farm families who have made American agriculture the most productive and efficient in the world—to plan and plant next years' crop when widly gyrating prices give not one clue as to whether they will recover their investments for production costs, let alone make a profit.

Farmers and consumers both have paid a high price, because we have ignored the need for a balanced national food policy. We should not be deceived by the rhetoric today concerning the need to remove the shackles of government intervention and interference from the farmer. A policy of "government hands-off" as some advocate, simply is not realistic in a world where state-controlled trading operations dominate the export business of many nations.

How many times are our producers and consumers going to be burned by volatile markets before we come to the realization that some basic structural changes have occurred in the world's agricultural system and we need a food and agricultural policy to reflect these changes?

It is no easy task to develop a comprehensive policy to meet the needs of both producers and consumer. But it should aim at the following objectives:

Price and income protection for producers of food and fiber;

Food supply stability for consumers at reasonable prices;

Adequate supply of inputs and transportation for producers at reasonable prices;

Adequate agricultural production for domestic and international needs;

The establishment of a reserve program to provide market stability during periods of shortage and surplus; to maintain the reliability of the United States as an exporter, and to continue the provision of food assistance to needy nations.

Soaring energy prices have been another cause of the sharp erosion in purchasing power we have experienced.

Month after month we watched gas prices, heating oil prices, and electric rates climb until now we pay 80 percent more for gas, 140 percent more for heating oil, and 75 percent more for electricity than we did in 1973. And we've had to fight mightily just to keep these prices from going still higher.

The free-enterprise buccaneers of this Administration tell us that oil prices should be set by the free market. But an OPEC-dedicated oil price is hardly what I would call a free market. It is a contrived artificial price established by an international cartel with no justification other than that provided by naked monopoly power.

Yet the debates rarely focus on that fact. And hardly anyone talks about you—about the impact of energy shortages and soaring prices to the consumer.

Oil decontrol was proposed in your name with claims that it would reduce imports. But the Administration's own data reveals that imports would be reduced by less than 10 percent by 1980. And this, had it come to pass, would have cost you at least $12 billion in higher oil prices on top of the estimated $40 billion in higher energy costs you already are paying. According to projections by the Joint Economic Committee, you would have faced double digit inflation this winter and watched 150,000 men and women join the ranks of the unemployed.

Specific authority already vested in the President resulted in a 20 percent increase in oil exploration without total decontrol.

Instead of taking more money out of your pocket, we need to establish a reliable oil and energy supply to achieve energy independence. We need to tax American know-how, not American consumers. We need:

A challenge to private enterprise to develop effective automobiles, appliances and machines that save energy;

A good-sized emergency oil stockpile of up to one billion barrels;

More domestic oil production—if environmentally sound, and if it can be done for less than we now pay for OPEC oil;

A massive solar energy program to replace scarce and environmentally-damaging nuclear and fossil fuels; and

An expeditious solution to the problems of transporting natural gas so that badly-needed energy will not be flared off in Alaska as shortages occur in the other 49 States.

Is it any wonder that public confidence in government is at an all-time low when time after time agencies that purport to represent the public interest end up costing the consumer more money?

In this time of economic recession and energy conservation, we need to devote a major effort to change regulatory processes which increase costs to the consumer and encourage a wasteful use of our precious resources. With the possible exception of taxation, no economic activity touches so much of the citizenry as does the regulatory commissions. Yet we're still operating according to concepts that have been or are becoming outmoded by change.

We need to encourage competitive pricing and restore industry to higher levels of production. Recent price increases in many industries simply cannot be justified when one realizes that 30 percent of our industrial resources lie idle and unused.

Auto production is down and has been for over two years, yet buyers are being asked to pay $1,000 more for the average car than they were two years ago. No wonder so many Americans are clinging to their old cars and so many auto workers remain unemployed. No wonder so many of our people feel that "free enterprise" is simply the mumbo-jumbo of the monopolists and their economic apologists.

In a truly competitive market, many of these pricing actions would not have taken place. Such irresponsible use of arbitrary pricing power has delayed and weakened the economic recovery by reducing the real value of consumers' purchasing power at a crucial time and by reinforcing the fear of inflation.

Renewed wage and price controls, reorganization of concentrated industries to create more competition, and the creation of government corporations to inject competition into certain concentrated industries have proposed to restrain corporate power. Each of these remedies, however, has serious drawbacks.

But fundamental changes will be necessary if arbitrary economic power continues to grow as it has done. In fact, we may not be far from a new era of general trustbusting like the one that swept America in the early 1900's in response to excessive corporate bigness and power.

I have talked about the direction we need to take in addressing the problems facing consumers today—food, energy, continued price escalation in the industrial sector in spite of production slack, and participation in the decisions so directly affecting you.

But to solve these problems we need a positive government with strong leadership. Don't let anyone promise to take government out of your lives. Some would have you believe that big federal government is to blame for the country's economic stagnation—that by cutting back federal programs, inflation somehow will magically disappear. Unfortunately, it's not that easy.

Big spending won't do it either.

What we really need is direction—some clear, national economic policy that is shaped by the people it will affect. Businesses plan; consumers plan. All other industrial nations plan. We are a nation with our destiny in our hands. Let's act like one.

We must look ahead in a free, democratic and orderly way to put the nation back on the road to prosperity. But we must do it together.

People are crying out for a government that works, that understands their problems, and makes an honest, realistic but compassionate effort to help solve them. A great deal depends on the choice you make at the polls in November and on the quality of leadership provided by the person selected as the next President of the United States.

One of the great moral political leaders of our time was my dear and good friend, Adlai Stevenson.

Adlai reminded us that democracy is not self-executing. We have to make it work

S. 1

of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 7575) to establish an Agency for Consumer Protection in order to secure within the Federal Government effective protection and representation of the interests of consumers, and for other purposes, had come to no resolution thereon.

BUDGET OF DISTRICT OF COLUMBIA FOR FISCAL YEAR 1976 AND TRANSITION PERIOD JULY 1, 1976, THROUGH SEPTEMBER 30, 1976—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 94-296)

The SPEAKER laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Appropriations and ordered to be printed with illustrations.

To the Congress of the United States:

I am today transmitting for your consideration the budget of the District of Columbia for fiscal year 1976 and for the transition period July 1, 1976, through September 30, 1976.

This budget is the first prepared by the city government in full exercise of its powers under the District of Columbia Self-Government and Governmental Reorganization Act. It reflects the results of a constructive city budget process which included participation by many District citizens. As such, this Home Rule budget represents a cornerstone of responsible city government and confirms the strength of a Federal-local partnership in the administration of Washington, D.C.

This budget also carries the Nation's Capital and the District community through the peak of our Nation's Bicentennial observance. I urge the Congress to review these proposals with the knowledge that Washington will be a focal point for the national celebration and that the city will be visited by greater numbers of American and foreign visitors than ever before. At the same time, residents of Washington, who also take pride in their own community, plan local observances just as other cities do across the country. It is, therefore, important that the Congress act promptly on the District Budget for 1976.

GERALD R. FORD.

THE WHITE HOUSE, *November 5, 1975.*

SELECTION OF SERVICE ACADEMY APPOINTMENTS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin (Mr. CORNELL) is recognized for 15 minutes.

Mr. CORNELL. Mr. Speaker, it is often said that a Member of Congress has many roles to perform in carrying out the functions of his office. Today, Congressman MCHUGH and I are introducing legislation which will remove from this long list of duties the role of dean of admissions for the three military academies. Our bill permits the service academies to select their own students. We believe this step is overdue and that compelling reasons exist for making this change.

First of all, although each congressional office tirelessly endeavors to select the best candidates from among the applicants, it is still true that no single established standard of admissions exists to guide us. Therefore, the nominees are now being chosen in a variety of ways instead of having all applicants judged by one set standard.

Our bill eliminates the congressional role in the selection process but retains the present geographical distribution pattern so that we can continue to draw our future officers from across the entire country. This means, in short, that the number of positions allotted to the congressional districts, the States on an at-large basis, Puerto Rico, District of Columbia, Guam, Virgin Islands, Panama Canal Zone, and American Samoa remains the same, but now the academies themselves will make these selections solely on the basis of merit.

Second, the existing system for naming candidates has political overtones and leads many people to believe, however falsely, that one must personally know the Member of Congress in order to have his son—and now daughter—appointed to the military academies. This misunderstanding has undoubtedly dissuaded some qualified students from even applying. Members of Congress are also placed in the difficult position of having to break the news to the disappointed applicants who were not chosen since there are usually more candidates than vacancies. Under our bill, the Representatives will continue to make the public announcements of those chosen for the service academies, but they will play no role in the decision on admission.

Third, for the Merchant Marine Academy at Kings Point, N.Y., we believe the best procedure is a purely competitive admission system. This is currently done at the Coast Guard Academy with great success. The small total enrollment at Kings Point—600—lends itself to this approach.

In order to provide an orderly transition to this new admissions policy and to insure congressional oversight over this process in the future, we have amended the duties of the now existing Boards of Visitors for each of the service academies to add the charge of overseeing admissions. An annual report to the Congress would also be required.

We realize that it has become a tradition for Members of Congress to appoint students to the three service academies. We firmly believe, however, that now is the time to break with tradition and to institute a more equitable and efficient process for selecting the future military leaders of the United States.

I now turn to my colleague, Congressman MCHUGH, who would like to add his comments on our proposal.

DANGERS OF S. 1 AND H.R. 3907, PROPOSED REVISIONS IN THE FEDERAL CRIMINAL CODE

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from New York (Ms. ABZUG) is recognized for 60 minutes.

Ms. ABZUG. Mr. Speaker, both the House and Senate Judiciary Committees have pending before them identical bills which would make major revisions in the Federal Criminal Code—H.R. 3907 and S. 1. These revisions were primarily drafted by the Department of Justice during the tenure of John Mitchell as Attorney General. If enacted, this legislation will result in the most repressive Federal activity since the McCarthy era.

Known officially as the Criminal Justice Reform Act of 1975, these bills represent the Nixon-Mitchell concept of law and order. They skillfully play upon the widespread and legitimate fear of crime in the streets to place on our Federal statute books a large number of repressive measures that have been referred to by leading newspapers and legal commentators as modern day alien and sedition laws.

We should all be alerted to the potentially dangerous implications that are inherent in this legislation, which has been put forward as a needed measure to combat crime. I certainly agree that reduction of crime is of critical importance. However, it must not, and indeed, cannot, be reduced through repressive laws which serve only to limit constitutional rights, while not reaching the root causes of crime in our society.

There was virtually no press coverage of the hearings which were held on the proposal during the 93d Congress, perhaps because the hearings overlapped with the Ervin committee hearings and the House Judiciary Committee hearings concerning Watergate and the impeachment of President Nixon.

S. 1 is now receiving relatively minor amendments in the Senate Judiciary Subcommittee on Criminal Laws. That subcommittee held 2 days of what the New York Times described as "perfunctory" hearings in May. The timetable for having the bill signed into law is some time before the 1976 Presidential elections. On June 19, President Ford, in his message to Congress on crime, vigorously supported S. 1 and called for its adoption as a "first step" in the "war on crime."

The President said:

In an effort to insure domestic tranquility, I am recommending new legislation to put the rights of the victim ahead of the rights of the criminal.

Analysis of this bill reveals, however, that there is far more in it than a tough law-and-order approach. It is not too much to say that it provides a blueprint for a police state. It makes legal much that both Senator Joseph McCarthy and those involved in the Watergate coverup would have welcomed. Its provisions restricting the press and the news media would have made the exposure of Watergate impossible.

S. 1, it is readily demonstrable, represents an astute and sophisticated attack upon the first amendment and upon other constitutional freedoms. It is directly aimed at peace groups, organized labor, as well as all other concerned citizens who may attempt to oppose future Vietnams and other unwise governmental policies. It affords a statutory basis for intimidating anyone who does

not accept a continuation of national goals and priorities favored by whatever administration is in power.

There has been very little publicity given to this dangerous bill. It is safe to consider that most attorneys have not even heard of it, despite its potentially momentous impact upon all of us.

What publicity there has been has largely centered about the concern by newspapers over what is known informally as the Official Secrets Act provision of the bill. There is a grave danger that some compromise will be reached making these provisions somewhat more palatable to the press and the media to remove their opposition, and to open the way to adoption of all the other repressive measures contained in it. These repressive proposals are so numerous and interlinked that two nationally prominent law school professors, Prof. Thomas I. Emerson of the Yale Law School and Prof. Verne Countryman of the Harvard Law School, have issued a statement declaring that the legislation is simply not amendable, and that it must be rejected in its entirety, and recommitted for complete overhaul and redrafting. They stated firmly that, in their judgment, the enactment of this legislation would constitute an unparalleled disaster for the system of individual rights in the United States.

The conclusion of Professors Emerson and Countryman that H.R. 3907 and S. 1 cannot be satisfactorily changed by the amendment process was based primarily upon two essential features of the present bill. They had stated that—

> The bill contains for many chapters, sections, clauses, words and definitions that would have to be changed. They include provisions dealing with the handling and publication of "national defense information," advocacy of overthrow of government by force (the Smith Act), obstructing government functions by fraud, statements impairing military effectiveness, riots, disorderly conduct, contempt, the obligation to give testimony, entrapment, wiretapping and electronic surveillance, the death penalty, conspiracy, attempts, the insanity defense, obscenity, responsibility of public officials for violation of law, penalties for criminal offenses, probation and parole, and complicated problems of Federal jurisdiction. It would be naive to believe that these countless provisions could be restructured and redrafted, one by one, through the procedure of motion to amend, amendments to the amendment, debate and vote, either in committee or on the Senate floor. Long before such a process could be completed, the pressures would be irresistible to make a few changes and let the rest go through.

Professors Emerson and Countryman also have noted that—

> S. 1 was designed and drafted upon the basis of philosophical, ethical and political goals that were repudiated by the American people in the Watergate scandals.

These legal scholars have done a great service in reminding us that—

> The bill is the product of the Nixon Administration, prepared under the aegis of Attorney Generals Mitchell and Kleindienst, and put into concrete form by a group of lawyers in Nixon's Department of Justice. The objective of the draftsmen was to incorporate into the criminal code every restriction upon individual liberties, every method and device, that the Nixon Administration thought necessary or useful in pursuit of its fearful and corrupt policies. As such, the bill is permeated with assumptions, points of view and objectives, finding expression in numerous overt or subtle provisions, that run counter to the open and free spirit upon which American liberties are based. This pervasive taint cannot be amended out.

Professors Emerson and Countrymen have made clear that they do not oppose revision of the Federal Criminal Code. They point out, however, that the task is an enormously complex one involving decision on literally thousands of provision of law that vitally affect every citizen. Congress, they emphasized, should start with a bill that has been drafted by people who are committed to preserve American rights. It can then effectively proceed to debate and amend those particular parts of the legislation where policy changes are thought desirable. As they put it:

> But it must have a solid foundation firmly fixed in the tradition of American democracy; to begin with, S. 1 does not supply such a foundation.

Mr. Daniel Crystal, an attorney who has performed valuable work in the area of constitutional rights, has prepared review and analysis for me of the inherent dangers in many of the provisions of this legislation. This review and analysis gives abundant evidence that the bill is an arrogant attack upon the Bill of Rights and cannot be amended in a manner which would make it acceptable. There is certainly a need for revision of the archaic and unsatisfactory scheme of Federal criminal law. However, that need for codification simply does not justify a bill which flouts fundamental constitutional freedoms as does S. 1 and H.R. 3907.

Legitimate widespread fear of crime in the streets, of muggings, assaults, armed robberies, and burglaries, is being used astutely to secure passage of highly repressive legislation that incorporates the Nixon-Mitchell formula for terminating constitutional freedoms. Whatever the motive of the bill's sponsors, such repressive legislation eases the way to the possibility of an American police state.

The proposed legislation would have the unexpected result of making official what was being done surreptiously through the secret state that was exposed in the Watergate scandal. Former President Nixon was driven out of office because of that scandal. Nevertheless, his repressive views are very much alive in these bills, and his philosophy will dominate Federal criminal law for generations if the legislation is enacted.

It is incredible and unacceptable that, with the Watergate scandal still in our minds, there is under active consideration a bill which would make it possible to imprison reporters and editors who, with boldness and courage paralleling those who exposed Watergate and its coverup, publicize comparable news that will be embarrassing to post-Nixon administrations.

This legislation also puts the Bill of Rights and modern concepts of correctional reform in danger. It substitutes harsh, punitive measures for the experience of those who offer workable approaches toward the enormous problem of crime. Its support comes from those who are impatient and who take the demogogic path of appealing to the fears of those properly alarmed at spreading crime, or those who supinely go along with unworkable law-and-order measures formulated by the Nixon-Mitchell administration, fearing to be labeled as soft on crime.

Let there be no mistake about the gravity of the threat to the Bill of Rights posed by this legislation. There must be much more urgent opposition to it than has been manifested thus far. The country must become aware of the constitutional and civil liberties horrors that are hidden in this massive bill. Opposition must not turn solely on the Official Secrets Act, outrageous as this new Alien and Sedition Act is. Some concessions to the press and media are likely to mollify them. Even if the Official Secrets Act were completely deleted, these bills would still not be acceptable. The provisions go far beyond "codification" or even "revision" or "reform." They urgently need to be studied and debated far more publicly than they have been yet.

A candid article in the Wall Street Journal of June 5, 1975, put the issues bluntly:

> Some opponents of the bill worry that to improve its chances, sponsors will tone down the press sections to the point where the press is willing to forget about the other questionable changes. With crime rates rising again and an election coming on, Senators and Representatives might then find it hard to vote against the bill if it reaches the floor—regardless of civil libertarian concerns.
>
> With a bill like S. 1, it's probably necessary to keep ringing the alarm bells loud and often.

As Professors Emerson and Countrymen noted, a bill to codify the Federal criminal law is desirable. But that simply does not mean that it should be one that is cast in the mold of the repressive thinking of a disgraced former President and a former Attorney General convicted of crimes that this bill would legalize.

The Criminal Code that Congress should enact should be in the spirit called for by Mr. Justice Tom C. Clark who urged in an article in 68 Northwestern University Law Review 817 that we "strive to make our laws instruments of justice, sufficiently strong to snare the guilty, but discerning enough to insure that the innocent go free." It should eliminate from our criminal law all the fearful, repressive statutes that marked the post World War II period. Adoption of a Federal Criminal Code framed in that approach would be the greatest contribution that the Congress and the President could make to celebrate this country's Bicentennial. It would constitute a legislative declaration of confidence in our future and would bear witness to a continuing faith in the wisdom and workability of our unique Bill of Rights.

It is incumbent upon us to extend constitutional freedoms, not to narrow them; to utilize our best thinking to solve the problems of crime, not to take a long leap backward by pretending that long prison sentences will somehow eliminate that pressing problem. This leg-

islation takes exactly the wrong approach.

I feel it would be helpful to my colleagues to make Mr. Crystal's analysis available in an effort to clarify the real issues involved in H.R. 3907 and S. 1.

The analysis follows:

MAKING WATERGATE LEGAL: AN ANALYSIS OF S. 1

(By Daniel Crystal)

THE OFFICIAL SECRETS ACT

For the first time in American history since the Alien and Sedition Act it is proposed to enact an Official Secrets Act. This would reverse democratic decision making under the Constitution by substituting government secrecy for the freedoms guaranteed by the First Amendment.

S. 1 provides penalties, including the death penalty, to prohibit public access to broadly defined "national defense information." Criminal sanctions are provided for the first time to enforce the administrative classification of documents. I understand that Section 1124, dealing with disclosing classified information, has been rewritten in response to sharp criticism, but the terms of the revision have not yet been made public. As presently written, S. 1 expands criminal sanctions to enforce the Administration's classification of documents. Section 1121 provides life imprisonment up to the death penalty for communicating "national defense information" with the knowledge that it "may be used to the prejudice of the safety or interest of the United States, or to the advantage of a foreign power." This raises but does not clarify the question of whether it applies to exposure of governmental corruption by a news reporter.

Section 1123 provides seven years/$100,000 fine for a person who receives such information and "fails to deliver it promptly" to a federal agent. This section would have reached to the New York Times, The Washington Post, and the Unitarian Universalist Beacon Press, upon their publication of the Pentagon Papers.

Section 1124 would extend suppression of information to the ultimate, providing three to seven years/$100,000 fine for passing vaguely defined "classified information" to a "person who is not authorized to receive it."

The bill, as presently drafted, provides additional, alternative means of curbing freedom of the press, including such vague provisions as making it illegal to obstruct a government function by fraud, and making it possible to define the information contained in government papers as "property" thereby making a newsman possessing a classified document vulnerable to prosecution for "theft."

S. 1 contains a broadened definition of "espionage" which converts that crime, normally thought of as involving spies and agents for a foreign power, into a means of censorship of press publication of classified information. It accordingly will have a chilling effect on, and will limit, the freedom of the press. Newsmen could be prosecuted under this section on the same grounds as were the Rosenbergs in the 1950's. In a lead editorial on Tuesday, May 6, 1975, the *New York Times* summarizing the Official Secrets Act provisions of S. 1, declared:

"The need for secrecy and the claims made for 'national security' are usually vastly overstated. The United States has no need for a law that would help officials conceal their mistakes far more often than it would hide anything of importance from a foreign enemy."

The Los Angeles *Times* in an editorial on Sunday, May 18, 1975, entitled "An Assault on the People," concluded that the Official Secrets provisions "if enacted, would have the effect of perverting self-government into its opposite. Americans would be free to speak only at their peril on vital matters of defense and foreign policy. The press would be free to publish only at the peril of possible prosecution under laws that would lend themselves to almost any interpretation the government wished to place on them."

On Sunday, June 15, 1975, the Chicago *Tribune* observed that, "by trying to seal every crack in the Pentagon walls, the McClellan subcommittee has actually constructed a concrete straight jacket that can be clapped on any journalist at the slightest whim of bureaucrats."

SABOTAGE

S. 1 provides the death penalty or life imprisonment in some cases, and a 20/30 year imprisonment/$100,000 fine in others, for activity that "damages, tampers with . . ." almost any property, facility, or service that is or might be used in the national defense, with intent "to interfere with or obstruct the ability of the United States or an associate nation (e.g., South Korea, Saudi Arabia, or Spain) to prepare for or engage in war or defense activities." Available information discloses that Sections 1111(a)(1) and 1111 (a)(2) relating to sabotage have been amended so as to add the language "used in or particularly suited for national defense." This change would limit the application of sabotage only to that property which is used for national defense. However, "national defense" is itself such a vague and all-inclusive term that the chilling effect of the sabotage provisions is hardly diminished by this change. Under its terms, participants in every public demonstration objecting to governmental property, facilities or services, regardless of how peaceful and orderly the demonstration is, could become the subject of potential criminal prosecutions.

Furthermore, the sabotage provisions of S. 1 would make certain striking workers, and even simply negligent workers potentially liable for punishment up to and including the death penalty, provided only that a United States Attorney can persuade a jury that the worker possessed the requisite evil intent. Under the legislation any interference with production of national defense *materiel*, any faulty manufacture or delivery, or delay in delivery, may provide the factual foundation upon which a conviction for "sabotage" can be based. (Sec. 1111 of S. 1) This provision appears to constitute a direct threat to organized labor and to all workers.

The provision gives the Government a most potent weapon to coerce unions and workers and to prevent them from voicing their views or taking any action in opposition to government policies.

DEMONSTRATIONS

If S. 1 is enacted into law in its present form, virtually every kind of civil rights, peace and other protest action would be threatened with severe penalties under a series of vaguely defined infringements on the constitutional right of assembly, including the right to demonstrate adjacent to the "temporary residence" where the President may be staying. (Secs. 1112, 1114, 1115, 1116, 1117, 1302, 1311, 1328, and 1334.)

"LEADING" A RIOT

S. 1 redrafts the 1968 Antiriot law which was used as the basis for the Chicago Seven trial growing out of the "police riot" at the Democratic National Convention in Chicago. It provides a three-year/$100,000 fine for "movement of a person across a state" line in the course of consummation of a "riot." The present language of S. 1 defines a "riot" as involving five or more people. I understand that the committee has amended this provision so that it now could involve as few as "10" participants who create "a grave danger of imminently causing" damage to property. The antiriot provisions of S.1 would therefore extend federal jurisdiction down to the level of bar-room fights. (Section 1831.)

WIRETAPPING

S. 1 reaffirms the 1968 Omnibus Crime Control and Safe Streets Act, despite the stunning defeat of the Nixon Administration wiretapping policy in *United States* v. *United States District Court*, 407 U.S. 297 (1972), in which the Supreme Court unanimously held that the customary Fourth Amendment requirement of judicial approval applies before there can be a wiretap of a person or organization claimed by the President or the Attorney General to be a domestic subversive. As drafted, S. 1, despite this defeat, continues ambiguous Presidential authority to wiretap domestic activities where a "danger to the structure" of the government can be alleged. S. 1 and H.R. 3907 further make changes in existing statutes so as to expand existing wiretapping authority. They continue the current 48-hour "emergency" wiretaps permitted without court approval. They direct telephone companies, landlords, workers, and others to cooperate "forthwith" and "unobtrusively" with government wiretappers, and provide compensation for such forced cooperation, providing that such order may be included in the order for a wiretap, and thus made punishable by contempt proceedings if the person refuses to "cooperate." (Ch. 31A.)

"SEDITION"

The proposed legislation redrafts the 1940 Smith Act used in the McCarthy era witch hunt trials until made inoperative by the decision of the Supreme Court in 1957 in *Yates* v. *United States*, 354 U.S. 298 (1957). It further provides a 15-year/$100,000 fine for allegedly inciting "other persons to engage in imminent lawless conduct that would facilitate" the destruction of the federal or any state government, and a penalty of seven years/$100,000 fine for a member of an organization who "knows" his group has such a purpose. (Section 1103). There would be an even greater jeopardy to First Amendment protected free speech if this "sedition" provision is combined with the penalties for "conspiracy" of Sec. 1002.

WATERGATE CRIMES

S. 1 would inhibit the prosecution of wrongdoing by "public servants" if their illegal conduct is the result of a "mistaken belief" that it was "required or authorized" or based on a written interpretation issued by the head of a government agency. This section would have granted legislative immunity to Messrs. Mitchell, Haldeman, Ehrlichman, and Mardian in the Watergate criminal proceeding, and virtually made Watergate legal. If enacted, it will establish in American statutory law the Nuremberg-Eichmann defense for those cooperating in cover-ups of future Watergates. Justice Tom C. Clark, Retired Justice of the United States Supreme Court, writing about parallel provisions in the predecessor bill (S. 1400 of the 93rd Congress) has stated in a law-review article: "The breadth of these provisions is alarming, exceeding any I have ever observed in a federal statute. Known as the 'Nuremberg sections,' . . . I believe that such sections should be condemned as they would only encourage or facilitate irresponsible, if not unlawful, conduct on the part of some public officials." Prologue to Symposium on S. 1400, 68 Northwestern University Law Review 817, 823–824 (1973). (Secs. 542, 544, 552, pp. 57–59).

ALLEGED OBSTRUCTION OF MILITARY RECRUITMENT OR OF INDUCTION: INCITEMENT TO INSUBORDINATION

S. 1 and H.R. 3907 provide legal machinery clearly intended to curb future peace movements and their impact upon potential draftees and members of the military. It is aimed directly at movements which were

effective in bringing the Vietnam War to an end. Broad, sweeping language is used to provide a legislative framework for punishment of persons in and out of the military services who utilize First Amendment rights of speech, press, and other media to advise current or potential members of the armed services regarding the action the Government is taking with its military powers. This legal machinery would infringe upon the American tradition of having an informed body public.

If enacted, the provisions would override the decision of *United States* v. *Baranski*, 484 F. 2d 556 (7th Cir. 1973) in which a similar statutory provision was declared unconstitutionally broad and violative of First Amendment rights. The *Baranski* court found that by forbidding "the use of any means whatsoever" to hinder or interfere with the draft, this prior statutory provision infringed upon speech, writing, and conduct that were expressly protected by the First Amendment." It is understood that less restrictive language has been added. There is still abundant room in the new provision for subjective interference with First Amendment rights.

If the "Impairing Military Effectiveness" provisions of S. 1 and H.R. 3907 become law, it will be possible for the Department of Justice to bring an action against a civilian for violation of these sections, claiming that any participation in a future peace movement by a member of the Armed Services had been incited by a civilian, and "could" impair military effectiveness. The provisions are sufficiently sweeping to impose upon civilians the military discipline and restrictive philosophy which sharply curtails First Amendment rights for those in the Armed Forces. Thus the proposed legislation in this regard would drastically impede any future peace movement. It would make punishable by long prison sentences and fines any liaison by drafting counsellors or representatives of the peace movement with anti-war groups in the military. Such groups had a significant impact in bringing to an end American involvement in Indochina.

(See secs. 1112–1117).

IMMUNITY

The legislation reaffirms the 1970 "use" immunity law, allowing indeterminate sentences to supersede the Fifth Amendment privilege against self-incrimination. (Sec. 3111.)

ENTRAPMENT

The bill permits the conviction of defendants for committing crimes which they were induced to commit by improper pressures, inducement, and suggestion of police agents. The burden is placed on the defendant to prove unlawful entrapment" and that he was "not predisposed" to commit the crime (Sec. 551). If the defendant may be found to be "predisposed" to commit the offense charged, the defense of entrapment is not available to him, regardless of the blatant efforts by one or more government agents provocateurs to entrap him. The Government is permitted, in establishing predisposition and thereby in rebutting the defense of illegal entrapment, to rely on evidence of such claimed predisposition. The way is accordingly open to it to rely on evidence which would ordinarily be inadmissible hearsay or otherwise inadmissible.

The question of the damage which such police misconduct does to the very essence of justice itself, was raised sharply by the Justice Felix Frankfurter, concurring in *Sherman* v. *United States*, 356 U.S. 369 (1958). Justice Frankfurter there warned:

"The power of government is abused and directed to an end for which it was not constituted when employed to promote rather than detect crime and to bring about the downfall of those who, left to themselves, might well have observed the law. Human nature is weak enough and sufficiently beset by temptations without government adding to them and generating crime."

This warning by a distinguished Justice has particular relevance today, when the entire country has become familiar with episodes of misconduct by government agencies, including the "plumbers," the FBI, the CIA, the IRS, and Army Intelligence. It is now documented that agents provocateurs have repeatedly provoked extreme actions for the secret purpose of provoking a police confrontation, discrediting an unpopular organization, inducing someone to purchase marijuana, or otherwise inducing crime where it would not otherwise have occurred. Government misconduct in this regard becomes the more reprehensible where the infiltrated organization is exercising rights guaranteed under the First Amendment. Infiltration of an organization under such circumstances raises sharply the basic question whether First Amendment rights are being put in jeopardy by a carefully orchestrated plan, devised a high governmental levels, to weaken or defeat a civil rights organization, religious or peace group, or any other group opposing some aspect of governmental policy. The paramount issue here is whether respect for justice itself can be reconciled with the government's conduct as successful lawbreaker. Clearly it cannot. As Mr. Justice Brandeis once remarked in his famous dissent in the wiretap case of *Olmstead* v. *Olmstead*, 277 U.S. 438 (1928): "If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."

MARIJUANA

S. 1 provides a penalty of 10 days in jail/$10,000 fine for the possession of the slightest amount of marijuana for personal use; the penalty is 6 months imprisonment/$10,000 fine for a second offense. The penalties are drastically increased for successive convictions on the above (Secs. 1812, 1813 of S. 1). These provisions go directly against the realistic recommendations of virtually all state and federal commissions which have investigated the marijuana situation and suggested an easing of the penalties.

POLICE FORCE

The present language of S. 1 (Subsection 541 (b) (1) (B)) provides a defense for public servants who used deadly force if they satisfied other preconditions and the person being arrested was attempting to "escape with a deadly weapon." I understand that the language has been limited by the committee, by adding the word "dangerous" to make defensible the "escape with a dangerous weapon."

There clearly are still highly questionable permissive provisions in this section. An officer is allowed to prevent the escape of a person arrested for an allegedly violent crime, without regard to the danger to the lives of others. The statute permits the use of deadly force where the claim is raised that such force was "reasonably required" under the circumstances to prevent the felon's escape. The escape hatch of "reasonable belief" that the killing was necessary sanctions excessive use of guns by police officers. Moreover, the present language permits force (although not deadly force) to be used where the defendant claims that he was making an arrest as a private person. This could give widespread official sanction to citizens arrests by irresponsible private vigilante groups or persons acting on their own.

DEATH PENALTY

S. 1 and H.R. 3907 attempt to circumvent the 1972 Supreme Court decision limiting the death penalty in *Furman* v. *Georgia*, 408 U.S. 238 (1972). *Furman* held that capital punishment was "cruel and unusual" because it as "so wantonly and so freakishly imposed." (Stewart, J., concurring). In addition, legislation would provide *mandatory* executions for certain crimes under certain conditions. The death penalty, under the present language of the bill, would be permissible for a Jack Anderson, Seymour Hersh, Carl Bernstein, or Bob Woodward if they printed classified information in wartime or a time of national emergency. The latter provision is probably the most frightening section of all in this repressive legislation and shows how grimly serious a threat to the Bill of Rights these bills are. The proposal to reestablish capital punishment ignores the fundamental flaws which were emphasized by the majority justices in the *Furman* case. Justices Marshall and Douglas, in particular, there emphasized that the death penalty had fallen particularly on blacks, the poor, and the ignorant.

CRIMINAL ATTEMPT

S. 1 uses a broad definition of "criminal attempt" and punishes such crime with the same sentence as the completed crime. It makes a person guilty of an attempt to commit a crime if his conduct "indicates his intent to complete commission of the crime." In addition, he is to be found guilty, even though "it was factually or legally impossible for the actor to commit the crime, if the crime could have been committed had the circumstnces been as the actor believed them to be." The latter provision is extremely close to the archaic medieval British law which made it a crime to wish for the death of the king. (Sec. 1001).

CONFESSIONS

The bill allows acceptance of so-called "voluntary" confessions, even if they were obtained by the police in the absence of counsel, and without the *Miranda* warning which the Supreme Court has declared to be a constitutional right necessary to protect the innocent. It also allows the admission of eyewitness testimony regardless of prior police irregularities in suggesting identifications. This would make failure to give the *Miranda* warnings only a circumstance to be considered by the court in deciding whether the defendant had made the confession or admission "voluntarily" so that it was admissible.

INSANITY

The legislation would admit insanity as a defense *only* if the mental defect caused a lack of "the state of mind required as an element of the offense charged." It thus returns the law as to insanity to its century-old primitive state.

The defense of insanity would be permitted if a person killed another thinking, under an insane delusion, that he was doing something else, whereas if his delusion led him to kill someone thinking he had been ordered to do so by some imagined power it would not be an admissible defense.

Justice Tom C. Clark has written that this "would roll back the insanity defense to the dark ages." (68 Northwestern University Law Review at 824).

Professor Louis B. Schwartz of the University of Pennsylvania Law School who had been Staff Director of the National Commission for Reform of Criminal Laws has sharply criticized this abrogation of the insanity defense as using "the gravest sanctions of the system of deterrence we call the criminal law against people who are obviously undeterrable" and that, with monumental lack of discrimination, the sane and insane are treated alike for purposes of criminal conviction. "The chief impact of such a change would be those cases where the defendant knew perfectly well what he was doing and intended to do it, but was governed by some kind of insane compulsion: to do the 'will of God' or the devil; to right illusory wrongs, to defend against hallucinated attacks." (Louis B. Schwartz, *The Proposed Federal Criminal Code*, 13 Criminal Law Reporter at 3269, July 4, 1973).

The effect of the insanity provisions would be to steer unequivocally sick people to jail or to a prison environment rather than to

mental hospitals and to a health environment. At the present time, courts define insanity as a mental disease which made it impossible for the defendant to appreciate the wrongfulness of his criminal act or to resist the impulse to commit it. S. 1 would make mental disease a defense only if it had the effect of making the defendant either unaware of what he is doing or unable to understand its consequences. It is clearly a regressive concept (See Sec. 529).

OBSCENITY

S. 1, H.R. 3907 freeze into statutory law recent restrictive decisions of the Supreme Court. They preclude the defense that the questioned material might be lawfully distributed under relevant state laws.

I understand that the bill now includes a revised definition of "obscene material," which applies to material "which, taken as a whole, appeals predominantly to the purient interest," Despite this reported amendment, the legal mischief which can be achieved by this regressive legislation is very great. The statutory sanction given to *Miller v. California*, 413 U.S. 15 (1973). and *Miller's* companion cases still presents a clear and present danger to our Bill of Rights. This danger arises in connection with what can be done by local Puritanical censor groups, or by unethical United States Attorneys with the loose provisions for local censorship using local "contemporary community standards." There is a direct threat to the bookseller, movie house operator, magazine vendor, or other distributor or disseminator of material which may be charged to be obscene under the particularly vague language used in Chapter 18 of S. 1. As now drafted, there is not even a defense provided of a good faith belief that the material in issue was not obscene.

The penalties are severe—three years imprisonment and a fine of up to $100,000 for an individual; a fine up to $500,000 for a corporation or organization. Film makers, publishers, and others will face heavy fines and imprisonment if they consider making such films having a serious purpose, such as "Carnal Knowledge". "The Last Picture Show", or a book equivalent to James Joyce's *Ulysses*. All of which have experienced attempts of censorship.

The cost of national distribution of such a film or book becomes an important factor of self-censorship, if it may be banned in certain communities, or the distributor fined heavily if it is presented in a community having a local censorship board, this will discourage its broad distribution. The film "Carnal Knowledge" was banned in Georgia after the *Miller* opinion, although it had previously played three or four times around the State. This occurred even though it is an acknowledged major work of a leading American film-maker, Mike Nichols, and deals with serious issues in a serious manner.

S. 1 and H.R. 3907 would make the dissemination of a film or literary work illegal, if a local censor board can hold that taken as a whole it appeals "predominantly" to the prurient interest. Public distaste for pornography is being skillfully used to sanction the introduction of a host of local boards of censors. (See Sec. 1842).

EXTENDED FEDERAL JURISDICTION

The legislation provides that federal policing authority is to be extended into new areas by extending what has been called "piggy-back jurisdiction" over crimes which heretofore had been regarded as State offenses.

"Piggy-back jurisdiction" means that wherever federal jurisdiction extends to any crime committed by a person, any other crime committed by that person during the same sequence of activity also becomes as a federal crime. The law-and-order approach of S. 1 and H.R. 3907, reflecting the position of both President Richard M. Nixon and now of President Gerald R. Ford, is thus to be widely extended to state offenses, and to serve as the model for equally repressive state legislation. (Secs. 201–205).

SENTENCING

In addition to reinstating the death penalty, and contrary to the recommendations of the National Commission on Reform of Criminal Laws, the legislation imposes harsh, retributive prison sentences and fines for many crimes. Fines for all felonies are increased to $100,000; criminal terms are increased to seven, fifteen, and thirty years, depending on the felony involved. The proposal establishes mandatory, minimum sentences with no chance of probation for certain offenses. This eliminates judicial discretion to consider the defendant's record.

Profesor Louis B. Schwartz, formerly Staff Director of the National Commission on Reform of Criminal Laws, has sharply criticized the sentencing procedures of S. 1 and H.R. 3907 and their predecessor bill, S. 1400. He wrote:

"The core of any penal code is its sentencing system. One should ask about any system: What is the general level of punishment contemplated? Is it adequate to deter? Is it gratuitously harsh? Are offenses rationally classified into grades of seriousness? Is the sentencing discretion properly distributed as between judges and parole authorities? Is the discretion properly guided by legislatively declared standards and judicial review?"

Professor Schwartz' conclusion was that the bill "fails these tests" and that, "It is gratuitously harsh." (See his article in 13 Criminal Law Reporter at 3265).

APPELLATE REVIEW OF SENTENCING

The proposed legislation would introduce appellate review of sentencing into federal criminal law. However, there is a chilling effect on the freedom of the defendant to utilize the right of appellate review of sentencing. Such review is made available to the prosecution as well as the defandant. (See sections 3725–3726). The intimidatory effect of such right of the prosecution to seek a longer sentence is obvious.

The National Commission had taken the position that the government ought not to be given the power to increase sentences. The prestigious Association of the Bar of the City of New York, testifying in opposition to government appeal of sentences, stated that the grant of these powers "would inevitably operate to prevent defendants from taking sentence appeals in many arguably meritorious cases because of their fear of receiving an increased sentence instead."

PROBATION

If enacted, this legislation would establish what is virtually a presumption against the grant of probation. It mandates that a trial court must consider guidelines for sentencing which place heavy emphasis upon the need to reflect the seriousness of the offense, to promote respect for law, to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant.

These mandatory guidelines are very plainly restrictive interferences upon the discretion of the trial judges, calling for denial of probation in the usual case, except for a first offender. Squarely to the contrary, the National Commission recommended both probation and parole "unless imprisonment is the more appropriate sentence for the protection of the public."

The former Director of the National Commission, Professor Louis B. Schwartz, has noted in 13 Criminal Law Reporter at 3266:

"The effect of this was not to prevent the judge from imposing prison sentences, but to require him to think about the alternative of probation, and to prefer freedom unless there was some reason why imprisonment better fits the needs of the situation, including protection of the public. As the Brown Commission said, the purpose was to prevent automatic, unthinking use of imprisonment."

Furthermore, S. 1 totally excludes probation for certain designated crimes. Giving all due emphasis to the need to curb crime, this nevertheless constitutes a totally unwarranted interference with the exercise of expertise and judicial discretion by experienced federal district judges. It flatly ignores the vast range of differences among defendants in degree of complicity, age, readiness to cooperate with the authorities, and other factors relevant to probation.

As a practical matter, moreover, even if the mandatory sentence is provided, and even more mandatory sentences are called for under President Ford's Message on Crime of June 19, 1975, this merely shifts the area of discretion from that of the courts to secret political decisions in the White House and the Department of Justice under the President's constitutional power to pardon and commute sentences. See Secs. 2101–2106; 3810–3813, administration of probation program).

PAROLE

The burden of proof is placed on the prisoner to demonstrate why what amounts to an exceptional privilege of release on parole should be granted to him. Inevitably, many prisoners will be denied parole under these unduly severe provisions sharply restricting grant of parole. The difficulty here is that this converts incarceration into simple storage of human beings for the term of imprisonment, leading inevitably to further training in crime from the experts who are the prisoner's fellow prisoners, recidivism upon release, and a revolving door between release and further crime and arrest.

This seemingly though, but in reality regressive and doomed-to-failure, approach contrasts sharply with that recommended by New Jersey Chief Justice, Richard J. Hughes, when he served as Chairman of the Commission on Correctional Services and Facilities of the American Bar Association.

FOREIGN POLICY: AMERICA AT THE CROSSROADS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Delaware (Mr. DU PONT) is recognized for 15 minutes.

Mr. DU PONT. Mr. Speaker, about half a century ago, when one of our Secretaries of Commerce said, "the history of the United States has itself been the history of frontiers," he was talking about our foreign policy. He was saying that we needed to keep the doors to trade open in the Far East and anywhere else that new markets existed.

It was not thought odd then, nor would it be thought odd today, for an American to talk about frontiers. This frame of reference springs naturally from our heritage. We have always been a pioneering nation, our forebearers moving steadily west from our eastern shores to the Pacific and then beyond, always looking for new opportunity, a chance to grow, and a place to tell the world about the success of our way of life.

Of course, the frontier theme is no longer accurate in the geographic sense. Domestically, we ran out of new territory 100 years ago, about the same time we began to flex our muscles internation-

ally. And now, those horizons of the second century have run out as well. We suddenly find ourselves having come full circle, back to our own shores.

That is what I want to talk about today. There are, I think, some new frontiers in foreign relations, but they are not so easily found on maps as they are in men.

Perhaps the best place to start looking is with an examination of what has changed in the world, particularly in the new, developing countries. For peoples who once quietly endured the frontiersmen from the industrial nations, are now banding together in international commodity agreements and fighting back.

Cartels, of course, are not new. They have been with us at least since 1301 when the kings of Naples and France agreed to control the price of their salt, then a vitally important commodity because of its preservative qualities. That agreement, like similar ones that followed, was not to last long. Even today, in the hands of oil-producing nations, the cartel is a primitive weapon, an arrangement too unwieldy to wear well.

The importance of today's cartels, however, is not what history tells us about how long they survive, but what a comparative analysis tells us is different—namely, that never before have so many cartels been formed at one time by so many countries. Or, to draw a larger conclusion, never before have so many so-called weaker nations been willing to wage economic warfare.

Consider what this means to the United States. In Latin America, for example, we established inter-American relations long before we ever thought about making ourselves a world power. From the very beginning of our Republic, the countries of the Caribbean and South and Central America have been important to us economically and for national security. And to our good fortune, they have never seriously threatened to change in this regard.

At least, not until recently. Today Latin American countries are expressing in clear terms that they are not satisfied with their relations with the United States. It was a South American country that founded OPEC, and at least one Latin American nation belongs to each of the international cartels that has been formed. And, while we can get by without coffee and bananas, what about copper, phosphate, tin, and bauxite?

Because our Latin American neighbors have not often chosen to hold these resources back, we easily overlook how much their friendship means. Take Venezuela's goodwill, for instance. When many of the OPEC nations embargoed oil shipments to the United States in 1973, the Venezuelans supplied us with one-fifth of our total foreign imports of petroleum.

But, we should not be misled by the restraint of these nations to date and think they will continue to give, getting nothing in return. The less developed countries want better treatment. And they are becoming impatient.

The options for the developed nations are clear. Either they help form a new international economic order so everyone can share in a prosperity or face at some point worldwide economic warfare or worse.

This, then, is the new frontier—a frontier that demands fresh approaches to foreign policy if we are to master the new challenges it presents. And, like any reevaluation that focuses on a topic so central to us, it is imperative at the Government level that the Congress, as well as the Executive, enter into it.

The House International Relations Committee can no longer act as it did when Sol Bloom, its chairman in the 1940's, would agree with any Executive foreign policy decision so long as the President telephoned him 15 minutes before the plan was announced.

The Congress has a role to play; and in order to see that it does, I have pressed for more than a year to have hearings on a global strategy for dealing with the proliferation of material cartels and other new economic developments. To my great gratification, the chairman of the Subcommittee on International Resources, Food and Energy recently informed me that such hearings would be held.

This is a beginning, but what of the end? The real measure of success comes when the work is done and we have accomplished something. This is the hardest task, for we are confronted with difficult questions. How far, for instance, are we willing to see consumer prices rise for the sake of insuring that everyone on the planet has enough to eat?

At this time, it is too early to say what solutions we will offer for this or any of the other complex issues facing us. But, it is not too soon to lay the groundwork to insure that we come up with good answers. Indeed, now when the frontiers are changing, it is time to rethink our approach to foreign policy. And, the best way to do that is to recognize that some of the old frontier solutions do not work.

Here is way. Two basic assumptions underlying our foreign policy—that foreign commerce is vital to our economic well-being and that our foreign relations should contribute to a better world—have been advanced in such a way that they cancel each other out. In this traditional approach trade has been used to force our views on other nations with the tragic result that we often deny and subvert the very "American ideas and ideals" we seek to encourage abroad.

Here are some examples:

In the last Congress, we insisted that a trade agreement with the Soviet Union must include certain promises on Jewish emigration. The result? We were hurt economically because the Russians refused to trade with us on those terms. As for our idealism: Jewish emigration has lessened dramatically.

We have boycotted Rhodesian chrome because of the abhorrent racial policies there. But the policies have not changed as a result, and we are buying this scarce resource from the Soviet Union—a nation with even more abhorrent national policies—at a much higher price.

In Chile, our CIA helped to subvert a democratically elected government because we did not agree with the will of its people. Today, Chileans no longer have a democracy.

Because of the idealism of the past, we are the only major power that does not formally recognize the People's Republic of China. Yet this nation, with almost one-fourth of the world's population, continues to ascend the power ladder.

As these examples show, we have neither inspired the world, nor helped ourselves. It is as if H. L. Mencken had our foreign policy in mind when he said:

> An idealist is one who, on noticing that a rose smells better than a cabbage, concludes that it will also make better soup.

If we are to produce a better foreign policy, we must deal with the world the way it is. We can do this without foresaking our ideals, but we cannot do it by using trade as a weapon or a wrecker's ball with which we try to destroy what we do not like.

On the contrary, commerce is the raw material with which a better world is built. We must earnestly use it to construct bridges between us and other nations to satisfy their economic needs as well as our own. In the process, we will also create a market for our ideals.

I do not mean to imply that idealism is just a byproduct of our foreign economic policy and therefore only secondarily important. Idealism should be of primary importance; it should make us generous contributors to the new international economic order, for instance. But, it should not lead us to try remaking other nations in our own image. For in doing this, we are bound only to estrange ourselves and our ideals from those we might otherwise help and influence.

Developing ties—this is the way to bring the world closer together. And, if we do it by being honest and evenhanded, with a careful respect for the integrity of other nations, we are likely to achieve our goals.

The frontier we confront then, is not some wilderness that we must harness, but our passions that we must tame. It is from this time we will contribute effectively to peace and international prosperity.

PARADE MAGAZINE EXPLAINS THE MONETARY SITUATION

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

Mr. PATMAN. Mr. Speaker, for too long, the people of the United States have had little opportunity to find out any information about one of the most powerful groups in our economy—the Federal Open Market Committee of the Federal Reserve System.

I am happy to see Parade magazine—in its October 26, 1975 edition—take steps to correct this situation. In an article entitled "Where Your Money Comes From," authors Alexander Cockburn and James Ridgeway bring much light in a mass circulation publication to the subject of the Federal Open Market Committee.