dom of Information Act, refuses to make public its internal reports on Medicare operations. Under the Medicare act, Blue Cross is named as a "fiscal intermediary"; that is, in most places Blue Cross runs the Medicare program under general supervision of Social Security. During the last few years Medicare costs have risen dramatically. Charges were increased and benefits curtailed. Criticism grew within and without Congress. There were accusations, for example, that Blue Cross was helping local hospitals increase their bills by including such items as maternity care. But the Social Security Administration, the source of some of these reports, will not make them public. The Senate Finance Committee and House Ways and Means Committee, the committees concerned with overseeing administration of the act, routinely receive these reports. They refuse to make them public.

Federal bureaucrats are ingenious in devising methods to keep the simplest, most basic information to themselves. The Health Law Center at the University of Pennsylvania wants to obtain a copy of the HEW claims manual, which includes a section on tolerance rules. The tolerance rules are a guide to federal officials, telling them how lenient they can be in deciding claims. For example, should an elderly person who can't remember his birth date and can't find it because of lack of records, receive Medicare benefits? The tolerance rules would indicate under what circumstances such a claim could be accepted or rejected. Until recently there were two sections of the HEW claims manual. One was public and available to anyone. The other was official, and held in confidence. It included the tolerance rules. After the Health Law Center began making its inquiries, the claims manual was rearranged. Now the entire claims manual is a public document. But the tolerance rules have been extracted from it, and made confidential.

The Freedom of Information Act may hold out some hope of changing this situation, affording a method for opening up records. Harrison Wellford, of the Center for the Study of Responsive Law, won an important suit under the act not long ago. He sought and eventually gained access to certain investigatory records at the Agriculture Department. Still, prospects for opening up more information under the act are regarded as dim. The presumption of the act is that there is complete disclosure, but it goes on to list so many exemptions as to make it nearly meaningless. The act exempts, for instance, interagency or intraagency memoranda or letters, trade secrets and commercial and financial information. The act apparently protects preexisting exemptions. Thus it continues the section of the preexisting Social Security Act which says that there is to be no disclosure except for such matters as the Secretary (HEW) may prescribe.

In short there are so many exemptions in this law that it has become a sort of domestic secrets act, widening the liaison between government and industry, protecting the public from information it ought to have.

Redistributing Power on Capitol Hill

Making Congress Work

by Ralph Nader

Congress, the anthropologists would say, is a severely acculturating institution. With rigid procedures, seniority rules, pervasive committee secrecy and a system of petty rewards and giant punishments, the federal legislature faithfully reflects the power alignments in the society. Power goes to those senior legislators who service powerful interests, while isolation goes to those who merely represent powerless people. The pattern of behavior for members of what should be democracy's great advocate has been smoothed over generations into a routine form of debilitating etiquette called "getting along by going along."

Given a system which divided internal power by centralizing it in the hands of committee and subcommittee chairmen with great authority, two consequences continually mark the pace. First, a trade-off relationship becomes automatic: "you scratch my satrap and I'll scratch yours." Second, the problems of control by the lobby-industries are spectacularly simplified. For example, the banks run the Senate Banking Committee; agribusiness the two Agriculture Committees; the defense establishment the Armed Services Committees. Where the chairman is resistant, as in the case of Wright Patman of the House Banking and Cur-

rency Committee, the banks most often get their way by their close business and campaign fund relationship with a majority of the committee's members. In most cases, the control of the chairman is close to absolute if the constituent lobby has reached a working majority of the committee. Senator Philip Hart, who heads the Antitrust and Monopoly Subcommittee, has been permitted, for instance, to hold many hearings but no bills get the approval of the subcommittee, not to mention the parent Judiciary Committee run by James Eastland. No bills, that is, except ones which weaken antitrust laws.

Pressures for channeling, trading off and conforming have worn down independent and courageous legislators or limited them to no greater impact than that of a tolerated but circumscribed house maverick.

But in recent years, there has been a change in the determination of some members to develop more diverse initiatives than can be brought about through the traditional committee mechanisms. This trend is quite apart from the agonizing drive to reform congressional procedures by a growing number of legislators. Rather it is characterized by the development of broader dimensions to the individual congressman's or senator's office. Let me cite some examples.

1. Creative uses of complaints flowing into congressional offices can have many ramifications. Between 1965 and 1968 Sen. Gaylord Nelson (D, Wis.) probed and exposed the tire industry's lack of safety practices and used a combination of detailed complaints and court documents on inadequate tire quality control to good effect in the passage of tire safety legislation and oversight of the National Highway Safety Bureau. Yet he was not a member of the Senate Commerce Committee which had jurisdiction over the bill, or bureau.

2. The public letter of inquiry from a member of Congress is a little used tool to obtain information not voluntarily disclosed by corporations and trade associations as well as government agencies. Sen. Walter Mondale (D, Minn.) obtained, in this way, highly useful data from the auto companies in 1968 on the number of defective cars actually brought back and corrected pursuant to auto company recall campaigns. So spurred, the National Highway Traffic Safety Administration, which should have required this information all along, issued regulations to make the companies routinely report these facts. Rep. Benjamin Rosenthal's (D, NY) letters of inquiry have led to the disclosure of information ranging from the description of industry complaint handling systems to the resale to poorer consumers of foodstuffs and other products by companies whose original deliveries were rejected by government procurement officials as deficient or spoiled. Rep. Ken Hechler (D, W.Va.) has been a one-man congressional monitor and spotlighter of the Bureau of Mines' laggard enforcement of the Coal Mine Health and Safety Act of 1969. His office is an active center of intelligence about violations of the law and the swirling politics inside the bureau. The bureau, consequently, is more concerned with him than with the entirely too casual review of the formal, congressional oversight committees.

3. The congressman as litigator, moving from one branch of government to another to spur enforcement of laws or development of fairer procedures in the regulatory and service agencies, can help redress the executive-legislative imbalance of power that turns laws into nonlaws. Rep. John Moss (D, Calif.) and 31 other congressmen filed suit in late 1969 at the US Court of Appeals for the District of Columbia against the Civil Aeronautics Board (CAB), alleging that the agency violated procedural and substantive requirements of the Federal Aviation Act when it granted a large nationwide airfare increase to the airlines. The court upheld the congressmen with a searing critique of the CAB and an order to obey the law. The case prompted the CAB to initiate a broad fare investigation with hearings, even before the decision was rendered. Although the agency is trying to limit the effects of the court's decision in its subsequent proceedings, it is under increasing pressure to reform its procedures to provide greater due process for the participating public. In addition, the message that a new reach by members of Congress was emerging certainly was not lost on other departments of the federal government.

Even where a court refuses to accept the congressman's standing to sue in a particular case, as occurred last year in a suit by Rep. Philip Burton (D, Calif.) and three other colleagues against the US Bureau of Mines for not enforcing the coal mine safety law, the impact was not lost on the bureau nor on the coal operators. This suit encouraged the coal miners struggling for safer working conditions and highlighted the ineffectiveness of the oversight committees. There is an opportunity for new judicial doctrine to be made, as more such cases are brought. This approach is in its infancy but has great potential. Since some more young Washington lawyers are willing to take such cases on a *pro bono* basis, the use by legislators of the courts may increasingly compel the agencies to mind their statutory mandates.

4. The unspoken taboo against congressmen making direct appeals to constituents of their colleagues on controversial issues is weakening. In over 150 congressional districts, blacks represent about 25 percent of the potential vote – a fact of increasing interest to legislators sensitive to injustices affecting minority groups. Last year, Rep. Charles C. Diggs (D, Mich.) went to South Carolina to campaign among black voters against Rep. John McMillan, chairman of the House District Committee and veritable ruler of the District of Columbia. If done thoughtfully and selectively, these campaigns can avoid much of the xeno-

phobia which incumbent legislators try to whip up among their constituencies. It is one of the most degrading ironies of American political life that the most reactionary, special interest-indentured members of Congress often come from the poorest districts in the country. If Senators and Representatives represent their country – read all Americans – as well as their states or districts, their oath of office certainly permits, if not encourages, campaign appeals that cut across district and state lines. Consider how salutary such campaigning would be in areas with many Chicanos, American Indians and poor whites. If, for example, Rep. Jamie Whitten exercises his enormous new powers over appropriations for environmental and consumer programs in a manner contrary to the objectives of these programs, then it should be the perceived duty of the legislative advocates of these programs to appeal directly to the citizens of northwestern Mississippi who vote Mr. Whitten into office.

5. Hurdling intransigent committees which refuse to address themselves to problems of large significance under their jurisdiction, or delay interminably, is on the increase. In 1967-1968 Rep. Joseph Reznick exposed abuses by the American Farm Bureau and its business interests in ad hoc hearings he convened as a lone Congressman and which he took to the midwest. In November of 1969, Rep. Leonard Farbstein and several New York Congressmen staged ad hoc hearings in New York City on air pollution, giving special emphasis to auto pollution.

Last year Rep. David Pryor held his own public hearings on nursing homes as part of a move to set up a special committee on aging. Although 250 members of the House have gone on record in support of his resolution to create such a committee, veteran members of the Rules Committee have blocked it. So this June, Pryor obtained two house trailers, parked them at a South Capitol street gas station very near Congress, and announced the formation of a House Trailer Committee on Aging staffed by 15 volunteer researchers on problems of nursing homes, housing, medical care, transportation and consumer fraud. This "committee-in-exile," as Pryor calls it, was created by a relatively conservative Arkansas Democrat.

A more formal circumvention of traditional procedures is Sen. George McGovern's Special Committee on Nutrition and Health, which has held field-hearings all over the country as well as in Washington on hunger and food quality – items that the Senate Committee on Agriculture has chosen to ignore.

Ron Dellums, the new Democratic congressman from Berkeley, wasted no time in setting up his own ad hoc, well-publicized hearings on the Vietnam war.

6. Building independent bases of power for representatives and senators *outside* Congress, which work *on* Congress to achieve needed change is the next logical step in democratizing that institution. A major undertaking by the Black Caucus may well signal the beginning of one of the most significant transformations within the congressional entrenchment since the founding of the national legislature. For example, the Caucus plans to have its own professional staff, funded by public appeals, which would range beyond immediate congressional concerns, probing the executive branch and the private sector with the aim of diminishing through legislative, regulatory or judicial power injustices to blacks. The Caucus has raised $200,000 to hire staff – lawyers, economists, scientists – who in turn will invite student teams during the summer to investigate government agencies or conduct needed studies.

Whether the Black Caucus' project works out or not, the principle it symbolizes is applicable elsewhere in Congress. There is no reason why senators and representatives, singly or in groups, cannot begin building new sources of legislative power, bringing the legislature closer to the people and many of the people, striving to be of assistance, closer to Congress. This popularization of Congress would develop a foundation to escape (1) from the micro-tyrannies of venerable Committee chairmen, (2) from the grip of campaign contributors, (3) from conformity to expedient quid pro quos and debilitating party allegiances, and, most important, (4) from the inability to launch a genuine reform of Congress toward making it the peoples' voice and an expert lever for democratic evolution. This will take more than an idea, more than a staff. It will take determination, skill and compassion.

For years, the decline of congressional authority vis-a-vis the executive branch has troubled observers. Its information-gathering powers are obsolete and trivial compared to the 4000 computer systems working on policy issues in the executive branch, and the even greater capability of industrial and commercial organizations which lobby the Congress. Its secrecy is used against its own noncommittee members as well as against the electorate. It is rife with conflict of interest, unjust procedures, compromising ties with lobbies, rewards for years of service instead of quality of service. Yet it is the only Congress we have; it has immense authority and it distributes over $220 billion a year. It can't be ignored. It can be improved and made more responsive to people's needs. Again and again, dedicated members have chosen not to run for reelection out of despair, or have jumped into impossible senatorial races. Others have refused to play by the odious rules of the campaign game and, with no other base of power and support, have scuttled their reelection chances. But there are other choices to make and roles to play. Congressmen and senators can become centers of movements that reach beyond Capitol Hill to other sources of persuasion and change so that they can be greatly strengthened in their use of the powers of the Congress.