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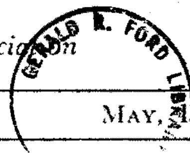

THE KENNEDY ASSASSINATION AND THE FREEDOM OF INFORMATION ACT—THE ADMINISTRATIVE AND JUDICIAL EXPERIENCE

WILLIAM E. CASSELMAN II*

For those of us who are old enough to wear the scars of the turbulent 60's, it hardly seems possible that ten years have passed since the assassination of President John F. Kennedy. And, as vivid as our recollections are of "where we were when we heard," so also are the doubts in the minds of some Americans concerning the unilateral guilt of Lee Harvey Oswald, the ultimate conclusion of the President's Commission on the Assassination of President Kennedy (Warren Commission). Today there are still persons whose primary vocation or avocation is seeking to disprove the findings of the Commission. In examining the effects on their efforts resulting from the passage and implementation of the Freedom of Information Act[1], it is not my purpose to support their position in this ongoing controversy. Any implications in this regard are wholly unintended.

I. *An Introduction to the Freedom of Information Act*

The Freedom of Information Act, enacted on Independence Day, 1966, to become effective on the following Fourth of July, was truly a revolutionary addition to Federal Administrative law. It is the law that states that any person, no matter who or what his interest in the subject matter, is to have access to any identifiable Federal record upon his request, subject only to the limitation that certain categories of records spelled out in the statute may be withheld by the controlling agency.

Prior to its enactment, access to Federal records was governed by Section 3, the "public disclosure" section, of the Administrative Procedure Act.[2] That provision was long recognized and condemned as a wherewithal to the non-disclosure of any and all Federal records whose custodian found this course of inaction either proper or convenient. For instance, it required the secreting of any records whose disclosure was not "in the public interest," and even if this vague criterion had been met, the records could be released only to those "persons properly and directly concerned with the information." When put into practice, "public disclosure" was a misnomer for Section 3 of the Administrative Procedure Act, because non-disclosure was its byword.

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The author is solely responsible for the views expressed herein, which do not necessarily reflect those of the General Services Administration. The author wishes to express his appreciation to Steven Garfinkel, Attorney-Adviser, Administration and Records Division, Office of the General Counsel, GSA, for invaluable assistance in the preparation of this article.

1. Pub. L. No. 89-487, 80 Stat. 250, 5 U.S.C. 552 (1970).
2. Then codified as section 1002 of title 5, United States Code.

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FINANCIAL ACCOUNTING STANDARDS BOARD

BY D. W. BRENNER & J. SILVERSTEIN*

May 17, 1974

The Financial Accounting Standards Board (FASB) has successfully taken over the reins from the Accounting Principles Board (APB) and responsibility for the control and development of accounting principles and accounting standards. Many interested parties were instrumental in the FASB's birth, most notably the American Institute of Certified Public Accounts (AICPA).

In order to appreciate the extent of the labor pains during its birth and the trials and tribulations of its early childhood, it is appropriate to flash back for a moment and look at the FASB's ancestry.

Background

John Carey's book, "The Role of the Accounting Profession", describes in some detail the many early milestones in the development of accounting principles in this country—now referred to as financial accounting standards. The historic Federal Reserve Bulletin of 1917 initially called "Uniform Accounting" was probably the first significant formal attempt to codify accepted accounting principles even though that document contains more in the way of definition of auditing standards than accounting principles. (A new edition of this Bulletin was published in 1929 and was more appropriately entitled "Verification of Financial Statements".) During this period, concern over accounting principles received varying degrees of attention until the 1929 crash provided the impetus to do something concrete. As the result of long consultations between the Committee on Accounting Principles of the AICPA and the New York Stock Exchange, the Institute published a pamphlet entitled "Audits of Corporate Accounts" in early 1934. It marked a step forward in the development of accounting principles. During this same period the Federal Securities Act of 1933 and the Securities Exchange Act of 1934 became law and created, among other things, the Securities and Exchange Commission.

It was during the late 1930's that the Institute Committee on Accounting Procedure began to issue Accounting Research Bulletins and the SEC began, and is still continuing, to issue its Accounting Series Releases. These periodic publications became the source of authoritative literature on accounting principles. The Committee on Accounting Procedure issued 51 ARB'S before its demise in 1959. To date the SEC has issued 151 ASR's and, we might add, is still going strong.

As the years passed, it became apparent that the Committee on Accounting Procedure, and its ARB's, were inadequate. The accelerated business pace after World War II left the largely volunteer committee outmanned. In 1957

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of accounting principles and standards. More specifically, it had this to say about the FASB.

"The body presently designated by the Council of the American Institute of Certified Public Accountants to establish accounting principles is the Financial Accounting Standards Board. This designation by the AICPA follows the issuance of a report in March 1972 recommending the formation of the FASB after a study of the matter by a broadly based study group. The recommendations contained in that report were widely endorsed by industry financial analysts, accounting educators and practicing accountants. The Commission endorsed the establishment of the FASB in the belief that the Board would provide an institutional framework which will permit prompt and responsible actions flowing from research and consideration of varying viewpoints. The collective experience and expertise of the members of the FASB and the individuals and professional organizations supporting it are substantial. Equally important, the commitment of resources to the FASB is impressive evidence of the willingness and intention of the private sector to support the FASB in accomplishing its tasks. In view of these considerations, the Commission intends to continue its policy for looking to the private sector for leadership in establishing and approving accounting principles and standards through the FASB with the expectation that the body's conclusions will promote the interests of investors." Further on in that release, the Commission said: "Principles, standards and practices promulgated by the FASB in its statements and interpretations will be considered by the Commission as having substantial authoritative support and those contrary to such an FASB promulgation will be considered to have no such support."

To further reflect the SEC's support and confidence in the FASB, colored with the spectre of the unattractive, though inevitable, alternative, SEC Commissioner Sommer made the following remarks in a recent speech: ". . . I am confident that out of the experiences of the past the private sector will be able to prove that it has found the means to develop a financial reporting system that reliably reflects economic activity without undue distortions and ambiguities. It seems likely that this tremendous effort we are all about is the last opportunity to keep this job out of the hands of government and, therefore, I think it is important that everyone involved do, in the vernacular, their damndest to make the effort work. This means industry, the profession, the Commission . . . for I repeat, another failure will produce irresistible insistencies that the chore be removed to other hands."

After outlining the measures and attitudes, which might maximize the effect of the FASB, the Commissioner concluded by stating, "I confidently predict that this new collaboration between the Commission and the Board will be fruitful and productive and of immense benefit to the public. Already there is developing the easy informal relationship that makes for happy collaboration. It is our purpose at the Commission to foster in everyway possible this collaboration and we mean to keep the channels of

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The legislative reform of this provision was a long-term effort. For over a decade Subcommittees of the Senate and the House of Representatives held hearings, conducted studies and issued reports on the need for remedial legislation. Their labors culminated in the enactment of Public Law 89-487, the Freedom of Information Act, eleven years after the start of the campaign to amend the undemocratic aura of the old law.

Unlike its predecessor, the Freedom of Information Act is truly designed as an access law. As the House Committee on Government Operations has declared, "Withholding of information by government under the act is permissive, not mandatory, and must be justified on the basis of one of the specific nine exemptions permitted in the act."[3] In the language of the Act, "This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section."[4]

Predictably, the furor over the implementation of the Act by Federal agencies is centered on the legislative, administrative and judicial interpretations of the enumerated exemptions.[5] Of the nine categories of records that may be exempted, the first seven are applicable to the pertinent records of most Federal agencies and, therefore, have been the subject matter of the great bulk of Freedom of Information Act litigation. Of these, it is very important to note that only two, records "specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy"[6] and records "specifically exempted from disclosure by statute,"[7] are deemed to mandate the non-disclosure of the requested records. The withholding of records which technically fall within one of the other exemptions is not mandatory, but permissive, and as the General Services Administration regulations provide, should only be invoked for a "compelling" reason.[8]

3. H. R. Rep. No. 92-1419, 92d Cong., 2d Sess. 3 (1972).
4. 5 U.S.C. 552(c) (1970).
5. These exemptions read in their entirety:
(b) This section does not apply to matters that are—
(1) specifically required by Executive order to keep secret in the interest of the national defense or foreign policy;
(2) related solely to the internal personnel rules and practices of an agency;
(3) specifically exempted from disclosure by statute;
(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
(7) investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency;
(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
(9) geological and geophysical information and data, including maps, concerning wells.
6. 5 U.S.C. 552(b)(1) (1970).
7. 5 U.S.C. 552(b)(3) (1970).
8. 41 CFR §105-60.105-2.

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How are these exemptions interpreted by the courts? To say the least, an inordinate factor has proved to be the district or circuit court that is hearing the case, somewhat an anomaly in litigation which ostensibly involves the mere interpretation of a statute. Although there has been a distinct trend toward a narrower construction of the exemptions by the courts generally, setting the pace have been the district and circuit courts for the District of Columbia, with the appellate tribunal in the lead. Of course, to some extent this can be explained by the fact that this general trend is bound to be more apparent in the jurisdiction that handles more Freedom of Information litigation than any other Federal jurisdiction. Nevertheless, in those frequent examples when the decisions relating to a particular exemption conflict between jurisdictions, it is far more likely that, if one of those cases was decided in the District of Columbia, the plaintiff received a better break there. As a result, forum shopping in Freedom of Information Act cases has become a very important part of the litigant's strategy.

The trend toward a narrower construction of the statutory exemptions has necessarily greatly reduced the volume and type of record that may be withheld from public disclosure under the Act. For example, whereas the "trade secrets" exemption[9] was once thought to apply to any information concerning which there had been some agreement, no matter how informal, to maintain confidentiality, this exemption has more recently been construed as applying only to that information that would not be released by a private firm to the public for fear of losing its competitive advantage.[10] Moreover, the exemption has been limited to apply to only that information that originates outside the Government.[11]

The "inter-agency and intra-agency memorandums or letters" exemption[12] was once thought broad enough to include almost all written communications that were prepared by and for Federal officials in the course of their duties. A series of recent decisions has diminished the scope of this exemption to apply to only those communications that evidence the administrative policy-making decision process within an agency and not to an actual agency decision or the factual material used in arriving at that decision.[13]

The "personal privacy files" exemption,[14] like the "trade secrets" exemption, was once applied to all records about which there had been some pledge of confidentiality between a private party or employee and the Government. However, the Court of Appeals for the District of Columbia Circuit has ruled that a balancing test must be applied by a judge in determining accessibility to records withheld under this exemption. In order for there to be a "clearly unwarranted" invasion of personal privacy, the damage caused by the invasion of privacy must clearly outweigh the benefits that would accrue to the general public if the information were released.[15]

The "investigatory files" exemption,[16] perhaps more than any of the other exemptions, has been subject to conflicting interpretations in the various jurisdictions that have been asked to rule on it. Both the Second Circuit Court of Appeals and the District Court for the Northern District of California have ruled that matters of personal privacy and the viability of potential law enforcement require that investigatory records remain exempted from disclosure after the investigation and enforcement proceedings have terminated.[17] Meanwhile, the Federal courts in the District of Columbia, at least until *Weisberg* v. *Department of Justice*, discussed *infra*, were holding that investigatory files could be exempted only when prosecution was imminent,[18] and the Court of Appeals has gone so far as to say that records of administrative action taken to enforce the law were not contemplated by the Congress in the "investigatory files" exemption.[19]

Interpreting the exemptions does not have an exclusive grip on the problems related to the ambiguities in the Act. There are at least several other problem areas in the language of the Act that have caused some confusion and resultant litigation in the past and are likely to recur in the future. One is the definition of "agency" for the purposes of the Act, because only the records of an agency are subject to its provisions.[20] A second is the definition of "records" for the purposes of the Act. Unlike "agency," there is no definition of records in the language or legislative history of either the Administrative Procedure Act or the Freedom of Information Act. As noted below, this deficiency has been particularly pertinent to litigation involving the Warren Commission materials. Finally, what factors constitute a request to an agency for access to an "identifiable" record, identifiability being the only criterion established under the Act to determine to what lengths an agency must go to search and collect requested record material.[21]

9. 5 U.S.C. 552(b)(4) (1970).

10. *Bristol-Myers Co.* v. *FTC*, 284 F. Supp. 745 (D.D.C. 1968), *rev'd in part and remanded*, 424 F.2d 935 (D.C. Cir. 1970), *cert. denied*, 400 U.S. 824 (1970).

11. *Grumman Aircraft Engineering Corporation* v. *Renegotiation Board*, 425 F.2d 578 (D.C. Cir. 1970).

12. 5 U.S.C. 552(b)(5) (1970).

13. *M. A. Schapiro & Co.* v. *SEC*, 339 F. Supp. 467 (D.D.C. 1972); *Consumers Union* v. *Veterans Administration*, 301 F. Supp. 796 (S.D.N.Y. 1969), *appeal dismissed*, 436 F.2d 1363 (2d Cir. 1970).

14. 5 U.S.C. 552(b)(6) (1970).

15. *Getman* v. *NLRB*, 450 F.2d 670 (D.C. Cir. 1971).

16. 5 U.S.C. 552(b)(7) (1970).

17. *Frankel* v. *SEC*, 460 F.2d 813 (2d Cir. 1972); *Cowles Communications, Inc.* v. *Department of Justice*, 325 F. Supp. 726 (N.D.Cal. 1971).

18. *Bristol-Myers, supra*, note 10; *Schapiro, supra*, note 13.

19. *Wellford* v. *Hardin*, 444 F.2d 21 (4th Cir. 1971).

20. The definition of "agency" in the Administrative Procedure Act is codified at 5 U.S.C. 551(1):

(1) "agency means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia; or except as to the requirements of section 552 of this title—

(E) agencies composed of respresentatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; or sections 1622, 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix. . . .

21. "[E]ach agency, on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person."
5 U.S.C. 552(a)(3) (1970).

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At a time when the quest for the "the public's right to know" is at an all time high, access to information law is more "with it" than an- other area of administrative law. When its catalyst is the facts surrounding the assassination of a President, the resultant tandem is a highly charged but fascinating legal exercise.

II. *The Administrative Experience*

Most of the documentary and real evidence materials which the Warren Commission reviewed or created are now located in the National Archives of the United States. The National Archives and Records Service is one of several major branches of the General Services Administration, the large and complex executive agency that serves as the Federal Government's business manager. The National Archives is the Government-wide records' manager, as well as the preserver of those records of continuing historical value, i. e., archives. As the historian of the Federal Government, the policies of the National Archives traditionally take an access-oriented posture.

The National Archives gained possession of the Warren Commission materials by three routes. First, the records of the Commission, having great historical value, were accessioned into the Archives upon the termination of the Commission. Second, many of the items of evidence considered by the Commission came to the Archives pursuant to the authority of Public Law 89-318, "an Act providing for the acquisition and preservation [by the General Services Administration] of certain items of evidence pertaining to the assassination of President John F. Kennedy."[22] Finally, the clothing worn by President Kennedy at the time of assassination and the X-rays and photographs taken during the autopsy came to the Archives via a letter of agreement between GSA and the executors of the Kennedy estate, pursuant to the authority found in sections 2107 and 2108(c) of title 44, United States Code.[23]

22. Pub. L. No. 89-318, 79 Stat. 1185.

23. 44 U.S.C. 2107 provides:

When the Administrator of General Services considers it to be in the public interest he may accept for deposit—

(1) the papers and other historical materials of a President of the United States, or other official or former official of the Government, and other papers relating to and contemporary with a President or former President of the United States, subject to restrictions agreeable to the Administrator as to their use; and

(2) documents, including motion-picture films, still pictures, and sound recordings, from private sources that are appropriate for preservation by the Government as evidence of its organization, functions, policies, decisions, procedures, and transactions.

44 U.S.C. 2108(c) provides:

When the Administrator considers it to be in the public interest, he may exercise, with respect to papers, documents, or other historical materials deposited under this section, or otherwise, in a Presidential archival depository, all the functions and responsibilities otherwise vested in him pertaining to Federal records. . . . Papers, documents, or other historical materials . . . are subject to restrictions as to their availability and use as stated in writing by the donors or depositors. . . .

The Kennedy letter agreement contains the following restrictions:

I

(1) None of the materials identified in Appendix A [the President's clothing and personal effects] shall be placed on public display.

(2) Access to the Appendix A materials shall be permitted only to:

(a) Any person authorized to act for a committee of the Congress, for a Presidential committee or commission, or for any other official agency of the United States Government, having authority to investigate matters relating to the death of the late President, for purposes within the investigative jurisdiction of such committee, commission or agency.

(b) Any serious scholar or investigator of matters relating to the death of the late President, for purposes relevant to his study thereof. The Administrator shall have full authority to deny requests for access, or to impose conditions he deems appropriate on access, in order to prevent undignified or sensational reproduction of the Appendix A materials. The Administrator may seek the advice of the Attorney General or any person designated by the Attorney General with respect to the Administrator's responsibilities under this paragraph I(2)(b).

II

(1) None of the materials referred to in Appendix B [the autopsy X-rays and photographs] shall be placed on public display.

(2) Access to the Appendix B materials shall be permitted only to:

(a) Any person authorized to act for a committee of the Congress, for a Presidential committee or commission, or for any other official agency of the United States Government, having authority to investigate matters relating to the death of the late President, for purposes within the investigative jurisdiction of such committee, commission, or agency.

(b) Any recognized expert in the field of pathology or related areas of science or technology, for serious purposes relevant to the investigation of matters relating to the death of the late President; provided, however, that no access to the Appendix B materials pursuant to this paragraph II(2)(b) shall be authorized until five years after the date of this agreement except with the consent of the Kennedy family representative designated pursuant to paragraph IV(2). For the purposes of this paragraph, the determination of whether such an expert has suitable qualifications and serious purposes shall be made by the Kennedy family representative. No access shall be authorized pursuant to this paragraph II(2)(b) during the lives of the individuals referred to in the second paragraph of this agreement for any purpose involving reproduction of publication of the Appendix B materials without the consent of the Kennedy family representative, who shall have full authority to deny requests for access, or to impose conditions he deems appropriate on access, in order to prevent such use of the Appendix B materials.

The last two years have witnessed the opening of Warren Commission materials that had previously been withheld from public research or disclosure. Of great importance is the fact that the five year ban imposed by the Kennedy executors on the viewing of donated X-rays and photographs taken during the autopsy expired on October 29, 1971. Since that date, two medical researchers, whose qualifications and interest were approved by the Kennedy Family representative in accordance with the letter agreement, have examined these materials at the National Archives. Although at least one of these doctors is widely recognized as a critic of the Warren Commission findings, as of now no spectacular revelations have come out of these examinations. Whether further probes will uncover any new evidence remains to be seen.

Agency action in response to Freedom of Information Act requests and administrative appeals has also led to the release of records for which access was previously denied. Last year the Archives opened up the last of the testimony before the Commission that had not been published. This previously edited testimony was that of the President's widow describing her recollections of those moments right after the shots had been fired.[24] The Archives had previously

24. *Hearing Before the President's Commission on the Assassination of President Kennedy*, Vol. V, p. 180.

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acceded to the request of the former counsel of the Commission that Mrs. Kennedy's testimony be edited in the interest of good taste. Accordingly, access was denied based on the "investigatory files" exemption to the Act, then thought to encompass the records of any investigatory function. However, the narrowing judicial interpretations of investigatory files led GSA to conclude that there was no exemption applicable to the testimony, and its unedited version was released.

A second important document released recently by GSA is the register of incoming Warren Commission correspondence. This was a chronological listing of the author and a phrasal summary of the subject matter of each piece of correspondence received by the Commission. This document had been restricted under the "inter-agency and intra-agency memorandum or letter,"[25] "personnel and medical files."[26] and "investigatory files"[27] exemptions to the Act, after the Federal Bureau of Investigation and the Central Intelligence Agency had suggested that names or subject-matter summaries might inadvertently reveal sources of information or other classified material. In light of narrowing judicial interpretations of the Freedom of Information Act, in April 1972, GSA asked the FBI and CIA to review the correspondence register to determine if their previous objections to its release were still pertinent. When both agencies made negative replies, the register was made available to every researcher who had sought access to it in the past.[28]

The most significant of the documents recently released (January 1973) by GSA related to the assassination in the "Report of Inspection by Naval Medical Staff on November 1, 1966, at National Archives of X-Rays and Photographs of Autopsy of President John F. Kennedy." This document was prepared at the request of GSA, in conjunction with the Department of Justice, by the Navy medical team which had performed the autopsy on the President in order to catalog the photographic materials taken during the autopsy which the Kennedy Family had donated to GSA by the letter agreement of October 29, 1966. Because the document listed and briefly described photographic materials which by the terms of the agreement were completely restricted for five years, after which only researchers approved by the Kennedy Family representative were to be granted access, its release had been withheld by GSA based on the "personnel files and medical files" exemption to the Freedom of Information Act.[29] Again, after the courts had narrowed the interpretation of this exemption, on an administrative appeal GSA granted access to the "Report of Inspection."

It appears that access to this document was primarily sought because of its reference to the unsuccessful surreptitious attempt of a Navy medical corpsman present at the autopsy to photograph the event. Several Warren critics have alleged that the thwarting of this clandestine recording of the autopsy evidences the Government's effort to prevent the truth about the assassination from ever being revealed. It was thought that the identity of the Navy corpsman or other intrigue surrounding the incident might be mentioned in the "Report of Inspection," thereby lending impetus to their claim. The actual description found in the "Report of Inspection" seems to add little to the controversy. Listed among the miscellaneous materials, the film was cataloged in the following manner by the medical team:

> (4) One roll of 120 film (processed but showing no recognizable image) which we recall was seized by Secret Service agents from a Navy medical corpsman whose name is not known to us during the autopsy and immediately exposed to the light. This item is numbered as item 4 in Appendix B to the letter dated October 29, 1966, referred to above.

Unsurprisingly, there are other records generated by the Warren Commission and its aftermath that are still withheld from public access. Among the most requested are the classified transcripts of the Commission executive sessions, the so-called "memorandum of transfer" which accompanied the first shipment of assassination materials from the Kennedy Family to the National Archives in 1965, and assorted Commission documents dealing with sources of information. Each of these records has been withheld from public access for reasons far removed from a conscious effort to hide the true story of the Kennedy assassination. However, it would be fanciful to think that these suspicions will not linger in the minds of some Americans for as long as a single piece of paper on the subject remains closed.

III. *The Judicial Experience*

Twice, recognized critics of the Warren Commission findings have gone to the Federal courts under the Freedom of Information Act[30] in an effort to gain access to materials relating to the assassination that were refused them by the controlling agency at all levels of the administrative process. As noted below, they were no more successful in the courts.

In *Nichols v. United States*,[31] plaintiff physician brought suit under the Act for access to certain exhibits of the Warren Commission, including the Oswald rifle, bullet fragments, and clothing worn by the late President at the time of the assassination. One of the Government's major contentions for denying access was the assertion that the items requested were not records for the purposes of the Freedom of Information Act. Because the Act does not include a definition of "records," the court looked to the Federal Records Act definition,[32] as implemented by the controlling Gen-

25. 5 U.S.C. 552(b)(5) (1970).
26. 5 U.S.C. 552(b)(6) (1970).
27. 5 U.S.C. 552(b)(7) (1970).
28. A review of the register indicates that the incoming Warren Commission correspondence could be divided into three major categories: (1) letters from other agencies, usually in response to Commission inquiries; (2) letters requesting employment on the Commission staff, or offering aid to the Commission, both on a voluntary or compensated basis; (3) crank letters, which decreased in number with each passing month.
29. 5 U.S.C. 552(b)(6) (1970).
30. "On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." (5 U.S.C. 552(a)(3) (1970)).
31. 325 F. Supp. 130 (D. Kan. 1970).
32. The Records Act definition of "records" is codified as section 3301 of title 44, United States Code:

> "[R]ecords" includes all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristic, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation

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eral Services Administration regulations,[33] and bemoaned: "If these regulations were designed to be a clarification of what was intended by the term 'record,' a failure of purpose must be registered."[34] Nevertheless, armed with a *Webster's Dictionary*, the judge ruled that the rifle, bullets, clothing, etc., were not "records," and the Government prevailed in the trial court.

Presumably, the decision that these items were not "records" for the purposes of the Freedom of Information Act was based on their physical characteristics, i. e., a rifle, bullets, and clothing are non-documentary in nature, general usage and form. Interestingly, this basis dodges what to the National Archives is the most crucial aspect of the Nichols case: are papers, tapes, and other materials having permanent historical value which are donated to the United States of America by Presidents and other public officials "records" under the Act. This question has taken on much greater importance of late as the controversial documentation of past and present administrations, including such organizations as the Committee to Re-elect the President, continues to pour into the Archives and the Presidential Libraries system.

This question went unanswered when Dr. Nichols appealed the district court decision.[35] As a matter of fact, much of the precedential value of the lower court's ruling was lost when the appeals court specifically refused to decide whether or not the above-listed items of evidence were "records." Instead, citing the statutes which permit a donor of materials to the General Services Administration to place restrictions on access to these materials,[36] and the statute in which Congress called for the acquisition and preservation of items of evidence related to the assassination,[37] the court affirmed the lower court decision by stating that if, arguendo, these materials were in fact "records," they would nevertheless be exempt from disclosure under the third exemption to the Freedom of Information Act,[38] records "specifically exempted from disclosure by statute."[39] Many of the items sought by plaintiff/appellant had been donated to the Archives by the Kennedy Family, subject to the restrictions discussed above.[40] The others, purchased by the Government pursuant to Public Law 89-318, were partially withheld from public access by regulations concerning their use issued by the National Archives. The court felt these restrictions followed the wishes of the Congress, as expressed in the statute, that the Government take adequate steps to preserve these Commission exhibits.

by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included.

33. 41 CFR §101-11.101-3.

34. 325 F. Supp. 130, 134 (D. Kan. 1971).

35. *Nichols* v. *United States*, 460 F.2d 671 (10th Cir. 1972), *cert. denied*, — U.S. — (1972).

36. 44 U.S.C. 2107 and 2108(c) (1970).

37. Pub. L. No. 89-318, 79 Stat. 1185.

38. 5 U.S.C. 552(b)(3) (1970).

39. 460 F.2d 671, 673-74 (10th Cir. 1972), *cert. denied*, — U.S. — (1972).

40. See note 23, *supra*.

A very important decision involving a noted and active critic of the Warren Commission came down in October from the en banc Court of Appeals for the District of Columbia Circuit. This is *Weisberg v. Department of Justice*,[41] and concerns plaintiff/appellant's request for access to the FBI's "[s]pectrographic analysis of bullet, fragments of bullet and other objects, including garments and part of vehicle and curbstone said to have been struck by bullet and/or fragments during assassination of President Kennedy and wounding of Governor Connally." The Department of Justice denied the plaintiff access to these analyses and defended the suit on the basis that they fall within the seventh exemption to the Act, "investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency. . . ."[42]

The Government's motion to dismiss was granted by the Federal District Court for the District of Columbia, which did not elaborate as to its reasons. On appeal, the Court of Appeals first reversed and remanded the case over the strong dissent of Senior Circuit Judge Danaher. However, the Government petitioned the court for a rehearing en banc, and the petition was granted, the court vacating its previous decision, and subsequently affirming the district court's dismissal of the action.

Notwithstanding its being vacated, a glimpse at the Court of Appeals' original decision provides some insights into the conflicts that are bound to arise when the mercurial dictates of the Freedom of Information Act are applied to the documentation of the assassination of the President. First, the majority opinion, written by Judge Kaufman of the United States District Court for the District of Maryland sitting by designation, and, of course, not a member of the en banc panel whose decision is contrary to his own, went to some length in differentiating the *Weisberg* situation from that found in *Nichols*. After discussing the relevant facts and findings at both the trial and appeal levels in *Nichols*, the court distinguished the two cases:

> Unlike *Nichols*, in this case there is no allegation or indication by the Government that the "analyses" Weisberg seeks were acquired pursuant to any statute or regulation which exempts them from disclosure. Furthermore, Weisberg does not seek disclosure of any tangible evidence of the type requested in *Nichols*. Weisberg seeks disclosure only of spectrographic analyses which are similar in kind to the "diagnosis" sought from the Navy in *Nichols* and which the District Court held to be a record within the meaning of Section 552.[43]

41. Civil Action No. 71-1026 (D.C. Cir., February 28, 1973), *petition for rehearing en banc granted and decision vacated*, May 22, 1973, *district court affirmed*, Civil Action No. 71-1026 (D.C. Cir., October 24, 1973).

42. 5 U.S.C. 552(b)(7) (1970).

43. *Weisberg v. Department of Justice, supra*, note 41, at fn. 3, p. 6 of the vacated opinion. The "Navy diagnosis" referred to by the court is the written diagnosis or findings made by the staff radiologist at Bethesda Naval Hospital of X-ray films taken during President Kennedy's autopsy. This "record" was also sought by plaintiff Nichols in the district court from the Navy Department. That agency filed an affidavit stating that it had turned over that document to agents of the Secret Service, and that it retained no custody or control of it or any copies thereof. As a result, plaintiff was unsuccessful in gaining access to the diagnosis. (*Nichols* v. *United States, supra*, note 31, at 137.)

(Continued on page 11)

COMMENT—STATUTE OF LIMITATIONS—(Cont'd)

(Continued from page 11)

Pennsylvania Securities Act of 1972, 70 P.S. §1-506, which provides in part: "Nothing in this Act shall limit any liability which might exist by virtue of any other statutes or under common law if this Act were not in effect." Does this mean that the timeliness of 10b-5 actions in Pennsylvania federal courts, liability under which would be terminated earlier if the Pennsylvania Securities Act of 1972 limitations period were to govern, remains to be judged by the six year standard? Or does the language of Section 506 only relate to existing theories of recovery, apart from the question of timeliness of suit? And should the federal courts consider Section 506 at all in picking the period of limitations? Here is another group of questions to add to those which have thus far surfaced on an undecided and predictably vital issue.

KENNEDY ASSASSINATION—(Cont'd)

(Continued from page 9)

Turning its attention to the "investigatory files" exemption claimed by the Government, the majority continued:

> In the within case, no criminal or civil action relating to the death of President Kennedy is pending nor is it indicated by the Government that any such future action is contemplated by anyone. Nor is Weisberg the subject of any investigation.
>
> * * *
>
> It follows that the exemption set forth in 5 U.S.C. §552(b)(7) applies only when the withholding agency sustains the burden of proving that disclosure of the files sought is likely to create a concrete prospect of serious harm to its law enforcement efficiency either in a named case or otherwise.
>
> * * *
>
> The conclusions that the disclosure Weisberg seeks will cause any of those harms is neither compelled nor readily apparent, and therefore does not satisfy the Department's burden . . . . Neither the FBI nor any other governmental agency can shoulder that burden by simply stating as a matter of fact that it has so done, or by simply labelling as investigatory a file which it neither intends to use, nor contemplates making use of in the future for law enforcement purposes, and least not without establishing the nature of some harm which is likely to result from public disclosure of the file.[44]

The opinion concluded by reversing and remanding the case to the district court.

In his highly emotional and literary dissent, Judge Danaher went one step farther than even the Justice Department had argued. First, he vigorously defended the right of the FBI to withhold access to any of its "investigatory files," no matter how untimely the subject matter, going so far as to say that Congressional intent presupposes that even the files on Dillinger may be withheld from disclosure.[45] Then, by relating the spectrographic analysis sought by plaintiff to the real evidence that had been subjected to these analyses, and to which the *Nichols* court had denied access, he invoked the finding in *Nichols* that these analyses were "specifically exempted from disclosure by statute," i.e., the statutes relied upon by the *Nichols* court, 44 U.S.C. 2107 and 2108(c) and Public Law 89-318.[46] This interpretation was even a surprise to the Governemnt. With a final plea against the sensationalism that he felt the appellant represented, Judge Danaher concluded: "REQUIESCAT IN PACE."[47]

After rehearing before the court en banc, Judge Danaher found himself in the opposite position of writing the majority opinion. In far less flamboyant language, he dropped the *Nichols* analogy, but reiterated his firm opinion that the analyses clearly came within the "investigatory files" exemption to the Act. In citing the legislative history of the Act, he quoted: "It is also necessary for the very operation of our Government to allow it to keep confidential certain materials, such as the investigatory files of the Federal Bureau of Investigation."[48] The court was quick to point out the absence of any time reference for investigatory files in the Senate or House Reports.[49] It will be interesting to note if this decision portends a shift in the thinking of the Court of Appeals for the District of Columbia Circuit, with respect to the "investigatory files" of all agencies or if it merely extends to FBI records.

Chief Judge Bazelon, who had concurred in the vacated opinion of Judge Kaufman, was alone in his dissent. Arguing for an *in camera* inspection of the analyses at the very least, his dissent largely consisted of quotations from Judge Kaufman's vacated opinion.[50]

Conclusion

It seems eminently clear that the controversy surrounding the assassination of President Kennedy will never be totally resolved, but will survive as long as the history of our nation. As the passage of time permits the release of more and more of the miniscule percentage of documentation on the assassination now withheld from public review, the outcry will likely diminish, but the concept of worldwide acceptance of the Warren Commission findings or anyone else's findings is illusory.

For example, as of the date of preparing this article, Mr. Weisberg has again filed suit in an attempt to gain access to a record that is still withheld from public access.[51] Moreover, the tenth anniversary of the President's death has witnessed a resurgence of Warren Commission skeptics, as evidenced by the more than 300 persons who attended the recent Washington conference sponsored by the Committee to Investigate Assassinations.[52]

44. *Weisberg, supra,* note 41, at 7-13 of the vacated opinion.

45. *Id.* at 21.
46. *Id.* at 25.
47. *Id.* at 26.
48. S. Rep. No. 813, 89th Cong., 1st Sess. 3 (1965).
49. *Weisberg, supra,* note 41, at 6-9 of the official opinion.
50. *Id.,* at 22-23 of the official opinion.
51. *Weisberg* v. *GSA,* Civil Action No. 2052-73, U.S.D.C. for the District of Columbia, filed November 13, 1973.
52. The Washington Post, November 24, 1973, at B12, col. 1.

(Continued on page 12)

KENNEDY ASSASSINATION—(Cont'd)

(Continued from page 11)

A glance at the recent past reveals that the Freedom of Information Act has had a profound effect on the records relating to the assassination. Although the Government has so far held its own in the courts, many previously withheld records have been released following administrative requests for access under the Act. This trend is bound to continue. As to the future, who can be so rash as to say that some long-hidden but monumental revelation about the assassination does not lie buried among the already-released or to-be-released documentation of that tragic event.

FINANCIAL ACCOUNTING—(Cont'd)

(Continued from page 5)

communication not only open, but used with increasing frequency."

Conclusion

We are optimistic that the FASB will achieve its purposes, that it will succeed where its predecessors have failed. There are some basic differences in organizational structure. There seems to be a greater awareness of the need for cooperative effort by all interested parties, and so we look forward with anticipation, after several not too successful attempts in the past 35 years, to a period of significant progress in the development of accounting principles and financial reporting.

THE PHILADELPHIA LAWYER

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AMNESTY

A painful residue of the conflict in South Vietnam and the years of substantial draft calls necessitated thereby is the matter of the treatment that should be accorded to those individuals who evaded the draft or absented themselves from the military. A number of proposals have been advanced under calls for "amnesty" for some form of absolution for these individuals. This memo is premised on the assumption that the pressure for action will continue, if not increase. An initiative by the executive might well dissolve the issue, and would enhance the possibilities of achieving a workable plan supported by a majority of Americans.

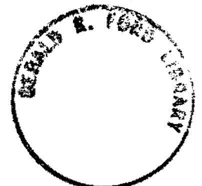
Section 1. General

Amnesty is a sovereign act of forgiveness for past misconduct, granted by the state to an individual or class of individuals. The grant may be conditioned upon the performance of an act or acts within a prescribed time (hence the popular term "conditional amnesty"). It has the effect of nullifying existing or potential convictions for specified misconduct as contrasted with pardon or executive clemency which relieves the penalties but leaves convictions standing. In according amnesty prior to trial and conviction for misconduct, of course, the state forgoes its right to try and punish.

Inherent in a grant of amnesty is the need for some mechanism whereby to assure through factual determination that an individual belongs to the class to which the amnesty is offered. Additionally, whenever amnesty is to be conditioned on a degree of repentance or contrition (expressed in the taking of an oath, or in some alternate service) there is an additional need to determine the facts in individual cases.

The current estimates of 4,400 fugitive draft evaders and 29,000 military deserters (i.e., with absences of over 30 days) pose a considerable administrative burden in compiling the facts and circumstances for making amnesty determinations. In additon, there are 8,200 evader cases in process or which have resulted in conviction, together with a significant number of convicted military absentees. In these cases, a record exists upon which an administrative board could make a recommendation to the Chief Executive.

With the lapse of time from the Southeast Asia war, national sentiment favoring some sort of amnesty will probably continue to grow. As early as January 1972, 70% of Americans polled favored some sort of amnesty (conditional amnesty having been explained to them) although half of these felt it should wait until the cessation of hostilities and the draft. A blanket amnesty does not seem appropriate, both because of its possible interpretation or because it fails to discriminate among the many and differing situations of individual evaders and absentees, whose derelictions will be weighed against the price payed by the 46,000 dead and the more than 300,000 wounded, captured or missing.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Conditional amnesty, or its equivalent, could be accorded through one (or a combination) of the following methods:

1. Reliance on existing laws and legal process, operating under the umbrella of a declaration of national policy of amnesty. The Attorney General and the military services would be charged to proceed as to all those who surrendered within a specified time, exercising prosecutorial leniency based on individual case circumstances and specified criteria. An Administrative Amnesty Board would be constituted to dispose of existing convictions, or to review the results of post-declaration convictions and process.

2. Declare a national policy of amnesty/clemency and create an administrative process for administration of the policy outside of existing legal process. The declaration would provide for the establishment of an intragovernmental Task Group which would develop the administrative mechanism and criteria, and report to the President within a time certain.

3. Convene the intragovernmental Task Group mentioned in 2 above, and after it had finished its work, declare the policy and proceed immediately to implement it.

The first alternative would appear to be most satisfactory. Little publicity has been accorded to cases already treated by the existing legal systems, which have been handled with a good degree of sensitivity. Start-up time for an amnesty program would be minimized. The public perception of existing legal process would be strengthened. The Chief Executive/Commander-in-Chief would be in a position through an Administrative Clemency Commission to review all of the results.

Section 2. The Current Situation

As of 1 January 1974, data obtained from the Selective Service show that about 7,900 men have been convicted as violators of the Selective Service Act. In addition, about 5,100 were under indictment and another 3,100 under prosecution determination or FBI investigation for a total of about 8,200 cases in process. In addition, it is estimated that there are about 4,400 fugitives of which it is estimated that about 3,000 are in Canada, 500 overseas, and 900 whereabouts unknown.

From 1 July 1966 to 31 December 1973 there were over 500,000 incidents of military desertion, i.e., unauthorized absences of 30 days or more. The number convicted and still incarcerated is available; but nearly 29,000 were "at large" as of December 31, 1973. The majority of these are individuals who have been dropped from the military rolls and technically are deserters. The distribution of lengths of absences,

dates of departure and other circumstances can be obtained and analyzed. As of December 31, 1973 there were 2,100 individuals "at large" in foreign countries, of which about three-fourths were in Canada. A rough analysis of these "deserters" or absentees is attached at Tab A.

Historical precedents are of limited assistance in addressing the problem. Past "amnesty" has tended more to executive clemency and prosecutorial inaction than to sweeping executive grants. The legal processes for handling the two categories of individuals are different. Selective Service Act violations are prosecuted by the Department of Justice while military absentees fall within the jurisdiction of the Uniform Code of Military Justice. There are, however, similarities between evaders and absentees in the sense that it is difficult to distinguish between an individual who failed to show up at his scheduled draft reporting date and a draftee who did show up, entered basic training, and left shortly thereafter. It may be only accidental that one individual is in the civil category and another in the military. The end result for two such individuals who otherwise behaved in similar fashion should be as nearly similar as possible.

There are a number of proposals associated with grants of amnesty or executive clemency that deserve consideration. They range from full and complete forgiveness through alternative service to forgiving incarceration but imposing (for the record) convictions and dishonorable discharges.

Whenever an individual already has been convicted under the Criminal Code or the Uniform Code of Military Justice, an Amnesty Commission can operate to recommend executive clemency or a full amnesty. The problem remains in the cases of evaders and absentees, that in order to make a case-by-case evaluation, some fact-determining mechanism must be found. In fashioning an administrative mechanism, the requirements of due process and the current sensitivity to individual rights induce a degree of complexity, even though the basis for the action is executive clemency rather than the exactions of the criminal laws.

It should be noted that there is another potential class of offenders involved in the amnesty problem, those who have been involved in counselling or otherwise aiding defenders, evaders, or deserters in violation of law (18 U.S.C. 1381). In the course of explaining the circumstances attending a period of expatriation or status as a fugutive, the involvement of families and friends is bound to come to light thus posing additional "amnesty" problems.

Section 3. Alternatives

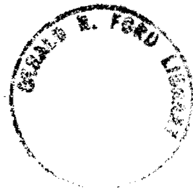
A quick review of the current situation suggests that three alternative plans might be pursued:

Alternative 1. A national policy of amnesty/clemency could be announced or proclaimed by the President. It would be accompanied by a policy statement which would set forth criteria and guidance for the handling of evader and absentee cases within the framework of existing law. The Attorney General and the Secretarys of the Military Services would be directed to handle all cases in consonance with a policy of leniency which could include such elements as alternative service, consideration of acceptable mitigating circumstances and the like. The President could institute an Amnesty (or clemency) Commission to advise him both with respect to convictions already received and to functions as a safety valve in those post-proclamation cases where convictions resulted.

This alternative sounds more in prosecutional discretion than amnesty, although it contemplates an amnesty commission which ultimately could act in appropriate cases. There is a wide flexibility in the present system. Individuals would remain free on their own recognizance, having reported to their local U.S. Attorney's office. In the more clear cut cases, prosecution can simply be withheld - even short of an arrest record - in the case of an individual who returns and undertakes some meaningful alternative public service. In more complicated cases, or where the circumstances do not warrant the forgoing conditional amnesty, an exception to usual policy could be made and pleas of nolo contendere allowed by the U.S. Attorneys, with a federal judge then disposing of the case after presenting reports that had been compiled. Trial and subsequent suspension of sentence or grant of pardon are also possible, again depending on the nature of the case.

Under the military system, the Services could be directed to handle amnesty cases as AWOLs rather than deserters. The investigation which usually precedes a court martial could be used to develop facts and circumstances. The convening authority would then decide on disposition based on the Commander-in-Chief's amnesty declaration, proceeding to court martial only in those cases where circumstances warranted.

Such an approach comports with requirements for contrition and recognition of wrongdoing, in the context of submission by the individual to law under sovereign leniency. It deals with the individual in his own community. Flexibility exists in the full range from de facto amnesty (no prosecution) to pure amnesty (absolution of conviction and restoration to full civil rights) in appropriate cases. It obviates the necessity to set up an administrative process for amnesty purposes alone.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Alternative 2. The President could announce a national policy of amnesty/clemency. It would set forth the principal elements such as the degree of "punishment" already suffered by the individual, and introducing the possibility of alternative service or other conditions as predicates for amnesty. The President would empanel a federal task force to develop a detailed plan for the administrative dispensation of amnesty and to report back to the President within 60-90 days. Such a task force probably should be headed by the Justice Department (Deputy Attorney General) with representatives from DoD, Selective Service, State, other appropriate agencies.

This alternative contemplates that a significant administrative mechanism will be desirable (or required other than the existing legal processes. It also recognizes that, as more is known about the extent and complexion of evaders and absentees as a group, more appropriate administrative criteria and mechanism can be designed. By utilizing a Task Group, the voices of the many differing opinions on the subject could be heard; a controlled national debate might even be possible under its auspices. By using a group of individuals in government, a greater degree of policy control could be exercised to assure a timely and practical result.

Such administrative approach would involve a means of developing the facts of individual cases, which might be as simple as an affidavit swearing that an individual was in the amnestied class and accepting alternative service. Here, as in Alternative 1, the individual seeking amnesty would report to a local authority within a certain time. Arrangements would be made with the appropriate investigating and prosecutorial authorities so that the individuals would be free on recognizance during processing. For more complex situations hearing examiners might be required. These could be drawn from the number of agencies that have hearing examiners around the country. Review boards could either make the determinations or review the initial determinations made by hearing examiners. The process would take the place under the Presidential declaration together with more detailed policy guidelines and criteria. Those who were not accepted for amnesty treatment would revert to the appropriate prosecutional authorities where, again, a measure of leniency could be administered.

This alternative might afford better comparability in end results for evaders and absentees. It would be more acceptable to those who feel the existing prosecutorial authorities could not make sufficiently sensitive judgments.

Alternative 3. The same objective as Alternative 2 would be pursued, except the proclamation and implementation would follow the work of the Task Group. This approach assumes that additional public debate and inputs are not as necessary as the impetus to be gained from a rapid implementation of a practical, workable scheme for administrative handling of amnesty, once the policy was announced.

Final observations. On the basis of present information, and assuming a fairly rapid implementation of an "amnesty" program would be desirable, Alternative 1 would appear the most desirable. It would capitalize on legal mechanisms already in place. It would avoid creation of administrative mechanisms which would be the subject of legal testing in the courts and therefore a period of uncertainty. It would recognize the efficacy of the existing legal system. It would afford a good degree of flexibility in shaping the program once it is started.

Any alternative selected must look to a good measure of Congressional support to assure general acceptance. Moreover, any dispensation of clemency or amnesty must be designed and administered giving full consideration to its impact on the military services present and future, both in terms of morale, and in terms of requirements to raise and maintain adequate military forces.

A

II Statistics

a. Since 1 July 1966 to 31 December 1973, there have been:

503,926 incidents of desertion (unauthorized absence of 30 days or m

28,661 individuals are "at large" as of December 31, 1973

b. Deserters in Foreign Countries (1 July 1966 to 31 December 1973)

4,194 have gone to foreign countries
1,413 have returned to military control
662 have been discharged in absentia (aliens residing in foreign countries and have been absent for more than one year)
20 have died in foreign countries

2,099 are "at large" in foreign countries

1,587(75.6%) in Canada
218(10.4%) in Sweden
86(4.1%) in Mexico
208(9.9%) in 56 other countries

1,090(26.0%) of the deserters who have gone or attempted to go to foreign countries are aliens (i.e., not United States citizens) who returned to their countries of origin. 660 of these aliens have been discharg in absentia; 242 are "at large".

c. Reasons/Circumstances for Desertion by Those Who Went to Foreign Countries.

45.4% no reason stated
20.3% aliens (non-United States citizens)
9.6% escaped from confinement/under charges/under investigation
3.6% Vietnam war
4.4% family, financial, personal
5.0% inability to adjust to military life
2.6% claimed CO or pacifistic beliefs
2.3% ordered for entry on active duty, but did not report
.8% live with an alien spouse
.5% admitted fear of being killed
5.5% other miscellaneous reasons (unrelated to Vietnam war)

OASD(M&RA)
31 December 1973

Policy issues

August 6, 1974

Mr. Philip W. Buchen
The Office of The Vice-President
Senate Office Building
Washington, D.C. 20510

Dear Mr. Buchen:

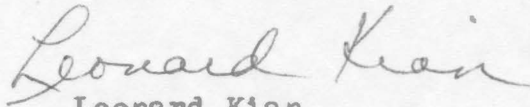
The attached fiscal reform plan was favorably received by a select group which included economists, bankers, business and professional people.

Their comments have encouraged us to survey a broad, representative and influential cross section of community and business leaders for their opinions, criticisms and support. The results should be available September 19, 1974.

Please study the ideas. Discuss them with other knowledgeable people. If circumstances require the Vice-President to assume the awesome responsibilities of the presidency, we believe this new banking program can be part of the answer to our nation's economic problems.

Should you desire additional information, I shall send it.

Sincerely,



Leonard Kian
Economics Committee
English for Congress

Please note: A duplicate of this letter and the material has been sent to your home address in East Grand Rapids.

LK

17284 Russell Avenue
Allen Park, Michigan 48101

Telephone 313--562-1706

WALLACE D. ENGLISH

Republican - 16th Congressional District

DATE

641 Highview
Dearborn, Michigan 48128
Phone: 563-2668

NAME
TITLE
COMPANY
ADDRESS
CITY, STATE AND ZIP

DEAR MR.

Floating-rate bank notes and U.S. Treasury bills buying will further dry up available mortgage money.

Balance of payment deficits are climbing. The dollar is weak.

We are being inflationed into higher tax brackets, with less actual spendable income. Fixed income consumers are desperate.

The Democrats' knee-jerk response to the problems of inflation is to cut taxes for the middle and lower income brackets.

The administration's knee-jerk response to the problems of inflation is to offer tax cut incentives to industry.

Economists and government officials have no better idea where this will lead than does the average citizen. They know the financial law of supply and demand has not been repealed. Can that law be governed?

My fiscal advisory staff and I have studied this vital subject and we have developed a program we feel has merit. We consider it a legitimate campaign issue and we intend to promote its acceptance and application in our economy.

Please study the enclosed, abbreviated version of our plan, our projection of its impact on the economy and its potential for better control of the nation's money supply. Candidly tell us what you think of it.

Your comments and criticism are most gratefully accepted.

Respectfully submitted,

WDE/lk

Wallace D. English
Republican Candidate
16th Congressional District

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BILL LEVAN
CAROLINE MACK
ED MACK

FORD MOTOR COMPANY FINANCE SUPERVISOR • CASE WESTERN RESERVE UNIVERSITY • ALMOST 20 YEARS IN COMMUNITY
CHURCH ELDER • FAMILY MAN MARRIED 25 YEARS • COMMUNITY SERVICE AWARD RECIPIENT

INTRODUCTION

Economic stability depends greatly upon the individual's (consumer's) confidence in the economic system and the political system.

Political stability depends greatly upon the individual's (citizen's) confidence in the economic system and the political system.

Economic uncertainty and political uncertainty breeds further lack of confidence.

One proven way to restore confidence is for government leaders to remember our nation was founded for the individual. Leaders that held steadfast to that principle have been accorded reverence and respect. Current events tell us how those who ignore that principle are regarded.

Consider the individual in a corporate sense. This corporation buys raw material (food), maintains a plant (clothing and shelter), develops subsidiaries (children), offers a product and a service (labor and brains), at a competitive price (wages), pays dividends (rest and recreation), provides for equipment maintenance (medical care), provides for plant expansion or improvement (savings), provides for machinery depreciation (life insurance, social security and savings) and pays taxes (no parenthetical comparison necessary).

Carrying this analogy a little further, if raw material costs rise, plant overhead rises, subsidiaries development costs (including education) rise and equipment maintenance costs rise, this corporation must raise its price. If costs increase more rapidly than price, the corporation may not pay dividends, may not be able to adequately provide for plant expansion or improvement, may not be able to adequately provide for machinery depreciation and actually be required to pay more taxes.

If the corporation ends the fiscal year with a net loss, the government may subsidize it (food stamps or welfare). If the corporation goes out of business due to a poor market for its services or products (unemployment), it may be nationalized (unemployment compensation) and/or subsidized (welfare).

If enough corporations suffer a net loss or face bankruptcy, they may form a conglomerate (ground swell of political unrest) and elect a new board of directors (again, no parenthetical comparison necessary).

The following three section fiscal program is an approach to the control of inflation with the individual in mind. The governmental control in this program is restricted to an interrelated interest/tax rate formula.

It is consistent with the following views:

A. Tax incentive for industry is inflationary. Lower prime rate and lower bond rate for industry funding promotes fiscal stability and more productivity. Higher earnings will follow, resulting in more taxes paid.

B. Tax reduction for the individual coupled with government deficit spending is inflationary. Increased individual savings induced by a guaranteed good investment return as a result of tax deferment and long term tax savings has a stabilizing effect on the economy.

C. Less federal government spending in state and local communities means a lower and a balanced budget.

D. The ultimate benefit should be a more responsive local government for the individual's needs with less obverse federal government bureaucracy, fewer debilitating controls and fewer unnecessary expenses. Less cost means a lower federal budget, which means a reduction in the national debt and, eventually, legitimate tax reductions.

E. Debt reduction and lower taxes strengthens the dollar internationally.

F. Most important, it inspires and strengthens the individual's confidence in the economic system and in the political system.

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SECTION I
GRADUATED TAX INCENTIVE
RETIREMENT SAVINGS AND INSURANCE PLAN

Introduction:

1. Low cost mortgage money is not available.

2. High interest rates, free gifts and special related banking service privileges will not induce people to save more money.

3. Lower middle income to upper middle income individuals find it very difficult to provide additional funds for retirement.

4. There is a very small, barely perceived but growing, lack of confidence in our banking system.

Proposal:

1. Raise insured deposits limit with FDIC, FSLIC and NCUA to $100,000.

2. Commercial banks discontinue savings account or traditional time deposits service. See Sections II and III.

3. Savings institutions discontinue withdrawal draft service or any service designed to duplicate a commercial bank checking account.

4. Deposits made on savings accounts and credit union shares (hereinafter referred to as savings) to earn interest at a rate no higher than 6% annually, compounded monthly.

5. $100,000. total savings limit for each individual will qualify for tax benefits.

6. $100,000. total limit face amount on a Limited Payment Life Insurance policy or policies (hereinafter referred to as insurance) for each individual to qualify for tax benefits.

7. Each insurance policy must have a spouse, children (natural or legally adopted), grandparent, aunt, uncle or cousin (no more distantly related than third cousin) as beneficiary or beneficiaries.

8. Dividends paid on insurance under this plan to earn interest at the same rate established for savings.

9. An individual may have $100,000. total savings (see #5 above) and $100,000. total insurance (see #6 above).

10. EXAMPLE: TAX INCENTIVE TABLE

Annual Savings or Insurance Premiums		% Tax Deductible on Annual Savings and Insurance Premiums	% Tax Deductible on Interest Earned on Savings - Insurance Dividends
Over	To		
$ 1.	$1,000.	100%	50%
1,000.	2,000.	80%	40%
2,000.	3,000.	60%	30%
3,000.	4,000.	40%	20%
4,000.	5,000.	20%	10%
5,000.		0%	0%

11. Tax deductible benefits on savings or insurance premiums are non-cumulative. They may not be carried over from one tax year to the next year.

12. Tax will be based on the total net savings or insurance premiums increase for each tax year.

13. Net reduction in savings or insurance cash value is subject to full taxation for the tax year in which the reduction occurred.

14. Savings institutions and insurance companies must report net reductions on savings accounts and insurance cash value on IRS interest information forms. Rate of interest must be reported.

15. Loans may be secured by these savings or insurance plans.

16. Loans secured by savings or insurance cash value must be reported by balance outstanding and date of loan. Such loans made during the tax year will be considered a net reduction for tax benefit purposes. When the loan is paid in full, the amount borrowed is eligible for tax deductible benefits.

17. Over a period not to exceed five years, individuals may transfer deposits from other savings accounts to the tax incentive savings accounts and transfer other insurance policies' cash value to the tax incentive Limited Payment Life Insurance policy and claim tax benefits shown in the table above.

18. Until all transfers are made, all information on savings or insurance under this plan must be separately issued and specifically designated for tax purposes.

19. After age 60, blindness, permanent disability or death, related withdrawals are not taxable.

Projection:

1. Temporary disruption of established savings and insurance to adjust to tax incentives. Probable redemption of U.S. Savings Bonds which will bring money into the private sector. See Section II, proposal #1.

2. Temporary increase in cash loans which will eventually be controlled by proposal #16 of this plan.

3. Small and marginal investors will be drawn out of the stock market and mutual funds. They are no longer wanted, anyway. Costs are too high to service the small investor. Besides, the market is now the institutional investor's province. Short term immediate result should be a slight further depression of the stock market.

4. Hoard mentality consumer buying will diminish, lowering retail sales for approximately six months and a reduction in prices.

5. Lower cost mortgage money will become available. Housing and building starts will climb.

6. The first $1,000. tax incentive should be inviolate. This would encourage savings and confidence in the dollar.

7. The tax incentives for the amounts over $1,000. and the interest earned on those funds may be adjusted by an economic committee of The Comptroller of the Currency in conjunction with the Federal Reserve Board, on a month-to-month basis if necessary, to more closely control the money supply.

8. This should help increase the dollar's value and stability.

SECTION II
DEFERRED TAX INCENTIVE
STATE/MUNICIPAL BOND AUTHORITY INVESTMENT PLAN
ALTERNATIVE TO FEDERAL REVENUE SHARING

Introduction:

Federal revenue sharing is not working. States and municipalities are using allocated funds for day-to-day operations rather than for the express purpose of physical community development and improvement. It is an easy way out for local politicians who look to the federal government to solve their fiscal problems at the expense of programs more important to the national good.

Office seekers claim as one of their attributes the ability to get more federal funds for their constituency.

There is no easy way to solve state and local fiscal problems. It requires elected officials with a responsible attitude, courage, candor and a bootstrap pride, qualities in short supply these days.

Of course, federal government help is essential, but only as a pump prime, not as a well.

Proposal:

1. The federal government get out of the consumer savings business. No more series E or H savings bonds.

2. States, commonwealths, school districts, municipalities and governmental authorities get out of the competitive bond market.

3. Establish a state and municipal bond authority supervised and administered by the U.S. Comptroller of the Currency.

4. All states, commonwealths, incorporated municipalities and school districts may borrow from the authority for the funding of programs or projects approved by a voter tax referendum majority.

5. Sports related enterprises must be approved by a voter tax referendum two-thirds majority.

6. Approved obligations need not be totally funded. Money will be given to the debtor government or its agency as projects progress. Interest will be charged only on that part of the capital actually received.

7. An adjustable per capita line of credit may be established by the SMBA as control on money supply for economic stability.

8. No new projects will be funded if a debtor government becomes delinquent and it is not considered eligible for federal credit subsidies. See #11 below.

9. Debtor government to pay half of the annual interest due on its SMBA outstanding obligation.

10. Federal government to pay one half the annual interest due on all SMBA outstanding obligations.

11. Federal government to pay up to one third the annual principal payment due on debtor government SMBA outstanding obligation.

12. Federal government payment assistance to be based on debtor community average per capita income as determined by federal income tax returns. The lower the average, the higher the payment assistance. As the community develops and prospers, the assistance diminishes and the assistance becomes more evenly distributed.

13. Federal government to continue support of those projects which are of benefit to the nation at large, such as medical research, social programs, educational grants and agricultural research and development.

14. To avoid possible collusion, conflict of interest or fraud, the debtor government may not "call" or repay outstanding traditional obligations, regardless of favorable "asked" price, with funds borrowed from SMBA.

15. SMBA may buy on a basis similar to item #12 above the debtor government outstanding traditional obligations issued prior to SMBA's formation, provided SMBA has surplus funds not pledged to debtor governments for developing projects; provided SMBA can purchase it at no more than two-thirds the traditional obligations' face value and at no more than 5% higher than the average "asked" price during the past 30 days, whichever is lower.

16. At the discretion of SMBA board of governors, the purchased traditional obligation may be converted to an SMBA outstanding obligation with all the federal assistance benefits accorded the SMBA obligation.

17. SMBA to issue bonds with face values of $25., $50, $100., $250., $500., $1,000.

18. Bonds may be purchased at banks, savings and loan associations, and with a payroll deduction. Non-transferable, they may be jointly owned or purchased in trust for someone.

19. Purchase of bonds is tax deferrable for an individual up to 10% of taxable income.

20. SMBA bonds may be purchased by institutions and commercial organizations up to 10% of their assets. An excess of 10% would not receive tax deferred benefits.

21. Tax deferred principal only is taxable upon redemption.

22. Tax free interest paid on redemption quarter annually.

GRADUATED INTEREST TABLE

Year	Principal	Annual Interest Rate	Interest Earned
	1000.00	2.9963	29.96
1	1029.96	3.1213	32.15
2	1062.11	3.2463	34.48
3.	1096.59	3.3713	36.97
4	1133.56	3.4963	39.63
5	1173.19	3.6213	42.48
6	1215.67	3.7463	45.54
7	1261.21	3.8713	48.83
8	1310.04	3.9963	52.35
9.	1362.39	4.1213	56.15
10.	1418.54	4.2463	60.24
11.	1478.78	4.3713	64.64
12	1543.42	4.4963	69.40
13	1612.82	4.6213	74.53
14	1687.35	4.7463	80.09
15	1767.44	4.8713	86.10
16	1853.54	4.9963	92.61
17	1946.15	5.1213	99.67
18	2045.82	5.2463	107.33
19	2153.15	5.3713	115.65
20	2268.80	5.4963	124.70
21	2393.50	5.6213	134.55
22	2528.05	5.7463	145.27
23	2673.32	5.8713	156.96
24	2830.28	5.9963	169.72
25	3000.00		

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The 25 year return on an investment in deferred tax SMBA bonds (Section II) compares favorably with the graduated tax incentive/ RSIP (Section I).

As the amounts invested in each plan are increased, and as the investor's tax rate increases, the SMBA plan becomes more desirable, particularly so because the SMBA interest is tax free.

Projection:

1. Lower the cost of state and local government funding.

2. This would not affect federal projects but it would tend to help local governments achieve fiscal self-reliance.

3. This would encourage cities to keep population because the funds would be used for community physical improvement and development.

4. Improvement of community environment could attract new business and encourage population movement back to the city.

5. Less active involvement of centralized federal government in local government affairs.

6. Eventual phasing out of the FHA in favor of a SMBA funded State Housing Authority similar in purpose to the FHA, but with closer supervision and controls at the local level.

7. Lower federal income tax needed to run country.

SECTION III
HIGHER RETURN INVESTMENT
INDUSTRIAL FUNDING CORPORATION

Introduction:

Industrial productivity has not kept up with money supply. The inevitable result is inflation. Productivity can be increased with plant improvement and expansion together with better machinery and increased research and development. Working capital is needed. The stock market is floundering. The bond market is hopelessly depressed.

Not much can be done with the stock market in the present economic circumstances. The purpose of the bond market is too vital to our national economy to be left to the vagaries of the bond market. A different approach to borrowing capital can be - indeed, must be - tried if we are to reverse the present trend toward fiscal strangulation.

Proposal:

1. Commercial banks discontinue private home mortgage lending.

2. The establishment of an Industrial Funding Corporation by the approximately 14,000 commercial banks in the United States.

3. Each bank, regardless of size or branches, may purchase only one share of stock at par, $1,000. Par could be more or less depending upon capitalization requirements.

4. The sole purpose of the IFC is to supply capital to any qualified corporation, regardless of its size, consistent with prudent credit practices.

5. IFC board members will be chosen by random drawing of nominees submitted by each stockholder bank, one nominee per bank. Drawings will be held regionally to assure geographic representation on the board. Drawings for board members will be every four years on an odd number year. A current board member may not be nominated again. Nominees may not include an elected government official or an individual who has been an elected government official during the past five years.

The Federal Reserve Bank will choose one board member.

The Comptroller of the Currency will choose one board member.

The Securities and Exchange Commission will choose one board member.

Board members will elect IFC officials.

Board members and officials will be responsible for corporate policy and research.

6. Board members will meet monthly to review borrowers' statements of condition and to issue a Directors' analysis of IFC operations and future plans.

7. A weekly financial statement and newsletter will be issued to all stockholder banks, the Federal Reserve Bank, the Comptroller of the Currency and the Securities and Exchange Commission.

8. Lending capital will be raised by stockholder banks selling IFC preferred stock at $25. a share in bank book form.

9. Shares may be sold to the bank at par upon demand.

10. Shares may not be "called" by IFC except upon IFC dissolution.

11. Shares may be used as security for a loan at the issuing bank.

12. Stock and cash dividends will be paid monthly at a rate no less than 75% of the average prime rate during the month. Prime rate formula is mentioned below.

13. Corporate credit worthiness will be determined by a staff of experienced business analysts employing established and proven systems.

14. Interest rates to be charged will be determined by the credit standing of the debtor company.

15. Inasmuch as too little credit is sometimes worse than no credit, it may be desirable to extend a line of credit to a less-than-top-grade risk equal to its agreed needs, but at a higher rate of interest.

16. Debtor companies must file a monthly statement of condition with the IFC.

17. The financial condition may improve or decline and the debtor company's rate of interest may be increased or decreased accordingly by the IFC staff.

18. The IFC will establish a reserve for failed debtors.

19. Bankrupt companies may not be controlled or operated by the IFC. They must be sold or liquidated or absorbed by other companies assuming the obligation to IFC.

20. IFC earnings will be distributed pro-rata based on preferred shares sold by each member bank.

Procedure:

1. Similar to a revolving charge account used in most department stores and charge card plans, an annual percentage rate will be established for each category of corporate credit worthiness.

2. The prime rate will be no more than 50% higher than dividends paid on savings (see Section I, RSIP). Since dividends may be no higher than 6%, prime rate may be no higher than 9%.

3. Interest will be charged monthly on the average daily principal balance only of an outstanding loan, from the date of the account's last transaction.

4. Short term loans, minimum 30 days, as well as long term loans, a minimum of 4% annual principal reduction from date of last draw (25 years) would be available.

5. Debtor company would draw funds up to its line of credit or only as it is needed during project development or as needs change.

6. Repayment would be determined by IFC Directors and staff. Factors establishing maximum time permitted would include total indebtedness, debtor's credit rating, debtor's seasonal needs and purpose for funds.

7. The IFC may not lend more than 10% of its capital to companies rated BAA. Companies rated lower than BAA will not be eligible.

8. The IFC may not charge more than ¼ of 1% higher than prime rate, or more than ¼ of 1% increments, for each lower rated credit category.

9. Sample rate and percentage outstanding chart:

Debtor Credit Rating	Annual Interest Rate	Share of Outstanding IFC Loans
AAA	9.00%	35 to 45 %
AA	9.25%	25 to 35 %
A	9.50%	15 to 25 %
BAA	9.75%	10 only %

Projection:

1. Capital available when needed to all qualified companies for improvement of plant, equipment and operational systems.

2. No underwriting costs.

3. Increased productivity and profits.

4. Improved products and services.

5. Prices stabilize or decline.

6. Capital needs level off or decline.

7. Interest rates level off or decline.

8. Stock market prices tend to rise as profits increase and interest rates decline.

9. As stock market rises, borrowing company may issue additional

Continued:

9. Continued:
stock or sell company held stock and pay outstanding IFC loan with proceeds.

10. Commercial banks reduce cost of commercial credit operations through greater use of IFC services.

11. Commercial banks (and Credit Unions) can profitably limit interest on secured consumer loans to a rate equal to ½ of 1% higher than IFC preferred stock dividend (i.e. no higher than 8% annual rate).

12. Commercial bank less likely to have serious failed debtor losses.

13. Commercial bank profits increase.

August 7, 1974

ACTION MEMORANDUM FOR THE VICE PRESIDENT

On January 11 you met with Roger Blough and Bill Gossett (appointees of the Chief Justice to the Commission on Executive, Legislative, and Judicial Salaries) regarding increased compensation for Federal judges. Gossett, former President of the ABA, has been active in organizing bar support for such a proposal.

Both Gossett and Blough met with Ken Rush yesterday to discuss this matter. Rush indicated that he would work to include a judicial salary increase in the 1975 budget as a means of attracting men of quality to the Federal judiciary and retaining sitting judges. Gossett emphasized that there has been no increase in judicial salaries since 1969, despite a 40% jump in the cost of living in the last five years. Enclosed is a copy of the memorandum Gossett prepared for Rush on the general subject of Federal salary increases, which he wished to share with you.

Gossett thought you might want to mention the need for a judicial pay increase in your ABA speech, although it might have rather inflationary implications.

/s/

WILLIAM E. CASSELMAN II
Legal Counsel to the Vice President

Enclosure

cc: Mr. Hartmann
Mr. Buchen
Mr. Friedman

8/6/74

MEMORANDUM

Re: Executive, Legislative, and Judicial Salary Recommendations of the President

Under Public Law 90-206 (81 STAT, 642) a Commission of nine members was appointed in late 1972 to report its recommendations to the President with respect to executive, legislative, and judicial salaries. Although the statute contemplates a salary reexamination every four years, the lateness of appointment of the second Commission resulted in a five-year interval.

On June 30, 1973 the Commission reported its recommendations to the President. Seven of the nine commissioners were convinced that simple equity required salaries be raised enough to at least offset the five year cost of living advance which the majority of the seven believed warranted a 25 per cent increase. The remaining three thought the increment should be 30 per cent. Two commissioners voted for no increase at that time.

The President reduced this recommendation to about 7-1/2 per cent per year for three years. His recommendation was disapproved by the Senate and no increases have occurred. Hence grades 16, 17, and 18 and the executive grades, as well as the legislative branch, and the judicial branch have been without salary changes in a very inflationary period for more than five years.

Nothing in the record pertaining to the passage of the Act indicates that the President's recommendations may be made only once every four years. The law provides for the Commission to report to the President "on such date as the President may designate but not later than January 1 next following the close of the fiscal year in which the review is conducted by the Commission." It also provides that the President shall include in the budget next transmitted by him to the Congress his recommendations. In that respect the Act is mandatory but there is nothing in the Act which prohibits resubmission of the report of the Commission by the President as his recommendation or of the President submitting his own recommendations at a time other than as part of the next budget after the Commission's report is received.

The requirement to submit with the next budget does not mean that with respect to all other years or submissions the Act is prohibitive. This legislation was never designed to prevent salary increases for executive, legislative, and judicial personnel in any year other than the year next following submission of the Commission of its report to the President.

It is proposed, therefore, that the President submit to the new Congress as his recommendation the original report and recommendations of the Commission to become effective beginning the first pay period after the thirtieth day following transmittal of the President's recommendations.

The budget, to be submitted to the same Congress, should have included therein by the President as soon as the budget is prepared, a sufficient sum to cover the increases in the Commission's report.

It is believed the new Congress, weighing all the equities, would be in a receptive mood to the recommendations and would take no action to disapprove. The recommendations could then become effective March 1, 1975.

COMMISSION ON EXECUTIVE, LEGISLATIVE AND JUDICIAL SALARIES

1016 - 16TH STREET, N.W.
WASHINGTON, D.C. 20036

JUNE 30, 1973.

The PRESIDENT,
The White House,
Washington, D.C. 20500.

DEAR MR. PRESIDENT:

We have the honor to present to you the report of the second Commission on Executive, Legislative and Judicial Salaries.

Unlike our predecessor, this Commission approached its task fully conscious of an important constraint upon its recommendations; namely, the need to act with due regard for the spirit of the Phase II (5.5 percent) Salary Guideline of the Economic Stabilization Act. In addition, we find that a substantial rise in living costs has eroded the purchasing power of salaries of top officials in the three branches of the Federal Government who have not had a pay increase since March of 1969. These considerations have greatly restricted the range of decisions available to the Commission.

The principal obstacle to maintaining a reasonable and equitable compensation structure in the Federal Government is the fact that career employees receive annual pay increases that are related to industry salary rates, while the salaries of top officials in the Executive, Legislative and Judicial branches are normally adjusted every 4 years; and these 4-year adjustments have the effect of placing a ceiling on the compensation of career employees, especially during an inflationary period. This, in turn, has created serious salary compression among the top ranks of career employees.

In our judgment, the dual salary system makes it difficult
attract, retain and motivate top officials in the Executive, Legisl
and Judicial branches, as well as career employees. Indeed
dissonance between the two pay systems, in effect, has b
a prime *de*motivator.

Replacing the present quadrennial Commission with
Commission would, we think, largely eliminate com
demotivating force in both structures. Further, th

would make the Executive Salary Schedules more responsive to economic change, and permit the next Commission to carry out what we regard as a much-needed reevaluation of positions within this structure. As we see it, the Phase II limitation precludes such action by the present Commission.

We are convinced that the salary schedules of career employees and the Executive Schedules require more effective integration. The biennial Commission would be one step in this direction, and we have recommended in our report an approach that could be a major advance toward achieving this end.

We share the conviction of the previous Commission that many critically important government positions are inadequately paid, and that this condition unfavorably affects the quality of talent available to these jobs. But once a reasonable degree of integration between the career salary structures and the executive salary structures has been attained, it will become practical for salary relationships more directly to reflect responsibilities of individual positions in these structures.

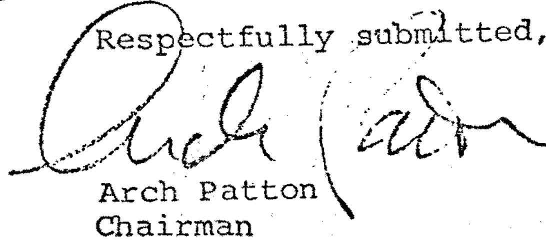
The Commission reached the above conclusion with great equanimity because the facts clearly pointed the direction corrective action must take. The same cannot be said regarding the Commission's primary function; recommending salary changes for the Executive, Legislative and Judicial branches of the Federal Government. The unusual economic conditions facing the country during our deliberations—price inflation at home and a weakening dollar abroad—led the Commissioners to arrive at three distinctly different salary recommendations, from the same available facts.

Let me summarize them briefly. Two Commissioners concluded that no salary increase should be recommended at this time in order to set an example for the rest of the country (see Minority View on page 33). Seven of the nine Commissioners, however, were convinced that simple equity demands that salaries be raised enough to at least offset the five-year cost-of-living advance. A majority of the seven, in turn, felt that restoring the purchasing power of Federal officials—a 25 percent increase—would be fair and equitable and at the same time set an unmistakable example of restraint (this Majority View is expressed in the report starting on page 23). In addition, they felt that growing Congressional recognition of the need for a biennial Commission that would reassess salary levels in 1975 warranted taking a conservative posture at this point.

And, three Commissioners voted for a 30 percent salary increment (see Minority View on page 34). Pay increases in other sectors of the

economy do, indeed, support such an advance. A very important consideration in this minority view is the belief that judges—as career public servants—have been seriously disadvantaged by lack of salary action since 1969. Other Commissioners share this concern regarding the Judicial branch's ability to attract and retain outstanding judges.

Respectfully submitted,



Arch Patton
Chairman

COMMISSION ON EXECUTIVE, LEGISLATIVE AND JUDICIAL SALARIES

Appointed by the President:

ARCH PATTON, Chairman
Director, McKinsey & Company, Inc.

JOHN H. LYONS
General President, International Association of Bridge, Structural & Ornamental Iron Workers

DAVID PACKARD
Chairman of Board, Hewlett-Packard Co.

Appointed by the President of the Senate:

JOSEPH F. MEGLEN
Lawyer
Partner, Meglen & Bradley

BERNARD G. SEGAL
Lawyer
Chairman, Schnader, Harrison, Segal & Lewis
Past President, American Bar Association

Appointed by the Speaker of the House of Representatives:

EDWARD H. FOLEY
Lawyer
Partner, Corcoran, Foley, Youngman, and Rowe
Former Under Secretary of the Treasury

WILLIAM SPOELHOF
Educator
President, Calvin College

Appointed by the Chief Justice of the United States:

ROGER M. BLOUGH
Lawyer
Partner, White & Case

WILLIAM T. GOSSETT
Lawyer
Partner, Dykema, Gossett, Spencer, Goodnow, and Trigg
Past President, American Bar Association

Executive Director
David H. McAfee

Mr. GRIFFIN. I announce that the Senator from Connecticut (Mr. WEICKER) is absent due to death in the family.

The ACTING PRESIDENT pro tempore. A quorum is present.

VOTE

The ACTING PRESIDENT pro tempore. Pursuant to rule XXII, a rollcall has been had, and a quorum is present.

The question before the Senate now is, is it the sense of the Senate that debate on Senate Resolution 293, a resolution to disapprove pay recommendations of the President with respect to rates of pay for Members of Congress, shall be brought to a close?

The yeas and nays are mandatory.

The clerk will call the roll.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate during this rollcall?

The ACTING PRESIDENT pro tempore. Senators will please take their seats. Those Senators carrying on conversations will please go the cloakroom. The Senate will be in order.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Nevada (Mr. CANNON) is necessarily absent.

I further announce that, if present and voting, the Senator from Nevada (Mr. CANNON) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Connecticut (Mr. WEICKER) is absent due to death in the family.

The yeas and nays resulted—yeas 67, nays 31, as follows:

[No. 54 Leg.]

YEAS—67

[illegible]	Eastland	McGovern
[illegible]	Ervin	McIntyre
[illegible]	Fulbright	Metzenbaum
[illegible]	Goldwater	Mondale
[illegible]	Gurney	Montoya
[illegible]	Hansen	Muskie
[illegible]	Hartke	Nelson
[illegible]	Haskell	Nunn
[illegible]	Hatfield	Packwood
[illegible]	Hathaway	Pastore
[illegible]	Helms	Pell
Byrd, Harry F., Jr.	Hollings	Percy
Byrd, Robert C.	Hruska	Proxmire
Chiles	Hughes	Randolph
Church	Humphrey	Ribicoff
[illegible]	Jackson	Roth
Cook	Johnston	Schweiker
Cranston	Long	Stennis
Curtis	Magnuson	Stevenson
[illegible]	Mansfield	Symington
Domenici	Mathias	Taft
Dominick	McClure	Talmadge
Eagleton	McGee	

NAYS—31

Baker	Griffin	Scott, William L.
Beall	Hart	Sparkman
Bennett	Huddleston	Stafford
Brock	Inouye	Stevens
Brooke	Javits	Thurmond
Buckley	Kennedy	Tower
Case	McClellan	Tunney
Cotton	Metcalf	Williams
Fannin	Moss	Young
Fong	Pearson	
Gravel	Scott, Hugh	

NOT VOTING—2

Cannon	Weicker

The ACTING PRESIDENT pro tempore. On this vote the yeas are 67 and the nays are 31. Two-thirds of the Senators present and voting having voted in the affirmative, the motion is agreed to.

Each Senator has 1 hour of debate. The Senator from Wyoming is recognized.

Mr. McGEE. Mr. President, what is the parliamentary situation in regard to the procedure after cloture has been voted?

The ACTING PRESIDENT pro tempore. The pending question is on agreement to the amendment of the Senator from Idaho.

Mr. McGEE. Mr. President, I want to make one declaration here in behalf of the Post Office and Civil Service Committee. In my judgment the Senate has expressed its will at all levels. Everyone has had a chance to be counted on all issues present in this question.

I want to say now, therefore, that the Post Office and Civil Service Committee will very soon, this spring, begin a series of hearings on this question. We will look toward revising the law, updating the law, abolishing the law, enriching the law, or doing whatever is required to come to grips with this question.

I do not have to repeat the shortcomings we find ourselves in this morning. I would hope that we would have out of the legislative committee a frontal attack on the apparent problems so that they might be resolved, no later than next January. It is the hope that anyone with any expertise, bias, or druthers on the matter will have testified before the committee.

We intend to have people from the Office of Management and Budget, the administration, the Civil Service Commission, consumer groups, taxpayer groups, and our constituents. We want input. We are looking now for what we should do, because it will be worse next year and the year after than this year with respect to the problem of the Federal pay structure. We are asking for your help. We will undertake very substantial studies and hopefully make legislative recommendations on this problem.

Mr. FONG. Mr. President, will the Senator yield?

Mr. McGEE. I yield to the Senator from Hawaii.

Mr. FONG. Mr. President, as the ranking minority member of the Post Office and Civil Service Committee, I join with my distinguished chairman in saying that I will do everything possible to have hearings held on the pay issue. What I am concerned about is the 28,000 Government employees that will be hitting the ceiling by 1978 if we do not do anything now. At the present time 9,704 Government employees are at the ceiling. If we want to keep our own pay out of the matter, that is perfectly all right, as Members of the Congress.

There are 9,704 Government employees at three levels who all receive pay of $36,000. In other words, boss No. 1, boss No. 2, and boss No. 3 all receive $36,000. If we do not do anything now, it will be another 4 years before we will have a quadrennial commission recommend a salary increase to the President and the Congress. By that time there will be another 19,000 Government employees in the statutory system who will be hitting the ceiling of $36,000. In other words, at that particular time, 4 years hence, when the quadrennial commission recommends a salary increase, instead of three levels of supervisory employees receiving $36,000, we will have six levels. We will have almost all of the GS-15, 16, 17, and 18 receiving $36,000 plus some GS-14's. For example in the Patent Office, the Patent Commissioner appeared before the Judiciary Committee for his confirmation hearing. We asked him how many of his assistants are receiving the same pay as he is receiving. He said that there were 50 of his assistants who are receiving $36,000, the same pay he is getting.

This is the problem of compression. And I think that if we do not do something now, we will have a crisis in the Federal statutory pay system.

I, therefore, join my distinguished colleague in asking for a quick review of the present situation.

Mr. HUGH SCOTT. Mr. President, I ask recognition on my own time.

Mr. McGEE. Mr. President, I have the floor.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming has the floor.

Mr. McGEE. Mr. President, I am not going to use much time. I only wish to suggest that those who believe that the law on the books now is unwise in any way will not move simply to repeal the law, if that is their wish. I hope that they start quickly to help us find a new approach. This law was honestly calculated to provide an honest judgment and take out all emotional factors.

Any number of Senators have expressed the desire to determine for themselves the congressional pay level. They, therefore, are opposed to the Commission recommendations to the President. It is not enough just to wipe it out. We have to be able to say what we are going to do, how we are going to attack this question. It is not going to be easy just to be against it. We have to come up with something if we are indeed to restore responsibility, the responsibility that goes with the Office of a Senator of the United States.

I think we ought to think of it in those terms. It is the Office that is at stake. And if we are not worth it, the people ought to send someone else here.

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

Mr. McGEE. I yield.

Mr. HUGH SCOTT. Mr. President, I think the flaw in our situation has now been demonstrated. We have failed to do justice to others, because of our fear to do justice to ourselves. That is a pity, and it is a tragic situation. I hope that the committee, which has done a splendid job here, will work out a situation whereby justice can be done all around, fairly and equally.

We are saying to the public employees that we are not going to let them have a pay raise because it will look bad if we try to get one for ourselves. And even if we defer it for ourselves, it will still look bad. Therefore, the public employees cannot have it even though they are entitled to it.

Mr. FONG. Mr. President, if the Senator will yield, we do not tell all the Government employees that they will not get a raise. We tell the lower- and middle-

UNIVERSAL FOREST PRODUCTS, INC.

3153 Three Mile Road, N.E. Grand Rapids, Mi. 49505 [616] 361-6651

Policy issues

August 7, 1974

Mr. Philip Buchen
Executive Director of Domestic
Council Committee on Right
to Privacy
Executive Office Building
Washington, D.C. 20500

Dear Phil:

Not wanting to bother Jerry with these comments, I thought it best if you were made aware of certain conditions out here in the hinter-land.

Yesterday I went to an emergency meeting in Chicago, regarding the financing of factory manufactured housing. Many large banks were represented, i.e., Mellon Bank of Pittsburg, Wells Fargo, Citicorp, etc. Many large commercial lending institutions and service companies were also represented.

It boiled down to one major problem. The usury laws in almost all states prohibit any bank or financial institution from loaning money at a profitable rate. The cost of money exceeds the legal lending rate.

There were many strong feelings against the Federal Government for issuing the 9% treasury bills this week. Funds are flowing from the Savings & Loan Association into the Federal Government, and making less money available for housing. The National League of Savings & Loan Associations was represented, and they find it virtually impossible to loan money on a mobile home-- which presently is the only low-cost housing available to the American public. This industry is in dire straights. 200 plants are closing down this summer.

For the first time in 17 years Universal Forest Products is having to lay people off, and we feel that there is no relief in sight for the housing industry. This letter is <u>not</u> to incite interest in federal subsidies, housing assistance, or any other federal program. It is to bring one major crisis to your attention.

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Peter F. Secchia
PRESIDENT

Apathy, consumer discontent--the people are weary. There has to be a change. Several months ago Jerry and I discussed this situation, and I recommended that the President resign. We debated--I lost.

It isn't because Jerry is the Vice President that I recommend this... it is because the office of the President must be cleansed. It would be like a fresh bath, a new shirt, a chance to start all over again.

There is no doubt in my mind the stock market would rebound violently, the institutions could then move back into the market, and the large corporations and utility companies would be able to raise funds in the public sector rather than competing in the commercial sector.

If there is confidence in the stock market, then there would be a source of funds again available to these industries. At that point in time they would no longer compete with the "average man" for mortgages, consumer loans, etc.

As a friend of Jerry's, and a recent acquaintance of yours, I ask that you consider these points. Please pass on my best to the Vice President, and his family.

Cordially,

Peter F. Secchia

PFS/jh

Aug. 9,1974 President Ford might hopefully want to "talk straight" about this.

Subject: The perversion of indirect minority rule and/or minority veto in the Congress and the potential minority rule of the notorious Electoral College with some proposed remedies

Attached please find ONE 1972 Michigan election data-page and two graphs showing actual/potential indirect minority rule and/or veto in the voting power operation of all three federal election systems---the U.S. House of Representatives, the U.S. Senate and the so-called Electoral College in comparison with 'popular' 1972 presidential vote totals.

The three curves in graph 1 were separately formed by dividing the 1972 total presidential vote for each State by the number of 1) the State's Representatives in Congress(for the House curve), 2) the State's (D.C.'s) electoral votes (for the President (Electoral College) curve) and 3) "two" (for the U.S. Senate curve). For each separate curve the resulting State ratio values were put in rank order from highest to lowest. Starting with the highest State ratio the corresponding cumulative 1972 presidential vote (by State) and the corresponding cumulative State "voting power" unit (Representative seats in Congress, electoral votes,or U.S. Senate votes) were then determined and converted into percentages to produce graph 1 (that is, a Lorenz data curve is determined for each of the three federal election systems). Graph 2 visually "transforms" the graph 1 curves to a "horizontal" basis rather than the "diagonal" basis of the graph 1-Lorenz system. Note--- the high to low rank orders of the States (and the D.C. in the electoral college curve only) differ in all three curves.

Some general comments regarding each voting power system--- A) the House of Representatives curve deviates from 'pure' equality mainly because of the Constitutional minimum of 1 seat per State and the somewhat 'extreme' votes per seat ratios for 'small' States resulting from the mathematics of the "method of equal proportions" which is used to apportion Representative seats among the States according to the decennial population (not electorate) census.; B) the electoral college curve deviates somewhat more from 'pure' equality than the Representative curve because it is in effect a 'political hybrid' composed of 80.9 % (435/ 538) of the Representative system, 18.6 % (100/538) of the Senate system and 0.56% (3/538) of the District of Columbia's 'special' 23rd Amendment system.; C) the Senate curve is a good example of an oligarchial voting power system due to the infamous 1787 "compromise" of two Senators per State irregardless of the size of the State's population or electorate.

All three systems being based on 1) Single-member districts (each State is in effect a single 'district' for Senate and Presidential election purposes) and 2) a plurality 'winner-take-all' system in each of such single-member districts produce, using the 1972 Presidential election results, the following "extreme case" perversions of majority (or two-thirds) rule from graph 1 (assuming only a two party system-- 3 or more parties cause even worse percentages)-------

Table A

Cumulative popular vote percentages

	bottom 33.3	bottom 50	bottom 66.7	top 33.3	top 50	top 66.7
House	30	45	61	70	55	39
Senate	10	16	28	90	84	72
President	--	42	--	--	58	--

} Voting power percentages

Table B

Cumulative voting power percentages

	Con.	bot 33.3	Con	bot 50	Con	bot 66.7	top 66.7	Con	top 50	Con	top 33.3	Con
House	18.5	37	27.5	55	36.5	73	63	31.5	45	22.5	27	13.5
Senate	36 (1)	72	42 (2)	84	46.5 (3)	93	28	14 (4)	16	8 (5)	7	3.5 (6)
President	--	--	30.5	61	--	--	--	--	39	18.5	--	--

Popular vote percentages

"Con." means control percentage (popular vote), 'bot' means bottom
Regarding (1) through (6)---- 1 is the maximum (6 is the minimum) to stop a constitutional amendment (or treaty in Senate); 2 is the maximum (5 is the minimum) to pass and/or stop a law; 3 is the maximum(4 is the minimum) to pass a constitutional amendment (or treaty in the Senate). Presidential veto percentages are 1,6,3,or 4 as the case may be. A "complete" House and Senate is assumed -- bare majority quorems (Constitution, Art.1,Sec.5,cl.1) reduce each of the circled "control" percentages by about half.

if the infamous electoral college fails to produce a President, the 12th Amendment minority mathematics 'roughly' approach that of the Senate in table B. The circled "control" percentages in table B show the minimum or worst 'theoretical' minority rule or minority veto possibilites of the three systems. The 'control' percentages are one-half of the 33.3,50,or 66.7 percentages because of the 'winner-take-all' aspect of the systems-- that is , the graphs below show ONLY THE 'single-member district' aspect of the three systems. For example-- 22.5 % of the total 1972 presidential voters in a 'faction' could in theory elect a bare majority of the U.S. House of Representatives if (in the very unlikely case) such voters were bare majorities in the 218 congressional districts of the 26 States having the lowest ratios of 1972 presidential votes per Represenative seat(by State) . In reality, the 'control' percentages are somewhat higher than the extreme values shown in table B since 1) the 'control' percentages (by State or congressional district) for one of the indicated purposes(pass/stop a constitutional amendment or treaty, let stand/override a presidential veto, pass/stop a law, elect/not elect a President in the electoral college) are "combined" from both "high ratio" and "low ratio" States (for the Senate and electoral college) or congressional districts (for the House of Representatives); and 2) the winning percentage in each separate State or congressional district exceeds the bare majority of 50.1% (roughly in the 55%-70% range).

The Michigan 1972 congressional data attached gives a "real" example of indirect minority rule and/or veto in a strong "overall" two party State. The following Michigan election law features contribute to the minority rule/veto results---. 1) U.S. Representatives are elected from single-member geographically defined districts based on "instantly" obsolete "equal" census population (not 'elector' population) data ;2) Nonpartisan Representative candidates can not obtain a ballot listing ; 3) A primary voter is limited to voting for only primary election candidates of the same so-called "major" political party; 4) A plurality is sufficient to nominate candidates in such 'party primaries'; 5) A plurality is sufficient to elect the winner in the district in the general election ; and 6) Each elected Representative has one vote in the House of Representatives irregardless of how many votes are cast a) for all candidates in the district in the general election,or b) for the elected Representative. Other States have similar election law features encouraging minority rule/veto in the U.S. House of Representatives.

With the country becoming more and more split along political and/or residential and/or income and/or de facto racial "class lines" in a manner analogous to the situation preceding the disaster of the Civil War, such three "radically defective" election/voting power systems can easily provoke by omission or commission repeated disasters such as the Civil War, World War I, The Great Depression, World War II, the Korean War, The Indochinese War or "Worse" through a "no compromise--deadlock" situation between the House and/or Senate and/or President (assuming that the insane political mathematics of the 12th Amendment don't come into operation). The following election/voting power features are proposed as amendments to the Constitution for your information as the 'obvious' means to avoid such indirect minority rule and/or veto "CRISIS" situations in the future----

A. A 'uniform' definition of a federal elector (human voter) for the election of the Congress and President would be put in the Constitution. A uniformly applied federal elector voter registration system would be enacted to be executed by State officers in the States.

B. A proportional representation system for the Congress would have the following features--- 1) Each Senate (House) district would be apportioned on the basis of registered electors and elect TWO Senators (Representatives); 2) Each district would consist of a number of complete States and/or parts of not more than two States ;3) Each State would constitute a number of complete districts and/or a part of not more than two districts. (the District of Columbia and each U.S. territory would be a "State" for election purposes); 4) The size of the Senate would be fixed in the Constitution. The even-numbered size of the House of Representatives would be determined by law; 5) District reapportionment would take place after each Presidential election by law not subject to Presidential veto; 6) A Senate (House) candidate would have the option of having a partisan or nonpartisan label; 7) In the primary election, a voter would be able to vote for any one candidate, irregardless of their partisan or nonpartisan label; 8) The top two primary election candidates per district would be nominated, irregardless of their partisan or nonpartidan label; 9) In the general election, a voter would be able to vote for any one candidate (the present situation of course) and 10) The top two vote-receiving general election candidates per district would be elected and have a voting power in their house of the Congress equal to the total vote cast for all general election candidates in the district apportioned by the "method of equal proportions" to said top two winners on the basis of the number of votes they each receive in being elected. Example--

Winner A - 195,000 votes
Winner B- 156,000 votes
subtotal 351,000
Loser C - 5,000 (write-in)
Total 356,000

A's voting power would be 197,778
(roughly $\frac{356,000 \times 195,000}{351,000}$)

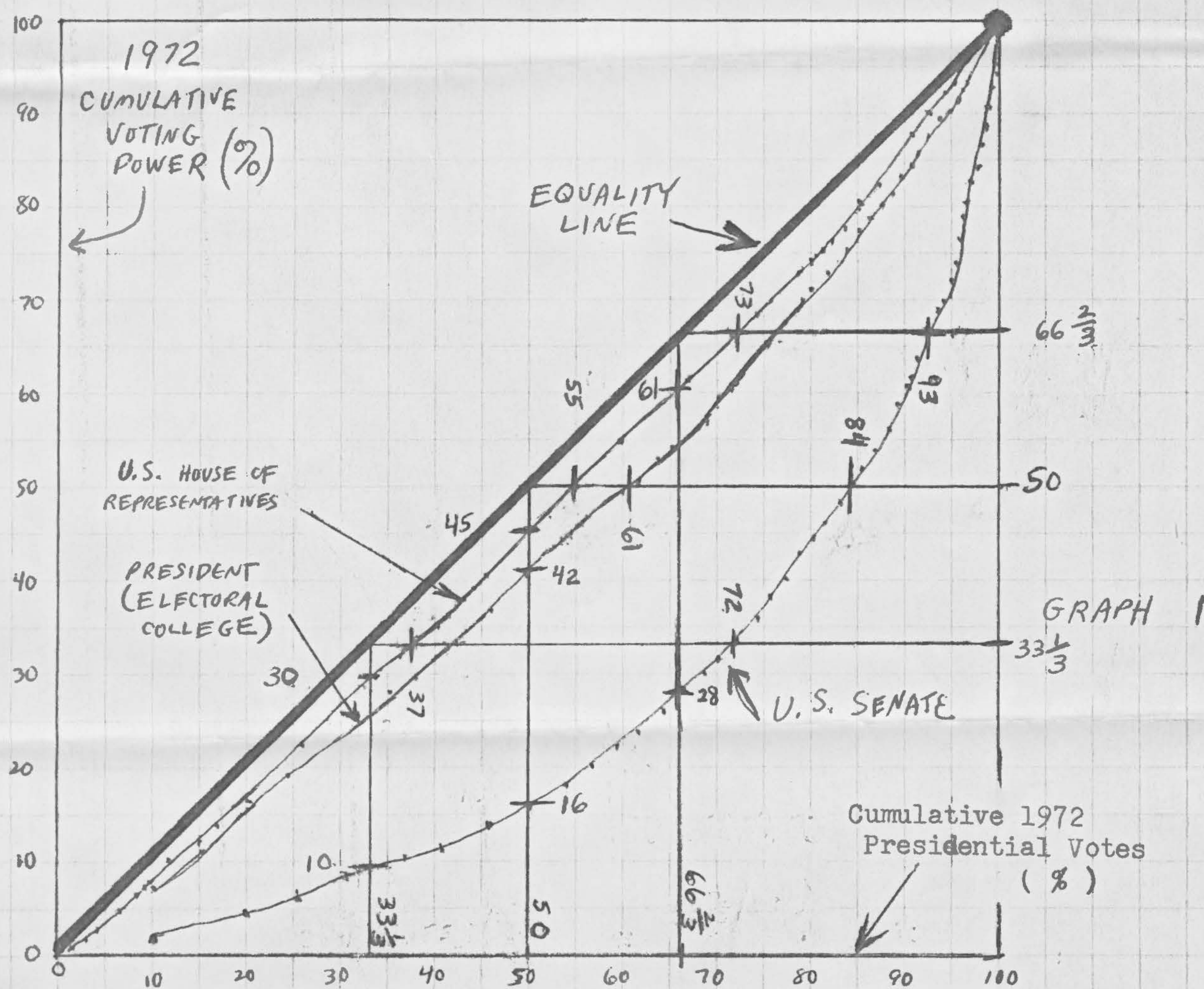
B's voting power would be 158,222
(roughly $\frac{356,000 \times 156,000}{351,000}$)

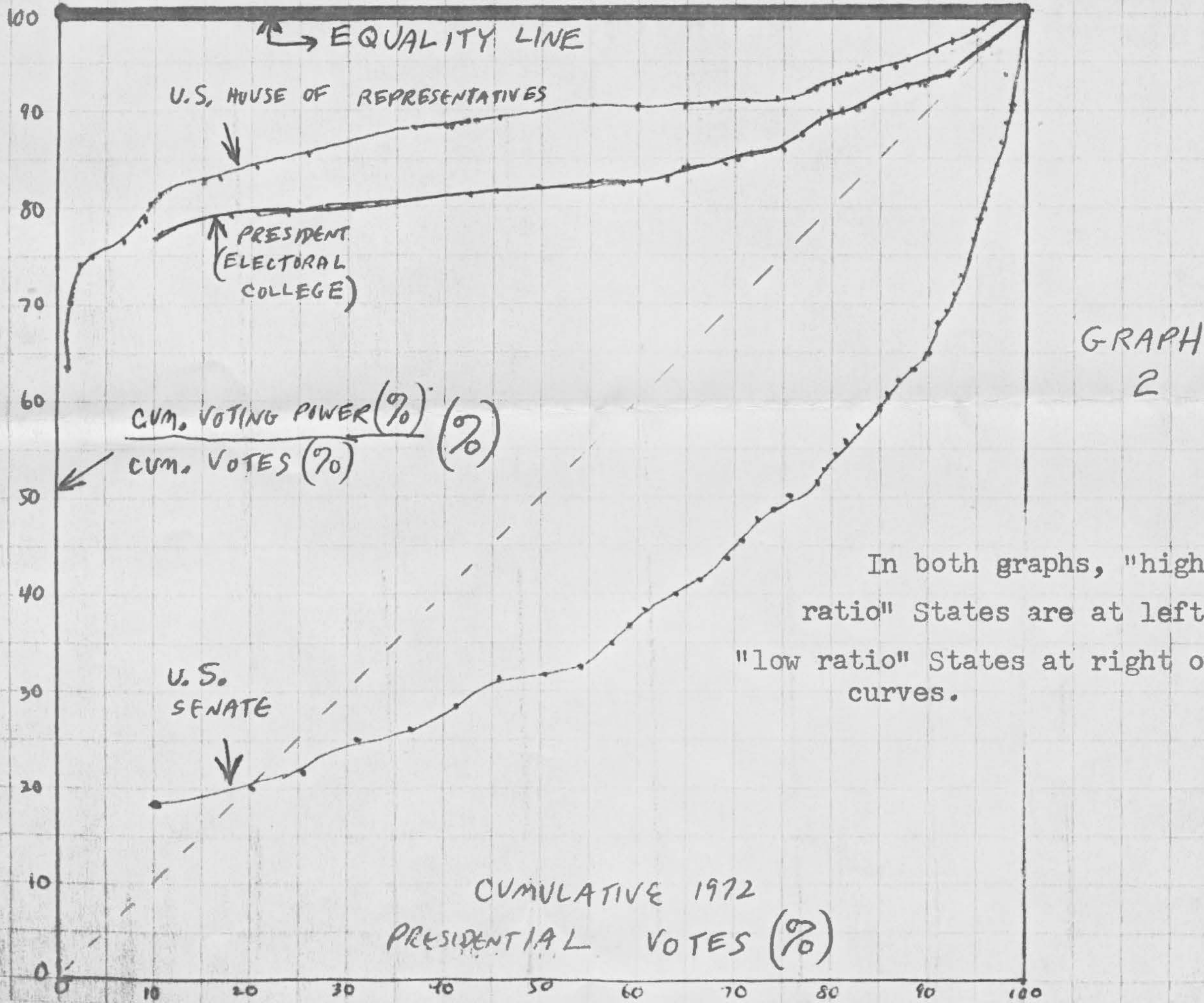
In 'practical' terms, both a 'majority' winner and a 'minority' winner would be elected from each district producing a much greater discussion of public legislative issues in general and primary elections than occurs at present and that political parties would become much more "responsible" and "liable" for carrying their election time platforms and other "promises" into execution.

C. The Presidential system would have the following features---1) Exclusively nonpartisan (on ballot) by federal elector signed nominating petitions; 2) Joint nomination and election of President and Vice President; 3) Top two joint teams in primary election would be nominated; 4) Highest team in general election would be elected; 5) Second highest team in general election would be permitted to become nonvoting members of Congress. The foregoing would of course junk the Presidential nominating portion of national political party conventions (leaving the 'legislative issue' portion of such conventions, of course).

T.W. Jones

Thomas W. Jones, 15336 Cruse, Detroit, Michigan 48227





In both graphs, "high ratio" States are at left and "low ratio" States at right on the curves.

I. PARTISAN GERRYMANDER RESULTS -- 1972 U.S. House of Representatives (Michigan)

19 Single-member districts apportioned on basis of 1970 census population data.

Elected: 12 R (63.2 %), 7 D (36.8 %), total 19 (100.0 %). Term ends Jan. 3,1975.

A. General Election	VOTES	% of Genl Total	% of Primary Total
1. 12 Elected R	1,363,706	41.7	
2. 10 Lowest Elected R	1,095,752	33.5	
3. R Losers	346,471	10.6	
4. Total R	1,710,177	52.2	
5. 7 Elected D	737,289	22.5	
6. D Losers	798,418	24.4	
7. Total D	1,535,707	46.9	
8. Other Party Losers	27,290	0.8	
9. General Election TOTAL	3,273,174	100.0	
B. Primary Election			
1. 12 Elected R	373,721	11.4	38.2
2. 10 Lowest Elected R	291,902	8.93	30.0
3. Lowest 10 R Nominees later elected	290,447	8.88	29.9
4. R nominees---General losers	46,656	1.42	4.78
5. R primary losers	96,181	2.94	9.88
6. Total R	516,558	15.8	53.0
7. 7 Elected D	199,224	6.10	20.4
8. D nominees--- General losers	128,931	3.94	13.2
9. D primary losers	129,466	3.96	13.3
10. Total D	457,621	14.0	47.0
11. Other parties --- none-- no primary			
12. Primary Election TOTAL	974,179	29.8	100.0

II. NONPARTISAN PERVERSION RESULTS

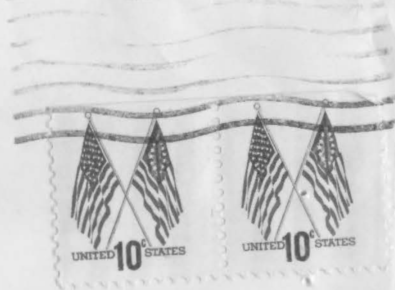
A. General Election -- Individual	VOTES	% of Genl Total	% of Primary Total
1. Winners Only	2,100,995	64.3	
2. Losers Only	1,172,179	35.8	
3. 10 Lowest Winners	989,324	30.2	
4. 9 Highest Winners	1.111,671	34.1	
5. 16 Lowest Winners barely exceed 50 % of General Election total	1,701,588	52.1	
6. 11 Lowest Winners barely exceed 50 % of Winners Only vote	1,100,509	33.6	
B. General Election -- District totals			
1. 10 Lowest Districts	1,582,362	48.4	
2. 9 Highest Districts	1,690,812	51.7	
3. 11 Lowest Districts barely exceed 50 % of Genl total	1,762,995	54.5	
C. Primary Election-- Individual			
1. Votes for all nominees	748,532	22.9	76.7
2. Votes for nominees later elected	572,945	17.5	59.4
3. Votes for nominees losing in Genl.	175,587	5.38	18.1
4. Votes for primary losers	225,647	6.89	23.2
5. Votes in primary for 10 lowest General election winners	254,341	7.78	26.1
6. Votes in primary for 10 lowest nominees later elected	219,591	6.72	22.5
D. Primary Election-- District Totals			
1. 10 Lowest Districts	427,395	13.1	43.8
2. 9 Highest Districts	546,784	16.7	56.0
3. 12 Lowest Districts barely exceed 50 % of primary total	536,108	16.4	55.0

E. Ratio Perversions

1. Highest Genl loser/ Lowest Genl winner	95,209 / 83,351	or	1.145
2. " " " / " District total	95,209 /113,928	or	0.835
3. " " winner/ " Genl winner	135,786 / 83,351	or	1.625
4. " " district/" Genl district	195,609 / 113,928	or	1.715
5. " Primary loser / " Nominee	19,511 / 1,979	or	9.84
6. " " " / " nominee later elected	19,511 / 13,115	or	1.48
7. " " " / " primary dist. total	19,511 / 25,664	or	0.762
8. " " district/" " " "	76,073 / 25,664	or	2.97

F. Misc. 1. Both D and R had primary candidates (and thus general election candidates) in all districts. 2. In only 3 districts were there two or more primary candidates of both the D and R parties. 3. 8 D and 10 R primary candidates were unopposed in their respective party primaries (of which 4 D and 7 R were elected). 4. 2 D and 2 R were winners with 55 % or less in the general election.

Thomas W. Jones
15336 Cruse
Detroit, Mich. 48227



Mr. Philip Buchen
adviser to President Ford
c/o The White House
Washington, DC 20500

Aug. 12, 1974

Mr. Philip W. Buchen
c/o The White House
Washington, D.C.

Dear Mr. Buchen:

After putting together the thoughts about Medical and Health Insurance for Mrs. Griffiths, congresswoman, to convey to you for President Ford, I decided to send this directly to you.

Then you can deliver "person-to-person" what I believe has never been openly stated, and which belongs to this new era of return to reality and the American way of life.

President Ford speaks our language and is the man to restore unity. Please condense my message and let him take the best from it. Sincerely, Marjorie McCutcheon

August 12, 1974

To: Representative Martha W. Griffiths
House Office Bldg.
Washington, D.C.

The opportunity for "person-to-person dealings" with President Ford, a realist, does not come in the case of the average American citizen. But if I were to be in your place and asked by Mr. Philip Buchen to tell him what the private sector is thinking about Health Insurance and Cutting down on costs in Government (cutting losses in dollars and in lives) and restoring integrity and trust — yes, all this — it might come as a surprise that by one addition to his Cabinet, every American will feel the benefit, and our country will be stronger.

Here is what I would tell President Ford, if I had the opportunity:

1. For reducing costs and delivering health services of a higher quality to all, the first step is to appoint a Secretary of Medicine and Health who is a medical doctor especially prominent in the field of IMMUNOLOGY Research. (immunological?)

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2. Only by ONE Dept. of Medicine and Health, can all the other related and positive advantages follow. To return health and medical service to a practical base of MEDICAL SCIENCE; and to put all services... which is to say care and prevention... in the MEDICAL MAINSTREAM, is the way to save lives, dollars, and restore faith and unity.

3. Unless there is a united and strong base for medicine and health, there will be no health insurance in the valid and practical meaning of this plan to serve and protect all the American people, without discrimination.

4. Just as our National Defense should not be left to the military "professionals", neither can National Health Insurance be left to the Medical "professionals".

Therefore the people (or the "civilians") should take part in planning the services that will so directly affect them in a Health Insurance plan.

5. There must be that open to the public participation which came through on Television and radio and in the press, but more specifically on TELEVISION as we all joined and all responded, in our hearts and minds; as we all learned together and so united on the way that was best for our Country. Without open discussion and open debate about Health Insurance and what it will mean, there will be no valid and practical plan for the best interests of our country.

Now for the facts which have been left unsaid and which have remained silent: We have in this country an impossible expectation for national health as a realistic goal because of two impossible structures.

a) The "MENTAL"-MEDICAL APARTHEID SYSTEM

b) The H.E.W. Conglomerate

In reference to (a): The Behaviorist Theory has been superimposed upon our Democracy. It flies in the face of our Constitution and our Declaration of Independence ..."Nature's God", Natural Science and the power of the Omnipotent, acknowledged in our motto — IN GOD WE TRUST

No more deleterious word has ever fallen into our path to obstruct our course than the word used as a prefix: "MENTAL".

It has cut across every facet of our society: educational, economic, social, industrial, moral, religious, legal, scientific, political and cultural.

It has become a totalitarian dynasty on free American soil. It has manipulated the minds and perfected the skill of Psychological Warfare. It can overthrow entire nations by demoralizing the people, sowing seeds of distrust, fear and by the tools of intimidation and TORTURE!

It has become a tool for character assassination. And this hoax of an "illness", three-pronged to cover our morals with "hygiene"; our conscience with "health"; and our victims of an epidemic that attacks the central nervous system with "treatment", pre-fixed by MENTAL, has BLOCKED OFF the rescue teams of medical science and medical care to halt this epidemic caused by a common virus.

For over a quarter of a century the "MENTAL" industrial complex has been filling its bins with the victims, even though every American knows that you cannot control or prevent a disease by Psychiatric "treatment" or theory!!

This system has cost billions in dollars. What it has

5/

cost in lives can never be calculated. Its statistics are unavailable. It has been a Secret OPERATION .. and has corrupted the world!

Into that "MENTAL" domain the medical doctor never treads. He reads "DO NOT ENTER"; but translates it in his code called, ethical practice.

In reference to (b): The H.E.W. conglomerate has merged beyond any anti-trust laws and beyond the limits of clarity and interpretation of its own laws, into a monster. It has become a three-pronged trap to control our free education, our field of medicine and our system of serving the people .. whether able or disabled.

Americans have sat silently by and let this monstrous conglomerate crush defenseless people; and reduce to despair the educational profession and the medical profession by the power of the purse!

Under the H.E.W.'s aegis the "MENTAL" Dynasty has flourished and blown itself into corruption!

This nation has been "hooked" by the Behaviorist vocabulary... written into legislation to protect the pushers of its "MENTAL" industry — now expanding into the Parapschology craze!

Our children have had NO PROTECTION.

Our children had no defence against the mafia that pushed the Rock-Drug culture

Our gullible society thinks it is an exciting advancement in "scientific" approach when Retardation (why not call it "cripplization"?) Centers (clinics) equip themselves with mechanical testing devices for "Bio-Feedback" and "Brain Cell Development" .... can you stand it ..... "For The Greatest Human Potential"!

All the while, the research development to IMMUNIZE against two MAJOR EPIDEMICS concentrates on only one .. cancer. Even though

the medical profession <u>knows</u> that there is a <u>VIRUS</u> that is linked in a peculiar way to <u>BOTH</u> diseases. (via the dual immunological tracks)

Even though the medical researchers in England have developed a vaccine to immunize against the VIRUS* that is <u>active</u> in the large majority of cases dubbed "mental" illness and "retardation"! (It can hit at <u>any</u> age... it is a progressive disease ... it requires <u>all</u> to pool their findings on IMMUNOLOGY)

But Americans are kept IN THE DARK!

The in-fighting of the medical professionals has become an underground system of warfare.

<u>No</u> health insurance plan could possibly emerge under these impossible conditions and work to the best interests of our people .. who <u>are</u> the nation!

<u>First</u>, we must become enlightened.

<u>First</u>, one department of Medicine and Health.

This is a MEDICO-SOCIAL CRISIS!

CYTOMEGALO VIRUS INCLUSION DISEASE { Cancer .... ? / Central nervous system disease

Policy issues

Friday 8/16/74

1:30 David H. Plegg a lawyer in Salt Lake City (801) 363-1111
has a point he wants to discuss with you.

I had suggested the Office of Legal Counsel perhaps could talk with him -- if you were unable to return the call.

He said it is a matter close to the President. His wife knows the President and at one point the President had intentions of staying at his home -- but plans were changed -- so he would appreciate a call from you at some point.

Joseph Kraft's column
re raising enough food.
Suggests crash program.

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