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VESSEL EXCHANGE PROGRAM AND OTHER MARITIME MATTERS

(DETERMINATION OF NAVIGABILITY OF ALASKAN INLAND WATERS FOR STATE SELECTION PURPOSES, EXTENSION AND EXPANSION OF VESSEL EXCHANGE PROGRAM, AND MEDICAL AID FOR MERCHANT SEAMEN)

GOVERNMENT
Storage

HEARING

BEFORE THE

SUBCOMMITTEE ON MERCHANT MARINE AND FISHERIES

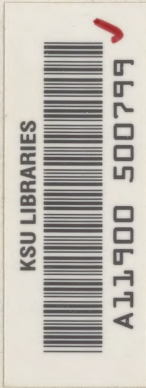
OF THE

COMMITTEE ON COMMERCE UNITED STATES SENATE

EIGHTY-NINTH CONGRESS

FIRST SESSION

ON



S. 945

A BILL TO CREATE A JOINT COMMISSION OF THE UNITED STATES AND THE STATE OF ALASKA TO MAKE ADMINISTRATIVE DETERMINATIONS OF NAVIGABILITY OF INLAND NONTIDAL WATERS IN THE STATE OF ALASKA FOR STATE SELECTIONS

S. 1917

A BILL TO AMEND THE MERCHANT MARINE ACT, 1936, IN ORDER TO PROTECT AND PROMOTE THE HEALTH OF SEAMEN ON VESSELS OF THE UNITED STATES, AND FOR OTHER PURPOSES

S. 2069

A BILL TO BROADEN THE VESSEL EXCHANGE PROVISIONS OF SECTION 510(i) OF THE MERCHANT MARINE ACT, 1936, TO EXTEND SUCH PROVISIONS FOR AN ADDITIONAL 5 YEARS, AND FOR OTHER PURPOSES

JUNE 11, 1965

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CONTENTS

	Page
Text of bills—	
S. 945	2
S. 1917	2
S. 2069	1
Agency comments—	
S. 945:	
Army Department, dated June 7, 1965	3
Commerce Department, dated May 28, 1965	4
Comptroller General, dated February 19, 1965	4
Federal Maritime Commission, dated February 11, 1965	5
Interior Department, dated May 25, 1965	5
Justice Department, dated June 14, 1965	7
Treasury Department, dated May 27, 1965	9
S. 1917:	
Comptroller General, dated May 28, 1965	10
Department of Health, Education, and Welfare, dated June 10, 1965	54
S. 2069:	
Comptroller General, dated June 9, 1965	10
Federal Maritime Commission, dated June 10, 1965	10
Justice Department, dated June 17, 1965	10
Statement of—	
Bourdon, Reginald A., assistant legislative director, American Maritime Association, 1725 K Street NW., Washington, D.C	28
Boyd, Alan S., Under Secretary for Transportation, Department of Commerce; accompanied by Nicholas Johnson, Administrator, Maritime Administration; J. W. Gulick, Deputy Maritime Administrator; Carl C. Davis, General Counsel; Capt. M. I. Goodman, Chief, Office of Ship Operations; Edward Aptaker, Chief, Office of Government Aid; and Ludwig C. Hoffman, Chief, Office of Ship Construction	13
Clark, Earl W. and Hoyt S. Haddock, codirectors, Labor-Management Maritime Committee, 100 Indiana Avenue NW., Washington-D.C.; accompanied by John N. Thurman, vice president, Pacific American Steamship Association; and Alvin Shapiro, executive vice president, American Merchant Marine Institute, Inc., 919 18th Street NW., Washington, D.C	56
Coles, Marvin J., Esq., 1000 Connecticut Avenue, Washington, D.C	23
Fishman, Frederick, Legislative Counsel's Office, Department of the Interior, Washington, D.C	11
Hirschfield, Vice Adm. James A., president, Lake Carriers' Association, 305 Rockefeller Building, Cleveland, Ohio; accompanied by Scott Elder, counsel	30, 85
Hope, Robert S., Esq., Kominers & Fort, Tower Building, Washington, D.C., on behalf of T. J. Stevenson & Co., Inc	26
Hughes, Phillip S., Assistant Director for Legislative Reference, Bureau of the Budget; accompanied by Pierre S. Palmer, Chief, Hospitals Branch	39
Kelly, James F., Deputy Assistant Secretary for Administration, Department of Health, Education, and Welfare; accompanied by Elmer Smith, Supervisory Operations Analyst, Office of the Secretary; Dr. G. P. Ferrazzano, Chief, Division of Hospitals, U.S. Public Health Service; and Dr. Leo J. Gehrig, Chief, Bureau of Medical Services, U.S. Public Health Service	48

Statement of—Continued | Page
Logan, Harold, vice president, Grace Line, Inc., 3 Hanover Square, New York, N.Y.; accompanied by Howard Adams, vice president, Pacific Far East Lines, 918 16th Street NW., Washington, D.C.; and Albert E. May, assistant executive director, Committee of American Steamship Lines, 1000 Connecticut Avenue, Washington, D.C ... 17
Meyers, Thomas L., Washington representative, Seafarers International Union, 400 First Street NW., Washington, D.C ... 86
Ragan, William F., 900 17th Street NW., Washington, D.C., on behalf of Bulk Food Carriers, Inc ... 21
Shapiro, Alvin, executive vice president, American Merchant Marine Institute, Inc., 919 18th Street NW., Washington, D.C ... 19
Statements, letters, etc. submitted by—
Blasingame, Dr. F. J. L., executive vice president, American Medical Association, 535 North Dearborn Street, Chicago, Ill., letter dated June 11, 1965 re S. 1917 ... 96
Bourdon, Reginald A., assistant legislative director, American Maritime Association, 1725 K Street, NW., Washington, D.C., statement on S. 1917 ... 98
Campbell, Joseph, Comptroller General, letter dated June 7, 1965, to Congressman Bonner ... 41
Corcoran, John J., director, National Rehabilitation Commission, The American Legion, 1608 K Street, NW., Washington, D.C., statement on S. 1917 ... 97
Holdsworth, Phil R., commissioner, Alaska Department of Natural Resources, Box 1391, Juneau, Alaska, statement on S. 945 ... 12
Hood, Edwin M., president, Shipbuilders Council of America, 1730 K Street NW., Washington, D.C., telegram dated June 11, 1965, re S. 2069 ... 35
Kennedy, Hon. Edward M., U.S. Senator from Massachusetts, statement and letter dated June 11, 1965, re S. 1917 ... 94
Klebanoff, Michael, chairman, American Tramp Shipowners Association, Inc., 350 Fifth Avenue, New York, N.Y., statement on S. 2069 ... 35
Sablic, A., vice president, Consolidated Mariners, Inc., 19 Rector Street, New York, N.Y., letter dated June 16, 1965, re S. 2069 ... 35

INDEX OF ORGANIZATIONS

American Maritime Association ... 28, 98
American Medical Association ... 96
American Merchant Marine Institute, Inc ... 19, 56
Bulk Food Carriers, Inc ... 21
Bureau of the Budget ... 39
Committee of American Steamship Lines ... 17
Department of Commerce ... 13
Department of Health, Education, and Welfare ... 48
Department of Interior ... 11
Grace Lines, Inc ... 17
Labor-Management Maritime Committee ... 56
Lake Carriers' Association ... 38, 85
Maritime Administration ... 13
Pacific American Steamship Association ... 56
Pacific Far East Line ... 17
Seafarers International Union ... 86
T. J. Stevenson & Co ... 26
U.S. Public Health Service ... 48

VESSEL EXCHANGE PROGRAM AND OTHER MARITIME MATTERS

FRIDAY, JUNE 11, 1965

U.S. Senate,
Committee on Commerce,
Subcommittee on Merchant Marine and Fisheries,
Washington, D.C.

The subcommittee met at 10 a.m., in room 5110, New Senate Office Building, the Honorable E. L. Bartlett presiding.

Senator Bartlett. The subcommittee will be in order.

The purpose of the hearing this morning is to consider three bills relating to the U.S. merchant marine. The subcommittee will hear testimony on the following bills:

S. 945, a bill creating a joint commission of the United States and the State of Alaska to make administrative determinations of navigability of inland nontidal waters in the State of Alaska for State selections.

S. 1917, a bill to amend the Merchant Marine Act, 1936, in order to protect and promote the health of seamen on vessels of the United States, and for other purposes.

S. 2069, a bill to broaden the vessel exchange provisions of section 510(i) of the Merchant Marine Act, 1936, to extend such provisions for an additional 5 years, and for other purposes.

(The bills follow:)

[S. 2069, 89th Cong., 1st sess.]

A BILL To broaden the vessel exchange provisions of section 510(i) of the Merchant Marine Act, 1936, to extend such provisions for an additional five years, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of subsection (i) of section 510 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1160(i)), is amended as follows:

(1) By striking out "within five years from the date of enactment of this Act war-built vessels (which are defined for purposes of this subsection as oceangoing" and inserting in lieu thereof the following: "before July 5, 1970,".

(2) By striking out "during the period beginning September 3, 1939, and ending September 2, 1945)" and inserting in lieu thereof the following: "before September 3, 1945,".

(3) By inserting immediately before the words "owned by the United States" the following: "(which are defined for purposes of this subsection as oceangoing vessels of one thousand five hundred gross tons or over which were constructed or contracted for by the United States shipyards during the period beginning September 3, 1939, and ending September 2, 1945)".

Staff counsel assigned to this hearing: William C. Foster.

SEC. 2. Subsection (i) (9) of section 510 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1160 (i) (9)), is amended to read as follows:

"(9) No tanker vessels shall be traded out under the provisions of this subsection unless it has been determined by the Secretary of Commerce:

"(A) After consultation with the Secretary of Defense that the vessel is no longer required in the reserve fleet for national defense purposes; and

"(B) That the vessel will be operated only in the domestic trade for a period of at least five years from the date of acquisition; and

"(C) That the vessel will not be employed in the tanker vessel trade for five years from the date of acquisition."

[S. 1917, 89th Cong., 1st sess.]

A BILL To amend the Merchant Marine Act, 1936, in order to protect and promote the health of seamen on vessels of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title IX of the Merchant Marine Act, 1936 (46 U.S.C., ch. 27, subch. IX) is amended by adding at the end thereof the following new section:

"SEC. 908. The responsibility and function of providing medical, surgical, and dental treatment and hospitalization for seamen and other beneficiaries placed in the Public Health Service by section 322 of the Public Health Service Act shall not be transferred or assigned, in whole or in part, to any other department or agency of the United States, nor shall the provision of any such service at any institution, hospital, or station of the Public Health Service be terminated without the consent of the appropriate committees of the Congress."

[S. 945, 89th Cong., 1st sess.]

A BILL Creating a joint commission of the United States and the State of Alaska to make administrative determinations of navigability of inland nontidal waters in the State of Alaska for State selections

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the policy of the United States to cooperate with the State of Alaska in making a joint administrative determination, for purposes of State selections only, of the navigability of inland nontidal waters within the State of Alaska.

SEC. 2. (a) The Secretary of the Interior shall designate, for such terms as he deems proper, not less than two and not more than five officers or employees of the Department of the Interior to comprise, together with a similar number of officers or employees of the Department of Natural Resources of the State of Alaska designated by the commissioner of that department, a joint commission of the United States and the State of Alaska for the determination of the navigability of inland nontidal waters within the State of Alaska, to be known as the "Navigable Waters Commission".

(b) The commissioner of the Department of Natural Resources of the State of Alaska may designate an officer or employee of the Department of Law of the State of Alaska as a member of the Navigable Waters Commission in lieu of the designation of an officer or employee from the Department of Natural Resources of the State of Alaska.

SEC. 3. The Navigable Waters Commission shall meet at a suitable place in the State of Alaska at the call of the Chairman. The Chairman for the first meeting of the Commission shall be designated by the Secretary of the Interior. During the course of each meeting, the Commission shall elect a chairman for the next meeting, and the chairmanship shall alternate between members from the Department of the Interior and members from the State of Alaska. Salaries and expenses of Federal and State members shall be borne by their respective governments. Joint expenses of the Commission shall be borne equally by the two governments.

SEC. 4. At each meeting the Department of the Interior of the United States and the Department of Natural Resources of the State of Alaska shall, either jointly or separately, propose to the Navigable Waters Commission, a determination of the navigability or nonnavigability of particular waters, or of

all waters contained in particular areas described with reference to the public land survey wherever possible, situated in whole or in part within the State of Alaska. The members of the Commission shall not take part in the making of such proposals by their respective departments. The Commission shall hear from (1) representatives of the two departments, (2) any expert witnesses hired by the Commission, and (3) any person who first establishes to the satisfaction of one-half of the membership of the Commission a sufficient interest in the proceedings, evidence bearing on the question of navigability. As soon as practicable, the Commission shall make a determination of the navigability or nonnavigability of the inland nontidal waters so proposed. No determination of navigability or nonnavigability shall be made with respect to particular waters or areas containing waters unless concurred in by a majority of the members of the Navigable Waters Commission. The expenses of the Department of the Interior and of the Department of Natural Resources incurred in investigating and proposing the navigability or nonnavigability of waters shall be borne by the respective governments.

SEC. 5. In making its determinations the Navigable Waters Commission shall be guided by statutory, common law, and judicial authorities on the subject of navigability of waters.

SEC. 6. Determinations of the Navigable Waters Commission shall be binding, insofar as State selection rights of the State of Alaska are concerned, upon all departments, agencies, officers, and employees of both the United States and the State of Alaska, and upon all persons deriving title from either or both governments subsequent to the effective date of this Act: *Provided*, That the United States, the State of Alaska, or any other affected party may obtain judicial review of any determination by filing a petition for that purpose in the United States District Court for the District of Alaska within one year after the publication of such determination in the Federal Register. Such judicial review shall be on the basis of the record.

(The agency comments follow:)

DEPARTMENT OF THE ARMY,
Washington, D.C., June 7, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense on S. 945, 89th Congress, a bill creating a Joint Commission of the United States and the State of Alaska to make administrative determinations of navigability of inland nontidal waters in the State of Alaska for State selections. The Department of the Army has been assigned responsibility for expressing the views of the Department of Defense on this bill.

This bill would establish a Joint Commission to determine, for purposes of State selections only, the navigability of inland nontidal waters within the State of Alaska. Members of the Commission would be appointed respectively by the Secretary of the Interior and the Commissioner of the Department of Natural Resources of the State of Alaska. The appointees would come from the existing staff of officers and employees of the Department of the Interior and the Department of Natural Resources. Not less than two nor more than five members will be appointed each by the Secretary and the Commissioner. The Commission will be known as the "Navigable Waters Commission." In making its determinations the Commission would be guided by statutory, common law, and judicial authorities on the subject of navigability of waters.

It is the understanding of the Department of the Army that the scope of the bill is limited to determinations of navigability with respect to State selections from the public lands of the United States as provided for in section 6 of the Alaska Statehood Act (72 Stat. 339, 340). The determinations are not binding upon and do not affect administrative determinations on the navigability of waters made by the Department of the Army in connection with its administration for the preservation and protection of the navigable waters of the United States.

The Department of the Army has no objection to S. 945.

Enactment of this legislation will cause no increase in budgetary requirements of the Department of the Army.

The Bureau of the Budget advises that, while there would be no objection to the presentation of this report to the committee, its views on S. 945 will be furnished to the committee in connection with the report of the Department of Justice on the bill.

Sincerely yours,

STEPHEN AILES,
Secretary of the Army.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., May 28, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for Department views on S. 945, a bill creating a joint commission of the United States and the State of Alaska to make administrative determinations of navigability of inland nontidal waters in the State of Alaska for State selections.

The purpose of this bill is to create a commission composed of an equal number of members from the Department of Interior and from the Department of Natural Resources of the State of Alaska to determine whether inland nontidal waters within areas of Federal land in Alaska being selected for transfer to State ownership are navigable so as not to be counted against the acreage authorized in the Alaska Statehood Act for selection. This Department interposes no objection to enactment of this legislation.

The Alaska Statehood Act provided that the territorial waters of the Territory of Alaska became property of the new State immediately upon its entrance into the Union. Another provision of the Statehood Act granted to the State the right under certain conditions to select for itself certain Federal lands over a 25-year period. As the selection of this acreage proceeds, the question of navigability of waters within the areas selected must be determined since navigable waters should not be charged against the State's selection quota. This bill would provide the machinery for making such determination.

The Bureau of the Budget advises that while there would be no objection to the presentation of this report to the committee, its views on S. 945 will be furnished to the committee in connection with the report of the Department of Justice on the bill.

Sincerely,

ROBERT E. GILES.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., February 19, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: By letter dated February 4, 1965, you requested our comments on S. 945. This measure would create a joint commission of the United States and the State of Alaska to make administrative determinations of navigability of inland waters in the State of Alaska for State selections.

We note that the last sentence of section 3 provides that joint expenses of the commission shall be borne equally by the two governments. In this regard, S. 945 contains no provision as to how the joint expenses shall be financed or who shall account for the funds so used. It is suggested that a provision specifically providing therefor be added to S. 945.

We have no further comments to make concerning this measure.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

FEDERAL MARITIME COMMISSION,
Washington, D.C., February 11, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request of February 4, 1965, for the views of the Federal Maritime Commission with respect to S. 945, a bill creating a joint commission of the United States and the State of Alaska to make administrative determinations of navigability of inland nontidal waters in the State of Alaska for State selections.

Inasmuch as the bill does not affect the responsibilities or jurisdiction of the Commission, we express no views as to its enactment.

The Bureau of the Budget has advised that there would be no objection to the submission of this letter from the standpoint of the administration's program.

Sincerely yours,

ASHTON C. BARRETT,
Acting Vice Chairman.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 25, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: This responds to your committee's request for our views on S. 945, a bill creating a joint commission of the United States and the State of Alaska to make administrative determinations of navigability of inland nontidal waters in the State of Alaska for State selections.

We recommend that the bill be enacted with our amendments.

The purpose of the bill is to assist the State of Alaska in its selection of 103,350,000 acres of public lands, under the Statehood Act of July 7, 1958 (72 Stat. 339), as amended, and to assist this Department in the discharge of its duties as the processing agent of the Federal Government with respect to such selections. More particularly, the bill is designed to facilitate the identification of navigable bodies of water so that the acreage thereof will not be computed against the State's selection rights. The State has 25 years from January 5, 1959 (the date of admission), within which to make its selections.

S. 945 establishes a joint commission of the United States and the State of Alaska to make administrative determinations with respect to State selections. The Commission, which will meet in Alaska, will consist of not less than two and not more than five officers or employees of this Department, selected by the Secretary of the Interior, and a similar number of officers or employees of the Department of Natural Resources of the State of Alaska, designated by the commissioner thereof. The commissioner may designate an officer or employee of the department of law in lieu of one from his department. Salaries and expenses of Federal and State members will be borne by their respective governments. Joint expenses of the commission will be borne equally by the two governments.

The bill also provides that the meetings of the Commission will be held at the call of the Chairman. The Chairman for the first meeting will be designated by the Secretary and subsequent Chairmen will be elected by the Commission. The chairmanship is to alternate between members appointed by the Secretary and those from the State of Alaska. In making determinations, the Commission is to be guided by statutory, common law, and judicial pronouncements on the subject of navigability of waters.

The Commission is empowered to hear evidence bearing upon the question of navigability from representatives of the two departments, or from any expert witnesses hired by the Commission. Any party who has an interest in a determination of the Commission may be authorized to present evidence to the Commission if he first establishes to the satisfaction of half of the members of the Commission a sufficient interest in the proceedings.

The bill also envisages that, as soon as practicable, the Commission shall make a determination of the navigability or nonnavigability of a body of water proposed for selection by the State.

The bill provides that determinations of the Commission shall be binding upon all departments, agencies, officers, and employees of both the United States and

the State of Alaska, and upon all persons deriving title from either or both governments subsequent to the date of enactment of the bill. It further provides that nothing in the bill shall prejudice the right of either government or any affected party to seek a judicial determination of the navigability or nonnavigability of any body of water by filing a petition in the U.S. district court in Alaska within 1 year after publication of a determination in the Federal Register.

About the time that the public land States were admitted to the Union, they were granted public lands of the United States for various purposes. Among such purposes was the support of common schools, for which the land grants usually amounted to but 2 to 4 sections (1,280 to 2,560 acres) per township (36 square miles), or a maximum of 6 to 12 percent of the land area. At the time of admission of Alaska into the Union, the Federal Government owned some 99 percent of the total land area. In order to provide a base for a more viable economic situation, the Congress granted to the State of Alaska the right of selection of over 100 million acres. Even after such selection program has been completed, the Federal Government will continue to own approximately 50 percent of the total land area in the State of Alaska. In Alaska very little land had passed from Federal ownership and there seemed to be little likelihood that much land would so pass within the then existing statutory framework. (U.S. Code Cong. & Ad. News, 1958, p. 2393, et seq.)

The bill would afford a ready vehicle for resolving questions of navigability to the extent that such questions arise in connection with the State selection program of the State of Alaska. The beds of bodies of navigable waters belong to the State of Alaska by virtue of section 1 of the Statehood Act (72 Stat. 339 (1958)). *Pollard's Lessee* v. *Hagan* (3 How. (15 U.S.) 212 (1844)). The beds, therefore, are not chargeable against the acreage limitations of the grants to the State of Alaska pursuant to the Statehood Act. It is obviously to the interest of both the State and the United States that the navigable status of waters within selected areas shall be fixed with certainty.

Adoption of the proposal would also tend to facilitate development of mineral resources, since it would eliminate the acquisition of both Federal and State leases for the same land. The Federal Government and the State of Alaska can fix, each in its respective sphere, the rights acquired under mineral leases granted by them.

The scope of the bill is properly limited to determinations of questions of navigability with respect to State selections. Otherwise, the functions of other Federal agencies would in all probability be involved. In that context, it would be questionable whether a commission consisting solely of representatives of this Department and of the State of Alaska would be appropriate.

As we have indicated earlier, the sole purpose of the bill is to determine navigability only for the purpose of State selections. Ordinarily the determination of the area which passes under a grant of public lands is a Federal function. The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands have been or remain to be disposed of by the United States. *Litchfield* v. *Register and Receiver* (9 Wall. (76 U.S.) 575, 577 (1869)). The Secretary, therefore, has adequate authority to make the determinations which the bill contemplates will be made by the Commission. However, in view of the magnitude of the problem, the unusual impact of the selection program upon the economy of the State, and the need to achieve early agreement upon such issues, we believe that the bill would serve a useful purpose.

We suggest the following clarifying amendments:

1. On page 2, line 2, substitute "an equal" for "a similar". This will insure that both parties will be equally represented on the Commission.

2. On page 4, line 10, between "be" and "binding" insert "be published in the Federal Register and shall". Although section 6 envisages such publication, the section contains no positive mandate for such publication.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program. Its views will be furnished to you in the Department of Justice's report on the bill.

Sincerely yours,

JOHN A. CARVER, Jr.,
Under Secretary of the Interior.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C. June 14, 1965.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on the bill S. 945 creating a joint commission of the United States and the State of Alaska to make administrative determinations of navigability of inland nontidal waters in the State of Alaska for State selections.

The fact that a body of water is navigable has important jurisdictional and proprietorial consequences in Federal-State relationships, for the States, by virtue of their sovereignty, are the owners of the lands underlying the navigable waters within their boundaries, *Pollard* v. *Hagan* (3 How. 212 (1845)), while the Federal Government, under the powers conferred upon it by article I, section 8, clause 3 of the Constitution, to regulate commerce, can control and use navigable water to the full extent that the exercise of its powers under the commerce clause may require. *United States* v. *Chandler-Dunbar Water Power Company* (229 U.S. 52 (1913)). No particular procedure exists for the determination, as between the State and Federal Governments, of the navigability of bodies of water; whenever the question arises with respect to a particular river or lake, if not settled amicably, it is settled by resort to court action. In *United States* v. *Oregon* (294 U.S. 1, 14 (1935)), the Supreme Court stated:

"Since the effect upon the title to such lands is the result of Federal action in admitting a State to the Union, the question, whether the waters within the State under which the lands lie are navigable or nonnavigable, is a Federal, not a local one. It is, therefore, to be determined according to the law and usages recognized and applied in the Federal courts, even though, as in the present case, the waters are not capable of use for navigation in interstate or foreign commerce."

Under the Statehood Act of July 7, 1958, as amended (72 Stat. 339) the State of Alaska is granted the right to make selections of certain public lands of the United States. Alaska has many lakes and rivers, and one of the practical problems faced by State officials in drawing up their selection lists, and by Federal officials in approving them, is ascertaining whether the land underlying a particular body of water already belongs to the State (as it would under the doctrine of *Polland* v. *Hagan*, if the body of water is navigable) or whether the land must be charged against the acreage the State may select (as it must if the water is nonnavigable). The purpose of the bill is to provide the means by which administrative determinations of navigability may be made.

The bill would create a Navigable Waters Commission, a joint commission of the United States and the State of Alaska, to make administrative determinations, for purposes of State selections only, of the navigability or nonnavigability of inland nontidal waters within the State of Alaska. At meetings of the Commission, the Department of the Interior and the Department of Natural Resources of the State of Alaska, jointly or separately, would propose to the Commission a determination of the navigability or nonnavigability of particular waters.

The Commission would receive evidence on the question of navigability from representatives of the two departments, any experts hired by the Commission, and person who establishes to the satisfaction of one-half of its membership a sufficient interest in the proceedings. The Commission would then make determinations of the navigability or nonnavigability of such waters, and its determinations would be published in the Federal Register. The bill provides that in making its determinations the Commission shall be guided by statutory, common law, and judicial authorities on the subject of navigability of waters. Insofar as State selection rights are concerned, the Commission's determinations would be binding upon the United States and the State and all persons deriving title from either or both governments subsequent to the date that the bill becomes law. The bill would also provide that a proceeding for judicial review of any such determination may be instituted within a specified period of time in the U.S. District Court for the District of Alaska.

The subject of the bill is not a matter for which the Department of Justice has primary responsibility and accordingly we make no recommendation as to its enactment. However, there are certain features of the bill to which attention is invited.

Although the bill would authorize the Commission to receive evidence on the matter of navigability of certain waters from any person having "a sufficient

interest in the proceedings," it does not require the Commission to give notice of hearing to persons who may have such an interest. Accordingly, it is suggested that the bill be amended to provide that the Commission shall publish notice of hearing on a proposal in the Federal Register and may publish such notice elsewhere as the Commission deems appropriate. This could be accomplished by inserting the following sentence after the period on line 18, page 3 of the bill:

"Notice in advance of Commission hearings, including a statement of the time and place of the hearing, shall be published in the Federal Register and may be published elsewhere as the Commission deems appropriate."

Also, it is recommended that since the publication in the Federal Register of the Commission's determinations seems to be contemplated (cf. sec. 6 of the bill), but is nowhere required, the bill should expressly spell out the requirement of publication. This could be accomplished by adding the following sentence after the sentence ending on line 21 of page 3 with the word "proposed";

"This determination shall be published promptly in the Federal Register."

Since, as pointed out above, the question of whether the waters within a State are navigable or nonnavigable is a Federal one, it is recommended that section 5 of the ball, providing that the Commission in making its determinations of navigability shall be guided "by statutory, common law, and judicial authorities," be revised to require the Commission to be guided, in the language of *United States* v. *Oregon, supra*, by "the law and usages recognized and applied in the Federal courts." This would merely state what the law in fact is, that Federal decisions and statutes, and not State decisions and statutes, must control the determination of the navigability of waters.

Section 6 of the bill provides that determinations of the Commission shall be binding, insofar as State selection rights are concerned, upon all departments, agencies, officers, and employees of both the United States and the State of Alaska. It is assumed that this provision is intended to refer to executive, as distinguished from nonexecutive, bodies and personnel. If this is so, it is recommended that on page 4, line 3, after the word "all," the word "executive" be inserted to make clear that which apparently is intended.

Section 6 also provides that any affected party, including the United States or the State of Alaska, may obtain judicial review of any determination of the Commission by filing a petition in the District Court for the District of Alaska. The bill concludes with the sentence, "Such judicial review shall be on the basis of the record." This sentence appears inadequate to describe the appropriate procedure. If the judicial review is on the record made by the Commission at its hearing, it should be made clear that the reviewing court is confined to deciding whether or not substantial evidence supported the Commission, and while it may remand to the Commission for further evidence, no de novo proceedings should be undertaken by the reviewing court. Furthermore it is the view of this Department that where judicial review is confined to the substantiality of the evidence to be found in the record before the administrative body, the proper court for such review should be the court of appeals. Accordingly it is recommended that in lieu of the language "United States District Court for the District of Alaska" appearing on lines 18 and 19, page 4, of the bill there be substituted the following language, "The United States Court of Appeals for the Ninth Circuit." Also, the last sentence of the bill should be stricken and the following inserted in lieu thereof:

"As a part of its answer the Commission shall file a certified copy of the transcript of the record, including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commission, and may, in its discretion, remand the cause for a rehearing. The findings of the Commission as to any fact, if supported by substantial evidence, shall be conclusive."

The Bureau of the Budget has advised that while there would be no objection to the presentation of this report to the committee, the Bureau believes that the Secretary of the Interior already has adequate authority and has in fact traditionally made determinations of navigability in connection with public land programs. It is the Bureau's view that the State's interest would appear to be protected adequately through recourse to the courts in the event of a disagreement between the Federal and State governments. In any event the authority to make appointments should be vested in a Federal officer since the Commission would be performing Federal functions.

Sincerely,

RAMSEY CLARK, *Deputy Attorney General.*

THE GENERAL COUNSEL OF THE TREASURY,
Washington, May 27, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 945, "to create a joint commission of the United States and the State of Alaska to make administrative determinations of navigability of inland nontidal waters in the State of Alaska for State selections."

The bill would create a Commission empowered to make determinations regarding the navigability of nontidal waters of the State of Alaska for the purpose of "State selections only." The Commission would be composed of personnel from the Department of Interior on behalf of the United States and from either the department of natural resources or the department of law on behalf of the State of Alaska. Determinations as to navigability would be binding insofar as State selection rights of the State of Alaska are concerned upon all departments, agencies, officers, and employees of the United States, and upon all persons deriving title from either or both governments subsequent to the effective date of the act. Judicial review of determinations could be obtained by affected parties, but review would be on the basis of the record.

The Department understands the term "State selection rights" to refer to the provisions of section 6 of Public Law 85–508 which was the preparatory act for Alaskan statehood. Generally, this act provided, among other things, that the State of Alaska could within 25 years of its admission, select lands from the national forest and from the public lands of the United States in Alaska which were vacant and unappropriated. A maximum limitation was placed upon the amount of land that could be thus selected by the State. It is further the Department's understanding that in accordance with court decisions, land underlying navigable waters, whether State or Federal, is deemed to be owned by the State. Land underlying nonnavigable waters is deemed to be owned by the person or agency having general ownership of the tract involved through which the nonnavigable waters flow. Thus, the effect of determinations by the Commission that certain waters are navigable will be to exclude the underlying land from being charged against the total which the State might select under the provisions of the preparatory statehood act. A determination of nonnavigability would serve to include the underlying land in that total since ownership of the land is in the United States rather than the State of Alaska.

The Treasury Department is interested in determinations of navigability since the statutory responsibilities of the Coast Guard to perform certain functions including marine inspection and safety duties, aids to navigation duties, and search and rescue duties, among others, depend upon the character of the waters as navigable waters of the United States. Normally, and in the absence of any court decision on the subject of navigability, the Coast Guard makes initial determinations so that it can carry out its functions; and these determinations remain in effect for such time as they are undisturbed by judicial or legislative action.

Since the proposed bill would limit the effect of determinations to State selection rights only, the Department does not anticipate that these determinations would be binding upon the Coast Guard with respect to the performance of its functions and that the Coast Guard would be free to continue to determine the character of the waters upon which they may be called to enforce U.S. law. It will undoubtedly consider determinations of the Commission, if this bill is enacted into law, as one of the factors which will affect its own determination along with standards of navigability found in decisions of the Supreme Court.

Subject to this understanding of the terms of the proposed bill, the Treasury Department has no objection to the enactment of S. 945.

The Bureau of the Budget advises that while there would be no objection to the presentation of this report to your committee, its views on S. 945 will be furnished to the committee in connection with the report of the Department of Justice on the bill.

Sincerely yours,

FRED B. SMITH,
Acting General Counsel.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., May 28, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: In reply to your request of May 10, 1965, for our comments on S. 1917, entitled "A bill to amend the Merchant Marine Act, 1936, in order to protect and promote the health of seamen on vessels of the United States, and for other purposes," you are advised we have no special information or comment to offer concerning the proposed legislation.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., June 9, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate,

DEAR MR. CHAIRMAN: Your letter of June 4, 1965, invites our comments on S. 2069, a bill to broaden the vessel exchange provisions of section 510(i) of the Merchant Marine Act, 1936, to extend such provisions for an additional 5 years, and for other purposes.

We have no special information that would assist in the consideration of S. 2069, and therefore have no comments to offer.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

FEDERAL MARITIME COMMISSION,
June 10, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request of June 4, 1965, for the views of the Federal Maritime Commission with respect to S. 2069, a bill to broaden the vessel exchange provisions of section 510(i) of the Merchant Marine Act, 1936, to extend such provisions for an additional 5 years, and for other purposes.

Inasmuch as the bill does not affect the responsibilities or jurisdiction of the Commission, we express no views as to its enactment.

The Bureau of the Budget has advised that there would be no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely yours,

JOHN HARLLEE,
Rear Admiral, U.S. Navy Retired.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., June 17, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 2069, a bill "to broaden the vessel exchange provisions of section 510(i) of the Merchant Marine Act, 1936, to extend such provisions for an additional 5 years, and for other purposes.

This bill has been examined, but since its subject matter does not directly affect the activities of the Department of Justice we would prefer not to offer any comment concerning it.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

Senator BARTLETT. We will consider S. 945 first. The only witness listed is Frederick Fishman, Legislative Counsel's Office, Department of the Interior.

STATEMENT OF FREDERICK FISHMAN, ATTORNEY, LEGISLATIVE COUNSEL'S OFFICE, DEPARTMENT OF THE INTERIOR

Mr. FISHMAN. Thank you, Mr. Chairman. I appreciate this opportunity to appear before this committee in support of this bill.

The purpose of the bill is twofold: (1) To assist the State of Alaska in its selection program of some 100 million acres, authorized by the Statehood Act of July 7, 1958 (72 Stat. 339), as amended, and (2) to enable the Department of the Interior to more effectively discharge its duties as the processing agent of the Federal Government with respect to such selections.

More particularly, the bill is designed to facilitate the identification of navigable bodies of water so that the acreage of their beds will not be computed against the State's selection rights.

We believe that enactment of the bill would also assist our mineral leasing program and that of the State of Alaska. Entrepreneurs are understandably loathe to take and develop mineral leases where the landlord's title is in doubt.

The bill establishes a commission, half of whose members will be appointed by the Secretary of the Interior and half by the director of natural resources of the State of Alaska. The Commission may hear representatives from the two departments, any of its experts, and any person who establishes to the satisfaction of one-half of the members that he has a sufficient interest in the proceedings.

Decisions of the Commission are to be made by majority vote. In making determinations, the Commission is to be guided by the usual criteria of navigability; that is, statutory, common law, and judicial authorities. Although there are many judicial pronouncements on what constitutes navigability, one definition, and by no means an exclusive one, is as follows:

> Navigability in fact is, in the United States, the test of navigability in law; and whether a river is navigable in fact is to be determined by inquiring whether it is used, or is susceptible of use, in its natural and ordinary condition, as a highway for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. (*Oklahoma* v. *Texas*, 258 U.S. 574 (1922).)

It is to be emphasized that the purpose of the bill, and indeed its scope, is limited to determinations of navigability only insofar as State selections are concerned. The bill will not affect the functions of any other Federal department or agency.

Because of the magnitude of the State of Alaska's selection rights, the unusual impact of that program upon the economy of the State, and the need to achieve early agreement upon the question of navigability of bodies of water, we favor the legislation. It would provide a ready and effective vehicle for facilitating the selection program for the State of Alaska.

Provision is made in the bill for Federal Register publications of determinations of the Commission. The United States, the State of Alaska, or any other affected party may obtain judicial review by filing suit within 1 year after such publication.

Thank you, Mr. Chairman, for affording the Department the opportunity of making this statement.

Senator BARTLETT. The committee is grateful to you, Mr. Fishman. Your statement, in my opinion, is so thorough, so reasonable, so logical, so comprehensive, that you leave me with only one question to ask. Has the Bureau of the Budget expressed an opinion on this bill?

Mr. FISHMAN. The Bureau of the Budget cleared our report. There may be views of other agencies that may not be fully consentient with those of the Department of the Interior.

Senator BARTLETT. I think we need have no concern on that point, Mr. Fishman. The Comptroller General is agreeable, likewise the Federal Maritime Commission; the State of Alaska is very strongly for the bill; Treasury and Commerce, and Army are likewise in affirmative positions. The statement from Mr. Holdsworth, commissioner of natural resources, State of Alaska, will be placed in the record.

(The statement follows:)

STATEMENT OF PHIL R. HOLDSWORTH, COMMISSIONER, ALASKA DEPARTMENT OF NATURAL RESOURCES ON S. 945; H.R. 4179

S. 945, and its companion measure H.R. 4179, as introduced by Alaska's congressional delegation, is the result of a cooperative effort by the Department of the Interior and the State of Alaska. In our opinion it is a sound, workable piece of legislation and we urge its adoption by the Congress.

When Alaska attained statehood, less than 1 percent of the land area within the State was surveyed or in private ownership. The land-grant provisions of the enabling act were entirely different than those of the other Western public land States. Because the land was unsurveyed, the State was entitled to select large tracts of land without regard to their later identification as sections within townships following cadastral survey at some later date. Because of this, the State's eventual pattern of landownership will encompass entire watersheds and other bodies of water which may or may not be navigable.

The Statehood Act also made the Submerged Lands Act of 1953 applicable to the State of Alaska. According to the 1950 decennial census prepared by the U.S. Bureau of the Census, the inland water area of Alaska amounts to 9,814,400 acres. Indand water is defined to include "permanent inland water surface, such as lakes, ponds, and reservoirs having 40 acres or more of area; streams, sloughs, estuaries, and canals one-eighth of a statute mile or more in width; deeply indented embayments and sounds, and other coastal waters behind or sheltered by headlands or islands separated by less than 1 nautical mile of water; and islands having less than 40 acres of area." This is the general criteria used by the Bureau of Land Management in "meandering out" what may be navigable waters in their conduct of the public land survey.

Approximately one-third of Alaska's land area is composed of sedimentary rocks or contains sedimentary basins which could contain deposits of hydrocarbons. In leasing these lands for exploration and development of oil and gas, it is imperative that the ownership of the lands, and the minerals therein, be clearly established. The ownership of lands beneath navigable waters rests with the State, but, lacking actual on-the-ground surveys, this determination is not possible.

It would appear desirable, therefore, to develop some means by which an agreement could be reached between the only two parties in interest—the State of Alaska and the United States—wherein water may be mutually considered to be navigable or nonnavigable, thereby establishing ownership of the lands beneath the waters. These determinations would be necessary only in those areas where there is no public land survey, and hence no privately owned land or third party in interest. S. 945, if enacted, would provide the means for reaching these determinations.

The Navigable Waters Commission which would be established under this bill appears to be a completely workable group and its determinations of navigability of waters are to be guided by statutory, common law, and judicial authorities. As provided in section 6 of the bill, determinations by the Commission shall be binding upon all departments, agencies, officers, and employees of both the United

States and the State of Alaska; subject, however, to the right of either sovereign or any other affected party to obtain judicial review of such determinations. The authority granted to the Commission under this bill in no way usurps the traditional right of the courts to make final decisions as to the navigability of waters.

In the absence of navigability determinations authorized by this bill, and hence the establishment of landownership, it has been considered necessary by prospective mineral lessees to obtain a lease from both the Department of the Interior and the department of natural resources. Likewise, acreage chargeability against State land selections cannot be determined until navigability or nonnavigability has been established.

The State of Alaska considers S. 945 as necessary and highly desirable legislation. We sincerely urge favorable consideration by your committee.

Senator BARTLETT. Now we turn to S. 2069. The first witness is Under Secretary Boyd.

STATEMENT OF ALAN S. BOYD, UNDER SECRETARY FOR TRANSPORTATION, DEPARTMENT OF COMMERCE; ACCOMPANIED BY NICHOLAS JOHNSON, MARITIME ADMINISTRATOR; J. W. GULICK, DEPUTY MARITIME ADMINISTRATOR; CARL C. DAVIS, GENERAL COUNSEL; CAPT. M. I. GOODMAN, CHIEF, OFFICE OF SHIP OPERATIONS; EDWARD APTAKER, CHIEF, OFFICE OF GOVERNMENT AID; AND LUDWIG C. HOFFMANN, CHIEF, OFFICE OF SHIP CONSTRUCTION

Mr. BOYD. Good morning, Mr. Chairman.

Senator BARTLETT. Good morning, Mr. Secretary. It is hard to resist calling you Mr. Chairman.

Mr. BOYD. As a measure of the depth of my ignorance, Mr. Chairman, I would like to advise the committee that I am accompanied by Mr. Nicholas Johnson, Maritime Administrator; Mr. J. W. Gulick, Deputy Maritime Administrator; Mr. Carl Davis, General Counsel, Maritime Administration; Capt. M. I. Goodman, Chief, Office of Ship Operations; Mr. Edward Aptaker, Chief, Office of Government Aid; and Mr. Ludwig C. Hoffmann, Chief, Office of Ship Construction.

Senator BARTLETT. I would say you are adequately fortified. Do you care to have any of these gentlemen flank you?

Mr. BOYD. No, sir. I just wanted them to be on the credit line.

Senator BARTLETT. Good.

Mr. BOYD. I want to thank you for the opportunity to appear before your committee to present the views of the Department of Commerce on S. 2069.

Section 510(i) of the Merchant Marine Act, 1936, provides that until July 5, 1965, the Secretary of Commerce may, subject to certain conditions, acquire war-built vessels from private owners in exchange for more modern war-built vessels—except tankers—in the national defense reserve fleet.

The term "war-built vessels" is defined for this purpose as vessels which were constructed, or whose construction was contracted for, by shipyards in the United States between September 3, 1939, and September 2, 1945. This definition is taken from the Merchant Ship Sales Act of 1946 under which merchant vessels built, or otherwise acquired by the Government, for World War II purposes, were sold to private owners after the war.

50-188—65——2

The conditions to which the section 510(i) are subject are as follows:

1. The trade-in vessels shall have been owned by a citizen of the United States and have been operated without subsidy under title VI of the act, and have been documented under the laws of the United States, for at least 3 years prior to the exchange.

2. The Secretary shall determine the fair and reasonable values of the traded-in and traded-out vessels as of the date of the exchange.

3. In determining said values, the Secretary shall consider the cost of placing the vessels in class with respect to hull and machinery; and if the traded-out vessel is a military type, the Secretary shall consider the cost of converting the vessel for normal commercial operation in determining its value.

4. If the value of the traded-out vessel exceeds that of the traded-in vessel, the applicant shall pay the difference in cash at the time of the exchange. The Secretary shall make no payment to the owner of a traded-in vessel with respect to any exchange.

5. The applicant shall agree that if the United States reacquires the vessel at any time within 20 years from its construction, the owner shall be paid the value thereof but not exceeding the exchange value plus the cost of capital improvements depreciated to the date of acquisition or scrap value, whichever is greater.

6. Any repairs or reconversion necessary at the time of the exchange to place the traded-out vessel in class and to prepare the vessel for commercial operation to be performed in a shipyard in the continental United States.

Section 1 of the bill would amend section 510(i) by eliminating the requirement that the traded-in vessels shall be "war-built vessels" as defined in the section and by substituting for that a requirement that such vessels be of 1,500 gross tons or over which were constructed or contracted for by the U.S. shipyards before September 3, 1945.

These are the same requirements as those for war-built vessels as defined in the section except that war-built vessels so defined are "ocean-going" and were built after September 2, 1939. Section 1 would also extend the expiration date of the section to July 5, 1970.

Section 2 of the bill would amend section 510(i) to authorize the Secretary of Commerce to trade-out tankers if he finds, after consultation with the Secretary of Defense, that retention of the vessels in the national defense reserve fleet is no longer required for national defense purposes, and if he finds that for 5 years after their acquisition, the vessels will be operated only in domestic trade and will not be employed in tanker trade. Under the existing provisions of section 510(i) the Secretary of Commerce is not authorized to trade-out tankers.

With the amendment hereinafter proposed, we recommend favorable consideration of the bill.

The purpose of the amendments which would change the requirements for traded-in vessels is to make American-flag vessels now in use on the Great Lakes eligible for exchange under the section. As of June 30, 1964, there were 206 American-flag vessels in operation in the Great Lakes trades and 30 in layup. Of these, 129 were built before 1920, 47 were built between 1920 and 1940. The other 60 were built after 1940.

Most of these vessels could not qualify for exchange under the existing provisions because they were not built after September 3, 1939.

In addition, vessels designed for Great Lakes operation are not oceangoing vessels, and for that reason would not be eligible for exchange under existing law.

Because of different wave conditions existing on the Great Lakes and the oceans, vessels specifically designed for the Great Lakes do not meet the Coast Guard and American Bureau of Shipping requirements for operation on the oceans.

Section 510(i) of the act was enacted in 1960 to aid in upgrading the unsubsidized fleet. As of June 2, 1965, 149 applications had been received under the section; 89 of these had been withdrawn; 11 were still pending; and 49 had been completely processed.

The completely processed applications resulted in the trade-out of 52 ships, the trade-in of 56 ships, payment to the Government of an estimated $4 million as the excess of value of traded-out ships over traded-in ships, including the return from scrapping traded-in ships, with an estimated $100 million of reactivation and conversion costs to be incurred by the private owners. To permit the continuation of this program and to give Great Lakes operators adequate time to participate in the program, the bill would extend the expiration date of the section to July 5, 1970.

Paragraph (9) of section 510(i) provides that no tanker vessel may be traded-out under the act. There are 49 T–2 tankers in the National Defense Reserve Fleet; 25 of these belong to the Navy, and the other 24 belong to this Department. T–2 tankers can be converted into good dry bulk carriers for use in the domestic or foreign commerce.

Section 2 of the bill would amend this section to permit trade-out of the vessels under conditions limiting their use to the nontanker domestic trade for 5 years. We do not believe the use of these vessels should be limited to domestic trade and we do not believe their use as tankers should be permitted at any time. We therefore recommend that section 2 of the bill be amended to read as follows:

> SEC. 2. Paragraph (9) of subsection (i) of section 510 of the Merchant Marine Act, 1936, as amended, is amended to read as follows:
>
> "(9) Tanker vessels may be traded-out under the provisions of this subsection only for nontanker use."

The Bureau of the Budget advises there is no objection to the submission of this statement from the standpoint of the administration's program.

Mr. Chairman, I thank you for the opportunity to present this testimony.

Senator BARTLETT. Thank you, Secretary Boyd. Why is it that the Department recommends the amendment you have just proposed?

Mr. BOYD. Well, as I understand it, Mr. Chairman, we are unable to develop any rational justification for limiting the use of tankers in the dry bulk business to strictly the domestic market. We think that the tankers can be converted to provide a valuable asset and that the bulk trades, as I understand it, the movement of dry bulk is becoming a larger and larger proportion of the total in the international markets, and we see no reason to limit it, artificially, in a sense, where the vessels can be used for the benefit of the U.S. operators in the foreign trade routes.

Senator BARTLETT. Why is it that the Department recommends that these vessels never be permitted to be used for tanker purposes?

Mr. Boyd. That they not be permitted to be used for tanker purposes?

Senator Bartlett. Yes.

Mr. Boyd. Again, as I understand it, there is a rather large, or there is a surplus of tanker capacity today, and this has been true, historically, for at least the period of the vessel exchange program, and I do not believe we see any reasonable expectation of that situation being changed.

I am also advised that S. 2069 provides a more lengthy amendment to—I am sorry—I can't read his writing—you had better come up and tell me what you wrote.

Senator Bartlett. You have been partially advised.

Mr. Boyd. This is Mr. Gulick, Deputy Administrator.

Mr. Gulick. Thank you, Mr. Chairman. We wanted to say that S. 2069 does provide for the conversion of tankers in exchange out of the reserve fleet. But by the process of a more lengthy amendment than the one which we propose, which is simply to permit the exchange of tankers and their use as long as they are not to be used in the carriage of petroleum products; that is, as a tanker.

Mr. Boyd. Why do we prefer our amendment?

Mr. Gulick. We prefer our amendment for the reason that we do not believe the language in the bill, commencing on page 2, in section 2, needs all of the conditions set up under the proposed item 9. We would consult with the Secretary of Defense under ordinary procedures.

Under (b) we have no particular brief for a limit on operation of these ships in the domestic trade. We feel that the exchangers should be free to use these converted carriers in the best way possible in order to get the full benefit of their investment.

(c) We would prefer to see the permanent restriction against the use of the ship as a tanker in view of the surplus of tanker ships in the market today.

Senator Bartlett. In the event of war, for example, when we might use many tankers, you wouldn't probably be bound to adhere to that language?

Mr. Gulick. Correct.

Mr. Boyd. In that situation, if we do not have some sort of an emergency-escape clause, I am certain, Mr. Chairman, that the Department of Commerce would permit a conversion, and then come to the Congress and seek authority ratifying our ultra vires actions.

Senator Bartlett. I see no particular reason to inquire into this at such considerable depth. I don't apprehend there will be any difficulty in accepting the proposal. I may be wrong.

I should like to ask you, though, Mr. Secretary, at least one further question. I didn't know, before you called it to the committee's attention, that a vessel must be prepared for commercial operations in a shipyard in the continental United States. What is the definition, I wonder, of continental United States?

Mr. Boyd. Well, for present purposes, Mr. Chairman, my definition would run from Key West, Fla., to Point Barrow, Alaska.

Senator Bartlett. I am not especially concerned—I am sure you won't believe this—with Alaska at the moment, because I don't think we will be in a position for quite some time to perform these services. But I am wondering about Hawaii?

Mr. BOYD. That raises a very real question. I have not had this question raised before. I don't know whether it is a burning issue in any sense.

Senator BARTLETT. I don't know whether it is, either, and I don't know if it will be. Perhaps, Mr. Secretary, you would do this: Cogitate on that and make a written reply to the committee, giving your recommendations whether we should leave the language exactly as it is, or alter it.

Mr. BOYD. All right, sir. That is as to the extent of the continental United States for the purposes of this statute, and what the Department of Commerce thinks about it?

(See letter from Department of Commerce dated July 14, 1965, on p. 33.)

Senator BARTLETT. Right. I don't know whether Hawaii has any commercial shipyard. If they do, I don't think they ought to be excluded by law.

Mr. BOYD. We are opposed to discrimination. That is why we want to take the domestic restrictions out of the amendment on tankers.

Senator BARTLETT. I understand. Thank you very much, Secretary Boyd. I predict to you, Mr. Secretary, there will be days, as you deal with merchant marine legislation, when you long for the simple old times of aviation.

Mr. BOYD. I have the impression that you are not given to exaggeration, Mr. Chairman.

Senator BARTLETT. The next witness will be Harold Logan, Sr., vice president, Grace Line.

STATEMENT OF HAROLD LOGAN, SR., VICE PRESIDENT, THE GRACE LINE; ACCOMPANIED BY HOWARD ADAMS, VICE PRESIDENT, PACIFIC FAR EAST LINES; AND ALBERT E. MAY, ASSISTANT EXECUTIVE DIRECTOR, COMMITTEE OF AMERICAN STEAMSHIP LINES

Mr. LOGAN. Mr. Chairman, for the same reasons the Secretary described, I would like to be flanked by a couple of people: Mr. Howard Adams, vice president of the Pacific Far East Lines; and Albert E. May, assistant executive director of the Committee of American Steamship Lines.

Senator BARTLETT. Their presence has been duly noted.

Mr. LOGAN. We appear here today on behalf of the Committee of American Steamship Lines, an organization comprised of 14 U.S.-flag liner steamship companies which hold operating-differential contracts under the Merchant Marine Act of 1936.

We are here in connection with the Vessel Exchange Act which S. 2069 would extend for another 5 years.

The segment of the industry which we represent, CASL, supported the enactment of vessel exchange legislation in 1960 in order that other segments of the American merchant marine might be able to use some of the remaining life left in the ships which were being traded in as a result of our replacement program.

We still support the exchange legislation for the same reasons. However, the problems which I wish to discuss briefly with you today arise from the impingement of the Vessel Exchange Act program upon

another highly important program of the United States; namely, the vessel replacement program embodied in title V of the 1936 act. The integrity of both of these programs must be maintained to the greatest extent possible. It is the position of the Committee of American Steamship Lines that 5 years of experience with the Vessel Exchange Act have demonstrated certain inequities which requires its amendment if the entire U.S. vessel replacement program, subsidized and nonsubsidized, is to function effectively. These inequities are caused by:

1. Government competition with us in the used private ship sale market.

2. Undervaluation by the Government of our ships upon being traded in and;

3. The Maritime Administration requirement that excessive repair be accomplished on ships before trade-in.

We feel that if the second and third points can be straightened out we can live with the first problem. We have been unsuccessful for many years in attempting to do this through administrative process and ask that this committee assist in the correction of these inequities in order that the intent of the trade-in provision of the 1936 act may be carried out.

Briefly, we would like to see language in S. 2069 which would require the Government to place a fair value, based on the higher of the foreign or domestic price, upon the vessels we are trading in and to follow normal commercial practices regarding the repairs required prior to delivery of the ships in the reserve fleet. By correcting these two pactices we would more nearly approach parity, with our foreign competitors, as set forth by the 1936 act.

CASL companies have contracted to invest approximately $1.8 billion of their own money in the replacement of their war-built fleets. New vessels are costing the owners approximately six times as much as those being replaced, and the added depreciation costs of the new ships is resulting in a net erosion of our companies' assets. In addition, many companies with limited capital resources are forcer to trade in because they need funds at the time they contract for new ships.

We respectfully urge that your committee consider correcting these inequities during your deliberation on the extension of the Vessel Exchange Act.

Thank you, Mr. Chairman. We will attempt to answer any questions which you may have.

Senator BARTLETT. Mr. Logan, I want to thank you for appearing before the committee, in company with Mr. May and Mr. Adams. I shall not have any questions, but I want to assure you the committee will give careful consideration to your recommendations.

I believe Mr. Foster has a question.

Mr. FOSTER. Mr. Logan, if you would have available any written amendment that might be helpful to the committee in considering your problems, the committee would like to have it just for the record.

Mr. LOGAN. We would be glad to do that. We have, we think, some simple words here that we will present to the clerk for the record.

Mr. FOSTER. Thank you.

(The amendment follows:)

That section 510(d) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1160(d)), is amended by adding after the second sentence thereof the following:

"If the market value of the obsolete vessel is different for operation in the foreign or domestic trade of the United States than for operation in the world trade, the higher value of the two shall be used. At the time it is traded in and upon redelivery from use agreement, the obsolete vessel shall be in class under the requirements of the American Bureau of Shipping, free of all outstanding recomemndations and requirements and shall have a U.S. Coast Guard certificate of inspection valid and in force and shall have valid certificates of such other bureaus or agencies, governmental or nongovernmental, as the Secretary shall prescribe consistent with normal commercial practice for the certification of U.S.-flag vessels, such certificates to be free of all outstanding recommendations and requirements. The owner shall have no other repair obligations. A vessel in its American Bureau of Shipping year of grace shall be deemed to be in class, if it is free of all outstanding recommendations and requirements. The market values used in determining the allowance shall be based on a similar type of vessel of a similar age and class position. The cost of deactivation and preparation of the obsolete vessel and its equipment for storage or layup and of delivery of the vessel and its equipment to the location designated by the Secretary shall be borne by the United States."

Senator BARTLETT. Alvin Shapiro, executive vice president, American Merchant Marine Institute, Inc.

STATEMENT OF ALVIN SHAPIRO, EXECUTIVE VICE PRESIDENT, AMERICAN MERCHANT MARINE INSTITUTE, INC., WASHINGTON, D.C.

Mr. SHAPIRO. Mr. Chairman, my name is Alvin Shapiro. I am executive vice president of the American Merchant Marine Institute. I won't bother to tell you what the American Merchant Marine Institute is, because I am sure you are reasonably familiar with the nature of our organization.

Senator BARTLETT. Yes.

Mr. SHAPIRO. There is rather little for me to say about the piece of legislation before you, Mr. Chairman. I must say I am rather a little bit embarrassed. Five years ago we practically fathered this bill, and we are rather proud of it. If I may, I would like to revert to the hearings at the time the bill was originally enacted, which I described this legislation then under consideration as recognizing the realities about our present day merchant marine and I considered it one that embodies proposals remarkably practical and fair to all parties concerned, including of course the U.S. Government.

It has been just this kind of bill, Senator, in my judgment. I will omit the details and specific provisions of the law which are quite well known and I am sure others will put it in the record.

If I may, however, I would like to refer back again so another point I raised during the course of those hearings 5 years ago, when I said that:

While I cannot claim it will prove a panacea for our maritime problems, to the extent that it is used, and I am reasonably certain that it will be substantial, it will help meet one of our most pressing merchant marine needs, that is of maintaining in active operation more, rather than less, modern vessels.

Those are not quantitative more or less, those are qualitative more or less. It has been this kind of a bill, Senator; 52 vessels have been traded out from the reserve fleet and they are now operating in our present day merchant marine in place of antiquated vessels.

Yard work has been estimated at $100 million. This is $100 million worth of work that in my opinion would never have been pro-

duced without this legislation, or very little of it. And the Government got $4 million in cash.

Of course the merchant marine is now using more rather than less modern vessels. I must say I anticipate there will be the same degree of advantage to all parties in the future as has been in the past.

Most of the users of this exchange program have made use of it. Therefore, however, no less than 13 applications and I think there will be more. So there may be in the future a somewhat quantative difference in the advantage of the legislation, but I think the legislation will prove advantageous in the future. For that reason, Mr. Chairman, we advocate that this will be extended.

I would like to comment, if I might, on three amendments, or three suggested amendments somewhat out of turn. I don't want to step on anybody else's territory who is about to follow me.

One is an amendment dealing with the Great Lakes, to make Great Lakes vessels older than war-built vessels eligible for trade-in. Now I have a great deal of doubt about the usability of this amendment by the lake carrier operators. But I think some of them may use it. And I would certainly recommend that they not be barred from this. And that would cover the first amendment which has been offered.

The second amendment you will hear about is one in correcting not an oversight in draftsmanship, but a situation that has arisen subsequent to the passage of the legislation, in which an operator has purchased a subsidized vessel on the open market. He would now like to trade that vessel in for a better vessel than he purchased on the open market. He is barred from trading that vessel in because, while he never operated it, it was, within the last 3 years, operated under subsidy. He would have to wait—he purchased this almost 2 years ago—he would have to wait another year under the law.

Now we never intended to preclude this kind of possibility, but we never anticipated this kind of problem would arise. But I think in all equity that amendment, which you will hear about, is a fair one and certainly we would urge its enactment. There has been quite a bit of conversation here about tanker vessels being traded in, traded out, really traded out, opening this program to tank ships, which were precluded from the original law largely because of the military. Obviously if the military have no longer the desire to keep these vessels in the reserve fleet, or some of them in the reserve fleet, I think it is rather fair to bring them out on the basis which has been suggested here and which will be suggested in the future.

But I would like to state one thing for the record: I have grave fears, and I hope nobody misinterprets my remarks—I have grave fears that it is being contemplated to preclude or postpone processing of construction differential subsidy applications for bulk carriers, which are presently on file at Maritime, under the pretense that we had better not process those until we run through the problem of: Aren't tanker vessels available, which can be brought out under the exchange program, and be used in the bulk trades or converted for use in the dry bulk trades?

Now that will give you, by that process, a dry bulk carrier. In my opinion, not a very good one. But at a very minimum, I would like to go on record, Mr. Chairman, as indicating that I would hope that this committee sounds a note of caution that it is not seeking the ex-

tension of the trade out privilege for tankers as a substitute for the construction differential subsidy of modern dry bulk vessels.

Finally, some comments on Mr. Logan's testimony. He has indicated that these problems he called attention to do not focus directly on the problem of the extension of the exchange privilege, it just so happens they run hand in hand, perhaps by coincidence, really.

The question of valuation of these vessels and the question of the repairs that have to be made to them before they can be traded in as required by Maritime are in large part I would say somewhat of an administrative problem. But I would think that Congress, either by administrative direction or by legislative correction, if necessary—I cannot make that choice, I will rest with the choice that you make on this—must correct these inequities when the weight of evidence is in and I am sure you will be persuaded they are inequities.

That is all I have to say, Mr. Chairman.

Senator BARTLETT. Thank you, Mr. Shapiro.

Do you happen to know the size of T–2 tankers?

Mr. SHAPIRO. Roughly 16,700 deadweight tons. They can be converted into substantially larger bulk carriers, by adding something in the midsection.

Senator BARTLETT. What sizes are contemplated for those for which applications are now on file before the Maritime Administration?

Mr. SHAPIRO. I can't answer that factually. I can only imagine they are talking about something in the neighborhood of 30,000 and 35,000 tons or larger. It would be my judgment, Senator, that anybody who contemplates a modern bulk carrier at sizes smaller than that is making a great mistake, but that is just my personal opinion.

Senator BARTLETT. That would be of much moment, though.

Mr. SHAPIRO. Yes; indeed it would.

Senator BARTLETT. I have no questions.

Thank you, Mr. Shapiro.

Senator BARTLETT. Mr. William F. Ragan, Washington, D.C.

STATEMENT OF WILLIAM F. RAGAN, WASHINGTON, D.C., OF THE FIRM OF RAGAN & MASON, ON BEHALF OF BULK FOOD CARRIERS, INC.

Mr. RAGAN. In light of the lack of time I will not read my statement, but try to summarize it.

Senator BARTLETT. We have lots of time; your statement is short. You may read it if you care to.

Mr. RAGAN. No; that is all right. We are here representing the Bulk Food Carriers. We have been in that business for a number of years, presently operating one converted DT–2 tanker in the rice trade between California and Puerto Rico which returns with phosphate from Florida. We are interested in the amendment that you have in the bill on trading out tankers. We are interested in acquiring at least two, presently, at least two T–2 type tankers for operation in the domestic trade. We contemplate converting them to the dry bulk carrier.

We feel that this will be a substantial benefit to the domestic merchant marine; it will be a benefit to the American shipyards to the extent that there will be at least $5 million worth of conversion work, all of it presently financed. To this extent we support your legislation.

(The prepared statement of Mr. Ragan follows:)

STATEMENT BEFORE THE COMMERCE COMMITTEE, U.S. SENATE, ON BEHALF OF BULK FOOD CARRIERS, INC., IN SUPPORT OF S. 2069

My name is William F. Ragan and I am a member of the law firm of Ragan & Mason, the Farragut Building, Washington, D.C.

I am appearing here today on behalf of Bulk Food Carriers, Inc., in support of S. 2069.

By way of background, Bulk Food Carriers, Inc., is a corporation controlled by Mr. Elmo Ferrari, of California. Members of this committee will recall that Mr. Ferrari was formerly the director of the port of Stockton. Mr. Ferrari has been connected with the movement of bulk commodities by water for many years. The corporation is headquartered at 311 California Street, San Francisco, and is organized under the laws of the State of Delaware. Bulk Food Carriers, Inc., is, of course, an American-citizen corporation, entitled to operate in the domestic trade.

Presently, the corporation operates one vessel—the *Rice Queen*—between the port of Stockton, San Francisco, and San Juan, carrying rice to Puerto Rico and returning with phosphate from Florida to California.

While Bulk Food Carriers, Inc., fully supports S. 2069, and should S. 2069 become law with the proviso of authorizing the transfer-out of tanker vessels under conditions set forth in the proposed legislation, it is anticipated that this company will promptly seek two tankers for operation in the bulk food trade, intercoastally.

Bulk Food Carriers, Inc., has, for some time, been negotiating for the movement of bulk commodities, under contract, in the intercoastal trade. A review of the vessels available makes it clear that the most suitable vessel would be the tanker-type vessel which readily lends itself to conversion as a dry bulk carrier. The present market for such vessels has not presented an acceptable ship from a viewpoint of Bulk Food Carriers, Inc. It is estimated that the conversion costs of the tanker-type vessels to Bulk Food Carriers, Inc., will be in the neighborhood of $2,500,000 each. The company is very desirous to proceed and hopes to have the vessels in service by the first of January 1966. It is for this reason that we support the proposal here before the committee.

S. 2069, extending the trade-out privileges and authorizing the trade-out for tankers under the terms set forth therein, is not in conflict with the philosophy of the present statute since it makes for the possibility, as disinguished from a statutory bar to the acquisition of tanker vessels now competitively and defensewise obsolete.

It should be noted that in hearings before the House Merchant Marine and Fisheries Committee, on H.R. 728—the companion bill to S. 2069—on Tuesday, June 8, the Department of Commerce specifically recommended the authority to trade out such vessels. The Department, in fact, went further than the proposed amendment and did authorize the trading out of such vessels for nontanker use, without restriction, to the domestic trade and without the specific statutory requirement of consultation with the Secretary of Defense. The Honorable Alan S. Boyd, Under Secretary of Commerce for Transportation, and the Deputy Maritime Administrator, Mr. James W. Gulick, did, however, indicate that it has been their practice to consult with the Department of Defense before approving any trade-outs. Both gentlemen also indicated to the committee that they conferred with the Department of Defense which inerposed no objection to their proposal. So perhaps what is suggested here might well be broadened out and of course Bulk Food Carriers, Inc., would have no objection to the suggested amendment of the Department of Commerce.

For the committee's information, there are approximately 48 T–2-type vessels in the reserve fleet. There are several T–3's and other types of tankers also in the reserve fleet.

The reserve fleet is costing the American taxpayer approximately $5 million to maintain. It seems consistent with good policy to remove such vessels and reduce the consequent cost from the reserve fleet, particularly when the removal of such vessels will place them in a position to benefit the overall national economy and employment. Such action would also benefit the American shipyards and offer additional employment to the depressed seagoing union.

The proposal of Bulk Food Carriers, Inc., will cost no money to the U.S. Government and will result in approximately $5 million worth of work in American shipyards, all of which will be privately financed.

Mr. Chairman, may we submit that this amendment will be for the benefit of the domestic merchant marine.

I appreciate the opportunity of appearing before you today.

Mr. RAGAN. I would like to add one thing. There has been some question on whether or not it should be limited to the domestic trade or also include foreign trade.

Senator BARTLETT. I was going to ask you about that.

Mr. RAGAN. We have no objection either way. Obviously, if there is no limitation, the value on the vessel is greater. Obviously financing will be facilitated. On the other hand, if it is restricted to the domestic trade, it does not run into conflict with the bulk carrier subsidy requests that Mr. Shapiro has just mentioned. There has been the tramp shipping group who requested it be limited to the domestic trade. We would accept it either way, as long as it does not impede the progress of the legislation, which is reaching a rapid deadline.

Senator BARTLETT. I note in your prepared statement that Bulk Food Carriers, Inc., will spend about $5 million in American shipyards if they can acquire these tankers.

Mr. RAGAN. Yes, sir.

Senator BARTLETT. I have no questions.

Mr. RAGAN. And this will be private financing. I would like to add one other point, if I may, Senator, and then I will leave.

The question on the point of raising it to, limited to tank shipping operations, I would not want the record to leave an impression that this would be a prohibition against carrying any liquid cargo, such as a dry liner service would carry today, but it would not be a tank vessel that—there would be obviously some areas where you would carry a minor amount of liquid cargo.

Senator BARTLETT. You would construe the suggestion of the Department to be a prohibition against the cargo of petroleum products?

Mr. RAGAN. No; I don't necessarily do that. I consider it a prohibition against taking these vessels out and operating them as tankers as such. But there may be a petroleum product that does not, a particular commodity, that does not lend itself to tanker lots, does not lend itself to tanker volume, which you may want to carry the same as a dry bulk carrier can today or the same as a liner carrier. Most of the liner ships will have some capacity for liquid cargo. This is the type of thing we envision. W don't consider it a complete prohibition to that extent.

Senator BARTLETT. I agree. Thank you. Marvin J. Coles?

You may proceed, Mr. Coles.

STATEMENT OF MARVIN J. COLES, ESQ., WASHINGTON, D.C.

Mr. COLES. Mr. Chairman, for the record, may I say I am Marvin Coles. I represent a number of unsubsidized tramp operators who have been and are applicants under the Exchange Act. May I ask that my statement be incorporated in the record, and then I will comment on it somewhat more briefly.

Senator BARTLETT. Surely.

Mr. COLES. Mr. Chairman, during the past several years this Exchange Act has been the only Government aid available for unsubsidized American operators and under this Exchange Act tramp operators, domestic operators, and some of the unsubsidized lines, have been able to upgrade their fleet.

Under this program, we have turned in Libertys and assorted old ships for vessels ranging in class from Victorys to C-4's. Without

this legislative enactment, many of the turned-in vessels would have been off the seas for physical or economic obsolescence, and there would have been no method of replacing them.

The ships taken out under the Exchange Act have been that method of replacement. The results have been summarized in my statement, and I will touch on them lightly.

These 50 ships which are now operating, and which would probably not operate without this statute, employ over 2,000 men. Without these ships, the men would not have been employed. There has been $100 million or more of shipyard work which would not have existed without this statute. Above all, this has been a program in which the unsubsidized American merchant marine has been assisted without any additional cost to the taxpayer.

The Maritime Administration has received, I am told, $4 million.

Now may I respectfully submit that this legislation must be continued or the unsubsidized fleet will rapidly go downhill. There are applications now for construction subsidy pending before the Maritime Administration. One which I represent has been pending for over 2 years. I do not know when or if favorable action on these construction subsidy applications will be granted. But assuming it were to be granted, and I think it must be granted, in the near future, it would be impossible to have a ship delivered from a shipyard for perhaps as long as 5 years; in other words, once the Maritime Administration agrees to the construction subsidy, we must still have an appropriation, the contracting with the yards is long and drawn out, and I would say the first ship would probably not be delivered for 2 or 3 years after the contracting process has been entered into. During that timelag we are going to have a lot of old ships that are again going to become physically or economically obsolete and the vessels in the laidup fleet are the vessels which I think will keep this unsubsidized fleet going until there is a coordinated new replacement program.

Now might I specifically refer to one problem. Several clients of my office have applications pending. The ships have been allocated to them, but these were ships which other companies have turned in and are out on use agreements until such time as the new ships for which they have been turned in are delivered. As a result of this, the transactions in some cases cannot be closed by July 5. So I think in fairness to these people as well as for the overall program this should be extended.

Lastly, I would like to state that this bill is not a panacea, this is not going to end the problems of the unsubsidized merchant marine and the tankers. I agree with Mr. Shapiro wholeheartedly that the sale of tankers will not cure or even substantially help the bulk carriers. But it is a necessary interim legislation to cover over the next 5 years or more until vessels under a new program may come off the waves.

For that reason, Mr. Chairman, I respectfully urge the enactment of this bill.

(The prepared statement of Mr. Coles follows:)

STATEMENT OF MARVIN J. COLES BEFORE THE COMMITTEE ON COMMERCE, SENATE OF THE UNITED STATES, IN SUPPORT OF S. 2069

Mr. Chairman, for the record, my name is Marvin J. Coles. I am a lawyer having offices in Washington, D.C., and represent several companies that are applicants to exchange vessels under section 510(i) of the Merchant Marine Act. These companies are unsubsidized and operate tramp vessels under the American flag. Some of the pending applications can probably not be processed by the expiration date of the present law because the ships to be exchanged are presently operating under use agreements. For tramp companies, as well as for companies in the domestic trades and several unsubsidized liner companies, the legislation which this bill would extend has been the principal Government aid during the past 5 years.

For the past 5 years, the Exchange Act has permitted unsubsidized operators to upgrade their existing fleet by replacing obsolete ships with better tonnage. Under the existing legislation, Libertys and other old ships have been turned in for more efficient ships ranging from the Victory class to C–4 types. Without the existing legislation, many of the turned-in vessels would have been off the seas because of physical or economic obsolescence. Without this legislation, a substantial number of jobs for American seamen would have been lost.

The results of the existing legislation have been excellent. Approximately 50 better type American ships have been put into active operation by private owners as replacements for older and less efficient American vessels. I am informed that in the course of this program over $100 million was spent in American shipyards to recondition the vessels which were exchanged. Moreover, there has been a profit in dollars to the Maritime Administration over and above the value of the trade-in vessels. Aboard the 50 vessels which have been taken from the laid-up fleet, there are now over 2,000 jobs for American seamen. Not only has the existing legislation resulted in upgrading the American unsubsidized fleet and maintaining it in operation, but this result has been attained without cost to the taxpayer.

May I respectfully submit that this legislation must be continued, or the unsubsidized American-flag fleet must go rapidly downhill. There is no other program by which unsubsidized operators can now replace their rapidly aging vessels. Theoretically, construction-differential subsidy aid is available to American-flag unsubsidized owners and applications have been pending before the Maritime Administration for as long as 2 years. Unfortunately, as a result of the Maritime Administration's long continued study of its overall policy on bulk ships, none of these applications have been acted upon and we have no knowledge of when any such action may be expected. Even when the Maritime Administration may act, the need for appropriations plus a timelag of perhaps 3 years for constructing the first of any new ships means that we must have some means of maintaining our unsubsidized fleet during this period. Unless the legislation is extended, numerous Libertys and other old and inefficient ships will go off the seas and jobs will be lost to American seamen, for if the ships go the jobs go too. Enactment of the pending legislation is necessary to insure that vessels will be available to unsubsidized American operators when required.

May I specifically mention several applications which are presently pending. We represent companies which have applied to trade in old vessels for better type ships and these ships have been allocated to them. These better type ships have been traded in to the Maritime Administration by subsidized and other lines as part of their rebuilding or exchange programs. Until such time as their new vessels are delivered from the shipyards, the companies are permitted to retain their old ships under use agreements. Some of the applications for these ships have been pending for a substantial period of time, but the vessels to be received by them will not be returned until after the July 5 expiration date. It seems to be only fair and proper that action be taken to insure that these ships, which are needed for operation in the unsubsidized American fleet, be made available to these owners who filed timely applications but who have not received their ships because of delays in their return by their present operators.

This exchange bill is not a panacea to cure the ills of the bulk fleet. The vessels covered by it are all war-built: their years of life are limited. However, they are the only means whereby during the next few years we can have any reasonable assurance that an adequate unsubsidized tramp fleet can be kept in operation under the American flag until such time as new bulk ships built with construction subsidy, can be delivered.

I respectfully urge, therefore, that S. 2069 be enacted.

Senator BARTLETT. Thank you, Mr. Coles. Do you know what this program to date has cost the taxpayers?

Mr. COLES. It would seem to me that the taxpayer has profited. Starting off, the Government has received for laid-up ships $4 million, plus the older ships which it received in trade. The 2,000 jobs of course have resulted in substantial taxes to the Government. The amount of $100 million in repair work would not aid the yards, but likewise would probably result in substantial taxes to the Government.

Most importantly, perhaps, I think this has furthered the overall policy of the Congress of having an adequate American merchant marine, because it has kept better grade ships on the high seas, without any out-of-pocket costs through subsidy.

Senator BARTLETT. Thank you.

Mr. Robert S. Hope.

STATEMENT OF ROBERT S. HOPE, KOMINERS & FORT, WASHINGTON, D.C., ON BEHALF OF T. J. STEVENSON & CO., INC.

Mr. HOPE. Mr. Chairman, I would like to submit my statement also and summarize it.

Senator BARTLETT. All right.

Mr. HOPE. I am representing the T. J. Stevenson & Co., Inc., which is an operator and has been an operator for about 30 years of nonsubsidized vessels.

The problem that we have encountered is the one alluded to by Mr. Shapiro. It was a development that came along in the implementation of the program. And that is, if a nonsubsidized line acquires a ship which itself has been operated by a subsidized line, it is precluded from trading the ship for 3 years. This, we feel, is not the intent of the original statute, and I have set that forth at some length in my statement.

And we also have proposed some slight clarifying language in the statement. I would like to add, however, that Stevenson is also an applicant for construction differential subsidy on a 25,000-deadweight-ton bulk carrier. We share the same concern that Mr. Shapiro mentioned, that the Maritime Administration amendment, contrary to your bill, which would permit these tankers to come out, might be used as some kind of substitute or stopgap measure to prevent the proper processing of these construction differential subsidy applications.

We would hope that you would consider this and make it quite clear that this is not the intent of Congress. We have no objection to the broader amendment, but I think your bill, which limits the operation of such tankers to the domestic trade, would solve the immediate problem for operators such as Bulk Foods. Thank you very much.

(The prepared statement of Mr. Hope follows:)

STATEMENT OF ROBERT S. HOPE, REPRESENTING T. J. STEVENSON & CO., INC., IN SUPPORT OF S. 2069

My name is Robert S. Hope. I am a partner in the law firm of Kominers & Fort, Tower Building, Washington, D.C. I am appearing on behalf of T. J. Stevenson & Co., Inc., in support of S. 2069 which would extend the termination date of the Vessel Exchange Act, Public Law 86–575 from July 5, 1965, to July 5, 1970. T. J. Stevenson & Co., Inc., has its headquarters in New York and has owned and operated American-flag vessels for approximately 30 years. During World War II and the Korean emergency the company operated large fleets for

the Government and it is still qualified as a general agenct of the Maritime Administration. The Stevenson Co. and its affiliates have been and are still desirous of upgrading their vessels and to this end they have acquired under the provisions of the Vessel Exchange Act one C–2-type vessel and one Victory-type vessel. Stevenson purchased on the open market one extended Victory-type vessel of about 14,000 deadweight tons and one C–2-type vessel from a subsidized owner. Its affiliate, Ocean Freighting & Brokerage Corp. purchased on the open market one C–2-type vessel likewise from a subsidized owner. More recently T. J. Stevenson has filed an application for construction-differential subsidy under section 501 of the Merchant Marine Act, 1936, to aid in the building of a new 25,000-deadweight-ton dry bulk carrier. Therefore it is obvious that this company has faith in the American merchant marine and earnestly desires to improve its fleet.

In addition to supporting extension of the vessel exchange program, Stevenson seeks a short and minor clarification of the existing language of the law to rectify a problem which it and other companies similiarly situated have encountered in their upgrading programs. Subparagraph (1) of section 510(i) of the act reads as follows:

"The traded-in vessels shall have been owned and operated without subsidy under title VI of this act by a citizen or citizens of the United States, and documented under the laws of the United States, for at least 3 years immediately prior to the date of the exchange."

This language has been interpreted by the Maritime Administration to mean that any vessel which has been under an operating subsidy contract within the last 3 years is ineligible for the vessel exchange program even though the present owner is not and has never been subsidized. Specifically, Stevenson's situation is that it exchanged an obsolete tanker about 2 years ago for a C–2 vessel, the *American Hunter*, which had immediately prior to the exchange been operated with operating subsidy. This vessel is a small C–2 of only about 10,000 deadweight tons but was one of a few vessels available at that time. Now Stevenson is desirous of exchanging this vessel for a larger vessel, but it cannot do so under the Maritime Administration's interpretation since the vessel was operated under subsidy prior to Stevenson's acquisition of the vessel 2 years ago. The same ruling would apply to the other C–2 owned by Stevenson and the one owned by Ocean Freighting, as both vessels were acquired from subsidized lines within the last 3 years.

Another nonsubsidized owner whom we represented made application for the exchange of a C–2-type vessel it had purchased from a subsidized line on the open market, but was advised that operation under subsidy by a prior owner rendered the vessel ineligible and the application was withdrawn. That company has other vessels similarly ineligible because of subsidized operation by a prior owner. There are, I am sure, numerous other nonsubsidized owners in the same predicament.

The legislative history, testimony, and committee reports, are clear that the Vessel Exchange Act was designed to upgrade the nonsubsidized fleet and the only purpose of the existing language was to limit the exchange program to such owners. For instance the report of the Commerce Committee to the Senate (S. Rept. 1275, 86th Cong., 2d sess.) stated as follows:

"All segments of the country's shipping industry currently are having their troubles, but the owners most severely affected are those operating without subsidy—the coastal and intercoastal lines, and the bulk carriers in the foreign tramp trades. Replacement of the vessels engaged in these trades—most of them war built—is essential if they are to continue to be truly competitive in these vital areas. Construction costs are high, however, and shipping profits in recent years have barely sufficed to assure continued operation, much less to permit provision for building the more modern vessels required."

To clarify the existing statute to properly reflect the original intent of Congress we propose that subparagraph (1) of section 510(i) be deleted and a new subparagraph (i) reading as follows be substituted:

"(1) The traded-in vessels shall have been owned by a citizen or citizens of the United States, documented under the laws of the United States, and shall not have been operated with operating-differential subsidy under title VI of this Act by the applicant or any affiliate of the applicant for at least three years immediately prior to the date of the exchange."

We respectfully request favorable consideration by this committee on the extension of the program and this clarifying amendment. Thank you very much for permitting me to appear at this hearing.

Senator BARTLETT. Thank you, Mr. Hope. I do not have any questions.

All right, Mr. Bourdon, please come forward.

STATEMENT OF REGINALD A. BOURDON, ASSISTANT LEGISLATIVE DIRECTOR, AMERICAN MARITIME ASSOCIATION

Mr. BOURDON. My name is Reginald A. Bourdon, assistant legislative director, American Maritime Association. With your permission, I would like to file my statement for the record and perhaps summarize what I have in the statement.

Senator BARTLETT. Permission granted.

Mr. BOURDON. Thank you, sir. The American Maritime Association represents approximately 150 shipping companies, most of whom are unsubsidized and operate in foreign and domestic trade of the United States.

Many of these companies have been beneficiaries of the vessel exchange program, and the association strongly supports the extension of the program for an additional 5 years.

As you are already well aware, there are many benefits which have derived from the program to date, benefits that have accrued to the Federal Government, to industry, and to labor. The Government has benefited from the trade-out, trade-in program to the extent that vessel sales have produced an additional $4 million to the U.S. Treasury, costs of maintaining the reserve fleet have been reduced somewhat, the shipbuilding industry has benefited to the extent of approximately $100 million through the repair work that has resulted from the program, and also of some significance is the fact that labor has had preserved 1,900 or 2,000 jobs through the program.

As far as the amendments are concerned, which have been presented to the committee, the association would favor the extension of the program to Great Lakes operators, and also favors the use of tanker vessels, as long as they remain in a nontanker service.

I would, therefore, share the view of Mr. Shapiro, who testified earlier this morning, that the trade-out of tankers should not be considered a substitute for the extension of construction subsidy programs to the dry bulk carriers. We would hope that the committee would make this plain in any report that is issued on the bill.

While the administration has been rather tardy in its support of this measure, nonetheless the views of the administration on the bill are quite clear. In the last session of Congress, for example, the Under Secretary of Transportation Martin appeared before this committee on S. 1773, and at the time proposed the extension of this program and use of the program for the domestic trades. Once again this morning both here and the other day before the House the present Under Secretary of Commerce for transportation reiterated those views.

The main question before this committee, Mr. Chairman, as we see it, is mainly should this program, which has proved highly beneficial to the Government, to labor, and to the maritime industry, be continued? This association believes that the only program that is now on the books to help the unsubsidized operator is this particular program. There is nothing else that is available and every day we have

the same reiteration of views before this chamber and in the public press. We constantly complain the American dry bulk carriers are only transporting 3 percent of all our bulk cargoes. We claim that they are only transporting about 3 percent of the oil that is imported into this country. Now we have before this committee a program which, while it is not a panacea to cure these particular problems, does provide a great amount of assistance and we urge that this committee support this program and extend this particular measure. Thank you, Mr. Chairman.

(The prepared statement of Mr. Bourdon follows:)

STATEMENT OF THE AMERICAN MARITIME ASSOCIATION ON S. 2069

My name is Reginald A. Bourdon, and I am assistant legislative director of the American Maritime Association. The American Maritime Association is made up of approximately 150 shipping companies which are engaged in both the foreign and domestic trades of the United States. Largely composed of a membership which does not receive either construction-differential or operating-differential subsidy, the American Maritime Association is vitally concerned with the present legislation before this committee.

Under the terms of S. 2069, authority would be granted for the continuation of the vessel exchange program, a program which has been highly beneficial to the tramp segment of the American merchant marine. During the past 5 years, 52 vessels have been involved in exchange agreements. In addition to reducing reserve fleet maintenance costs, the sale of these ships has benefited the U.S. Treasury to an amount over $4 million. More importantly, this program has improved our tramp fleet and provided repair work for American shipyards. Only last year 18 C–4's were made available to nonsubsidized operators in exchange for old vessels. While the American Maritime Association does not believe that the trade-out, trade-in program constitutes the most effective method of coping with the program of oblescence in our tramp fleet, it feels, nevertheless, that in the absence of a more dynamic construction program it is an absolute necessity.

This association believes the amendment to the vessel exchange program suggested in S. 2069 would be beneficial to domestic operators and would also provide assistance to some Great Lakes operators. This association, therefore, would recommend the adoption of a provision that subsection (i)(9) of section 510 of the Merchant Marine Act, 1936, as amended, be amended to permit the trading out of tanker vessels from the reserve fleet upon the conditions that such vessels are no longer required in the reserve fleet for national defense purposes, that the vessels will be operated only in the domestic trade, and that they will not be employed in the tanker vessel trade upon their acquisition.

In hearings before the Merchant Marine and Fisheries Subcommittee of the Senate last year, concerning the vessel construction program to aid domestic trades, the Under Secretary of Commerce for Transportation, Clarence Martin, Jr., advocated greater use of the vessel exchange program to assist the replacement needs of domestic operators. The new Under Secretary of Commerce for Transportation recently reiterated those same views before the House Merchant Marine Subcommittee considering H.R. 728.

There would appear to be no alternative to the passage of the proposed extension, for without it there is an absence of legislative authority designed to assist the replacement and updating of our tramp fleet. If the exchange program is to terminate, it would mean that the unsubsidized and tramp operators would be left with no method of improving their fleets. I need not recite to this committee the sad statistics relating to the unsubsidized segment of the American merchant marine. They are often echoed in this chamber and published in the press. Failure to act on the renewal of the vessel exchange program can only lead to the further deterioration of the domestic and tramp segments of our merchant fleet. As this legislation will soon expire unless renewed by the Congress, it is hoped that this committee will give its favorable consideration to this measure as soon as possible.

Senator BARTLETT. Thank you. You were here this morning when Secretary Boyd testified and urged an amendment which would per-

50-188—65——3

mit the tankers in bulk cargo service to be used in other than the domestic trade. I note in your statement on page 2 that you recommend that the vessels be operated only in the domestic trade. Would you be willing to acquiesce in the recommendation of the Department of Commerce?

Mr. BOURDON. Yes, sir; except to the extent that we would not support such a measure if it is extended to operation in the actual tanker service. If it is nontanker service, yes.

Senator BARTLETT. Thank you.

Our next witness is Admiral James A. Hirshfield.

STATEMENT OF VICE ADM. JAMES A. HIRSHFIELD, U.S. COAST GUARD (RETIRED), PRESIDENT, LAKE CARRIERS ASSOCIATION, CLEVELAND, OHIO; ACCOMPANIED BY SCOTT ELDER, ESQ., COUNSEL

Admiral HIRSHFIELD. Mr. Chairman, we have a prepared statement which we would like to submit for the record.

Senator BARTLETT. It will be accepted.

Admiral HIRSHFIELD. I would like to comment briefly on it. We have suggested an amendment——

Senator BARTLETT. Pardon me. For the purpose of the record, will you name your associate?

Admiral HIRSHFIELD. I am sorry. This is Mr. Scott Elder, counsel of our association.

We would like to suggest an amendment to the bill, because we feel that this is the area where it possibly might help or might possibly be used by our members. This is in regard to tankers.

The restriction of these vessels to the tanker trade, we feel, would preclude their use on the lakes by tanker companies who might want to trade entirely in the Great Lakes. They are the only ones I know of who have expressed an interest in vessels in the reserve fleet. But should someone else decide that they wanted to convert one of these vessels to a bulk carrier, and engage in the trade between United States and Canada, this would preclude that, because this restriction calls for the use of them in the domestic trade.

That is all I have to say, sir.

(The prepared statement of Admiral Hirshfield follows:)

STATEMENT OF LAKE CARRIERS' ASSOCIATION, CLEVELAND, OHIO

I appreciate this opportunity to express, on behalf of Lake Carriers' Association, the view of the American-flag Great Lakes vessel industry concerning S. 2069, legislation which would, in effect, extend the current vessel exchange program provided by Public Law 86-575, due to expire on July 5, next, and broaden its application so as to permit the trade-in of obsolete Great Lakes vessels in exchange for war-built vessels now in the reserve fleet. The fact that this or similar legislation has been introduced, we understand, at the request of the Secretary of Commerce suggests that such a broadened exchange program will meet the perplexing problem of ship replacement on the Great Lakes. Unfortunately, such is not the case.

Last year the commerce of the Great Lakes exceeded 202 million net tons, of which about 90 percent consisted of bulk commodities such as iron ore, limestone, coal, and grain. Of this total trade only about 9 percent was domestic to Canada, while 32,300,000 net tons, or 16 percent, was international trade between the United States and Canada. From the standpoint of individual commodities, iron ore is by far the most important, inasmuch as it accounts for about 52

percent of total U.S. domestic Great Lakes traffic and about 30 percent of the international trade in bulk commodities between the United States and Canada.

Impressive as total traffic figures may be, the fact remains that the percentage of total traffic transported in American-flag Great Lakes vessels has been steadily declining. At one time our vessels transported in domestic trade 85 percent of all the iron ore consumed by the steel industry. Today, American-flag Great Lakes vessels move only about 57 percent of our total iron ore requirements. Similarly, American vessels last year moved only 13 percent of the total grain cargoes transported on the Great Lakes. Twenty-four percent of the cargoes found their way into overseas-flag ships, while 63 percent went into Canadian bottoms. Considering, as a whole, the international trade in bulk commodities between the United States and Canada, it is significant that in less than 20 years the Canadian participation in this traffic has risen from about 22 to 85 percent.

What has happened, and will continue to happen on the Great Lakes unless immediate remedial measures are taken, should be of the greatest concern to this subcommittee. The Canadians, in recent years, have embarked upon an extensive Government-sponsored vessel-building program. This program, based on a system of rapid amortization and construction subsidies, has resulted in an expansion of the carrying capacity of the Canadian Great Lakes fleet by more than 130 percent. This year seven additional new large ships will be placed in service in Canada for employment in Great Lakes trade. When it is considered that only 9 percent of total Great Lakes trade is domestic to Canada, it is obvious the expansion which has taken place in the Canadian fleet is aimed directly at capturing the international trade in bulk commodities between the United States and Canada. In this endeavor the Canadians, by reason of their lower construction and operating costs, accelerated depreciation, and subsidies, have been singularly successful.

Equally important, however, is the impact which the increased emphasis upon international trade in bulk commodities within the Great Lakes has had on domestic trade. It is obvious that the future of the domestic bulk commodity movement on the Great Lakes depends in large measure upon the ability of our own vessels to keep commodities such as iron ore, grain, and limestone competitive in the marketplace with the same foreign product. It is this indirect competition between commodities and its resultant effect upon the domestic bulk commodity movement that is rapidly strangling our American-flag Great Lakes fleet.

As of now the fleet consists of fewer than 260 vessels with a total trip-carrying capacity of about 3,000,000 gross tons. This is in comparison to a fleet in 1957 of 350 vessels with a total trip-carrying capacity of 3,450,000 gross tons. Most of the vessels in the current fleet are of the 10,000-ton class and have an average age in excess of 43 years. Only 26 American-flag Great Lakes vessels are capable of lifting 20,000 tons or better. Our Canadian competitors have 40. Since 1960 no new vessels have been added to our fleet. In the last 7 years alone, no fewer than 82 vessels have succumbed to either age or obsolescence. The overall net loss in trip-carrying capacity has been more than 450,000 tons. The number of available seamen's jobs has shrunk from 14,000 in 1957 to a present level of approximately 9,000, a loss of some 5,000 jobs, or in terms of wages a loss of better than $35 million annually.

The problem on the Great Lakes is not merely one of replacing obsolete or wornout units with younger or newer vessels. The object of any program to rejuvenate the Great Lakes fleet must be to attract cargoes to American bottoms. This cannot be done unless the American fleet Great Lakes operator is placed in a position to meet the competition of Canadian operators who are now utilizing large, modern, and efficient 25,000-ton capacity, lake-type vessels built with the aid of construction subsidies and rapid depreciation. This holds true whether the American vessel is engaged purely in domestic trade or in international trade on the Great Lakes, since both trades involve the same basic commodities which, in turn, compete in the same consumers' market. With this premise in mind, it is now proposed to examine the benefits, if any, to be derived from expansion of the current vessel exchange program.

Extension of the vessel exchange program to the Great Lakes was first proposed by former Under Secretary of Commerce Martin in his testimony before the Merchant Marine and Fisheries Subcommittee of the Senate Committee on Commerce during the course of the hearings held on S. 1773 in early 1964. At that time, it was indicated that the majority of the ships in the reserve fleet were of the Victory class, of 10,800-deadweight tons and a speed of 15.5 to 17

knots. The remainder of the fleet consists of Liberties and C–1's, C–2's, C–3's, and C–4's, in limited number.

Following Secretary Martin's proposal, representatives of Lake Carriers' Association, on several occasions, met with the Maritime Administration to explore the feasibility of utilizing reserve fleet ships on the Great Lakes. As a result of those conferences it was concluded by members of the industry that a vessel exchange program, at best, would be of only limited benefit.

The alternatives explored with the Maritime Administration included the conversion of Liberty vessels and Victory ships, the transplanting of powerplants and the grafting of lake-type midbodies on C–4- and T–2-type vessels. Insofar as Liberty vessels and Victory ships are concerned, the lines of the hulls are very fine as compared to the conventional bulk carrier. For this reason, they do not have sufficient carrying capacity to warrant their conversion to lake use. Further, they have the added disadvantage of being very hard to handle in a light condition in adverse weather because of their depth and the lack of side tanks for ballast. To the extent that such vessels might be available for conversion to barges, it would be no more costly to convert an existing lake vessel to such use.

The grafting of lake-type midbodies into C–4- and T–2-type vessels has been utilized to a considerable extent on the Great Lakes by both Canadian and United States operators. For the most part, these midbodies were built abroad before the customs laws were modified to prohibit the use of such sections if foreign built. It has been the experience of Great Lakes operators that if such midbodies are built in this country the cost of the resulting vessel is nearly as great as the cost of constructing a new Great Lakes-type bulk cargo carrier.

It must be remembered that any conversion, as compared to a new Great Lakes-type vessel, results in less carrying capacity, less efficiency and higher cost of operation. In nearly all instances where C–4- and T–2-type vessels have been utilized in Great Lakes trade it was not done to save costs but to provide urgently needed capacity. A lack of vessel capacity is not the basic problem on the lakes today. Consequently, the conversion of C–4- and T–2-type vessels is not attractive because of the relative expense of performing the conversion as compared to new construction. Moreover, the C–4 or T–2 conversion is not nearly as effective as the modern 25,000 tons capacity vessels being utilized by the Canadians.

By way of illustration, let us look at the type of competition the Great Lakes operator must meet. The newest Canadian ships are 730 feet in length with a beam of 75 feet and a depth of 39 feet. They are diesel powered, fully automated in accordance with modern-day technology and equipped with bow thrusters. They carry a crew of only 24 men as compared to a crew of 32 to 36 on the larger American-flag vessels. An extensive savings in weight has been accomplished in these Canadian vessels by the use of diesel propulsion, lightweight high-tensile strength hatch covers, side and bottom plating. Ballast piping is plastic rather than steel.

While the estimated carrying capacity of these vessels at maximum draft was 25,000 gross tons, the savings of weight through modern day construction and material enabled one such vessel to break three cargo records last year. With respect to grain, that vessel, the *Saguenay*, carried 28,365 tons of wheat, the equivalent of 945,596.8 bushels. She also moved 28,252 net tons of coal in a single cargo. Her record for iron ore is 25,469 gross tons. It is estimated that the *Saguenay* cost about $7,500,000 to build in Canada. Of this amount, $2,740,-000 probably represented a Government construction subsidy. This, then, is a typical example of the type of vessel with which American-flag Great Lakes operators are endeavoring to compete. It is now proposed that they meet such competition through utilization of antiquated Liberty and Victory ships and the conversion of World War II relics. The facts speak for themselves.

It is entirely possible that the contemplated exchange program would have value, through limited application, in the fields of container ships, auto carriers, and railroad carferries. In the bulk commodities trades, however, it is extremely doubtful that any exchange program utilizing vessels in the reserve fleet could provide the type of ships needed to meet the basic competitive problem which has arisen on the Great Lakes. Frankly speaking, we do not feel that extension of the vessel exchange program offers a feasible or realistic solution to the vessel replacement problem on the lakes. Certainly, such a proposal falls far short of meeting the current needs of Great Lakes vessel operators.

It is not our purpose to rule out entirely the utilization of reserve fleet vessels on the Great Lakes. Instances might well arise where the use of such vessels would be attractive to certain operators. In that connection, it is encouraging

to note that S. 2069 would liberalize paragraph (9) of subsection (i) to permit the trade-out of tankers for exclusive use in domestic trade, other than as tankers. From the viewpoint of the Great Lakes, this liberalization is not sufficient. Strangely enough, the Great Lakes is probably one area where some of the small tankers in the reserve fleet could be efficiently utilized. For that reason it is suggested that section 2 of S. 2069 be amended by adding to subparagraph (C) of proposed paragraph (9) the following:

"The subparagraph (C) and subparagraph (B) shall not apply to tankers traded out under the provisions of this subsection for use exclusively in trade and commerce on the Great Lakes, including the St. Lawrence River and Gulf."

In correspondence with former Under Secretary Martin it was indicated to Lake Carriers' Association that modification of the vessel exchange program is not intended to be the solution to the problems of the domestic shipping industry, particularly that on the Great Lakes. We certainly hope this is true.

Rejuvenation of the Great Lakes fleet requires much more than an extension of the vessel exchange program. One encouraging step is the introduction of bills such as S. 1858, H.R. 8495, and H.R. 7956 which would promote the replacement and expansion of the U.S. nonsubsidized merchant marine through the establishment of tax-deferred construction reserve funds.

Finally, it is urged that serious consideration be given to extending construction subsidies to Great Lakes vessels. Many have expressed deep concern over the 11-percent decline that has taken place in our ocean merchant marine over the last 10 years. Few realize that a 22-percent decline has taken place in the American-flag Great Lakes fleet over a period of the last 5 years. The real solution, we believe, lies in enactment of legislation such as S. 1773 and H.R. 7385, 88th Congress. Short of this, any piecemeal program such as the broadening of the vessel exchange provisions of Public Law 86–518 will not suffice.

Senator BARTLETT. Thank you. If Secretary Boyd's recommendation is followed, your problem would be solved?

Admiral HIRSHFIELD. I didn't hear what he said, Mr. Chairman.

Senator BARTLETT. He recommended, among other things, that there would be no restriction to domestic trade.

Admiral HIRSHFIELD. That would be what we would like to see, certainly. But if he suggested they not be permitted to use the tankers, that would also preclude the use as tankers by tanker people on the lakes.

Senator BARTLETT. That is right.

Admiral HIRSHFIELD. So, from that angle, we feel this change we suggest, which is in the statement, should be made.

Senator BARTLETT. Thank you, Admiral.

Does anyone remain here from the Department of Commerce or Maritime Administration?

Mr. GOODMAN. Yes, sir. I am Martin Goodman, Chief, Office of Ship Operations.

Senator BARTLETT. I would like to put a question to you and ask the Administration or the Department to reply to it.

Mr. GOODMAN. Pardon me, Senator. Mr. Hoffman is also with me, Chief of Office of Ship Construction.

Senator BARTLETT. Perhaps you would prefer to reply to this question in writing, and if so, that will be perfectly agreeable. I should like a comment on the suggestion just made by Admiral Hirshfield respecting tanker use in the Great Lakes.

Mr. GOODMAN. I would prefer, Senator, if we might, to comment in writing on that.

Senator BARTLETT. All right. Also will you reply in writing to this question: Is there any intention on the part of the Administration or the Department to use the mechanics of this proposed legislation as a substitute for the granting of construction subsidies?

Mr. GOODMAN. To the best of my knowledge, there is not. I also think we would like to reply in writing to that question, however.

Senator BARTLETT. If you will, please. Thank you very much.

(The information requested above follows:)

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., July 14, 1965.

Hon. E. L. BARTLETT,
Subcommittee on Merchant Marine and Fisheries,
Committee on Commerce,
U. S. Senate, Washington, D.C.

DEAR SENATOR BARTLETT: At the hearing on S. 2069, we were asked whether the term "continental United States" in the portion of the Vessel Exchange Act which requires that any repairs or reconversion necessary at the time of the exchange to place the traded-out vessel in class and prepare it for commercial operation shall be performed in a shipyard within the continental United States, includes Alaska and Hawaii.

The Alaska Omnibus Act (Public Law 86-70) provides (sec. 48) that the phrase "continental United States" when used in any law of the United States enacted after June 25, 1959, shall mean the 49 States on the North American Continent and the District of Columbia unless otherwise expressly provided. The Vessel Exchange Act was enacted on July 5, 1960. It is clear, therefore, that the phrase "continental United States" in the Vessel Exchange Act includes Alaska.

Neither the Hawaii Statehood Act (Public Law 86-3) nor the Hawaii Omnibus Act (Public Law 86-624) changes this definition in the Alaska Omnibus Act, although the Hawaii Omnibus Act amends specific statutes to provide that the term "continental United States" in those statutes includes the State of Hawaii. Among the statutes thus amended by the Hawaii Omnibus Act are sections 505(a), 606, and 702 of the Merchant Marine Act, 1936. Section 510(i) of the Merchant Marine Act, 1936, was enacted on July 5, 1960. The Hawaii Omnibus Act was enacted on July 12, 1960. To conform section 510(i) of the Merchant Marine Act, 1936, to the amendments made to other sections of that act by the Hawaii Omnibus Act, paragraph 7 of section 510(i) should be amended by inserting at the end thereof the following: "For the purposes of this paragraph the term 'continental United States' includes the States of Alaska and Hawaii."

We were also asked at the hearing to comment on the amendment proposed on behalf of the Lake Carriers Association which would permit the tradeout of tankers for use in tanker service on the Great Lakes. The tankers we have in the reserve fleet are obsolete for use as tankers though they can be converted into good dry bulk carriers. If they are converted into dry bulk carriers, they will upgrade the active fleet and this is the use we think should be made of them. We therefore recommend against favorable consideration of the foregoing proposed amendment.

We were also asked at the hearing whether there is any intention on the part of the administration or of the Department to use the Vessel Exchange Act as a substitute for the granting of construction subsidies. As you know, new programs for the merchant marine are now under active consideration by the administration. The Vessel Exchange Act is not intended as a substitute for any new programs which may be recommended.

The Bureau of the Budget advises there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

ROBERT E. GILES,
General Counsel.

Senator BARTLETT. With regard to S. 2069, there are several departmental reports which have been received by the committee and which will be made a part of the record. The record will be kept open for 1 week for the submission of additional information or statements.

(The following information was received on S. 2069:)

SHIPBUILDERS COUNCIL OF AMERICA,
June 11, 1965.

Hon. E. L. BARTLETT,
Committee on Commerce,
Senate Office Building,
Washington, D.C.:

Our members hope the Committee on Commerce will favorably consider 5-year extension of Vessel Exchange Act as covered in S. 2069. In absence of replacement program for nonsubsidized operators, vessel exchange alternative permits continued operations under U.S. flag and offers opportunity for conversion work in U.S. shipyards where much idle capacity continues to exist.

Consequent additional advantages in terms of employment for shipyard workers and effect on national economy, with a minimum outlay from Federal treasury seems to us meritorious.

With regard to section 2 proposing that reserve fleet tanker vessels be eligible for trade-out, we strongly urge that the 5-year restrictions against use as a tanker be broadened to permanently prohibit the vessel's return to the tanker trades. Also that the language be revised so that no part of the traded-out tanker can be used in constructing or reconstructing a tanker vessel to be employed in the tanker trade. This would continue the Vessel Exchange Act benefits for shipbuilding and ship repair industry without jeopardizing market for new tankers for the U.S. domestic trades.

EDWIN M. HOOD,
President.

CONSOLIDATED MARINERS, INC.,
New York, N.Y., June 16, 1965.

CHAIRMAN OF THE SENATE COMMERCE COMMITTEE,
Washington, D.C.

DEAR SIR: We are in favor of S. 2069 (also H.R. 728) since it would appear to provide the only means in which a tramp ship operator may either upgrade or replenish his presently aging and obsolete fleet, without asking for a construction-differential subsidy, and continue performing a service which is essential to the national defense and prosperity of the country.

We are the owners of a vessel, the *Taddei Village*, O/N 245198, which would ordinarily qualify as a trade-in since it has been under continuous U.S. ownership, but which, unfortunately, went aground on or about March 15, 1964, on a shoal approximately 1 mile from the Japanese coast while it was on a commercial voyage to Japan. It is still a vessel. We applied to the Maritime Administration to exchange this vessel for a fast Victory (AP-3) and would have been happy to accept scrap value for our vessel, since the Maritime Administration was accepting other vessels on a scrapping valuation.

Our application was denied purely on the reported condition of the vessel. The deletion of the description "oceangoing" would remove all doubt of interpretation and, thus, otherwise make eligible and qualify our vessel for trade-in under the act, which we would like very much to do and thus continue our contribution to the national defense and economy of the country.

Very truly yours,

A. SABLIC, *Vice President.*

STATEMENT SUBMITTED BY MICHAEL KLEBANOFF ON BEHALF OF AMERICAN TRAMP SHIPOWNERS ASSOCIATION ON S. 2069

Mr. Chairman, my name is Michael Klebanoff. I am chairman of the American Tramp Shipowners Association, Inc., 350 Fifth Avenue, New York, N.Y. Accompanying me is Richard W. Kurrus who is general counsel of the association. My appearance is in support of S. 2069.

The American Tramp Shipowners Association is a trade association comprised of 11 domestic shipping companies owning or controlling 86 American-flag vessels totaling 1,517,259 deadweight tons. A list of the member companies and their vessels is furnished as an attachment to this statement. Our organization has the purpose of promoting, fostering and maintaining the tramp segment of the American merchant marine.

By way of introduction I might explain that tramp vessels seek employment in the carriage of bulk cargoes at such times and between such places as opportu-

nity may offer in contrast to the common carrier liners which operate with regular advertised sailings on a fixed schedule between prearranged termini. Each voyage of a tramp is a matter of special arrangement between shipowner and shipper. Tramps are therefore contract rather than common carriers. The world economy would wither away were it not for the work of the tramps that carry their bulk cargoes of grain, sugar, ore, oil, cotton, coal, lumber, fertilizer, and other raw material when and where needed in shipload lots.

The tramp fleet of the American merchant marine is unfortunately in a very depressed and constantly declining condition. Despite repeated pronouncements by Government officials of the absolute necessity of having a strong and vital American tramp fleet, very little is actually being done to promote the development and maintenance of such a fleet to function in conjunction with the American-flag liner fleet in accordance with the purpose and policy of our shipping statutes. The Cargo Preference Act, which is embodied as section 901(b) of the Merchant Marine Act of 1936, as amended, has been so administered that American-flag tramps are not assured of the same amount of U.S. Government aid cargoes as are shipped on foreign-flag tramp vessels and, within the past few years, several American-flag tramp operators have gone bankrupt carrying these cargoes which Congress set aside to aid them. Although more than 85 percent of the total foreign oceanborne commerce of the United States is now carried by tramp vessels, it is little wonder that less than 5 percent of our export and import bulk tonnage is being carried on American-flag ships rather than the at least 50-percent participation which is envisaged as a minimum goal by our basic shipping statutes.

Foreign-flag tramp vessels are proliferating at a rapid rate because of the constantly expanding world tramp commerce while, due to the cost-differential, no American-flag tramp ships have been built in recent years. For example, the cost to build a ship in the United States is about twice the cost of building the same ship in Japan, which is now the leading shipbuilding country in the world, and about two-thirds greater than the cost of building it in the United Kingdom.

Indeed, it appears that no new American tramp construction is conceivable unless the present policies pursued by the Maritime Administration are altered, and it is unrealistic to assume that any company operating American-flag vessels in the foreign commerce of the United States can continue to exist on a long-range basis without some more meaningful measure of governmental assistance.

Next to the Cargo Preference Act, the vessel Exchange Act is the most important single piece of legislation that has been made available to the tramp operator. This statute has afforded to the American tramp operator a method for upgrading and improving his vessels. During its 5-year existence, the exchange program, as administered by the Maritime Administration's Office of Property and Supply, although not a panacea for our problems, has proven itself to be the only existing avenue open to the tramp owner desiring to acquire more competitive and more economic vessels. In this short 5-year period and after a rather slow beginning, 52 reserve fleet ships have been traded out to private shipowners. Broken by type the traded-out ships are as follows: C–4, 22; C–3, 3; C–2, 14; Victory, 13.

The Vessel Exchange Act has been a demonstrable success in improving the type and suitability of vessels operating in the tramp trade under the U.S. flag and which will be available for immediate national defense purposes. It has also provided a considerable amount of work for domestic shipyards and their employees, both in placing the vessels in class and in improving and converting many of the traded-out vessels.

Should the Vessel Exchange Act be allowed to expire, the Maritime Administration would have care and custody of a reserve fleet comprised of about 1,600 idle vessels which is increasing constantly in quality as the subsidized lines turn in their older vessels as credit toward the construction of new vessels. In all likelihood, these vessels would never sail again and under existing laws could only be disposed of for scrapping. It would be an improvident waste of capital goods from both the commercial and national defense point of view to have superior vessels laid up in the reserve fleet rather than being in active operation. Certainly, it is consistent with our economy and our maritime policy that we should not be foreclosed from utilizing where feasible the valuable assets in this great maritime wasteland.

May I note 1 further pressing problem facing 11 unsubsidized operators, not all of which are members of this association, who have firm applications pending at the Maritime Administration for the exchange of war-built vessels. These applications are in various stages of administrative processing, with the

shipowners having in good faith made plans and important decisions relying upon the continued integrity of the program. If the act should abate on July 5, a tremendous amount of work on the imminent exchanges may be rendered useless. In fact, it may have been worse than useless since the applicants might have passed up other commercial opportunities in the meantime based upon what they regarded as firm commitments to the Government.

We support that the request of bulk food carriers but suggest that any tanker vessels traded out for use in the domestic trade for the carriage of bulk foods should be restricted to the domestic trade and should not be employed in the tanker trade for their economic lives.

On behalf of the association and myself, may I express our appreciation for this opportunity to urge the committee to report favorably and promptly on S. 2069. Should there be any questions which the committee may have, I shall be pleased to attempt to answer them.

American Tramp Shipowners Association, Inc., deadweight tonnage, June 5, 1965

AMERICAN FOREIGN STEAMSHIP CO., INC.

Vessel	Type	Year built	Deadweight tons
American Eagle	Tanker	1959	33,164
American Falcon	C-3	1945	12,865
American Hawk	do	1943	12,900
American Oriole	do	1944	12,900
American Robin	do	1943	12,778
Company's total deadweight tons			84,607

AMERICAN UNION TRANSPORT, INC.

Vessel	Type	Year built	Deadweight tons
Transborinquen	C1-A	1944	7,590
Transcaribbean	AP-2	1945	10,825
Transmariner	C1-B	1943	9,510
Transunion	do	1943	9,047
Company's total deadweight tons			36,972

BLIDBERG-ROTHCHILD & CO., INC.

Vessel	Type	Year built	Deadweight tons
Southport II	C-2	1944	11,315
Wellsley Victory	C-2	1945	10,626
Norwalk	EC-2 converted	1961	12,986
Company's total deadweight tons			34,927

DORIC SHIPPING & TRADING CO., INC.

Vessel	Type	Year built	Deadweight tons
Elaine	EC-2 converted	1956	12,367
Eviliz	do	1955	12,358
Company's total deadweight tons			24,725

JAMES W. ELWELL & CO., INC.

Vessel	Type	Year built	Deadweight tons
Elwell	C-2	1944	10,660
Glory of the Seas	do	1944	10,660
Ranger	do	1943	10,660
Thunderbird	AP-2	1945	10,694
Company's total deadweight tons			42,674

HALCYON STEAMSHIP CO., INC.

Vessel	Type	Year built	Deadweight tons
Halcyon Panther	AP-3	1944	10,702

American Tramp Shipowners Association, Inc., deadweight tonnage, June 5, 1965—Continued

HUDSON WATERWAYS CORP.

Vessel	Type	Year built	Deadweight tons
Manhattan	Spr. tanker	1962	108,400
Transbay	T-2 tanker	1945	16,585
Transeastern	Spr. tanker	1959	46,427
Transerie	T-2 tanker	1944	16,590
Transglobe	Roll-on/off rebuilt	1962	7,521
Transhartford	T-2 tanker	1942	16,430
Transhatteras	do	1943	16,682
Transhudson	do	1945	16,623
Transindia	C-5	1946	24,427
Transorient	do	1946	24,427
Transorleans	T-2 Tanker	1943	16,669
Transtexas	do	1943	14,123
Transwestern	C-3	1943	12,970
Transyork	do	1940	12,970
Company's total deadweight tons			350,844

MARITIME OVERSEAS CORP.

Vessel	Type	Year built	Deadweight tons
Audrey J. Luckenbach	C-4	1946	14,850
Edgar F. Luckenbach	do	1946	14,850
Globe Carrier	Bulk carrier rebuilt	1959	22,800
Globe Explorer	do	1960	22,900
Globe Progress	do	1959	22,900
Globe Traveler	do	1962	25,130
HoraceLuckenbach	C-3	1943	12,800
Lena Luckenbach	do	1943	12,800
Natalie	C-2	1944	10,516
Ocean Anna	Tanker	1953	30,300
Ocean Evelyn	C-4	1946	14,850
Ocaen Dinny	C-2	1943	10,500
Ocean Ulla	Tanker	1960	36,585
Overseas Eva	C-2	1943	10,500
Overseas Joyce	do	1943	10,500
Overseas Rose	C-3	1944	12,800
Rebecca	Tanker	1960	48,791
Company's total deadweight tons			334,372

ORIENTAL EXPORTERS, INC.

Vessel	Type	Year built	Deadweight tons
Columbia	Bulk carrier rebuilt	1962	23,349
Cottonwood Creek	do	1959	15,200
Hudson	do	1960	15,107
Merrimac	do	1962	25,002
Missouris	do	1965	15,450
Niagara	do	1955	17,803
Potomac	do	1962	23,000
Sacramento	do	1959	21,931
Yellowstone	do	1965	15,450
Company's total deadweight tons			172,292

U.S. BULK CARRIERS, INC.

Vessel	Type	Year built	Deadweight tons
Anne Quinn	EC-2	1943	10,800
Dorothy Boylan	do	1944	10,750
Janet Quinn	do	1943	10,844
Isaac Mann	do	1942	11,000
Russel L	do	1945	10,813
Smith Adventurer	AP-3	1945	10,658
Smith Builder	do	1945	10,753
Smith Caper	do	1945	10,658
Smith Conqueror	EC-2	1944	10,500
Smith Defender	AP-2	1945	10,725
Smith Explorer	AP-3	1945	10,696
Smith Leader	do	1944	10,734
Smith Pilot	C-2	1944	10,607
Smith Tourist	AP-3	1945	10,650
Smith Victory	do	1944	10,669
Company's total deadweight tons			160,857

VICTORY CARRIERS, INC.

Vessel	Type	Year built	Deadweight tons
Ames Victory	AP-3	1945	10,767
Coe Victory	do	1945	10,757
Coeur Delane Victory	do	1945	10,745
Jefferson City Victory	do	1945	10,767
Mount Vernon Victory	Tanker	1961	47,000
Mount Washington Victory	do	1963	47,164
Longview Victory	AP-3	1945	10,745
Mankato Victory	do	1945	10,745
Monticello Victory	Tanker	1961	47,700
Montpelier Victory	do	1962	47,164
Northwestern Victory	AP-3	1945	10,733
Company's total deadweight tons			264,287
Total deadweight tonnage, 86 vessels			1,517,259

Senator BARTLETT. Now we will proceed to take testimony on S. 1917. The first witness is Phillip S. Hughes, Assistant Director for Legislative Reference, Bureau of the Budget.

STATEMENT OF PHILLIP S. HUGHES, ASSISTANT DIRECTOR FOR LEGISLATIVE REFERENCE, BUREAU OF THE BUDGET; ACCOMPANIED BY PIERRE S. PALMER, CHIEF, HOSPITALS BRANCH

Mr. HUGHES. Thank you, Mr. Chairman. Mr. Pierre Palmer is with me, also from the Bureau of the Budget, Hospital Branch.

Senator BARTLETT. Thank you.

Mr. HUGHES. I have a very brief prepared statement, Mr. Chairman, and I would like to read it, if I might.

Senator BARTLETT. Certainly.

Mr. HUGHES. Mr. Chairman and members of the subcommittee, we are here in response to the subcommittee's request to discuss S. 1917, to amend the Merchant Marine Act, 1936, in order to protect and promote the health of seamen on vessels of the United States, and for other purposes.

S. 1917 is intended to prohibit the transfer or assignment of any responsibility or function of providing medical, surgical, and dental treatment and hospitalization for seamen and other Public Health Service beneficiaries to any other department or Government agency, or the termination of such service at any Public Health Service institution, hospital, or station without the consent of the appropriate committees of the Congress.

Four Attorneys General, including Attorney General Katzenbach, have held that legislative provisions vesting in congressional committees the power to approve or disapprove action of the executive branch are unconstitutional. The constitutional objections to such procedure were stated many years ago in 1933 by Attorney General Mitchell as follows:

> The Constitution of the United States divides the functions of the Government into three great departments—the legislative, the executive, and the judicial—and establishes the principle that they shall be kept separate, and that neither the legislative, executive, nor judicial branch may exercise functions belonging to the others. The proviso in the * * * (instant) * * * bill violates this constitutional principle. It attempts to entrust to members of the

legislative branch, acting ex officio, executive functions in the execution of the law, and it attempts to give to a committee of the legislative branch power to approve or disapprove executive acts * * *.

In recent years Presidents have on numerous occasions protested bills with similar effect. In 1954, Congress passed a bill to authorize the transfer to the State of Florida of federally owned lands situated within Camp Blanding Military Reservation with a provision in the bill requiring that prior to the consummation of the agreement of conveyance, the Secretary of Defense or his designee—

shall come into agreement with the Committees on Armed Services of the Senate and of the House of Representatives concerning the terms of such agreement.

President Eisenhower vetoed the bill because of the presence of this "come-into-agreement clause."

President Johnson's recent disapproval of S. 327 reflects a similar concern over a provision different in form but with the same effect.

In addition to the constitutional objection to S. 1917, we believe it would inhibit orderly and efficient administration. We believe it essential that the President have the necessary flexibility to respond to changing circumstances. The closing or relocation of facilities often may be a necessary part of plans for providing improved and efficient services. The proposed amendment could cause undesirable and perhaps costly delays in the relocation and consolidation of facilities. This, in turn, runs counter to the administration's commitment to high quality and efficiency in the Government's operations.

Accordingly, the Bureau of the Budget recommends that the Congress not enact S. 1917.

That is all of my statement, Mr. Chairman. We would be glad to do whatever we can by way of answering questions.

Senator BARTLETT. What is S. 327?

Mr. HUGHES. S. 327 was the west coast flood bill.

Senator BARTLETT. Do you know what the plans of the administration are with respect to the treatment of seamen in these Public Health hospitals? Are alterations, changes, under contemplation, or have they been ordered?

Mr. HUGHES. There is underway the implementation of a plan under which the five largest Public Health Service hospitals would be improved, would be expanded and modernized, with, I believe, expanded teaching and research facilities. Other smaller hospitals, seven, would be phased out over a period of time, with the patients that have heretofore been taken care of in those hospitals cared for primarily in Veterans' Administration or in Defense hospitals that would be nearer to the seamen or other patients being served.

Senator BARTLETT. Which hospitals are to be closed?

Mr. HUGHES. The two in the near future are Memphis and Chicago, and I would like Mr. Palmer to name the others.

Mr. PALMER. The other five are Boston, Norfolk, Galveston, Savannah, and Detroit.

Senator BARTLETT. Each of those last five is obviously a seaport of considerable importance. How is it proposed that seamen who are ill or who have been injured shall be treated in those places?

Mr. PALMER. They would use the Veterans' Administration hospitals in those locations, or in the case of Galveston, they would use the Houston VA hospital.

Senator BARTLETT. I have just been informed that only yesterday, last night as a matter of fact, the General Accounting Office issued a decision, stating that seamen entitled to treatment at public hospital facilities would be necessarily subordinate to veterans with respect to admission to VA hospitals. Are you aware of that?

Mr. HUGHES. I understood there was such a decision, Senator. I haven't seen it. I am not really in a position to comment on it.

Senator BARTLETT. I haven't read it, either. It has just been handed to me. It is a letter to Chairman Bonner of the House Merchant Marine and Fisheries Committee dated June 7, as a matter of fact, and apparently signed by Joseph Campbell, Comptroller General of the United States. That letter will be incorporated in the record.

(The letter follows:)

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., June 7, 1965.

HON. HERBERT C. BONNER,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives.

DEAR MR. CHAIRMAN: Your letter dated April 13, 1965, requests our views on several legal questions which arose during the recent hearings of your committee on the proposed administrative closing of designated Public Health Service hospitals, announced January 19, 1965, by the Secretary of Health, Education. and Welfare.

To briefly summarize the situation, the Department of Health, Education. and Welfare contemplates closing, over the period ending with the fiscal year 1968 or 1969, 7 of the 12 general hospitals of the Public Health Service. The hospitals to be closed are in Chicago, Memphis, Savannah, Boston, Galveston, Norfolk, and Detroit. They are the smallest of the Service's general hospitals, having a capacity of 1,035 beds, or approximately 35 percent of the present bed capacity of the 12 hospitals.

The closed hospitals are to be converted to outpatient clinics which will refer Public Health Service beneficiaries in need of hospitalization to Veterans' Administration, Department of Defense, or local community hospitals. Merchant seamen, the largest category of Public Health Service beneficiaries, are to be referred to Veterans' Administration hospitals, and it is contemplated the Veterans' Administration will give the merchant seamen a higher priority in admission to its hospitals than veterans with non-service-connected disabilities.

The five remaining Public Health Service hospitals, located at Staten Island, Baltimore, New Orleans, San Francisco, and Seattle, are to be modernized and enlarged from a bed capacity of 1,937 to not more than 2,400, or an increase of about 20 percent. In the course of the hearings your committee was informed that a study was being conducted, by the Office of Science and Technology, to weigh the merits of transferring responsibility for the health care of American seamen, and the five remaining Public Health Service general hospitals, to the Veterans' Administration.

In view of the foregoing the questions arose, on which our opinion is requested, "as to the authority of the Department of Health, Education, and Welfare to close any or all of the Public Health Service hospitals and to transfer a statutory responsibility to another Government agency." Also, "The questions arose as to the authority of the Veterans' Administrator to render hospital care to Public Health Service beneficiaries in preference to veterans of any category and under what authority, if any, can nonveterans be treated at Veterans' Administration hospitals."

The Public Health Service Act, as amended (42 U.S.C. 201, et seq.), contemplates the operation by the Public Health Service, Department of Health, Education, and Welfare, of hospitals and other stations for the care of certain beneficiaries, such as merchant seamen, and in the absence of Public Health Service facilities authorizes the referral of such beneficiaries, at the expense of the Service, to public or private hospitals (sec. 249). The act also states that any executive department, in accordance with the interdepartmental service provisions of 31 U.S.C. 686, may perform work or service for the Public Health Service (sec. 254).

The Surgeon General, who administers the Public Health Service, is empowered by the Public Health Service Act to "control, manage, and operate all

institutions, hospitals, and stations of the service * * *" (sec. 248(a)). Our examination of the act does not disclose a substantive basis for restrictively construing the general administrative powers thus conferred. Rather, in the context of providing medical care, involving professional judgment, we consider inherent in the power to control, manage, and operate the Service's various health facilities, the discretionary authority to close and convert to outpatient clinics one or more of the Service's general hospitals. The closing, however, of all Public Health Service general hospitals, with general referral of beneficiaries to facilities outside the Service, would in our opinion be an unwarranted extension of the Surgeon General's discretionary authority.

While we consider the proposed conversion of the seven smallest hospitals to outpatient clinics to be within administrative authority where the treatment of Public Health Service beneficiaries may otherwise be provided, we do not view the contemplated interdepartmental transfer of the remaining five Public Health Service hospitals, together with responsibility for the health care of merchant seamen, as encompassed by that authority. The accomplishment of the latter transfer of facilities and responsibility would require a reorganization plan, in the event the Reorganization Act is extended beyond June 1, 1965, or a legislative enactment. This view of the matter we understand is also entertained by the Department of Health, Education, and Welfare.

In considering your questions with reference to the rendering of hospital care by the Veterans' Administration to nonveterans, we particularly noted the memorandum dated March 25, 1965, of the Assistant General Counsel, Veterans' Administration, which appears on page 227 of your committee's hearings. We concur in his position that the Veterans' Administration may furnish, in accordance with the provisions of 31 U.S.C. 686, hospital care on a reimbursable basis to beneficiaries of other Federal agencies where facilities are available.

Section 686 provides for interagency furnishing, on a reimbursable basis, of "material, supplies, equipment, work, or services of any kind that [the] requisitioned Federal agency may be in a position to supply or equipped to render * * *." In concluding that the Veterans' Administration may furnish hospital care to nonveterans on a space-available basis under a section 686 arrangement, we have not overlooked the existence of section 5003 of title 38, United States Code, authorizing the Veterans' Administration and the Armed Forces to enter into "contracts for the mutual use or exchange of use of hospitals and domiciliary facilities, and such supplies, equipment, and material as may be needed to operate such facilities properly, or for the transfer, without reimbursement of appropriations, of facilities, supplies, equipment, or material necessary and proper for authorized care for veterans." Section 5003 is in effect an extension of the scope of section 686 in that it provides for the mutual use or exchange of hospitals and the transfer of such facilities, etc., without reimbursement. Section 5003 is not in conflict with section 686, and is not viewed as precluding resort to the interagency service provisions of the latter.

However, the use of section 686 would require the Veterans' Administration to be in a position to supply or equipped to render the requested services. See 23 Comp. Gen. 935. And we are of the opinion that the situation of being in a position to render service cannot be artificially created by the promulgation of an administrative regulation, under 38 U.S.C. 621, which would subordinate statutory beneficiaries of the Veterans' Administration to beneficiaries of other agencies and constitute a relinquishment of the Veterans' Administration's primary responsibility. See 38 U.S.C. 201, 610, and 500; *United States* v. *St. Paul Mercury Indemnity Company* (133 F. Supp. (1955) 726, 735, 736, affirmed 238 F. 2d 594); *United* v. *Alperstein* (183 F. Supp. (1960) 548, affirmed 291 F. 2d 455).

We believe the foregoing answers the questions submitted but we shall be pleased to consider any additional aspects you may wish to explore.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

Senator BARTLETT. I think it would be well to consider that right now. I will read from the Comptroller General's letter:

While we consider the proposed conversion of the seven smallest hospitals to outpatient clinics to be within administrative authority, where the treatment of Public Health Service beneficiaries may otherwise be provided, we do not view

the contemplated interdepartmental transfer of the remaining five Public Health Service hospitals, together with the responsibilities for the health care of merchant seamen, as encompassed by that authority. The accomplishment of the latter transfer—

the letter goes on to say—

the latter transfer of facilities and responsibility would require a reorganization plan in the event the Reorganization Act is extended beyond June 1, 1965, or a legislative enactment.

Mr. HUGHES. I think, Senator, we would agree with that, as I understand it. But I would like to reserve final judgment pending some study of the letter. But as I understand the portion you read, we have no disagreement with that.

Senator BARTLETT. Let me read one other paragraph, the next to the last paragraph of the Comptroller General's letter which apparently was written in response to certain questions put to GAO by Chairman Bonner:

However, the use of section 686 (which I should say parenthetically provides for interagency furnishing on a reimbursable basis of materials, supplies, equipment, work, or services of any kind) that the requisitioned Federal agency may be in a position to supply or equipped to render; however, the use of section 686 would require the Veterans' Administration to be in a position to supply or equipped to render the requested services. And we are of the opinion that the situation of being in a position to render service cannot be artificially created by the promulgation of an administrative regulation under 38 U.S.C. 621, which would subordinate statutory beneficiaries of the Veterans' Administration to beneficiaries of other agencies—

and so forth.

Now, in the light of that, Mr. Hughes, I am rather puzzled as to your statement which says that "we believe it would inhibit orderly and efficient administration," because if I read this correctly, it would mean that the merchant seamen in these five ports might be left without any medical facilities at all, without any place where they could go for hospital care.

Mr. HUGHES. Well, the administration's plan, Mr. Chairman, contemplated the provision of service by the Veterans' Administration primarily, rather than through the Public Health Service hospitals.

With respect to the veterans hospitals, the plan anticipated that the merchant seamen would be taken care of on a priority basis, second only to the priority granted to the service-connected veterans. Service-connected veterans are a relatively very small proportion of the total VA hospital caseload, something like 10 to 20 percent in the general medical hospitals. In these circumstances, we saw and still see no problem in rendering prompt effective, and we think better quality, service, closer by, to the seamen, than would have been the case in the Public Health Service hospitals. The effect of the Comptroller General's letter on this is not clear to me and I would like to have an opportunity to consider the letter. I am not clear, for instance, as to the role of the Comptroller General in this, his legal authority with respect to the provision of care to veterans on one hand and merchant seamen on the other, vis-a-vis the authorities of the respective departments or agencies of Government, both of whom are formally on record that this is a feasible arrangement that the administration has put forward. I am just not clear on the effect of the Comptroller General's views on this.

Senator BARTLETT. I wouldn't expect you to be. You just heard me read in a rather disconnected fashion certain sections from it. I would like you to study the letter. I should suggest, however, that the views of the Comptroller General are quite persuasive, so far as the Congress is concerned, because the General Accounting Office is an arm of the Congress, while the Bureau of the Budget is an arm of someone else's.

Mr. HUGHES. We are fully aware of that, Mr. Chairman.

Senator BARTLETT. And it seems to me in my brief attention to this letter that it is filled with a lot of commonsense. Now I would like to ask you this:

You said that you saw no difficulty in securing sufficient space for merchant seamen in VA hospitals when they are entitled to medical care, because they would have a priority over anyone admitted to those hospitals except those who had service-connected disabilities.

In the first instance, the Comptroller General casts doubts upon the validity of that argument.

In the second place—I am just wondering this—I wonder if the veterans themselves, individually and through their organizations, would be amenable to having merchant seamen move into a Veterans' Administration hospital ahead of them, whether or not their illness or injuries are service-connected? I can very well imagine that the Veterans of Foreign Wars, the American Legion, and other veterans organizations might say, "What goes on here? These hospitals were built for servicemen, for ex-servicemen, and not for merchant seamen. Let them come last."

Mr. HUGHES. Two comments, I think, Mr. Chairman.

First, the cross-servicing in Federal hospitals is not a new thing, and seamen have been given care in veteran hospitals heretofore, just as veterans are now receiving care in some instances where facilities are nearer or for other considerations in Public Health Service hospitals. In light of this experience, and in the light of the fact that the Administration's plan contemplated the addition of beds to the veterans system to accommodate any net increase in load resulting from the inclusion of Public Health Service hospital patients, we did not see a problem here. A very small percentage of the total veterans load are service connected. There are a large number of beds, 125,000-plus beds, in the Veterans' Administration hospital system, and we regarded the effect of the relatively few Public Health Service patients on service to veterans as not serious, causing no significant delays in care to them, particularly in view of the fact that the size of the Veterans' Administration hospital system, the authorized beds, that is, would be increased to accommodate the Public Health Service patient load.

Senator BARTLETT. Do you know how many merchant seamen have been given hispital care in any given year?

Mr. HUGHES. We can furnish that for the record, Mr. Chairman, but we don't have it. What period did you want?

Senator BARTLETT. The latest year.

(The following was submitted to answer the above question:)

In 1964, 26 merchant seamen were provided a total of 3,104 days of care in Veterans' Administration hospitals.

Senator BARTLETT. Is there any plan or intention within the Administration, insofar as you know, to phase out entirely this medical service for merchant seamen?

Mr. HUGHES. No, sir; there is not. As you doubtless know, the status of the Public Health Service Hospital system has been the subject of controversy within the Administration and, to some extent outside of it, for a period of years. And we regard this plan that I described as a settlement, in effect, of that controversy.

There is, as a part of the plan, an OST study to consider what, if any, further steps should be taken. But I do not see that as leading to the abolition of care.

Senator BARTLETT. What is OST?

Mr. HUGHES. The Office of Science and Technology, I am sorry.

Senator BARTLETT. But it could lead to that though? That possibility can't be precluded.

Mr. HUGHES. It cannot lead to that, Senator, as the Comptroller General's letter indicates, it cannot lead to that without statutory action or a reorganization plan, as the case may be.

Senator BARTLETT. Mr. Foster?

Mr. FOSTER. Thank you, Mr. Chairman. You entirely agree then with the Comptroller General's statement that no further hospitals outside of the seven which are now programed for closing could be closed without either the submission of a reorganization plan or legislation?

Mr. HUGHES. Again I plead some ignorance on the exact language there. I didn't think that was quite what he said. I think what he said was that the Public Health Service could not be divested of its responsibilities and the hospital system abolished without statutory action. Whether, for instance, one more hospital could be closed without legal or statutory action, affecting the statutory responsibilities of the Public Health Service, I am not clear. I didn't think the letter went to that precise point.

We do agree with him, I believe, that the responsibility continues to rest with the Public Health Service, and that it cannot be removed from the Public Health Service or the system eliminated without statutory action.

Mr. FOSTER. But you might drop one more possibly, or two?

Mr. HUGHES. It is conceivable to me that statutorily this would be possible. I have not considered this particular legal point and I wouldn't want to give you a precise answer. There is no such plan at this point.

Mr. FOSTER. We have got a study underway to see what further steps, as I understood it, were necessary.

Mr. HUGHES. I think the study was somewhat broader in purpose than that. Mr. Palmer, could you comment on that?

Mr. PALMER. The purpose of the study is to determine whether the responsibility for care of merchant seamen should be transferred to the Veterans' Administration, along with the five large hospitals, to be operated by the Veterans' Administration, and the responsibility for other patient, uniformed service personnel, transferred to the Department of Defense. And what effect this would have upon the training and recruitment of staff for the Public Health Service carrying out its other missions.

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Another part of the study is how the Public Health Service might improve the recruitment and training of health personnel for its many missions.

Mr. FOSTER. Do you believe that it would be possible to transfer one of the major five hospitals that still remain or close it within the discretion that the executive has to use the Veterans' Administration facilities and other hospital facilities within the scope of the present law, or would it be necessary, if you are going to close additional hospitals to get legislation?

Mr. PALMER. As Mr. Hughes said, the closing of one more hospital, and arranging for the care of its patients on a cross-servicing basis, probably would not be any different than the closing of the seven which is planned for. But the transfer of all of the responsibility for seamen to the Veterans' Administration and the transfer of all of the remaining hospitals to the Veterans' Administration, which removes the Public Health Service from responsibility for seamen's medical care, could not be accomplished without a reorganization plan or legislation.

Mr. FOSTER. My problem is trying to understand what you mean when you say "transfer." You have closed seven, there are five left. I have asked you if you closed one more, would that be transferring the function, and I understand you are not sure? The same would be true if you closed two out of the five, or three out of the five, or four out of the five?

Mr. HUGHES. I think at some point it becomes quite obvious you go beyond the point where you retain in the Public Health Service the machinery that is necessary for it to carry out its missions.

Mr. FOSTER. What is that obvious point?

Mr. HUGHES. It is not an obvious point.

Mr. FOSTER. I thought you said an obvious point; I am sorry.

Mr. HUGHES. No, I said it seems to me obvious that at some point you cross a line here. I don't know what the point is. It seems to me this is a very fine legal point which I really haven't considered. There is no plan for the administration to close further Public Health Service hospitals, to my knowledge, and I think I would know if there were one.

The question which you raise is, Could another one be closed within the framework of existing law without statutory action? It seems to me this is a possibility, although it is certainly not planned. At some point, however—and whether this would be one more or two more hospitals, you do run afoul of the problem that the Comptroller General speaks about in that letter—at this point the statutory action or reorganization plan or something of that sort would be necessary.

Mr. PALMER. If I may add something to that, when we talk about transfer of responsibility, this would mean the appropriation of funds would be made directly to the Veterans' Administration for providing seamen care. Under the plan that the administration has now, Public Health Service retains the responsibilities for the medical care of the seamen, and gets the appropriation to provide it. It will provide the out-patient care in these seven locations. It would pay the Veterans' Administration to provide the care for the seamen in the Veterans' Administration hospital. So that the control over the care and how it is furnished, and the responsibility for its quality and so forth would

be the Public Health Service's. And it would be merely choosing one of several sources by which it fulfills that responsibility.

Mr. FOSTER. Well, as I understand it from that statement then it would be in your opinion within the scope of the present law for the seamen's hospitals to all be closed, and simply have the Department as the Veterans' Administration or some other agency which has the facilities, to, on a contractual basis, be of service to them. HEW would continue to get their appropriations and by contract pay it over to VA. This would not be a change of responsibility, this would not require a change of law or any reorganization plan. Is that correct?

Mr. PALMER. This probably would be theoretically true, but from a practical point of view, in the five locations where the large Public Health Service hospitals are, the Veterans' Administration or no other Federal agency is in a position to provide that care with their facilities. And this is why, if the responsibility for the care were transferred to the Veterans' Administration, the five hospitals would necessarily be transferred along with it, to enable them to have the facilities to assume that responsibility.

Mr. FOSTER. Mr. Hughes, in respect to S. 1917 you spoke to the constitutional question. Of course, your comment didn't go beyond that in terms of whether or not this in your opinion is constitutional. The objectionable provisions, as I understand it, from the standpoint of the executive, is that which relates to a requirement that no transfer be made or closure made without the consent of appropriate committees of Congress.

Mr. HUGHES. Yes, sir.

Mr. FOSTER. If that were stricken, that is, that portion of lines 4 and 5, on page 2 were striken, and the bill simply said that responsibility and function of providing the service may not be transferred or Public Health Service station be terminated, period, that would avoid that constitutional problem which you raise?

Mr. HUGHES. It would avoid a portion of the problem; yes, that is correct. It would avoid the committee approval.

Mr. FOSTER. It would avoid the constitutional problem you raised; is that true?

Mr. HUGHES. I think that is correct.

Senator BARTLETT. Why did you say it would avoid part of the problem then?

Mr. HUGHES. I understood him initially to imply that this would eliminate our objection to the legislation and I didn't want that impression to be conveyed. I believe it would remove the constitutional problem as such.

Senator BARTLETT. Oh, that isn't your only reason for objecting to the bill?

Mr. HUGHES. No, sir. I indicated others in the statement.

Senator BARTLETT. Do you have a question, Mr. Kenney?

Mr. KENNEY. If I may, Senator.

I don't know whether you have had a chance to examine it, but the House of Representatives passed a bill yesterday, military construction authorization bill, which contains a provision seeking a somewhat similar objective.

Mr. HUGHES. Yes; that is correct.

Mr. KENNEY. Is that constitutional, would you say?

That provision roughly says that no installation shall be closed until the expiration of 30 calendar days of continuous session of Con-

gress following the date on which the details of the closure are reported to the committees.

Mr. HUGHES. As to constitutionality, I would, I think, pass on that. I am quite confident the provision is objectionable to the Defense Department and to the administration. While it has somewhat the same effect as this, it is different in form.

Mr. KENNEY. It doesn't require the reaching of an agreement.

Mr. HUGHES. Yes. However, it also relates to the President's powers, constitutional powers as Commander in Chief, which this at least does not so directly do. And this affects somewhat the legal and constitutional status of the provision.

Mr. KENNEY. I see. This bill would be free from those restraints?

Mr. HUGHES. This does not affect, as I see it, the President's Commander in Chief functions under the Constitution.

Mr. KENNEY. In other words, this committee could adapt the language in the House bill to constitutionally serve this purpose? Over the objections of the Bureau of the Budget, of course, I mean?

Mr. HUGHES. Constitutional language could be devised which would have somewhat the same effect. That is, the form could be constitutional with what would be tantamount to an unconstitutional result in terms of its effect on the ability of the President or the ability of the agency to act.

Mr. KENNEY. Thank you.

Senator BARTLETT. Mr. Palmer, do you happen to know or could you supply the committee with information bearing on the average cost to the Government of treating a patient for 1 day in a Public Health Service hospital, as compared with a VA hospital?

Mr. PALMER. I can answer it in general now and, if you want it more specifically, I can correct it.

Senator BARTLETT. General answer would suffice.

Mr. PALMER. Roughly, they are in the same magnitude, in the neighborhood of $28 to $30 a day. There is no major difference between the cost.

Senator BARTLETT. Thank you.

We appreciate very much your appearance here under somewhat difficult circumstances. Thank you.

Mr. HUGHES. Thank you, Mr. Chairman. We appreciate the opportunity.

Senator BARTLETT. The next witness on S. 1917 is James Kelly.

STATEMENT OF JAMES F. KELLY, DEPUTY ASSISTANT SECRETARY FOR ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; ACCOMPANIED BY ELMER SMITH, SUPERVISORY OPERATIONS ANALYST, OFFICE OF THE SECRETARY; DR. G. P. FERRAZZANO, CHIEF, DIVISION OF HOSPITALS, U.S. PUBLIC HEALTH SERVICE; AND DR. LEO J. GEHRIG, CHIEF, BUREAU OF MEDICAL SERVICES, U.S. PUBLIC HEALTH SERVICE

Mr. KELLY. My name is James Kelly, Deputy Assistant Secretary for Administration, Department of Health, Education, and Welfare. I am accompanied by Elmer Smith, Supervisory Operations Analyst. Office of the Secretary; Dr. G. P. Ferrazzano, Chief, Division of Hospitals, U.S. Public Health Service, and Dr. Leo J. Gehrig, Chief, Bureau of Medical Services, Public Health Service.

The Secretary asked me to represent him this morning since I have worked closely with him on the problem of providing improved and more accessible medical care for Public Health Service beneficiaries. He asked me to express his appreciation that we were being afforded the opportunity of discussing our views on S. 1917, as well as the outlines of the Department's plan for changes in the general hospital system of the Public Health Service.

We submitted to the committee this morning the Secretary's written views on the bill and I will not repeat them. I would like to mention the Department's plan, if I might.

THE DEPARTMENT PLAN

Last January the Department announced a far-reaching proposal to effect overall changes in the Public Health Service hospital system that were aimed at meeting several objectives. These are:

1. To provide more comprehensive and, therefore, better care for the patients served by the existing hospitals;

2. To provide such care at locations which would be more accessible to the patients needing medical services; and

3. To strengthen the medical and dental training programs that provide an important source of recruitment for the clinical service and national leadership positions within the Public Health Service.

In addition to accomplishing these objectives, the plan will produce an estimated savings in operations of over $1 million annually to the Federal Government.

These results would be achieved through changes in the pattern of medical care facilities and resources now used by the Public Health Service to provide care to its beneficiaries. These changes are designed to be implemented in stages over the next 3 or 4 years.

Twelve Public Health Service general hospitals were operated during fiscal year 1965. The future plans for these institutions are as follows:

(*a*) The five largest hospitals would be enlarged and modernized. Overall existing bed capacity of these institutions is about 1,900, and the plan anticipates an expanded capacity of about 2,400 beds, or an increase of approximately 20 percent. These hospitals are located at Baltimore, New Orleans, San Francisco, Seattle, and Staten Island.

Wherever possible, close affiliations would be sought between these hospitals and university medical centers in order to strengthen training programs for medical and other health personnel. In addition, other steps would be taken both to expand the size of training programs and to bring about improvements in patient care services.

(*b*) The seven smallest institutions are scheduled to be closed on the basis of the following timetable: Chicago and Memphis in fiscal year 1965; Savannah in fiscal year 1966; Boston, Galveston, and Norfolk during fiscal year 1967, and Detroit in either fiscal year 1968 or 1969.

Patients now receiving care at these hospitals would in the future be cared for in other Federal or community hospitals. Under cross-servicing arrangements American seamen would be cared for at the hospitals of the Veterans' Administration able to offer compre-

hensive care which is nearest the point where their illness is first identified. Active duty Coast Guard, Public Health Service, and Coast and Geodetic uniformed personnel and their dependents would, for the most part, receive care under similar arrangements in hospitals of the Department of Defense. Two categories of patients to be cared for at Federal expense in community hospitals are Bureau of Employee Compensation cases, that is Federal employees injured in the line of duty, and some dependents of active duty uniformed service personnel. Other patients, primarily retired uniformed service personnel and their dependents, will need to seek care in community hospitals at their own expense.

The Public Health Service would continue to operate its network of outpatient clinics and offices, and, in particular, it would continue the operation of such clinics in the cities where hospitals are scheduled to be closed. These outpatient facilities would not only offer clinical services to ambulatory patients but would also act as referral points in arranging for the care of Federal beneficiaries under the cross-servicing agreements noted above.

Both the Veterans' Administration and the Department of Defense have assured us that, under these contemplated cross-servicing arrangements, they will be able to offer on a timely basis the care needed by Public Health Service beneficiaries.

Many studies and considerations contributed to the final decisions which are incorporated in the Department's plan. Among these were the findings that hospitals of less than 180 to 200 beds could not feasibly provide the comprehensive range of diagnostic and therapeutic services which are an essential part of modern medical care. Furthermore, these studies have also suggested that the training potential of the hospital system can be maximized in a system of hospitals of from 300 to 900 beds each which are affiliated with university medical centers.

POSSIBLE CONFUSION OVER THE EFFECT OF THIS PLAN

To date, hearings on the Department's plan have been held by the House and Senate Appropriations Committees, the Intergovernmental Relations Subcommittee of the House Government Operations Committee, and the House Merchant Marine and Fisheries Committee. During the course of these hearings, we became aware of the fact that confusion may have arisen in many minds concerning the effect of this plan. Therefore, we would like to clarify certain points which may needlessly be causing concern.

The plan does not contemplate any transfer in the responsibility of the Public Health Service for the medical care of its designated beneficiaries. Instead, the more extensive cross-servicing arrangements that are called for are seen as an enlargement of the authority residing in the Surgeon General to make the optimum arrangements for serving the needs of these beneficiaries. The Public Health Service will retain responsibility for determining care needed by patients; arranging for such care; providing followup care through outpatient clinics, when necessary; and handling special items unique to its beneficiaries, such as fitness for duty slips required by American seamen.

Similarly, the intention of the plan is not to diminish the scope or quality of care being provided these patients. Instead a deliberate effort is being made to offer better care to patients through the use of facilities which can offer more comprehensive services and which are more conveniently located to patients to be served.

Furthermore, the primary purpose of initiating this plan is not economy. The savings involved are relatively small when compared with total Federal expenditures for medical care. We are pleased that the plan is less costly than feasible alternative arrangements, but we wish to emphasize that the primary purposes of the plan are related to the directive contained in President Kennedy's 1962 health message which requested the Secretary to develop a plan for providing more accessible hospital care to seamen and to recommend improvements in the physical facilities of those Public Health Service hospitals needed to provide such care.

COMMENTS ON S. 1917

I have taken the liberty of providing this background statement on the overall aspects of the Department's plan in the hope that it will provide a framework for the comments contained in the report which the Secretary has submitted on S. 1917 which is now under consideration by this committee. Our understanding is that the bill attempts to place two limitations on the authority of the Surgeon General.

First, it would prevent the partial or total transfer or assignment of the responsibility and function of providing care for those beneficiaries listed in section 322(a) of the Public Health Service Act, without the consent of the committees of Congress. As noted above, the Department's plan does not contemplate such a transfer. In addition, we agree that under existing law such a transfer could not be made, except by act of Congress in amending present law or by a reorganization plan which would be subject to congressional review. Thus, we believe that no purpose would be served by this aspect of the bill.

Second, it would require that the approval of certain committees of Congress be obtained to any proposal to terminate the provision of medical and dental services at any institution, hospital, or station of the Public Health Service. As you are aware, the medical care system of the Public Health Service is a complex network of facilities and resources. To insure its effective operation, a great variety of decisions must be made of both a professional medical and an administrative nature.

We believe that Congress has wisely left these decisions to the discretion of the executive branch. There are many means already in existence to allow the Congress to assess the stewardship of the executive branch in carrying out its responsibilities for patient care. These include review of, and action on, budget requests; consideration of requests for new legislation; and special ad hoc reviews of program operations and plats.

The special benefits of these devices and relationships are that they clearly establish complete responsibility in the executive branch to discharge its responsibilities and to efficiently utilize the authorities

and resources available to it. At the same time, they enable Congress to hold the executive branch fully accountable for its actions. It does not seem warranted to us to add to these existing review devices the further limitation proposed in this bill. Therefore, as we indicated, we do not recommend the enactment of this bill.

I thank the committee for the opportunity to present this statement. My colleagues and I will be happy to attempt to answer any questions the committee may wish to ask.

Senator BARTLETT. Thank you, Mr. Kelly. You said the plan does not contemplate any transfer of the responsibility of the Public Health Service for the medical care of its designated beneficiaries.

I still don't quite comprehend how the responsibilities of the Service will be manifested when the patient is being treated, let us say, in a VA hospital. How will the connection be maintained?

Mr. KELLY. Well, the plan contemplates a much more comprehensive use of cross-serving arrangements than now exists, but such cross-serving arrangements do now exist. Perhaps if we were to describe those, it would evidence our understanding of the workings of this plan.

We now operate about 116 physician-patient offices under contract with the Public Health Service, and 25 outpatient offices, in addition to the 12 general hospitals. A beneficiary of the Public Health Service can present himself to any one of these, roughly, 150 locations, and if he is determined to be in need of inpatient care in a hospital, a decision is made whether or not the nature of his illness would permit him to be transported to a place where the Public Health Service now has a hospital.

If the decision were made that the illness was of an emergency nature and must be taken care of at the location where he is found to be ill, and that he could not appropriately be transported to the location in 1 of the 12 general hospitals, then he can be placed either in a community hospital, at the expense of the Public Health Service, or he can be placed in another Federal hospital on the basis that we will reimburse that agency for care.

The care would be rendered by either the community hospital, or by the other Federal hospital as a part of their capability of providing comprehensive care, and then he would be released back through the Public Health Service outpatient facility for fitness for duty slips, or for such other action as is appropriate.

At the present time, at the point when the emergency is considered to have ended and it is necessary to have a more extensive stay in the hospital, it is customary to transfer him to the location where we do have a Public Health Service hospital.

Under this plan, he would complete his hospitalization at the facility to which he was initially assigned.

Senator BARTLETT. Say the plan is in effect. The merchant seaman comes in, and it is determined that he must go to the hospital immediately in Galveston. The Public Health hospital there has been closed, and there is a VA hospital there—I am assuming that—I am not sure.

Mr. KELLY. Houston is the closest VA hospital.

Senator BARTLETT. Houston. What actual contact with the man's treatment is made on a continuing basis by the Public Health Service while he is in the hospital—any?

Dr. GEHRIG. It is contemplated under this plan that he would initially be seen in Galveston at an outpatient clinic operated by the Public Health Service. If the determination were made that he needed hospital care, then, once admitted to the hospital, he would be provided the services he required by the VA physicians.

When they deemed his condition to be completely treated, he would be referred back to the outpatient clinic. We also have administrative arrangements for a summary of his hospitalization, as well as recommendations for follow-up care, to be also sent back with him to the clinic, and such further ambulatory, or other care would be managed by the outpatient physicians in the Public Health Service.

Senator BARTLETT. You said, Mr. Kelly, at the bottom of page 5, and I quote: "A deliberate effort is being made to offer better care to patients through the use of facilities which can offer more comprehensive service," and so forth. How big a hospital does the Public Health Service have in Galveston?

Mr. KELLY. The Galveston hospital is only about 75 beds on the basis of its constructed capacity, but it is operating at something more than 150 percent of its constructed capacity. It now has 139 as an average daily patient load, although it has a constructed capacity of only 79.

So if we were to modify the hospital so that it was adequate to accommodate the average patient load, it would be a hospital of about 170 beds.

Senator BARTLETT. Is it the determination of the Public Health Service that better medical care can be supplied at the VA hospital in Houston?

Mr. KELLY. I would like to let Dr. Gehrig amplify my statement, but I would like to make a preliminary statement, if I might. It is very difficult to answer that question without implying that the kinds of care being rendered by the Public Health Service today do not constitute good medical care.

I think that every study that has been made of the hospitals, both by people inside the Government and by outside consultant groups which have been brought in, have been quite commendatory of what the Public Health Service staff have been able to do with their limited resources. So I think the kind of care that has been rendered has been excellent, under the circumstances.

The conclusion reached by our study was that hospitals of more than 200 beds are more likely to have the range of services available, both in terms of physical facilities and equipment, and in terms of the kind of specializations that make possible a more comprehensive range of medical care than can occur economically in a small hospital.

And it is with this thought in mind that if an alternative arrangement can be found, it is preferable not to operate hospitals of less than 200 beds. But there are many, many instances where alternative arrangements cannot suitably be found.

Certainly in the Indian health program, operated by the Public Health Service, we have something in the neighborhood of 45 hospitals that are quite considerably less than 200 beds, and we plan to continue their operation because we have no suitable alternative.

This is the best means of providing medical care under these circumstances.

Dr. Gehrig?

Dr. GEHRIG. I believe, Mr. Chairman, what I have to say really is, in a sense, a reiteration of what has already been said with some specifics. We are proud of the job that has been done in Galveston, and it is a good example of an overtaxed hospital that has, I think, effectively met the needs of the seamen.

However, on an objective review, we are, in that size hospital, able to maintain only a relatively small number of full-time specialty services, such as medicine, surgery, and some others.

Now, the VA hospital in Houston has an established bed capacity in the vicinity of 1,100 beds, and does maintain on a full-time basis additional specialty services that we are not able to provide on the same basis at Galveston, and I think these are the specifics of how more comprehensive care can be provided in Houston.

Senator BARTLETT. Thank you. Mr. Foster?

Mr. FOSTER. I do have a question, Mr. Chairman. From the testimony, so far, I gather that there is available a substantial amount of data, studies, that have been made, indicating the present load on the hospitals that will be retained, and the hospitals where you expect transfers to be made to, and the load on the present hospitals you are closing.

I think it would be helpful for the committee to have available this information so the committee could take a look also at whether it does appear that the hospitals that you now are going to continue operating will have the capacity to not only furnish the services they are supposed to furnish, but, also, furnish the anticipated services.

Sometimes, the present VA hospitals, I understand, have not been able to do everything they are called upon to do, and then, adding on that this load, it might, in some instances, appear to be excessive.

But I am sure this has been well thought out and well studied, and the committee would like to have some information on this.

Mr. KELLY. One of the reasons why the time schedule delays the closure of Detroit is related to just that, Mr. Foster. At present, the VA hospital in Detroit could not handle the additional load. They do contemplate the construction of new facilities in that area. We plan to stay in operation until such time as they are in a position to provide appropriate care on a cross-servicing arrangement.

Senator BARTLETT. Thank you, gentlemen. There will be placed in the record at the appropriate point a letter dated June 10 to Chairman Magnuson from Under Secretary of HEW, Wilbur J. Cohen, recommending against this bill.

(The letter follows:)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
June 10, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request of May 10, 1965, for a report on S. 1917, a bill to amend the Merchant Marine Act, 1936, in order to protect and promote the health of seamen on vessels of the United States, and for other purposes.

The bill would amend title IX of the Merchant Marine Act, 1936, by adding a new section 908. The new section would require that the responsibility and function of providing medical, surgical, and dental treatment and hospitalization for seamen and other beneficiaries placed in the Public Health Service by section 322 of the Public Health Service Act shall not be transferred or assigned, in whole or in part, to any other department or agency of the United States, nor shall the provision of any such service at any institution, hospital, or station of the Public Health Service be terminated without the consent of the appropriate committees of the Congress.

1. Under existing law, as explained below, the legal responsibility and function of the Public Health Service under section 322 of the Public Health Service Act could not be transferred or assigned elsewhere except by act of Congress or reorganization plan. The first part of the bill, if read literally, would therefore serve no purpose. It may, however, have been intended to prevent the Public Health Service from utilizing medical facilities of other Federal agencies in the care of its beneficiaries under the provisions of section 322(e) of the Public Health Service Act or under the Economy Act (31 U.S.C. 686(a)). For example, in emergency situations Public Health Service regulations and practice require that other Federal medical facilities be given preference if available and conditions permit. The Public Health Service must be in a position, as a provider of services, to meet the needs of its beneficiaries by the utilization as necessary of other available resources.

In those instances where the Public Health Service now utilizes other Federal medical facilities, the Service exercises full responsibility in the matter of providing medical care benefits to eligible beneficiaries. The servicing agency, pursuant to the authority of the Economy Act, provides the care on request and on a reimbursable basis subject to the requirements and benefits available to beneficiaries under the authority of the Public Health Service Act.

As stated above, there is no question but that the provisions of section 322 of the Public Health Service Act represent the congressional intent that responsibility for the medical care program for seamen and other listed beneficiaries shall remain in, and be discharged by, the Service. Although provision is made in section 322 of the Public Health Service Act to procure care for beneficiaries at "facilities other than those of the Service," this does not reflect congressional intent that such authority or responsibility may be transferred or assigned to any other Federal department or agency. Also, the use of other Federal facilities under the provision of the Economy Act (31 U.S.C. 686(a)) is employed by the Public Health Service in situations where Public Health Service-operated facilities are not available and under emergency conditions where beneficiaries may be remote from any Service facility.

2. The intent of the second part of the bill would appear to be that the congressional committees concerned be fully informed and in agreement with the executive branch before certain Public Health Service hospitals or stations can be closed. The term "stations" would ordinarily include the 25 Public Health Service outpatient clinics which are relatively small, full-time medical facilities providing outpatient services to beneficiaries specified in section 322(a) of the Public Health Service Act. This may also include the 116 outpatient offices which are contract facilities of the Public Health Service operated in the private offices of local physicians on a part-time basis. In addition, the Public Health Service operates 12 general and 3 special hospitals, wherein the Service provides the appropriate physical, professional, and supporting resources for furnishing inpatient and outpatient care to beneficiaries.

The Surgeon General, in the discharge of his responsibilities for the operation of this medical care system, must exercise a variety of judgments, both medical and administrative. These include actions consonant with accepted standards of progressive medical care, and sound administrative practices, and the making of necessary adjustments in the deployment of available resources.

Congress has left a considerable degree of discretion to the Surgeon General and his staff in arranging the deployment of resources within this network needed to provide good medical care. There are many means already available to the Congress to assess the stewardship of the executive branch in implementing its program responsibilities and in exercising this discretion. These means include review of budget requests, consideration of requests for new legislation, and special ad hoc reviews of program operations and plans.

The procedure required by this bill would not seem warranted in view of the other means available to the Congress to hold the executive branch fully accountable for its actions and would make more difficult the process of assessing how well the necessary resources are being organized and utilized by the Public Health Service in carrying out its responsibilities.

Furthermore, the requirement that there be approval by congressional committees before any service at any institution, hospital, or station of the Public Health Service is discontinued would raise serious questions from the standpoint of the separation of the powers of the legislative and executive branches. It is, incidentally, unclear whether the term "appropriate committees" is intended to refer to the congressional committees having legislative jurisdiction over the Public Health Service Act, the committees concerned with the Merchant Marine Act, the Appropriations Committees, or all of them.

We would, therefore, recommend against the enactment of S. 1917.

We are advised by the Bureau of the Budget that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

WILBUR J. COHEN,
Under Secretary.

Senator BARTLETT. The next witnesses are Hoyt Haddock and Earl W. Clark, codirectors, Labor-Management Maritime Committee.

Also let the record show that the statement of Mr. Haddock and Mr. Clark is joined in by Alvin Shapiro and John N. Thurman, the latter of whom is present physically today.

STATEMENT OF EARL W. CLARK AND HOYT S. HADDOCK, CODIRECTORS, LABOR-MANAGEMENT MARITIME COMMITTEE; ACCOMPANIED BY JOHN N. THURMAN, VICE PRESIDENT, PACIFIC AMERICAN STEAMSHIP ASSOCIATION, AND SUPPORTED BY ALVIN SHAPIRO, VICE PRESIDENT, AMERICAN MERCHANT MARINE INSTITUTE

Mr. THURMAN. Mr. Chairman, I have a short statement. As you know, I represent the shipowners in this instance, and we are worried about what is happening. This has been a longstanding problem, it is getting more difficult to get good medical care for our seamen. We have to drop men off on various coasts, pick up fill-in replacements, and if they close more hospitals we are going to have more problems.

I would like to point out, though, a parochial view, and that is that on the west coast we have come out pretty well. We have an excellent hospital in San Francisco that they have agreed to maintain at least for the present, and one in Seattle. It is when our ships are on the east coast that we are really worried right now.

Now I will turn to my colleagues, who have gone into this matter very extensively.

Senator BARTLETT. All right. Thank you.

Mr. CLARK. Mr. Chairman, we have deposited with your clerk a copy of a formal statement which we would like to file at this time. I would like to inquire if you have that.

Senator BARTLETT. Yes.

Mr. CLARK. We would like to have that placed in the record.

Senator BARTLETT. It will be placed in the record in full.

(The complete statement follows:)

STATEMENT OF THE LABOR-MANAGEMENT MARITIME COMMITTEE, AFL–CIO MARITIME COMMITTEE, AMERICAN MERCHANT MARINE INSTITUTE, AND PACIFIC AMERICAN STEAMSHIP ASSOCIATION ON PROPOSALS TO CLOSE PUBLIC HEALTH SERVICE AND VETERANS' ADMINISTRATION HOSPITALS

On January 19, 1965, the Government announced plans for the closing of Public Health Service hospitals at Chicago, Ill., Memphis, Tenn., Savannah, Ga., Boston, Mass., Galveston, Tex., Norfolk, Va., and Detroit, Mich. Thus, 7 out of the existing 12 general Public Health Service hospitals are scheduled for termination. These hospitals were formerly called marine hospitals, and approximately 50 percent of the patient load is still merchant seamen. Marine hospitalization has been carried on in Government hospitals for almost 1¾ centuries (since 1798) as a means of protecting the Nation's health from importation of diseases from abroad; for maintaining efficient seamen for our fourth arm of defense, and for helping to promote the transportation and foreign commerce needs of the Nation.

Over the past decade, the Bureau of the Budget has persistently attempted to close several of these hospitals. More particularly it has demonstrated a desire to bring about a termination of the whole program of medical care for merchant seamen, questioning even the fundamental policy itself. This has been consistently rejected by the Congress.

The Bureau of the Budget has not only refused to approve appropriation requests for adequate funds to maintain these hospitals in proper status, but has placed such continuing restrictions on capital improvements and major repairs as to bring about a progressive state of deterioration.

In 1956 the then Surgeon General arranged for special surveys of the hospitals by independent outside medical experts, who studied the conditions and reported their findings. Their conclusions forcefully condemned the practice of budgetary privation, holding that unless there was a change in such practices, the program was in danger of further deterioration and self-destruction.

In spite of appeals from these experts, from labor, from maritime organizations, from other members of the medical profession, and from Members of the Congress, the policy of budgetary privation as applied to capital improvements, major repairs, and even proper maintenance persisted. It seems all too clear that the Bureau of the Budget has been intent on an eventual elimination of the program.

Now, without further consultation with maritime labor and the shipping community and, more importantly, the Congress of the United States, the announcement is made that 7 out of 12 of the existing Public Health Service general hospitals are to be phased out, beginning this year. The five remaining ones are to be modernized and ultimately turned over to the Veterans' Administration. Seamen in other hospitals are to be transferred to veterans hospitals at a time when 11 veterans hospitals and certain clinics in some 12 States are also scheduled for closing.

We oppose this move. The Public Health Service care is superior for merchant seamen to that available in private or community hospitals. This results from the fact that the types of hospital and medical services rendered are tailored to meet the specific needs of the ship. The limitations of port time, the short periods between checking out and the signing on of shipping articles, the necessity for timely medical treatment after long periods at sea, the problems of meeting all physical requirements promptly before shipping to sea, including fitness-for-duty declarations, all these are matters requiring a medical program directly related to the needs and the time schedules of the ship. The marine hospitalization program of the Public Health Service meets all these special needs. The programs of private, community, and even other Government hospitals are not conceived to meet these requirements.

Despite the policies of attrition and budgetary privation practiced by those who have sought to destroy it, the program of marine hospitalization has been one of the finest of its kind in the history of the country.

The fine dedicated members of the PHS staff have maintained a high standard of service in spite of the frustrations heaped upon them, in spite of the persistent rumors that the Bureau of the Budget sought the closing of the hospitals, and in spite of the fact that they were forced to improvise at every turn to maintain a high level of service.

The ax, however, has now fallen. At 2:30 on the afternoon before Inauguration Day, all the staff of the seven hospitals to be closed were notified. There

will now be added to budgetary privations and administrative attrition an immediate decline in staff morale, which will eat further into the heart of the program if this ill-conceived action is not reversed.

The statement of Health, Education, and Welfare that this move will improve the quality of patient care and that the Public Health Service will be better able to meet its needs for trained health personnel is open to grave question. Training programs conducted at the Public Health Service hospitals have provided a significant source of recruitment for numerous activities. For decades, this service has operated as a training ground for other national programs—even the Veterans' Administration—and has provided experienced national leadership in clinical care, research, and other health services.

When the veterans hospital program was established, the Public Health Service provided the training of its doctors and staff and practically set it up. When NASA was developed, the Public Health Service was a major factor in its medical training program. Its medical services have been vital to the quarantine service, the sanitary engineering program for ship inspection, cancer research, cardiac dilation research, the study of hypertension, oral malignancies, and a myriad of other diseases. As late as December of 1964, the President's Commission on Heart, Cancer and Stroke recommended that "The Division of Hospitals of the Public Health Service be appropriated funds necessary for renovation and the development of research space in existing facilities, and for increased research and training activities." It further urged "that the smaller but still significant Public Health Service hospital system, which has taken promising steps toward an increased research and training program in recent years, be supported in the development of its full potential for research and training as well as patient care."

It has specialized in preventing disease importation at our maritime gateways. One of the vital programs of PHS is first aid at sea and air rescue. All PHS hospitals are integrated into civil defense emergency planning. Mobile civil defense field hospitals are stored in Public Health Service hospitals. These hospitals have been the prime institutions in medical programs for nuclear ships. It has been the chief source of medical help in hurricanes and flood disaster. It has been the mother agency of most Government medical efforts in the protection of all our people.

The impact of a move to close them, if allowed to persist, will undoubtedly be severe. Recently, the national commander of the American Legion stated in testimony before the Subcommittee on Veterans' Affairs of the Senate Labor and Public Welfare Committee, and we quote:

"We understand that certain patients previously hospitalized in Public Health Service hospitals will be eligible for care in VA facilities. We are unable to ascertain to what extent it would decrease the ability of the Veterans' Administration to care for war veterans. We fear that the VA hospital system as established by Congress is in jeopardy."

If the ability to adequately serve veterans is in jeopardy by the transfer of seamen and other beneficiaries to the already overcrowded veterans facilities, then the service to seamen and these other beneficiaries will most likely also be in jeopardy. We agree heartily with the position of the national commander of the American Legion.

The Commissioned Officers Association of the U.S. Public Health Service, commenting on the position of the national commander of the American Legion, states (February 4, 1965):

"It is difficult to understand how the patients from the Public Health Service hospitals can be cared for by the VA hospital system when many of the VA hospitals that these patients are to be referred to are already operating at maximum patient capacity and have long waiting lists for those veterans with non-service-connected disabilities."

The commissioned officers of the Public Health Service are dedicated men who know their jobs and have had long years of experience in the dispensing of medical and hospital care. Note what they say further on this subject, using Galveston, Tex., as an example:

"The Public Health Service hospital in Galveston, Tex., had a daily patient load in the fiscal year 1964 of 139, or 176 percent of capacity. Most of these patients are to be cared for at the Houston VA hospital. However, we have been informed that constructed bed capacity of the Houston VA hospital is 1,242 and the patient load is 1,219.

"Further, there is a long waiting list for those veterans with non-service-connected disabilities. It is, therefore, impossible to comprehend how over 100 patients can be cared for in a hospital that has only 23 beds available."

This is a most demolishing statement and leaves little justification for the January 19 announced closing statement on Galveston except the abstract comment that "closing the Galveston PHS hospital will result in average savings of about $150,000 taking into consideration amortized costs of capital improvements."

One wonders if the principal motive of the Bureau of the Budget is the squeezing out of dollars from both the PHS and the VA hospital systems to divert to other programs. The pronouncement of the late President Kennedy to expand medical and hospital care for our citizens is not advanced by an attack upon two of our oldest hospital institutions serving respectively the seamen who constitute our fourth arm of defense and the men and women who fought for their country in two world wars.

With reference to bed capacity in terms of patient load, the medical profession normally considers approximately 80 percent occupancy to total bed capacity as maximum. The leeway provided by the remaining beds is utilized for special isolation cases, adjusting room space between the sexes, emergency cases requiring special facilities, overlapping between check-in and check-out patients and a myriad of other needs. In terms of this accepted pattern, it is helpful to examine the VA regional facilities statistics in areas where hospital closings are planned. The following figures are from official statistics of the Department of Health, Education, and Welfare—Public Health Service—submitted as of February 5 this year. While the VA hospitals selected are in the areas where PHS hospitals are scheduled for closing, the patients may not necessarily be transferred to all of these particular institutions. However, they are set forth for comparison.

VA hospitals	Total average operating beds	Total average daily patient load	Percent occupancy
1. Boston, Mass	920	804	87.4
2. Memphis, Tenn	1,252	1,130	90.3
3. Houston, Tex	1,219	1,168	95.8
4. Chicago, Ill.:			
(West Side)	505	478	94.7
(Research)	516	443	85.9
5. Dearborn, Mich. (nearest Detroit PHS hospital)	890	767	86.2
6. Richmond, Va	957	835	87.3
Kecoughtan, Va. (both nearest Norfolk PHS hospital)	570	566	99.3
7. Atlanta, Ga	300	273	91.0
Augusta, Ga	421	374	88.8
Dublin, Ga. (nearest Savannah in Georgia)	500	476	95.2

The proposal is to transfer patients to a new veterans hospital being constructed at Charleston, S.C.

Thus, in terms of overload, the veterans hospitals are all over the 80 percent maximum operating efficiency level accepted by the medical profession. Most are well over 90 percent with some almost 100 percent. While the percent of maximum capacity may be liberalized some in hospitals where chronic patients predominate, the status of the above hospitals is not even conducive to this. This is one of the reasons why the national commander of the American Legion is concerned. This is undoubtedly one of the reasons why the Commissioned Officers Association of the Public Health Service is disturbed. This is why both the veterans and the seamen are concerned.

The announcement of the Secretary of Health, Education, and Welfare on January 19 seems to offer three principal reasons for closing PHS hospitals:

1. Dollar savings (with disproportionate consideration for the human values).
2. A lack of affiliated university training and research program.
3. A claim of more comprehensive care in larger hospitals.

Let us look at each of the above items separately.

1. The dollar savings motive

The justification here is that many of the PHS hospitals are in such need of major repair and capital improvement that more can be saved by scuttling

them. If this is so, the Bureau of the Budget made it so. The Bureau's budgetary privation policy was so bad that Senator John Sherman Cooper, of Kentucky, wrote that agency on June 3, 1958, asking for its position. The agency replied, "It is by no means the intention of the Bureau to abolish the Public Health Service general hospitals through the medium of attrition" and that, "The Bureau of the Budget does not intend to use the budget process to reduce or impair the level of care."

However, on April 16, 1958, the Bureau had already issued its now famous order to the Commissioner, Public Buildings Service, which we quote:

"The need for the Federal Government maintaining general public health hospitals is under intensive study by the Department of Health, Education, and Welfare and the Bureau of the Budget. It is possible that some of these hospitals will be closed or transferred to non-Federal agencies. Under these circumstances, air conditioning or repairs other than those required by emergencies or the safety of the occupants would not be in the best interest of the Government.

"You are, therefore, requested not to proceed with contracting for design or repair work on these hospitals (excluding minor recurring maintenance) without prior clearance with this Bureau. The hospitals covered by this letter are the Public Health Service hospitals in Baltimore, Norfolk, Memphis, Savannah, San Francisco, Chicago, Detroit, Seattle, Staten Island, Boston, Manhattan Beach, Galveston, and New Orleans."

These limitations were so severe as to bring about a progressive deterioration of the PHS hospitals. It was the clear intent of the Bureau then to do exactly what the Health, Education, and Welfare Department announced on January 19, 1965. This was in spite of the findings of five outside medical experts employed by the Public Health Service in 1956 to survey the hospitals and who condemned this practice most vigorously. This was also in spite of the position taken by the Congress. In dealing with appropriations for the PHS hospitals for 1963, the U.S. Senate Committee on Appropriations (Independent Offices, Rept. 1923, 87th Cong., 2d sess., Aug. 27, 1962) also condemned this practice, pointing out to the Bureau of the Budget that the PHS hospital program was "a matter of congressional policy—not one for abstract executive discretion."

"The committee points out that this hospital program has been in effect for well over a century and a half and that its continuance is a matter of congressional policy—not one of abstract executive discretion. The committee believes that these Public Health Service hospitals should be maintained in good and serviceable condition in accordance with modern standards."

Yet by pure executive discretion, PHS beneficiaries will be piled in upon the veterans if these plans persist.

As late as August 17, 1964, the Appropriations Committee of the Senate directed Health, Education, and Welfare as follows:

"The committee noted that funds for repairs and maintenance of the Public Health Service hospitals are included in the 1965 estimates as directed in last year's report.

"However, the amounts and projects requested appear to reflect only the minimum necessary for emergency repairs to keep the hospitals in operation. Many of the Public Health Service hospitals are obsolete and overcrowded and in need of major modernization.

"The committee will, therefore, expect to be presented with a plan for the modernization of the entire Public Health Service hospital system before January 1, 1965, and expects the 1966 budget estimates will contain the funds necessary to initiate this plan."

Instead of following this advice from the Congress, PHS beneficiaries are to be added to the responsibilities of the VA Administration.

It seems clear that the dollar savings which the Bureau now claims can be effected are, to a very substantial extent, the result of its own purposeful creation achieved against the wishes of both the medical profession and the Congress.

There are many, including the Commissioned Officers Association, who question whether, in fact, any extensive dollar savings will result from these proposed closings when viewed against the increased costs in other institutions and the long-range need for hospitals.

Look at the situation on the South Atlantic seaboard. When the Savannah and Norfolk PHS hospitals are eliminated, where are the nearest VA hospitals

located? In Virginia they are either Richmond or Kecoughtan, Va. Both of these are quite some distance from the sea or any actual seaport. In Georgia the nearest ones are at Atlanta, Augusta, or Dublin—all long distances from any seaport at all. The alternate answer given to all this is a VA hospital now under construction as Charleston, S.C. Neither the Bureau of the Budget nor the Health, Education, and Welfare Department knows what the actual caseload will be when this hospital is finished or the extent to which it can adequately serve the total needs, including those of seamen. The present seamen patients may well be lost in the great VA hospital complex.

2. A lack of affiliated university ties for research

While acknowledging that several PHS hospitals have affiliated university research activities, Health, Education, and Welfare points out that some do not have, while others are not sufficiently strong. If this be so, it is also the result of Bureau of the Budget policy. An outside medical expert report in 1956 states, "The potentials of this medical care program for teaching, research, and services are great. They are in grave danger of being destroyed by budgetary restrictions that go beyond economy to eventual deterioration and self-destruction."

The fact is that the abstract Bureau of the Budget restrictions on major repair and capital improvements have seriously impaired this program and kept its potential from realization. One example will exemplify this. In December of 1960 the PHS hospital in Seattle and the University of Washington had worked out a program including a memorandum of understanding to supply increased research services at the PHS hospital site. The unused 11th floor was available for such a research program but needed minor repairs, such as relocation of temporary walls, painting, etc. The University of Washington was to provide the major staff and funds for the research program. However, the minor repairs which PHS would have to make fell under the abstract policy prohibition against capital improvements or repairs, other than those required by emergency conditions or actual safety of the patients. The research program was thus hung up on this arbitrary ruling and there it remained.

When Senator Warren Magnuson found out about this state of affairs, he got something done about it. Today, through the efforts of the Senator from Washington, Seattle has a good research program at the PHS hospital.

If there is a lack of research arrangements at other locations, the Bureau of the Budget restrictions have made it so. Now the Bureau, through Health, Education, and Welfare, uses this as one of the reasons for closing hospitals. Still, as late as 1960, 10 out of the 12 general PHS hospitals had and many still have research programs of some sort, thanks to the ingenuity of the PHS medical staff, even in the face of the Bureau's restrictions. The university research affiliations in 1962 were as follows:

Baltimore:
- Johns Hopkins University School of Medicine.
- University of Maryland School of Medicine and College of Physicians and Surgeons.

Boston:
- Boston University School of Medicine.
- Harvard Medical School.
- Tufts University School of Medicine.

Galveston: University of Texas Medical Branch.

Lexington:
- University of Cincinnati College of Medicine.
- University of Louisville School of Medicine.
- University of Kentucky College of Medicine.

New Orleans: Tulane University School of Medicine.

Staten Island:
- Albert Einstein College of Medicine of Yeshiva University.
- Columbia University College of Physicians and Surgeons.
- Memorial Center for Cancer and Allied Diseases.
- New York University School of Medicine.
- Seton Hall University Medical School.

San Francisco:
- Stanford University School of Medicine.
- University of California School of Medicine.

Seattle: University of Washington School of Medicine.

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In addition, the Public Health Service has traditionally used its hospitals for training and has utilized local physicians as staff consultants to augment its training and research program as do other hospitals.

With proper encouragement all PHS hospitals could have better programs than they have been allowed to have. It seems a travesty that those who have held back the program can now come, as with clean hands, and use their own action as an excuse for the final blow—closing the institutions themselves.

3. A claim to more comprehensive care

The announcement of January 19, 1965, on hospital closings contains the following:

"The Veterans' Administration has stated that the merchant seamen patients from the PHS hospitals closed can be absorbed in the VA hospital system without impairing service to veterans."

Such statements are most unconvincing in the face of (*a*) the figures on current VA hospital overload; (*b*) the statements of the commander of the American Legion; and (*c*) the maximum bed and space standards accepted by the medical profession.

In its hospital closing announcement, the Health, Education, and Welfare Department release states in effect that the care to be provided at the larger VA hospitals will be more comprehensive. This is greatly to be doubted insofar as seamen are concerned. The great bulk of the veteran caseload emanates from the regional vicinity of the hospitals. Except for emergencies, comprehensive medical and hospital care in such hospitals is usually not extended in the compact period of time required for most seamen whose ship schedules require their speedy return to work status. In VA hospitals patient caseload and waiting lists are not conducive to a normal marine hospitalization program.

Care for seamen in PHS hospitals, on the other hand, is not only comprehensive in an acceptable degree but is promptly rendered and is tuned to the needs of the ship. In all hospitals surveyed, not one seaman complained about either the extent of care given, the results of treatment or the immediacy of the service. Each PHS hospital staff boasted of the comprehensive nature of the program.

The statement now, at this late date, that other larger hospitals can give more comprehensive care is completely out of caste with what all top officials of the Public Health Service and the medical officers in charge told the labor-management representatives during the hospital surveys. In fact, the comprehensive nature of the service was stressed throughout. Further, the Public Health Service has traditionally utilized outside physicians as do other hospitals where additional and special services are needed. It seems quite clear that any modification of position on comprehensiveness is forced by the Bureau of the Budget drive to close the hospitals.

Will a VA hospital, in treating a seaman for a traumatic injury necessitating orthopedic surgery, also while he is there, provide him with complete dental treatment—a complete opthalmological examination, including adjustments of frames and lenses as needed, and perform a hernia operation? Such types of seamen's cases are common.

The marine hospitalization program conducts a progressive port entry service. An ambulatory seamen patient, treated in Seattle, may board ship and continue hospital or medical care at San Francisco, New Orleans, or Norfolk when his ship docks. Can VA hospitals do this?

The plan for closing PHS hospitals does not confine the transfers to VA hospitals alone but envisages "other Federal facilities" and "community hospitals." Any use of so-called other Federal facilities is uncertain and undefined. They are no more capable of carrying on a program of marine hospitalization than VA hospitals. As to community hospitals, they principally treat specific ailments and diseases and do not as a rule give comprehensive care and most are already overloaded. In addition, they are very costly. By Health, Education, and Welfare's own analysis, the average per diem cost in PHS hospitals for the year 1963 was $26.22 as against approximately $57.50 in community hospitals. This comparison holds about the same today. Thus costs in community hospitals are more than double.

1. Why have the Bureau of the Budget and the Department of Health, Education, and Welfare ignored the expressed desires of the Senate Committee on Appropriations (Subcommittee on Independent Offices, in Rept. No. 1923 of

Aug. 27, 1962, p. 11, 87th Cong., 2d sess.)? In its 1962 report this committee pointed out that the continuation of the hospital program is a matter of congressional policy—not one for abstract executive discretion and encouraged the improvement of the PHS hospital facilities—not their abolishment, nor the transfer of the patients to veterans hospitals.

2. Why have the Bureau of the Budget and the Department of Health, Education, and Welfare ignored the request of the Committee on Appropriations—Departments of Labor, Health, Education, and Welfare and related agencies—in Report No. 1460, August 17, 1964, page 27? This report asked for a plan for modernization of the entire Public Health Service hospital system before January 1, 1965, with budget estimates in the 1966 budget to make it effective.

Modernization of the Public Health Service hospital system sought by the Congress is a far cry from abolishing the hospitals which the executive branch of Government now seeks to do.

3. In the face of critical reports by outside medical experts employed by PHS in 1956, why were their recommendations for improvement not given full effect by the Bureau of the Budget and Health, Education, and Welfare? More particularly, why were the hospitals permitted or forced to retrogress to such a state in the first place?

Note the report of medical experts on the Staten Island Hospital alone.

"There is a glaring discrepancy between the expressed philosophies and recommendations of the U.S. Public Health Service for proper diagnostic and therapeutic programs of medical and hospital care for the country at large and the actual operating of these in the U.S. Public Health Service Staten Island Hospital.

"The potentials of this medical care program for teaching, research and services are great. They are in grave danger of being destroyed by budgetary restrictions that go beyond economy to eventual deterioration and self-destruction. (Previously quoted on page 13.)

"The present budgetary restrictions of the Staten Island Hospital will undoubtedly adversely affect the immediate care of patients in the hospital because of incomplete supplies and deteriorating equipment.

"Of forgotten importance from a long-range point of view is the serious undermining of morale and the possible disappearance of high-quality professional and technical personnel from the hospitals of the U.S. Public Health Service. The present budgetary restrictions are such that job satisfaction cannot be attained by any individual who is a professional—or who has a position of responsibility or authority.

"This is particularly true among the medical personnel where the morale is presently high, the professional abilities excellent, but where there is a rather universal evidence of mild to severe frustrations. They have a heavy workload. They have a high turnover of younger men as assistants and are continually being subjected to petty harassments, such as a dearth of necessary supplies. Budget restrictions, for example, have resulted in inadequate quantities of medicines being available for medical care, necessitating the substitution of less effective drugs in many instances."

4. Following the reports of the outside medical experts in 1956, why was the rigid order of April 16, 1958, issued only a year or so later, placing the most severe restrictions on major repairs and capital improvements except for those of the most emergent nature or when the safety of the patients was endangered? It would prove interesting to determine why these rigid restrictions persisted in spite of the expressed suggestions and requests of the Congress.

5. Question is raised as to whether the Bureau of the Budget has purposely brought about these conditions in order to achieve the elimination of these hospitals and even the program itself. If such is the ultimate aim of the Bureau, then the transfer of seamen to VA hospitals would be a convenient first step in achieving this result. The record of its actions over the past decade points clearly in this direction.

6. In terms of title 42, section 249 of the Annotated Statutes, we submit that the Bureau cannot transfer the remaining five hospitals to the Veterans' Administration without legislation or special action by the Congress. Even the announced mass closing of seven PHS hospitals is in violation of the spirit of that statute, if not the letter of the statute itself and its legislative history. The statute clearly provides that merchant seamen and other approved bene-

ficiaries are entitled to medical and hospital care in hospitals and clinics of the Public Health Service, 42 United States Code, section 249. Contract hospitalization may be employed under subsection (e) of the statute where isolated geographic location or the absence of available PHS hospitals makes it necessary.

Our general counsel has advised us that he questions the legality of the proposed phasing out of the seven Public Health Service hospitals and the possible eventual transfer of the five remaining PHS hospitals and substantially the entire medical care and hospitalization program for merchant seamen from the Public Health Service to the Veterans' Administration. In his judgment, such a drastic transfer of function as the present release of the Secretary of Health, Education, and Welfare contemplates cannot legally be accomplished by executive action alone but must have the express approval of the Congress.

Section 249 of title 42, United States Code, provides for the medical treatment and hospitalization of American seamen, without charge, at hospitals and other stations of the Public Health Service. In the opinion of our counsel this reposes in the Public Health Service a statutory responsibility for the medical care and hospitalization of American seamen, which cannot be shifted or changed without congressional action.

It is clear from the legislative history that subsection (e) of section 249 was intended only to permit the outcare and treatment of American seamen in other public or private medical or hospital facilities when the Public Health Service hospitals were overcrowded or were too remote. It did not intend to transfer the responsibility of caring for hospitalized American seamen from the Public Health Service, where it has long reposed, to another executive agency, such as the Veterans' Administration, as now proposed.

In the opinion of our counsel, this could only be made legally effective by congressional action, or at least the inclusion of such a proposal in a reorganization plan to be submitted by the President to Congress in accordance with the Reorganization Act of 1939, to which neither House of Congress interposed objection.

The Department of Health, Education, and Welfare cannot legally utilize this section of the law to eliminate all PHS hospitals or transfer them to the Veterans' Administration (sec. 249, title 42, United States Code).

There has been some suggestion that authority to effect such a shift in function can be found in section 686 of title 31 of the United States Code, which permits any executive department or agency to place orders with another department or agency for materials, supplies, equipment, work or services, which the requisitioned agency is in the position to supply, or equipped to render. It provides that such supplies or services shall be paid for immediately by the requisitioning department or agency.

In the opinion of counsel, this section does not contemplate a shift of statutory responsibility and function from one executive agency to another, such as is contemplated here, but rather the utilization by a department of another executive agency to furnish supplies or render services where it is in the interest of the Government to do so, the same to be paid for out of the appropriations of the responsible department or agency. This clearly indicates the securing of a particular requirement through another agency, not a shift in statutory function to that agency.

7. In the Secretary of Health, Education, and Welfare's release of January 19, 1965, there are three different references which seem to indicate an intent to convert and ultimately transfer the remaining five PHS hospitals to veteran services or facilities. The use of such language as "providing care for additional veteran patients" (p. 5) and "Veterans' Administration beneficiaries to be cared for in these PHS hospitals will eliminate the need for some additional VA beds which had been planned in (these) cities," (p. 7) and "determining the merits of transferring * * * the five modernized hospitals from the Public Health Service to the Veterans' Administration" (p. 10), all this points to a rather clear intent to carry out the abolishment of PHS hospitals as such, by abstract executive decree regardless of the already expressed wishes of Congress.

If the five remaining hospitals at New York, Baltimore, New Orleans, San Francisco, and Seattle are now to be modernized and ultimately transferred to VA—if such modernization is now justified, why was it not justified 8 years

ago when outside medical experts, employed by Health, Education, and Welfare to survey them, so recommended?

The answer is that to have done so would have retained them in the Public Health Service. The Bureau is now willing to do so for the purpose of augmenting VA hospitals rather than build new ones. Seamen are now to be deprived of a hospital system to which they have had recourse since 1798. Their needs engendered the whole system. The PHS hospitals were called Marine Hospitals until recent years. Seamen will now be piled in with veterans and vice versa until they are lost in the great VA complex. Further, if the present plans are carried out, which I gravely doubt, veterans with non-service-connected disabilities are to be kicked out to give priority and make room for seamen.

We think this is phony but to the extent it does occur, such veterans will be pushed into a second-class position.

The veterans and the seamen have common cause in this struggle. They had common cause when they manned the ships and fought two World Wars together. The Great Society will be getting off on poor footing indeed if it must bleed out funds from some of America's oldest and honored institutions to finance schemes yet uncertain and untried. We plead with the Congress not to let this happen.

Mr. CLARK. Mr. Chairman, to summarize the statement, I would like to begin my remarks by stating that in the opinion of the witnesses at this table the Bureau of the Budget has been attempting some 15 years to do away, if you will, with the marine hospitalization program.

I only need to call the attention of the committee to the bill which was introduced and passed 2 or 3 years ago on the small boatowners, where the Bureau came up and testified pretty much to this effect, and I believe the record is quite clear as to what they said at that time.

Before I get too deeply into my testimony, I want to pay my great respect to the distinguished gentlemen who just left this table. The Public Health Service and its staff have done a tremendous job in the face of tremendous odds over the last 10 years.

In 1956, because of the deteriorating effects of what we like to call budgetary deprivation, the Public Health Service employed a group of outside doctors to examine, review, and make a report on the condition of the Public Health Service hospitals. These doctors were detached from the hospitals, their judgment was completely independent, and they made the survey in 1956 and made their final report to the Public Health Service in 1957.

They were Dr. Ray E. Brown, superintendent, University of Chicago Clinics; Dr. Frank Bradley, Barnes Hospital, New Orleans, La.; Dr. Russell A. Nelson, director, Johns Hopkins Hospital, Baltimore; Dr. G. Otis Whitecotton, medical director of Alameda County Institutions, Alameda, Calif.; and Dr. Albert W. Snoke, Grace-New Haven Community Hospital, New Haven, Conn.

The report which was filed in 1957 by these doctors is one which I think will go down in history, at least in the medical annals of the Public Health Service.

I would like at this time the permission of the Chair to file into the record the statement made by those eminent physicians, if I may.

Senator BARTLETT. That statement will be accepted.

(The statement referred to follows:)

Disregard of Professional Advice

In 1956 the Surgeon General employed outside medical experts to survey representative PHS hospitals and make an official report to the Government. These were:

Ray E. Brown, superintendent, University of Chicago Clinics (Illinois)
Dr. Frank Bradley, M.D., and member of Barnes Hospital, New Orleans, La.
Dr. Russell A. Nelson, director Johns Hopkins Hospital, Baltimore, Md.
Dr. G. Otis Whitecotton, Medical Director of Alameda County Institutions, Alameda, Calif.
Dr. Albert W. Snoke, Grace-New Haven Community Hospital, New Haven, Conn.

These outstanding leaders agreed in effect that the Public Health Service hospital program had great potential but was being strangled by budgetary restrictions which could only diminish the quality of the service and destroy staff morale. Their recommendations were basically unheeded and only when Senator Lister Hill forced the matter into the open did the Bureau of the Budget allow the barest minimum funds to be even considered.

Why did the Bureau resist adequate provision for care of PHS beneficiaries in the face of these expert reports?

Congressional Policy of Long Standing

The national policy of the Congress firmly provides for medical and hospital care for merchant seamen—a policy that has been sustained since 1798. This policy is not only geared to prevention of disease importation from abroad but in its composite recognizes the necessity for able bodied seamen to promote our export and import commerce and provide for our national defense.

Is the hospital elimination plan of the Bureau of the Budget, as expressed in the Health, Education, and Welfare release of January 19, 1965, in conflict with this longstanding congressional policy and is it a step toward the elimination of marine hospitalization program itself?

Disregard for Congressional Committee Advice

In 1962, the U.S. Senate Committee on Appropriations for Independent Offices "noted a practice by the Bureau of the Budget and, in turn, the General Services Administration to withhold approval of capital improvements and repair projects for Public Health Service hospitals except in instances of the most emergent nature or where the actual safety of the occupants is involved. This practice has apparently been based upon consideration by the Bureau (as early as 1958) of closing some of these hospitals or transferring them to non-Federal agencies."

The committee then pointed out "that this hospital program has been in effect for well over a century and a half and that its continuance is a matter of congressional policy—not one of abstract executive discretion." It further stated that "the committee believes that these Public Health Service hospitals should be maintained in good and serviceable condition in accordance with modern standards." (U.S. Senate Committee on Appropriations. Independent offices appropriation bill (fiscal year 1963), Rept. 1923 to accompany H.R. 12711, 87th Cong., 2d sess., Aug. 27, 1962, p. 11).

Is not the action of the Bureau of the Budget expressed by Health, Education, and Welfare on January 19, 1965, the exact opposite counterpart of the congressional committee declaration?

Rejection of Congressional Request

The U.S. Senate Committee on Appropriations for the Departments of Labor and Health, Education, and Welfare and related agencies noted in 1964 that funds for repairs and maintenance of the Public Health Service hospitals were included in the 1965 estimates but that "the amounts and projects requested appear to reflect only the minimum necessary for emergency repairs to keep the hospitals in operation. Many of the Public Health hospitals are obsolete and overcrowded and in need of major modernization." The committee then took a very firm position. It stated that "the committee will, therefore, expect to be presented with a plan for the modernization of the *entire Public Health Service hospital system* before January 1, 1965, and expects the 1966 budget

estimates will contain the funds necessary to initiate this plan." (Italic supplied). (U.S. Senate Committee on Appropriations, Department of Labor and Health, Education, and Welfare and related agencies, Rept. 1460, Aug. 17, 1964, to accompany H.R. 10809, p. 27).

Does not the Health, Education, and Welfare announcement of January 19, 1965, to close seven hospitals and proceed with a study for transferring the remainder to the Veterans' Administration constitute a complete disregard of this congressional position?

The abolition of hospitals is a far cry from presenting a plan for modernizing the entire Public Health Service hospital system. *Does not the public announcement representing decisions already reached by the executive conflict with this clear congressional request and constitute a disregard of the process of congressional review and determination?*

Ultimate Transfer of All Hospitals to Veterans' Administration

On page 10 of the Health, Education, and Welfare public release of January 19, 1965, it is stated that the Office of Science and Technology will weigh the merits of transferring the health care program for American seamen and the operation of the five modernized hospitals from the Public Health Service to the Veterans' Administration. Page 2 of the same release already makes the decision that beneficiaries will be referred to Veterans' Administration and other hospitals. Weighing the merits of transferring the health care program to Veterans' Administration (p. 10), therefore, could imply that the transfer of the entire processes, including hospital facilities, Administration and professional hospital services is also envisaged. Seamen and many other beneficiaries will simply get lost in the Veterans' Administration hospitalization complex.

Is this not a subtle device to gradually eliminate by Executive action what the executive branch of Government does not want to leave to Congress?

Legal Complications to Health, Education, and Welfare Proposal

Section 249 of 42 United States Code provides that merchant seamen and other approved beneficiaries are entitled to medical and hospital care in the Public Health Service (not the Veterans' Administration). Section (e) authorizes care in other hospitals under very limited conditions. This is spelled out in a report by the House Committee on Interstate and Foreign Commerce in the 78th Congress. The language states as follows:

"Subsection (e) would authorize treatment of Service beneficiaries in other hospitals, at the expense of the Service, as provided in regulations. This provision, which would afford a statutory basis for present regulation, is designed to meet overflow conditions and cases where beneficiaries may be remote from the Service hospital." (H. Rept. 1364, the report of the House Committee on Interstate and Foreign Commerce, on H.R. 4624, 78th Cong., 2d sess., p. 20.)

This subsection (e) appeared as section 322(e) of H.R. 4624 which bill became Public Law 410, 78th Congress, 2d session, and now appears in the United States Code as section 249, subsection (e) of Title 42: Public Health and Welfare.

Doesn't the Health, Education, and Welfare proposal violate the intent of Congress?

Only Congressional Action Can Be Legally Governing

It is clear that subsection (e) is to be used only under conditions of overcrowding or at remote locations. It did not intend the transfer of the entire function from the Public Health Service to another agency. Both the wholesale closing of the seven hospitals or the ultimate transfer of the remaining five hospitals to VA would be outside Executive authority under this law and would require action by the Congress. Were it possible to do so under the Reorganization Act of 1939, it must still be recommended to the Congress by the President. No action under the Economy Act of such consequence could possibly be sustained.

Is not the action of HEW as announced on January 19, 1965, illegal under existing law and a usurpation of congressional responsibility?

Expansion of Training and Research

One of the reasons given for closing the seven Public Health Service hospitals is to provide planned expansion of the training potential and greater

research development. It is an indisputable fact that the budgetary privation policies of the Bureau of the Budget have been the prime factor in stymieing the training and research efforts of Public Health Service hospitals. The most glaring examples can be supplied for the record. Yet, in spite of this, some 10 or 12 hospitals have had programs in existence, thanks to the ingenuity of a highly trained and capable and dedicated staff.

Health, Education, and Welfare implies that smaller hospitals are not conducive to proper training and research activities. This position becomes suspect in terms of the following:

Dr. Albert W. Snoke, director of the Grace-New Haven Community Hospital hired by HEW to survey Public Health Service hospitals in 1956 stated, "the potentials of this medical care program for teaching, research and services are great. They are in grave danger of being destroyed by budgetary restrictions that go beyond economy to eventual deterioration and self-destruction."

This statement says there is nothing wrong with training and research potentials other than their destruction by budgetary privation. Following this report HEW accepted it wholeheartedly.

Why does HEW now suddenly take a complete 180° turn in this matter?

Contradictory Government Positions on Research and Training

As late as December 1964 the President's Commission on Heart, Cancer, and Stroke asked that "the Division of Hospitals of the Public Health Service be appropriated funds necessary for renovation and the development of research space in existing facilities and for increased research and training activities."

This is devastating to the Bureau of the Budget's claim and HEW's announcement of January 19, 1965. The same President's Commission continues by urging also "that the smaller but still significant Public Health Service hospital system, which has taken promising steps toward an increased research and training program in recent years be supported in the development of its full potential for research and training, as well as patient care."

This statement was officially issued by the President's Commission almost the same month that HEW was stating the exact opposite as an excuse to close the same smaller Public Service hospitals.

In addition, on October 9, 1963, the present Surgeon General wrote Senator Yarborough, of Texas, stating that "the Galveston hospital offers a rich source of clinical training and research material. The Public Health Service and the University of Texas Medical School are collaborating in joint research and training programs." He pointed out that the program was being hampered by bad physical facilities and lamented the lack by budgetary support.

Do not these conflicting positions by highly placed experts in the medical profession demolish the excuses offered for closing these hospitals. Should not these irreconcilable positions be thoroughly examined to determine if the real purpose back of these proposed closings arise solely from budgetary motives and the will of the Bureau of the Budget to do away with the Service?

Modernizing Five Remaining Hospitals

The new proposals call for "modernizing and expanding the five largest hospitals" and increasing their bed capacity by over 400 beds. For the past decade the medical experts have proposed this. Budget restrictions and a ban on any appreciable repair or capital improvements has been the response while progressive deterioration took its toll. Why the sudden change?

Is it not because the Bureau of the Budget sees an opportunity to seize these five larger hospitals for VA purposes to avoid building new VA hospitals and thus administer the final coup de grace to the long service of the marine hospital program?

More Convenient Locations

The announcement of January 19, 1965, states as a part of the plan to close hospitals that it will provide "a system which will permit many Public Health Service beneficiaries to obtain more convenient locations." This apparently is an attempt to justify the closings by conveniently reinterpreting the late President Kennedy's words when he said, "I have directed the Secretary of Health, Education, and Welfare to develop a plan for providing more readily accessible hospital care for seamen, etc." President Kennedy didn't say "abolish the existing facilities." He did not say "end the Public Health Service hospital program."

What could be more accessible for seamen than the present coastal locations of Boston, New York, Baltimore, Norfolk, Savannah, New Orleans, San Francisco, Seattle, and for river and lake seamen—the interior locations of Detroit, Chicago, and Memphis.

If it is desirable to increase service in still further convenient locations by utlizing other hospital facilities, could not this still be done at other locations where overcrowding, remoteness, or lack of convenience factors would apply under title 42, section 249, subsection (e) of the existing law?

Hospitals Under 200 Beds

The announced plans are predicated in part on the assumption that hospitals under 200 beds cannot offer as comprehensive care or service. We believe you will find about 50 percent of all the hospitals in the United States are 200 beds or under. In the class of hospitals categorized as "private" or "community" hospitals, there may be some truth to this claim. In hospitals such as the original "marine hospitals" or the Public Health Service hospitals, the very foundations of the entire service is centered around the "comprehensive" nature of the care, including even dental service. The staff of PHS hospitals have proudly and persistently proclaimed the comprehensive nature of the service, particularly in its marine hospitalization program which is keyed to the needs of shipping. Public Health Service staff members have held that the only impediment to this comprehensive care has been the policy of budgetary restrictions.

Is it not true that increasing the accessibility of the service does not depend upon or require the abolition of hospitals? May not the abolition of these PHS hospitals work against their very theory of accessible service as future case overload and population increase augment demand for medical care?

Operationally Feasible Hospitals

The proposed program submits that patient load may decline to a point where a hospital is no longer operationally feasible or administratively warranted. This is a sound position and where current or prospective patient load fails to justify continuation, other action must be taken. Of the seven hospitals scheduled for closing, certainly Boston, Norfolk, Galveston, and Detroit do not fall in such category. While Detroit is relatively smaller, it is strategically located for lake seamen and because of closed and open seasons on the lakes, should be judged only upon its peak season. Chicago, Memphis, and Savannah should be studied further in depth and action taken on the merits.

Should not the general PHS hospital program be sustained with adjustments to meet the requirements of operational feasibility?

Advantages of Integrated Hospital and Clinical Care

The Department of Health, Education, and Welfare, as late as 1957, studied the problem and concluded as follows:

"The comprehensive service required by PHS legal beneficiaries can best be given with integrated hospital and clinical services." (Report of study group on Bureau of Budget's projected closing of four PHS hospitals. See "Medical and Hospital Care for Merchant Seamen," vol. I, p. 184.)

The position of HEW now makes a complete reversal, apparently forced by the Bureau of the Budget.

Should not this inconsistency be thoroughly investigated to determine the basic reasons for basic change?

Greater Economy Theory

Claim is made that it is more economical to close PHS hospitals and transfer patients elsewhere. This is a subject for detailed and expert study. We doubt that any appreciable savings will result.

The Health, Education, and Welfare Department reviewed this matter in 1957 and concluded to the contrary. The wording of its findings is as follows:

"Use of alternate hospital facilities would be more expensive than use of the PHS hospitals in each of the four cities, (Chicago, Detroit, Memphis, and Savannah) even when the cost of needed improvements in the PHS hospital system was taken into account."

The Department questioned the availability of other facilities in three of the areas studied. A part of the cost factors upon which their judgment was based was contract hospitalization in private and community hospitals which, under medicare, now is estimated at $61.75 per day (latest figure) as against an average of $27.81 in PHS hospitals (1963).

The transfer of patients to veterans hospitals would be slightly higher in cost, with no direct savings. The plan envisages greater contract hospitalization which would substantially increase costs.

Staff conclusions at that time were that closing of hospitals at Detroit, Chicago, Memphis, and Savannah "would neither serve the interest of economy in Federal expenditures, nor make it possible to provide care of the scope and extent available patients in PHS hospitals."

Why do we have a complete reversal of this position?

The Savings Theory

Mr. Celebrezze, in his testimony before the Appropriations Subcommittee of the Senate hearing the hospital closing problem stated:

"The compelling reason was not the saving, that was not the reason standing by itself, but it was that these hospitals used primarily to train our public health officials were not of sufficient capability."

This is strange indeed. Mr. Celebrezze's announcement of hospital closings released on January 19, 1965, is so prolific in statements centered on the matter of savings as to leave the clear impression that this is a basic underlying motive. Certainly it is from the Bureau of the Budget's position. Further, the statement that training capability is in question is in direct contradiction to the findings of five medical experts hired by HEW in 1956 to survey these hospitals. These experts attested to the great training potentials and condemned the budgetary privation that hindered it. Further, a study group in PHS sustained this view and a little over a year ago Surgeon General Luther Terry advised Senator Yarborough, of Texas, of the rich source of training and research material in the Galveston hospital.

Do not these conflicting statements indicate the disparate position in which the agency finds itself in trying to comply with the overriding Bureau of the Budget drive to close them out?

The Deterioration Factors

The Health, Education, and Welfare Secretary, in testimony before the Senate Appropriations Subcommittee on Labor, Health, Education, and Welfare and Related Agencies, stated in connection with Public Health Service hospital closings:

"It was a question that had to come to a head sooner or later because many of these hospitals were deteriorating fast, and the administration, with the Office of Science and Technology and with the Budget Bureau and with the Veterans' Administration, continued their search to find a solution to the problem."

How right that they are deteriorating fast and how important it is to note that the Bureau of the Budget has used most any device to bring it about, chief of which is its famous order of April 16, 1958, barring for the most part any capital improvements and major repairs. The Office of Science and Technology has now been given the job of executing the coup de grace.

Are these agencies actually trying to find solutions or are they charged with the job of coming up with the only solution the Bureau of the Budget will permit; namely, complete abolition of the Public Health Service hospitals?

How Can Contract Hospitalization Save Money?

Mr. Celebrezze, in his testimony before the Senate Subcommittee on Appropriations hearing the hospital closing problem stated:

"Arrangements had been made where the Veterans' Administration can take patients, and we also consider it with the local hospitals where there are local hospitals in a community to render service."

Speaking of the Boston hospital and the services to be rendered he continues:

"Also, we will do it by contract with local hospitals in the Boston area; for example, when we answer those requests, we will contract it with the local hospitals that do it."

The average cost of care in Public Health Service hospitals was $26.48 per day in 1962; $27.81 in 1963, and $29.65 in 1964.

The average cost of care per day in private and community hospitals, according to the so-called medicare figures (cost of care in private hospitals for dependents of the Armed Forces) was $57.50 in 1963; $60 in 1964, and $61.75 in 1965.

These costs, including physicians services in each case, show over twice the cost in private and community hospitals where care is not comprehensive and admission is usually for a specific ailment at a time.

If there is any expansion of contract care as is envisaged by the Secretary, will not costs skyrocket by such a process?

LEGAL AUTHORITY IN QUESTION

Mr. Celebrezze, in testimony before the Senate Appropriations Subcommittee for Labor, Health, Education, and Welfare and Related Agencies, stated with reference to legal authority to close Public Health Service hospitals that:

"Under the Public Health Service Act, we can contract the hospital services and this would be the method we would follow. There is a misconception that all of it will be transferred to the Veterans' Administration. That is not accurate."

He proceeds to say "we will merely pay for the service to be rendered."

Now title 42, United States Code, section 249, subsection (e) is the law to which the Secretary refers. The subsection, according to both the language and the congressional history—and we have researched it thoroughly—provides for contract in two situations; namely (a) overcrowded conditions in Public Health Service hospitals, and (b) for seamen in remote locations where Public Health Service hospitals are not available. If the committee desires, we can provide a legal statement already prepared by a law firm on this subject.

It was never intended, nor can it be used to accomplish a wholesale closing of hospitals, nor an abolition of the Public Health Service hospital service, nor a wholesale transfer to some other agency. The action being proposed is, therefore, illegal. Only an act of Congress can change it.

Mr. CLARK. May I state that the blocked paragraphs in single spacing is the finding of the physicians and the double spacing is comment by those of us here.

Now I know the time of the committee is somewhat limited, and if you will bear with me, I would like to comment on a few of the things in the above report.

Let me correct one thing. I have distributed two documents at once. The document I have just described is this one giving a summary of the medical experts findings, but also I want to file in the record a series of questions and answers for consideration of the committee. May I file also this statement, on which I am now going to comment?

Senator BARTLETT. Surely.

(The document referred to follows:)

A brief summary of conclusions from the report of Albert W. Snoke, M.D., director of the Grace-New Haven Community Hospital, is quoted below:

"There is a glaring discrepancy between the expressed philosophies and recommendations of the U.S. Public Health Service for proper diagnostic and therapeutic programs of medical and hospital care for the country at large and the actual operating of these in the U.S. Public Health Service Staten Island Hospital.

"The potentials of this medical care program for teaching, research, and services are great. They are in grave danger of being destroyed by budgetary restrictions that go beyond economy to eventual deterioration and self-destruction.

"The present budgetary restrictions of the Staten Island Hospital will undoubtedly adversely affect the immediate care of patients in the hospital because of incomplete supplies and deteriorating equipment. Of forgotten importance from a long-range point of view is the serious undermining of morale and the possible disappearance of high-quality professional and tech-

nical personnel from the hospitals of the U.S. Public Health Service. The present budgetary restrictions are such that job satisfaction cannot be attained by any individual who is a professional or who has a position of responsibility or authority.

"This is particularly true among the medical personnel where the morale is presently high, the professional abilities excellent, but where there is a rather universal evidence of mild to severe frustrations. They have a heavy workload. They have a high turnover of younger men as assistants and are continually being subjected to petty harassments, such as a dearth of necessary supplies. Budget restrictions, for example, have resulted in inadequate quantities of medicines being available for medical care, necessitating the substitution of less effective drugs in many instances."

A. Patient care and standards

"Opinions on the quality of care ranged from substandard to very good, but there was general agreement that deterioration was inevitable unless the programs could be supported with adequate supplies, equipment, and personnel. Among contributory deficiencies mentioned were inadequate diagnostic equipment and obsolete and irreparable therapeutic equipment; insufficient essential supplies, such as surgical instruments, rubber gloves, scalpel blades; insufficiencies in modern drugs; either the complete absence or inadequate utilization of social service; the general lack of nutrition-counseling services; the absence of rehabilitation services and occupational therapy; insufficient personnel in most of the outpatient departments; too few consultants; and insufficient clerical and nursing staff. One surveyor pointed out that in comparison with other Federal hospitals the quality of care in ours was 'poor,' but he hastened to add that it would have to be considered 'good' in light of the circumstances under which the care was being rendered. Thus, in essence, this sample of the care being rendered in our hospitals reveals that there are many important modern-day services that our patients are not getting at all, and that the present level of quality of care, of those services being furnished, has about reached its breaking point."

This represents a sad commentary on a service almost as old as the Nation itself and is not in keeping with the expressed policies of the Government in an age when general medical and hospital facilities and services are inadequate to meet the current needs of the population. The wide gamut of unmet needs in equipment, drugs, supplies, administrative personnel and professional staff leads to the conclusion that the service was substandard in 1956 in comparison, but that it must be rated "good" in the light of what the management had been able to achieve under the circumstances. It would seem that no greater compliment could be paid to the devoted staffs of these hospitals than was paid by these independent outside experts who attributed to them, very creditable results achieved in the face of the great impediments placed in their path.

At the time of the summary report the experts stated that the patients were not getting many important modern-day services, and that the level of care for those services rendered had about reached the breaking point. It seems clear that those responsible for practicing economies in Government, as important as this is, had been given full priority in action over those responsible for the life, health, and welfare of patient beneficiaries. It can only be assumed that the superimposition of administrative economy determinations over the opinions of the medical profession resulted from an ignorance of the facts. It is not conceivable that arbitrary administrative budget or expenditure limitations would be exercised in the face of such a situation, were the facts adequately sought out. Exercise of authority by those detached from the real medical needs of the patients has always been one of the problems to be surmounted by the medical profession. In all too many instances, the pressures of time and patient load have allowed too little time for the professional voice to be adequately heard, or the professional position to be sufficiently advanced.

B. Physical plant, equipment, and supplies

"In the main, the surveyors thought that we had done a reasonably good job in adopting hospital plants 20 years or more old to modern-day functions. They did, however, point out a number of deficiencies involving, chiefly, insufficient space or poorly arranged space for conduct of ambulatory care and for such paramedical services as the clinical laboratory. Some specific needs

were pointed out, the major one being the need for an addition to the New Orleans hospital for the outpatient service.

"The surveyors were in full agreement as to the poor state of our equipment.

"They recognized that most of it is 20 years or more old and that it is well past its useful life. They also recognized that we have very little new equipment and much of this has come by way of surplus from other Federal hospitals, such as veterans, Army, and Navy. Some of the surveyors pointed out some specific needs. All recommended that a program of modernization be instituted and that a program of planned replacement be undertaken along with modernization. Their hospitals replace equipment at the rate of 10 percent per annum. At the present rate of replacement in our system, this would take nearly 40 years.

"The surveyors were also in agreement concerning the inadequacy of supplies. Each recognized that our inventories had been reduced to dangerously low levels and that we can scarcely escape continued reductions with the amount of funds available for purchase of supplies on a rising market. Each recommended that all supply levels be kept up to at least a 60- to 90-day level. Many instances of stations being out of important items were noted."

The surveyors generally found that the hospital management had done well in maintaining the facilities in spite of the lack of adequate support budget-wise. The Labor-Management Maritime Committee surveys also bear out this fact. In fact, quite an unusually excellent job has been performed in most of the general PHS hospitals. The ingenuity demonstrated by the hospital staff in adaptation and improvision has enabled the hospitals (most of which are over 20 years of age) to remain reasonably functional. This staff has been under constant pressure of the severest type in order to make do with inadequate facilities, equipment, and supplies.

One would assume that the continuity of pressures and distractions, which such a situation engenders, would destroy the morale of the staff. To some extent, this has occurred, but much of the deterioration in morale from this cause has been offset by the pride of achievement in countering the policies of attrition created by budgetary restrictions.

The staff has been forced to rely on surplus property much of which has been cast off by other Federal hospitals. This "castoff policy" has worked its unsavory effects for a number of years. The impact of such a "castoff policy" can only be realized by some examples. We set forth just a few which existed at the time budget hearings were in progress before the 87th Congress in the early months of the second session. The examples below which were in evidence during the surveys made by the Labor-Management Maritime Committee over the past few years could be multiplied many times over.

(1) At the Norfolk Public Health Service Hospital, a general diagnostic X-ray machine—a complete diagnostic unit—was purchased under funds made available by the Congress. This unit was badly needed, but remained in storage on the premises for over a year because the existing X-ray space was too small to accommodate it properly. Although other space was available, the restrictions of the Bureau of the Budget against the simplest capital improvements made its use all but impossible.

In this case there was a need for lead lining of the walls and the installation of some dressing rooms and toilet facilities which fell within the Bureau's prohibitions.

Finally the hospital worked out a temporary scheme to install the unit in the existing X-ray room creating an almost impossible situation. The hospital staff took the position that it would have to be moved again later due to crowded conditions and the size of the X-ray workload.

(2) At the Chicago Public Health Service Hospital, there was need for an emergency generator. About 5 years prior to the appropriations action of the Congress in 1962, a generator had been secured from surplus of the U.S. Air Force. It could not be installed and had been stored out of doors all that time. The only reason for this has been the restrictions on the most ordinary capital improvements by the Bureau of the Budget. In this case, all that was required was the removal of two old fire boilers, which hadn't been fired for approximately 10 years, to make room for the generator. This had created a hazard to the hospital and the patients as no emergency generator plant existed except for a few battery lights. Emergency generators are considered a necessity in all good hospitals. This type of situation therefore seemed to border upon the ridiculous.

(3) For several years prior to 1962, the Congress had appropriated funds which were used to procure badly needed scientific equipment in the operating, X-ray and other departments, including those of the Staten Island hospital. At this hospital, such equipment needed increased voltage to operate. It was advised that wiring could not be installed due to the restrictions on capital improvements by the Bureau of the Budget. The staff of the Staten Island hospital, thereupon, improvised by dropping long cables from the roof of the hospital bringing the wiring through the windows or holes in the walls. These cables were suspended from the roof like spaghetti and so remained for an extended period of time. Only early in 1962 were any steps taken to ameliorate this situation. This was apparently accomplished just prior to the budget hearings before the Congress as the situation at Staten Island was becoming open public knowledge.

(4) In both the Detroit and Memphis Public Health Service Hospitals. there was a crying need in 1962 to convert unused space formerly used for wards, into outpatient clinic space as the workload was rising. This involved capital improvements in the most narrow sense, yet neither funds nor approval for their use could be secured under the then current restrictions of the Bureau of the Budget.

(5) As the same year, the Galveston Public Health Service Hospital building badly needed to be relieved of the outpatients program to meet patient demands. The outpatient program could be moved to the former nurses home. The administrative personnel, some of which are now housed in this home, could be moved to the nursing attendants quarters, thus providing a needed and sensible arrangement. This was even forbidden under the then current restrictive orders against capital improvements. Actually, the long-range needs of this hospital would call for an addition to the building itself to solve the space problem. However, even though this had not been approved, temporary solution to the problem was also being denied.

(6) At the New Orleans Public Health Service Hospital, the second floor of the research building needed rearrangement to cover expanded work. All that was needed was conversion of some space from storage to added laboratory space. This had been long denied as falling within the category of unauthorized capital improvements. Only recently has the capital improvements restriction been at least partially lifted to give some relief.

(7) At Seattle, one of the floors of the Public Health Service hospital needed rearrangement to accommodate a needed research program. Here an arrangement had been worked out with the University of Washington, whereby certain staff and equipment would be furnished by that institution at no cost to the Public Health Service hospital, and from which the patients of the latter would receive untold benefits. Here again the arrangement of such things as temporary walls and partitions had long been forbidden as being in the nature of capital improvements. Only after the most prolonged efforts has the Bureau relented to permit some relief to this area.

While some relief has been given in certain of the above cases—and they are only a few specific examples—it was only permitted after the situation became acute and nonpostponable. In the meantime, other situations of similar circumstance have developed with little relief under existing budgetary policies.

The experts who surveyed the Public Health Service hospitals in 1956 noted that old equipment is usually replaced at the rate of 10 percent per year. They pointed out that the then current rate of replacement in the Public Health Service hospitals would result in modernization in about 40 years. This situation can only be laid directly on the doorstep of the specific budgetary policies applied to these hospitals.

The surveys also noted that supplies were dangerously low and that reductions of funds for such purpose were forced upon the hospitals even in a rising cost market. Such a policy of deliberate reduction of needed supplies would appear to be toying with the health of sick patients and in a normal program of hospital care would be considered extremely bad practice.

C. Adequacy, morale, and ability of staff

Under this heading the position of the medical experts who surveyed the Public Health Service hospitals was summarized as follows:

"The surveyors were in general agreement that our staffing was either short or marginal. Numerous examples of insufficiencies were cited. In general, these applied to nurses, physicians, and clerical personnel. Some specific examples of dire personnel needs were mentioned, such as physicians, occupational therapists, medical social workers, and nutritionists. There was also general recognition of the fact that our medical care programs are being carried on the backs of dedicated and overworked medical officers. Each of the surveyors marveled at this and wondered how much longer it could be continued because of the despair and frustration they observed in these important key personnel. One of the surveyors observed that our medical officers were getting a bit 'ingrown' because of lack of opportunity to meet with their professional contemporaries at national medical meetings. One of the surveyors recommended that we utilize consultants to a greater extent. In essence, then, the surveyors seemed in agreement that we can go no further in personnel reductions; in fact, they suggest that we appear to have gone too far already."

This summary statement is quite clear and points out very directly three major conclusions:

(1) Staffing is short or marginal with some "ingrown" characteristics due to lack of opportunity for greater participation in national medical meetings; (2) the work is carried on by dedicated people working under frustration because of the lack of policy support and funds; (3) the Government can go no further in staff reductions and, in fact, has gone too far now.

A well supported and sustained medical staff is the essence of good hospital care. Without this, the program fails in the long run, and it was concluded that this should not be permitted to occur.

D. Hospital administration

The expert medical personnel charged with surveying the hospitals arrived at conclusions on hospital administration which have been summarized by the Public Health Service as follows:

"Concerning administration of the hospitals, the surveyors were impressed with the administrators' abilities to keep the programs going as well as they are with the existing severe shortages in personnel, supplies, and equipment. They generally feel that there must be some lack of understanding of the current costs of medical care at the Washington level. Some felt that if the medical officers in charge had an opportunity to defend their budgets in Washington, things might be better. There was agreement that the forced absorption of increased costs of personnel services by the stations was not only unfair, but poor economy. One suggested that the hospital administrator be given a more flexible budget and more administrative freedom. He indicated that inequities had resulted at this station through tendencies of headquarters branch specialists to successfully promote their own programs. In the main, administration at the field level was considered to be sound, dedicated, and well informed. One of the surveyors pointed out that the hospital administration was quite aware of the deficiencies and could rectify them quickly if given support.

"The overall conclusions of the surveyors were uniform in expressing the clear needs for additional funds, staff, supplies, and equipment at the field level to do the job for which we have the responsibility. There was also general agreement that in the absence of such support the deterioration of the medical care program of the Public Health Service would soon become serious."

The general conclusion is that the hospital management is doing a good job in the face of existing shortages of personnel, supplies and equipment and unless funds and more substantial support are given, the deterioration of the medical care program of the Public Health Service would become serious soon.

The Public Health Service had very wisely secured outside experts in the medical profession to give an objective analysis of the program. The fact that the agency utilized independent experts who had no particular actions to defend or projects to promote, speaks highly for the objective nature of the surveys. The fact also, that the findings so directly condemned the fiscal practices, which tended to create deteriorated conditions in the service, speaks strongly against the policies of the Bureau of the Budget as applied to the program.

Mr. CLARK. Dr. Snoke, in analyzing the hospital at Staten Island, made a point, as I pointed out, in paragraph 2 of his comments, on page A–1, that:

The potentials of this medical care program for teaching, research and services are great. They are in grave danger of being destroyed by budgetary restrictions that go beyond economy to eventual deterioration and self-destruction.

He then proceeds in somewhat of a critical vein to discuss the effect upon the hospital in Staten Island of the very sharp budgetary restrictions that have been applied over the years.

On the second page, under patient care and statistics, the conclusion is very critical of what was going on in 1956, and this is a summary of the report made by all of the doctors who were engaged in this survey. I won't elaborate on that since it will be in the record.

Now under B, on what is identified as page 2, physical plant, equipment, and supplies, there is a like statement, which is a summary of the opinions of all these doctors, again commenting on the deterioration in the facilities and the lack of adequate supplies. They state here that the surveyors were in agreement and each recognized that inventories had been reduced to a dangerously low level with the amount of funds available for purchase of supplies limited by the rising market, and each made a recommendation far beyond that which has ever been accepted. The next conclusion of these eminent physicians will be found in this document on page 9, adequacy of morale, ability of staff. There they point out the deteriorating effects upon the morale of the staff, because they were having to improvise at every stage in order to make do with the funds allowed them.

On page 10 under hospital administration, a like critical analysis is set forth.

Now this very excellent report by eminent physicians would normally have called for adjustments to meet the conditions that were occurring in these hospitals at that time.

I want to refer you, however, to the action of the Bureau of the Budget in meeting these conditions.

Under date of April 16, 1958, the Acting Chief of the Commercial and Finance Division of the Office of the Bureau of the Budget, wrote to the Commissioner of Public Buildings Service, General Services Administration, as follows:

The need for Federal Government maintaining general Public Health Service hospitals is under intensive study by the Department of Health, Education, and Welfare and the Bureau of the Budget. It is possible that some of these hospitals will be closed or transferred to non-Federal agencies. Under these circumstances air conditioning or repairs other than required by emergencies or the safety of the occupants will not be in the best interests of the Government. You are therefore requested not to proceed with contracting for design or repair work on these hospitals without clearance with this Bureau.

And they list in the record the 12 general hospitals, of the Public Health Service. This was the answer of the Bureau of the Budget to this report of distinguished medical experts.

May I say that about this same time the Surgeon General called Mr. Hoyt Haddock and I to his office and said:

We have had this report from the outside experts in the medical profession. We would now like to hear from labor and management, because of the direct connection between our Department and the maritime community.

Well, we did a study which has been distributed to the Congress, two volumes of it, and this is what I hold up here. We were allowed to survey the hospitals. I want to tell you just three things that happened on that survey. And we pointed this out to Senator Lister Hill and his committee this morning.

The Congress had appropriated funds for additional equipment in the hospitals for the operating room, that is, radiation treatment and so forth. We visited the Staten Island Hospital and found they couldn't install the equipment purchased by funds which the Congress had appropriated, because they couldn't put wires in the baseboards, they couldn't bring in heavier wiring in order to operate these machines.

Now the Staten Island Hospital has an overhanging roof, and this staff had improvised by going to the roof and dropping down over the sides, like spaghetti, these long cables and then bringing them in through the windows. All of this was because of this order which said no capital improvements, no major repairs.

At the Chicago hospital we found an emergency generator which had been purchased from the U.S. Air Force as surplus. It couldn't be utilized because they wanted to install it in a room where there were two old boilers that had not been used for 10 to 15 years, but to remove the boilers and renovate that room would be a capital improvement, so consequently they couldn't install the emergency generator.

Now we were told it is a must in operating room procedures to have emergency power so if the power goes off, you don't risk the life of a patient, and yet that is what we found in Chicago. They couldn't install it.

I am sure the distinguished chairman will recall that in Seattle the 11th floor of that building was vacant, when the University of Washington had a plan to develop the research program in connection with the hospital there, and they couldn't do it, because they couldn't rearrange the floor, they couldn't put in extra walls or tear down walls. That was a capital improvement. Consequently it wasn't until Senator Magnuson got hold of this thing and brought it to light that it was corrected.

Now this is the kind of deteriorating thing that has been practiced by the Bureau over these years, with the thought, I am sure, that eventually they want to relieve the Government of this whole responsibility.

Now I would like to turn to a reply made by the Bureau to the Honorable Senator Cooper, who wrote about this condition on June 3, 1958. Now this is the same identical year in which this order of the Bureau of the Budget was issued. But look what the Bureau says to Senator Cooper:

It is by no means the intention of the Bureau of the Budget to abolish the Public Health Service hospitals through the medium of budgetary attrition. The Bureau of the Budget does not intend to use the budgeting process to reduce or impair this level of care.

In a further response to Senator Cooper the Bureau of the Budget replied under date of July 11, 1958, as follows:

Under the law the Federal Government has an obligation to provide medical care for merchant seamen and we intend to see that this responsibility is carried out effectively and that seamen receive good medical and hospital care.

I submit that neither one of those replies is in accordance with the facts. Nor is it in accord with the action taken on April 16, 1958, when this order went out. Mr. Haddock and I were visiting the hospitals at that time, and we saw the deteriorating effects of this order all over the hospitals.

Now they may say today some of these hospitals may not deserve to be saved. Well, when Poland was overrun in the last war, and after it was raped and burned, the German Chancellor went over and looked at it and said "It is no longer worth saving." I don't mean to make that a plain and direct analogy, but it has its points.

If they continue, by these limiting orders—and the orders limited funds far beyond what this Congress gave; funds were appropriated by this Congress and were not used in many, many cases—then you cannot help but come up with this result. The intent here has been from the beginning to either do away with the marine hospitalization program or to get rid of the program by first transferring it into some other agency.

I think there is a more important issue here and that is where does the authority of the Congress end, and where does the authority of the Executive begin in this matter? May I remind you that the Honorable Warren G. Magnuson, chairman of the Committee on Independent Offices, a few years ago, I think only 2 or 3 years ago, held a hearing and this matter came up. He pointed out some of the deteriorating effects of what was going on at that time in these hospitals. His language was quite clear, and the language of the entire committee report which was adopted was quite clear. It indicated this should not continue, and used the words to the effect that—

This is not a matter of abstract Executive determination, because it has been a longstanding policy of the Congress of the United States. It is not a purely abstract authority which resides with the executive department.

Well, that doesn't seem to have been followed very well. But even after that date, I want to point out what happened in the committee before whom we just now testified this morning, the Subcommittee on Appropriations, and I will read this statement. This is dated August 17, 1964, and reads as follows:

The U.S. Committee on Appropriations for the Departments of Labor, Health, Education, and Welfare, and related agencies, noted in 1964 that funds for repairs and maintenance of the Public Health Service hospitals were included in the 1965 estimates, but that the amounts and projects requested appear to reflect only the minimum necessary for emergency repairs to keep the hospitals in operation. Many of the Public Health Service hospitals are obsolete and overcrowded and in need of major modernization.

The committee then took an affirmative position. It stated:

The committee will therefore expect to be presented with a plan for the modernization of the entire Public Health Service hospital system before January 1, 1965, and expects the 1966 budget estimates will contain the funds necessary to initiate this plan.

Now that is from the U.S. Senate Committee on Appropriations for the Departments of Labor, Health, Education, and Welfare and related agencies, Report No. 1460, August 17, 1964, to accompany H.R. 10809, page 27.

Mr. Chairman, that was only last August. Now do we get a plan for modernizing hospitals as requested by the Appropriations Committee of the Senate? We do not. What we do get is an announcement on January 19 by the Secretary of Health, Education, and Welfare that he is closing 7 out of 12 hospitals. I mean, where does the Congress end and the executive department begin? I am confused, as a layman, as you will observe.

Now they talked about constitutionality a while ago. Is it constitutional when the Congress in 1798 adopted and adhered to a strong policy of marine hospitalization to have it practically eliminated by deterioration and a lack of support on the part of the executive? Is that constitutional? Is it constitutional for them to spin a wheel and say "We are going to eliminate seven and keep five"? What is the virtue of five and seven? It might well have been eight and four or six and six. There is no virtue in that. The hospitals should be examined on their merits. But apparently that is constitutional. Apparently it is constitutional to close Chicago and Memphis, when the whole House of Representatives told them not to do it. But yet in considering this law, you have to be very careful that you don't treat on the constitutionality of what the executive department happens to think is constitutional.

Now let me turn to one other thing. I hold here in my hand the report of the subcommittee of the House, the Honorable John Fogarty's Subcommittee on Appropriations, and I will make this brief. It will read only the pertinent clauses:

> This proposal runs counter to the current effort to improve the health of the Nation by wider dissemination of medical skills and facilities. A net reduction over the next 2 years, under executive proposals, of approximately 3,000 beds in the veterans' hospitals, and Public Health Service combined is not the answer to the problem of improving the health of the Nation and certainly not the veterans and the merchant seamen for whom the Government has made special provision.

Now here is the real power to this report.

> The committee can see no justification for closing any of the Public Health Service hospitals under current conditions and will look with extreme disfavor on any action to do so, unless a resurvey of this matter brings to light new information to support this action.

He didn't say "until." He said "unless." That report, Mr. Chairman, was approved by the full Committee on Appropriations in the House and the appropriation bill was passed by the House of Representatives.

Now that says they will look with "extreme disfavor." Maybe under the Constitution that is all you can do in the legislative, to look with "extreme disfavor." But I am glad they looked.

Now what happened as a result of this? Mr. Chairman, they immediately closed Chicago. They turned the key. The patients have gone, the staff has gone, and the door is locked. They are now closing Memphis. It will be closed I think before the middle of next week. This has been the answer to these three important positions taken by the Congress of the United States.

I don't know whether my information is completely accurate, but I think it is fairly so, when I tell you that Congressman Bonner, of

the Merchant Marine and Fisheries Committee of the House, who wrote a letter to the General Accounting Office on this. The reply from General Accounting Office was twofold: One, that maybe it is legal to close seven, and keep five open. I think this is questionable. We will file with your permission a statement on the law as developed by our counsel, and I hope you will see fit to let me insert that in the record.

Now the second thing that the General Accounting Office did was to say that seamen cannot be placed above non-service-connected disability cases. In other words, they can't be placed above any veteran. Now this is the crux of the whole case. The whole idea of the Bureau of the Budget was that they give seamen preference, because marine hospitalization must be, Mr. Chairman, turned to the needs of the shipper. You can't wait 6 weeks on a waiting list when you are expected to rejoin the ship on schedule. This is the crux of the whole case. If the seamen cannot be placed above non-service-connected disability cases, then where are the seamen going to be taken care of, because most of the veterans' hospitals have a long, long waiting list of non-service-connected disability cases. But here is the pinch. They have already closed Chicago.

Apparently they were depending on the fact that they can get preference for seamen, and now they can't. They closed Memphis depending on the same thing, and now they can't make good. So where do the seamen in the Midwest go now? Where do they go? This is a dilemma I can't answer. The executive could not wait as requested in accordance with the House action. It could not wait to determine what the will of the Congress was; they went ahead and closed these hospitals anyhow. Now they are stuck with a General Accounting Office ruling, and I don't know where constitutionality comes out on this one.

Mr. Chairman, I would like at this time, if the committee would permit it, to file the statement of legal position developed by our counsel on this whole subject in which he treats title 42, section 249, which is the basic law under which seamen get medical care.

Senator BARTLETT. That will be included in the record.

(The document mentioned follows:)

MAYER, KLINE & RIGBY,
Washington, D.C., February 18, 1965.

LABOR-MANAGEMENT MARITIME COMMITTEE,
Washington, D.C.

GENTLEMEN: You have called my attention to a release by the Secretary of Health, Education, and Welfare dated January 19, 1965, whereby he proposed to phase out seven of the Public Health Service Hospitals and to modernize and expand the remaining five Public Health Service Hospitals, and the possible eventual transfer of these five remaining hospitals and the entire health program for American seamen from the Public Health Service to the Veterans' Administration.

The question is whether this can be legally done by executive action without the approval of Congress and without the President utilizing his power under the Reorganization Act of 1939 to submit a plan to Congress proposing a change in executive function and responsibility such as the one here indicated.

Our particular concern is the proposed shift in responsibiltiy for the medical care and hospitalization of U.S. seamen from the Public Health Service to the Veterans' Administration.

The basic law providing for the medical care and treatment of seamen is 42 U.S.C. 249, which provides as follows:

"SEC. 249. *Medical care and treatment of seamen and certain other persons; foreign seamen; certain quarantined persons; temporary treatment in emergency cases; authorization for outside treatment*

"(a) The following persons shall be entitled, in accordance with regulations to medical, surgical, and dental treatment and hospitalization without charge at hospitals and other stations of the Service:

"(1) Seamen employed on vessels of the United States registered, enrolled, and licensed under the maritime laws thereof, other than canal boats engaged in the coasting trade;

"(2) Seamen employed on United States or foreign-flag vessels as employees of the United States through the War Shipping Administration;

"(3) Seamen, not enlisted or commissioned in the military or naval establishments, who are employed on State school ships or on vessels of the United States Government of more than five tons' burden;

"(4) Cadets at State maritime academies or on State training ships;

"(5) Seamen on vessels of the Mississippi River Commission and, upon application of their commanding officers, officers and crews of vessels of the Fish and Wildlife Service;

"(6) Enrollees in the United States Maritime Service on active duty and members of the Merchant Marine Cadet Corps;

"(7) Employees and noncommissioned officers in the field service of the Public Health Service when injured or taken sick in line of duty; and

"(8) Persons who own vessels registered, enrolled, or licensed under the maritime laws of the United States, who are engaged in commercial fishing operations, and who accompany such vessels on such fishing operations, and a substantial part of whose services in connection with such fishing operations are comparable to services performed by seamen employed on such vessel or on vessels engaged in similar operations.

"(b) When suitable accommodations are available, seamen on foreign-flag vessels may be given medical, surgical, and dental treatment and hospitalization on application of the master, owner, or agent of the vessel at hospitals and other stations of the Service at rates fixed by regulations. All expenses connected with such treatment, including burial in the event of death, shall be paid by such master, owner, or agent. No such vessel shall be granted clearance until such expenses are paid or their payment appropriately guaranteed to the Collector of Customs.

"(c) Any person when detained in accordance with quarantine laws, or, at the request of the Immigration and Naturalization Service, any person detained by that Service, may be treated and cared for by the Public Health Service.

"(d) Persons not entitled to treatment and care at institutions, hospitals, and stations of the Service may, in accordance with regulations of the Surgeon General, be admitted thereto for temporary treatment and care in case of emergency.

"(e) Persons entitled to care and treatment under subsection (a) of this section and persons whose care and treatment is authorized by subsection (c) of this section may, in accordance with regulations, receive such care and treatment at the expense of the Service from public or private medical or hospital facilities other than those of the Service, when authorized by the officer in charge of the station at which the application is made. July 1, 1944, c. 373, Title III, sec. 322, 58 Stat. 696; June 25, 1948, c. 654, sec. 3, 62 Stat. 1018; Aug. 13, 1964, Pub. L. 88–424, 78 Stat. 398."

It should be noted that subsection (a) provides for the medical, surgical, and dental treatment of seamen and certain other persons without charge at hospitals and other stations of the Service. By definition the "Service" referred to is the Public Health Service which for many years has had the sole responsibility for the medical care and hospitalization of U.S. seamen and other related persons.

It should be noted that subsection (e) provides that persons entitled to care and treatment under subsections (a) and (c) may, in accordance with regulations, receive such care and treatment at the expense of the Service from public or private medical or hospital facilities other than those of the Service, and authorized by the officer in charge of the station at which the application is made.

It has been suggested that this section permits the Public Health Service to delegate its care and treatment of seamen function to some other agency of the Government, such as the Veterans' Administration, as now proposed. This was not the congressional intent, as is evident from the statement with regard

to this subjection (e) contained in House Report 1364, the Report of the House Committee on Interstate and Foreign Commerce, on H.R. 4624, 78th Congress, 2d Session, wherein at page 20 it is stated.

"Subsection (e) would authorize treatment of Service beneficiaries in other hospitals, at the expense of the Service, as provided in regulations. This provision, which would afford a statutory basis for present regulation, is designed to meet overflow conditions and cases where beneficiaries may be remote from any Service hospital."

This subsection (e) appeared as section 322(e) of H.R. 4624, which bill became Public Law 410, 78th Congress, 2d Session, and now appears in the United States Code as section 249, subsection (e) of title 42, Public Health and Welfare.

It is apparent from this quotation from the legislative history of this subsection that the permissive outcare and treatment of American seamen was only intended to apply where the Service hospitals were overcrowded or too remote. It did not intend the transfer of the entire function of caring for and hospitalization of American seamen from the Public Health Service, where it has long been roposed, to another agency such as the Veterans' Administration, as now proposed. That the Public Health Service has the statutory responsibility for the medical care and treatment of seamen is clear from the provisions of 42 United States Code section 249(a).

It is equally clear from subsection (e) that this function of and responsibility in the Public Health Service could only be delegated by the officer in charge of the station at which application for treatment was made when there were overflow conditions or if the applicant were too remote from any Service facility.

It would seem from the above that the proposed shift of responsibility for medical care and hospitalization of seamen from the Public Health Service to the Veterans' Administration, both now with respect to the seven hospitals to be phased out and ultimately with respect to the remaining five to be transferred to the Veterans' Administration, would require some action by Congress to make it legally effective, or at least the inclusion of such a proposal in a reorganization plan to be submitted by the President to Congress in accordance with the Reorganization Act of 1939.

There has been some suggestion that authority to effect such a shift in function can be found in section 686 of title 31 of the United States Code, which permits any executive department or agency to place orders with another department or agency for materials, supplies, equipment, work or services, which the requisitioned agency is in the position to supply, or equipped to render. It provides that such supplies or services shall be paid for immediately by the requisitioning department or agency.

In the opinion of your counsel, this section does not contemplate a shift of statutory responsibility and function from one executive agency to another, such as is contemplated here, but rather the utilization by a department of another executive agency to furnish supplies or render services where it is in the interest of the Government to do so, the same to be paid for out of the appropriations of the responsible department or agency. This clearly indicates the securing of a particular requirement through another agency, not a shift in statutory function to that agency.

Sincerely yours,

ROBERT E. KLINE, Jr.

Senator BARTLETT. Does that legal opinion bear on the constitutionality of the bill before us?

Mr. CLARK. I think it does. Counsel has done a very lengthy study, going back into the annals of the actions of Congress to siphon out the will of the Congress as expressed in connection with the law. Basically what he found was that the authority to contract with other hospitals was only intended by the Congress to be exercised in two instances. The first instance was where the existing Public Health Service hospitals were overcrowded and couldn't take the patient and the second was where the seaman found himself in such a remote place that he couldn't get to the hospital. And the whole legislative history hinges on those two things.

Now our position and the position of our legal counsel is, that you cannot use that to transfer a function from the Public Health Service to the Veterans' Administration; that would be illegal. He also finds you can't transfer en masse a group of hospitals; that also violates the spirit if not the law as expressed in title 42, section 249.

Now we have an additional ruling which is quite pertinent given by the Comptroller General. If my information is correct, the seamen now in the Veterans' hospitals will have to wait until all veterans, whether they have service-connected disability or non-service-connected disability, are taken care of. We have been told there is a long waiting list. You can get in for a hernia, if it is strangulated; you can get your teeth fixed if you need oral surgery.

Mr. Chairman, this kind of thing will destroy marine hospitalization. If we have to go into the third waiting category, it will destroy marine hospitalization in this country.

Finally, we support—and when I say we, I include the Labor-Management Committee ,the AFL–CIO Maritime Committee, the American Maritime Association, the Merchant Marine Institute, and Pacific American Steamship Association, all those organizations, both labor and management, throughout the entire country, are unanimously in support of a bill which will allow the Congress to have something to say about this thing, to have something to say about a law that they created in 1798.

Let me say this, when I was Deputy Maritime Administrator, the fourth day I was there, the Korean war came on, and I have never seen so many of the brass from the Navy and the military in my life as came in the next day saying, "Help us, help us, we have to have ships broken out, so many by such and such a date," and so forth. We are always a popular organization in time of war, but we seem to be one of the most unpopular in time of peace. I remember when the Suez Canal situation was on they called upon us, for diversion ships. I remember in the Cuban situation when we were ready on standby, and I remember right now in the Vietnam situation, which is a pretty hot situation, I understand the merchant marine is being brought aboard on this.

So if there was ever a poor time to cancel out or to diminish marine hospitalization it is now, because section 101 of the Merchant Marine Act says we shall have able-bodied seamen in order to act as an auxiliary to the Armed Forces, so I say it is the wrong time to consider this kind of hospital reduction. Of course, I think, any time is the wrong time.

Now I would like to close my testimony with one statement. We favor this bill. We have an amendment or two which we would like to offer for the record for the consideration of the committee. To provide that the Executive can't terminate hospitals without congressional consent that doesn't mean they can't deteriorate it from now until kingdom come.

Senator BARTLETT. I am sorry, I have to answer a rollcall on the floor.

(Thereupon, a short recess was taken.)

Senator BARTLETT. Mr. Clark, would you continue, please?

Mr. CLARK. Mr. Chairman, I think I had finished my testimony. I would like to submit this proposal which modifies only slightly what

the bill, S. 1917, provides now. The only thing these changed recommendations do is to provide against impeding or diminishing the service. The bill now only talks about termination and even if it was passed, it wouldn't keep them from going ahead like they have been and letting the hospitals deteriorate as in the past.

We only submit this for consideration. There are probably better drafts, but we would like to enter this into the record as a recommendation.

(Suggested amendment follows:)

A BILL To amend the Merchant Marine Act of 1936, in order to protect and promote the health of seamen on vessels of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title IX of the Merchant Marine Act, 1936 (46 U.S.C., chapter 27, subchapter IX) is amended by adding at the end thereof the following new section:

"SEC. 908. The responsibility and function of providing medical, surgical and dental treatment and hospitalization for seamen and other beneficiaries reposed in the Public Health Service by section 249 of title 42, United States Code, shall not be transferred or assigned, in whole or in part, to any other department or agency of the United States, nor shall the program for maintaining the hospitals and other facilities necessary for the Public Health Service to carry out its medical care and hospitalization program for seamen and other beneficiaries in accordance with modern standards, be impeded or diminished without the consent of the appropriate Committees of the Congress."

Senator BARTLETT. Thank you, Mr. Clark.

I have only a question or two.

Very obviously, and I know you will agree with this statement, the committee is up against a situation whereby the Bureau of the Budget has by implication at least advised us that it considers the bill which we are considering at this time to be unconstitutional.

In light of that, what would be your suggestions, if any, as to amendments?

Mr. CLARK. I think the committee in light of that might well take a looksee at title 42, section 249, subsection (e), which is the portion of the law that gives them the right to make transfers or to contract services. Perhaps that particular section of the law could be changed to prohibit the kind of thing being done now.

Senator BARTLETT. How about these words, to which Mr. Hughes took rather vigorous exception, relating to the termination of these services, and I quote:

Without the consent of the appropriate committees of the Congress.

Mr. CLARK. I believe, but I am not too sure about this, that the Senate did something very similar to this, did it not, in the case of the veterans hospitals? Was there not—I am asking this in the form of a question—was there not an action taken either by the Senate or the House?

Senator BARTLETT. I think the House committee took that action within the week, but of course we don't know what the ultimate response of the Executive will be to that action, if it is finally cleared by the Congress for Executive action.

Mr. CLARK. I see. The only other thing I can suggest, and Mr. Haddock may have other suggestions, would be to consider modifying section 249 of title 42. They certainly can't do this if the basic authority which gives them permission to contract is modified in such a manner as to correct this kind of situation.

Senator BARTLETT. Mr. Haddock, do you have a comment to make?

Mr. HADDOCK. I think, Mr. Chairman, the responsibility of the administration to carry forth a program was intended by Congress and cannot be carried out, cannot be enforced by Congress if the administration simply doesn't want to do it. Now this is a classic instance of the administration refusing to administer the law as Congress intended it. I think really there is only one remedy to it and that is for the Congress to remove the authority completely from the administration, and put it under Congress as it did the various commissions. I think this is really your only solution.

Now assuming this is unconstitutional, assuming that the President is not going for this bill, I think he ought to be given the opportunity to do so, and then if he doesn't, if he says in effect, "We do not want to go ahead and administer this law as Congress wants it done, we want to go ahead and continue to maladminister it as we have done in the past, then I think it is up to Congress at that point to face up to the situation and to literally remove all of the authority from the administration and put it under Congress.

Mr. CLARK. I just want to leave on one note, Mr. Chairman, which I meant to include in my earlier remarks. You will recall that President Kennedy made quite an excellent statement on the matter of making hospitalization more available or accessible. The action of the General Accounting Office which says that seamen now take a third place, that they cannot move ahead of any veteran, destroys the idea of accessibility, because the service is no longer readily accessible at all.

So the very reasoning in transfer proposals evaporates with this ruling from the General Accounting Office. They have destroyed accessibility under this ruling particularly in the Midwest where the hospitals have been closed.

Senator BARTLETT. Thank you very much.

Mr. CLARK. Thank you, sir.

Senator BARTLETT. Just a moment. Mr. Kenney has a question.

Mr. KENNEY. With your permission, Senator, I wanted as minority counsel to express my regrets that seamen find themselves such orphans in the Great Society.

Mr. CLARK Thank you.

Senator BARTLETT. Well, they are a little bit adrift, I guess.

Mr. Foster?

Mr. FOSTER. No questions.

Senator BARTLETT. Admiral Hirshfield.

STATEMENT OF VICE ADM. JAMES A. HIRSHFIELD, U.S. COAST GUARD (RETIRED), PRESIDENT, LAKE CARRIERS' ASSOCIATION, CLEVELAND, OHIO

Admiral HIRSHFIELD. Lake Carriers' Association heartily endorses S. 1917, and urges its enactment. There are on the Great Lakes today some 260 vessels under American flag engaged in the bulk commodity trades. These vessels employ about 9,000 seamen. Overall, when other types of vessels, outside of the bulk commodity trades, are included, the total number of ships under American flag on the Great Lakes is 304.

50-188—65——7

The only Public Health Service hospital facility now available to seamen in the Great Lakes area is the hospital located in Detroit, Mich. The Public Health Service hospital in Chicago has already been closed. Medical and dental care for merchant seamen have been provided by the Public Health Service since 1798. The experience gained by the Service over the ensuing years has certainly resulted in an understanding and appreciation of the problems peculiar to seamen. They should not now be made secondary citizens by turning responsibility for their care and treatment over to the Veterans' Administration, the primary mission of which is to care for the veteran.

It is true that many of the Public Health Service hospitals are outmoded, but you do not solve this problem by eliminating the service or transferring the function to the Veterans' Administration. It hardly seems reasonable to believe that seamen would receive the same consideration and care in a Veterans' Administration hospital as from the Public Health Service system.

The proposed restriction of the Public Health Service system is viewed as inimical to the already hard-pressed Great Lakes vessel industry, and is further evidence of a lack of interest by the Federal Government in this important segment of the American merchant marine. As far as the Great Lakes are concerned, the proposed discontinuance of the Detroit Public Health Service hospital can only result in less skillful attention to the medical needs of the seamen.

It is difficult to understand why the Department proposes to maintain facilities on each of the three sea coasts but withdraw those same facilities entirely from the Great Lakes. Such a drastic step should not be taken without appropriate congressional approval. For this reason, Lake Carriers' Association endorses S. 1917 and urges its enactment.

Senator BARTLETT. Mr. Meyers, please?

STATEMENT OF THOMAS L. MEYERS, WASHINGTON REPRESENTATIVE, SEAFARERS INTERNATIONAL UNION, WASHINGTON, D.C.

Mr. MEYERS. Mr. Chairman, we have filed a written report for the record and I will try to confine my remarks to what has been left unsaid here or my observations on certain comments made earlier.

Senator BARTLETT. When you say "we," you mean the Seafarers International Union of North America?

Mr. MEYERS. Yes. I am speaking for them, sir.

The question arises in my mind, sir, as to whether the Public Health Service remarks regarding their responsibility should be interpreted as being merely physical. We would assume, or we would hope the interpretation placed upon the responsibility, as referred to in their statement, means medical responsibility. We fail to see where the transfer of seamen to veterans hospitals constitutes a continuation of medical responsibility for the care of American merchant seamen. We would hope, sir, that adequate facilities and services are made available for seamen, whether they are referred to the veterans hospitals or to community hospitals, in the event that VA facilities are not available to them.

We are particularly concerned in view of the General Accounting Office interpretation of the legality of treating seamen at veterans

hospitals. If it is finalized that the treatment of seamen at veterans hospitals is not legal, we fail to see how the seamen can be properly administered to, when they become ill, because we question very much the fact that with the high cost of community hospital services for individuals, that a continuing use of the community hospital at rates of about $60 a day in place of the $27 to $28 a day charge in Government facilities will be continued.

In my own particular knowledge, from the southern California area, where there was no public health service hospital in the Los Angeles area, we found that they were very adverse to treating seamen in community hospitals, unless they were dire emergency cases. They preferred to put them on a waiting list for the San Francisco Public Health Service Hospital and this waiting list extended 3 to 4 weeks beyond the time that they made the original application.

Now it is well-known, of course, that all of the VA hospitals are highly crowded at the moment, and reference was made earlier today before the Appropriations Committee of the Senate to the Houston Hospital, which has a bed capacity of 1,200 beds. This hospital is now 95.8 percent crowded, or being utilized to the extent of 95.8 percent. We think it is going to be utilized even further as a result of the aging of the veterans, and I would like you to keep in mind, sir, that there are now 16 million veterans of the Korean war and World War II, and with the Government VA hospital capacity of 125,000 beds and we feel in the next 5 to 10 years the hospitals will be overcrowded and we fail to see how they will take care of the seamen.

In Galveston, the Public Health Service hospital there has 139 merchant seamen as a daily load. They propose to put these men into the Houston hospital, which as I say is 95.8 percent occupied today and the American Medical Association and all competent medical people state that no hospital should have more than 80 to 85 percent occupancy and anything in excess of that creates an inefficient operation.

Constant reference has been made by the Public Health Service to the cross servicing arrangements they have with the other agencies. Now we feel that wholesale cross servicing is no longer cross servicing, it is a transfer of the function of the Public Health Service to another agency.

We question the legality of that particular interpretation. As I say as to cross servicing, we have no argument to cross servicing as such, where it is used in an occasional case, but wholesale cross servicing or transfer of functions to another Government agency is not in our opinion proper. I have no argument, of course, with the people from Public Health Service, but the statement of Mr. Kelly this morning representing the Public Health Service we feel, of course, is a result of pressure put upon the Health, Education, and Welfare Department by the Budget Department.

They make reference to the fact that the closing of these hospitals will provide more accessible service to the patients needing medical care. They fail to make reference to the fact that there are 1,900 beds in the Public Health Service, in five remaining Public Health Service hospitals which will be left at the end of the period when

the seven hospitals will be closed. They state that they anticipate an expanded capacity of about 2,400 beds or an increase of approximately 20 percent.

I would like to call the committee's attention to the fact that the Public Health Service now has 3,000 beds, and a curtailment to 2,400 beds is certainly not an increase of facilities of 20 percent, but rather it is a drop of 20 percent.

I could go on through this report, I think a close analysis of it would prove that many of these facts are not in line with the true picture. I thank you, Mr. Chairman, and I hope this S. 1917 is approved by the Senate.

Senator BARTLETT. Mr. Meyer, do you consider that a sword is dangling over our heads, as it were, following the testimony of the Bureau of the Budget?

Mr. MEYER. I most certainly do. And one fact I didn't mention, which I should bring at this time, Mr. Chairman, is the fact that I know that all members of this committee dealing with maritime affairs are aware that at the present time we are in a period of negotiation on contracts and I most definitely feel that the maritime unions will certainly have to protect the interests of their members and negotiate some kind of clause that in the event the facilities for the seamen, these hospital facilities for seamen, that these should be abandoned or curtailed by the Government, they will certainly have to work this into the contract where the shipowner will have to pick up the tab.

We don't wish to contribute to the additional costs of the shipowner, but we would certainly have to protect the interests of our members and negotiate something like this in these contracts. When you say a "sword dangling over our heads," I assume you mean with reference to the medical care for the seamen, and the possibilities of this thing being abandoned altogether; is that the reference you meant?

Senator BARTLETT. At least the bill being vetoed.

Mr. MEYER. I am afraid it will be, sir, but we must go on record and fight in every way we can. We would hope it would not be, in consideration for what is just and fair for our people, but I would certainly hope it will pass and be OK'd by the time it reaches the White House.

Senator BARTLETT. Mr. Foster?

Mr. FOSTER. No questions.

Senator BARTLETT. Mr. Kenney?

Mr. KENNEY. No questions.

Senator BARTLETT. Your prepared statement will be printed in the record.

(Mr. Meyer's statement follows:)

STATEMENT OF THE SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, ON S. 1917

My name is Thomas L. Meyer. I am the representative in Washington for the Seafarers International Union of North America, AFL-CIO, whose membership of 80,000 includes seamen on the Atlantic, gulf, and Pacific coasts, the Great Lakes, and on the inland waters of the United States.

The Department of Health, Education, and Welfare's anomalous announcement of January 19, 1965, of its plans for far-reaching changes in the general hospital system operated by the Public Health Service came as a profound shock

to American seamen, the trade unions which represent them, the management which employs them, and to all others who are concerned with the maintenance of the high quality of medical care and treatment that are available through the Public Health Service marine hospitalization program.

In announcing its plans, the Department stated that 7 of the 12 remaining public health hospitals would be closed. The plans say that a system would be provided which will permit "many Public Health Service beneficiaries" to obtain care at facilities of the Veterans' Administration, after the closing of the Public Health Service hospitals in Boston, Norfolk, Savannah, Galveston, Memphis, Chicago, and Detroit. This ill-conceived program apparently stems from pressures by the Bureau of the Budget, which has made a systematic effort to terminate the Federal program of medical care for seamen and the other public health hospital beneficiaries. It appears that the Public Health Service hospital service is slated for abandonment as a result of the Bureau's campaign of attrition over the past 10 years or so.

The plan to destroy this very vital service is at once both shocking and inconsistent in light of the special functions performed by the Public Health Service, the top quality of its services, and the absolute need in our Nation today for developing and increasing medical care and facilities rather than to diminish and liquidate them.

Since 1798, when the Congress established the marine hospitals—as the U.S. Public Health Service hospitals were called formerly—merchant seamen and other Federal beneficiaries have been eligible for a program of medical care and treatment which has been necessitated by the peculiar nature of their employment. The program of marine hospitalization was shaped to meet the special requirements and character of maritime employment. The considerations which led to the establishment of the Federal program of marine hospitalization under the Public Health Service still exist today. Merchant seamen, who are certified for their employment by a Federal agency—the U.S. Coast Guard—must work without the availability of medical care and treatment while on the job at sea. Their work is transient. They are subject to limitations of time in port, to the very flexible schedules of ship arrival and sailings and the need for meeting precise physical requirements before obtaining clearance to ship. They require the availability and accessibility of hospital and medical care after protracted periods at sea, and because they may require such care at any port in which their vessel may call or sign on and pay off, the maximum possible number of strategically located facilities is essential. These required services have been available to merchant seamen—and to the other Federal employees, who also are eligible for Public Health Service treatment—at the Public Health Service hospitals and clinics. However, this availability has been on a diminishing basis over the years as a result of the periodic closings of a number of these institutions inspired by pressures from the Bureau of the Budget.

The quality of medical care and treatment in the Public Health Service hospitals has been excellent. Staffed as they are by dedicated doctors, technicians, and other staff people, the Public Health Service hospitals have functioned with a uniformly high degree of competence, devotion, and understanding. Complaints or grievances against Public Health Service facilities by merchant seamen and the maritime unions representing them are virtually nonexistent—a rare condition when you consider the manifold grievances in regard to hospital and medical care generally today.

Perhaps the most shocking aspect of the Government plan to close the seven Public Health Service hospitals and to attempt to divert patients to the Veterans' Administration is the utter incongruity of liquidating established Federal medical hospitals universally respected for their high quality, comprehensive medical care and treatment, research and clinical facilities at a time when the administration has expressed determination for a "Great Society" to include expanded medical care, increased hospital and clinical facilities, and greater research efforts under Federal aegis. In fact, it is obvious to everyone that the Government is working completely in this direction because it is acutely aware of the Nation's hospital and medical needs.

Those responsible for the plan to close the Public Health Service facilities and to ultimately dissolve the very effective and useful contribution to the well-being of Americans by this highly respected service are either uninformed of the medical care and research goals set by the administration or they are indifferent to the needs of our society. They certainly did not pay any attention to the President's Commission on Heart Disease, Cancer, and Stroke when it recommended in December 1964 that "the Division of Hospitals of the Public

Health Service be appropriated funds for the renovation and the development of research space in existing facilities and for increased research and training activities."

The President's Commission also recommended that the "still significant Public Health hospital system, which has taken promising steps toward an increased research and training program in recent years, be supported in the development of its full potential for research and training as well as patient care."

The Health, Education, and Welfare Department's announced plan for reducing the Public Health Service hospitals from 12 to 5 disregards the Commission's sound recommendations and evidences an absolute lack of the compassion and feeling that is fundamental to any successful program of medical care and treatment for American citizens. The plans of the Bureau of the Budget and the Department are fraught with flaws and unwarranted and misleading projections, both from the standpoint of continued availability of the marine hospitalization program for seamen and from the dollars and cents standpoint. Such plans certainly should not be permitted to influence judgments which affect the well-being of American citizens and which were made on the basis of sound social and human considerations.

The Department of Health, Education, and Welfare's summary of its plans for the closing of the seven Public Health Service hospitals and to use the Veterans' Administration's facilities as a substitute, and its assertion that it would save money thereby, is hardly the basis for such drastic and irreparable action which in the long run can only result in increased costs. The assertions made in support of the program are little more than an attempt to rationalize the untimely and ill-conceived scheme to wipe out a vitally necessary service. As a matter of fact, the Department's program does not deal in any specifics, but rather submits a series of generalized objectives, which are highly contradictory and misleading.

The Health, Education, and Welfare Department says in very unspecific terms that its plan will provide a system for Public Health Service beneficiaries to be cared for "by utilizing cooperative agreements with the Veterans' Administration and the Department of Defense for the use of their medical facilities" (Department of Health, Education, and Welfare, "Summary of Plan," p. 1). It would be quite impossible to accommodate seamen in VA hospitals that do not have beds available for veterans. In this connection it must be noted that VA hospitals are all operating over the 80 percent bed-load capacity universally accepted as the maximum for operating efficiency. In the administration of hospitals, 80 percent of bed occupancy is considered most practical. The remaining 20 percent is the margin accepted for emergencies and other contingencies In the VA facilities, in the same, or nearest, areas to the seven Public Health Service hospitals slated for closing, the percentage of bed utilization ranges from 85.9 to 99.3. Across the Nation most VA hospitals are operating at over 90 percent. These figures certainly indicate that the VA hospitals are already operating over the proper limit and are concerned, themselves, with obtaining more space for veterans.

The Health, Education, and Welfare Department plan is not only jeopardizing medical care and treatment for seamen, it is also causing concern among veterans over the future of the VA hospital system for veterans. The National Commander of the American Legion, Donald E. Johnson, has testified on January 28, before the Senate Subcommittee on Veterans' Affairs that the Legion was unable to ascertain the extent to which the referment of seamen to Veterans' hospitals would decrease the ability of the VA to care for war veterans. He said that the American Legion "fears the VA hospital system, as established by Congress, is in jeopardy." At its Fifth Annual Washington Conference last month the Legion went on record to oppose the plan.

The Commissioned Officers Association of the U.S. Public Health Service concurs in the position of the American Legion in these words: "It is difficult to understand how the patients from the PHS hospitals can be cared for by the VA hospital system when many of the VA hospitals that these patients are to be referred to are already operating at maximum patient capacity and have long waiting lists for those veterans with non-service-connected disability." (Statement of Commissioned Officers Association of the U.S. Public Health Service on the "Closing of Seven PHS Hospitals," February 1, 1965.)

The Health, Education, and Welfare Department certainly must know that its assertion that seamen would be accommodated at VA hospitals is more myth

than reality. In response to a question from our organization, the Department advised us admission to VA hospitals will be in this order:

1. Veterans with service-connected disabilities.
2. Merchant seamen.
3. Veterans with nonservice disabilities.

Most all of us are aware and very likely the members of this committee know of this from their constituents that veterans with service-connected disabilities have difficulty in gaining admission in VA hospitals in some areas because of the lack of available beds. All of us are aware of the long waiting periods in almost all VA hospitals for veterans with non-service-connected disability—even where hospitalization is recommended without delay.

And what about the type of medical care that would be given to merchant seamen in the VA hospitals? The Federal Regulations provide that:

"When a seaman requires medical, surgical, or dental treatment or hospitalization, and the urgency of the situation does not permit treatment at a medical relief station, arrangements for necessary treatment or hospitalization at the expense of the Service from public or private medical or hosiptal facilities other than those of the Service may be made." (42 C.F.R. sec. 32.12 (1960)).

Under the existing marine hospitalization program of the PHS hospitals, merchant seamen have been receiving the comprehensive care in all of the PHS facilities, as provided in the regulations. Nowhere in its plan does the Health, Education, and Welfare Department indicate that a seaman could, if he was able to gain admission, receive the same care in the VA hospitals. If the seaman was to be referred to a community hospital, it is obvious that the seaman would have difficulty in obtaining the comprehensive care called for. In short, only the PHS hospitals are geared to provide the medical care and service to seamen which are necessitated by the nature of his employment and the schedule of ships arrivals and departures in the various ports. A seaman, for example, may be given treatment in a PHS hospital in the port of New Orleans and then may ship out and resume his treatment when his vessel calls at another port, such as New York or Norfolk. Thus there is no unnecessary delay and a seaman is not kept from employment in order to wait for treatment to be concluded in a particular place.

The Department's plan states that one of the advantages of its plan is that "health care received by patients under alternative arrangements will be more comprehensive than that available in the hospitals scheduled for closing since in most instances patients will be treated in larger facilities than those now being operated."

We point out that no complaints have been registered in regard to the quality or comprehensiveness of medical care in the seven hospitals which the Department would close down. In fact, there is no assurance that the seaman-patient will wind up in a larger facility. The likelihood, considering the overcrowded conditions of VA hospitals, and the fact that seamen come after veterans with service-connected disabilities is that most seamen would have to be referred to smaller, private community hospitals. (According to American Hospital Association figures, there are 5,684 non-Federal short-term general hospitals, which are typical community general hospitals, in the United States, with a total 698,000 beds. Thus the average community hospital has 105 beds, almost half of the 200 that the Department of Health, Education, and Welfare regards as a minimum for comprehensive care.)

In what sounds like the old shell game, the Department says that savings will accrue from its plan, which, upon examination, is purely hypothetical, and refers to savings from what would have been the costs to operate the facilities that will be shut down—they had been modernized to provide more comprehensive care, including strengthening of their medical and dental training programs. In other words, the Department says it will save money in the amount that it will not spend. Later in their plan they speak of strengthening their medical and dental training program in the five facilities which will remain open.

Even if the so-called savings feature of the Department's plan were taken at its face value, these savings would be offset, more likely washed out, by the costs of sending seamen to private hospitals for which the PHS service would pay the bills. The average cost of care per day per person in PHS hospitals in 1964 was $29.65, and this is for comprehensive care.

The average cost of care in PHS hospitals was $26.48 per day in 1962, $27.81 in 1963, and $29.65 in 1964.

The average cost of care per day in private and community hospitals, according to the so-called medicare figures (cost of care in private hospitals for dependents of the Armed Forces) was $57.50 in 1963, $60 in 1964, and $61.75 in 1965.

It cost the USPHS in Chicago $34.35 per day per man (inpatient) during the fiscal year of 1964, which includes room and board, surgical, medical, dental, dentures, X-ray, recovery room cost, etc.

The Chicago Hospital Council figures show that in private hospitals it cost an average of $41.53 per man per day, but which only covers room, board, and nursing care.

So the alleged savings idea advanced by the Department is a snare and delusion. Moreover, any need for improvements in the PHS hospitals derives purely from the continuing tactics of attrition of the Bureau of the Budget in denying funds for these purposes over the years.

In respect to the financial aspects involved in the closing of the seven hospitals—all of which under the proper circumstances could long continue their badly needed services—it is apparent that shortly after their closing these hospitals will be a mass of cobwebs and will no doubt wind up being sold to private purchasers for a shred of their value, with the taxpayers footing the bill for this tragic mistake. Significantly, the Department of Health, Education, and Welfare mentions nothing about the present Government investment in, and the present worth of, the seven PHS facilities to be shut down.

The manner in which the Department has announced its plan for shutting the hospitals and the impractical costly procedure it offers as a substitute for treatment in VA and private community hospitals is certainly a definite cause for caution. If the architects of the plan themselves sincerely believed that the plan truly would have enabled better and more comprehensive care for all concerned, we submit that they would have proceeded in a more open manner. It seems to us that with an objective for improved service and treatment, they could have called upon the seamen's unions and the others with an interest in the matter for a full and open discussion with a view toward reaching a solution satisfactory to all concerned. They did not choose to do this. And they did not choose to take such a course because they knew the plan was the first in a series of steps to destroy the PHS hospitalization program for merchant seamen and the other Federal beneficiaries. Is it not significant that the Department's plan, which is alleged to be predicated on the improvement and expansion of comprehensive care, has been roundly condemned by every segment of the citizenry concerned with it? The plan has been condemned by the seamen's unions, it has been condemned by the management of the maritime industry, it has been condemned by the veterans organizations, it has been condemned by the commissioned officers who are responsible for the operation of the PHS hospitals. Surely there would not have been such a categorical and unanimous denunciation of the plan if it had an iota of merit and if its objective was a sincere attempt to improve the Public Health Service rather than to abolish it and foul up the VA hospital system in the process.

We remind you that the USPHS hospitals have always provided quality medical care for the American seamen and the other beneficiaries who are entitled to its services. These facilities are conveniently located in major U.S. seaports and are immediately accessible to those who require its care and treatment.

The administration's claim that the closing of the USPHS hospitals would be an effective "economy" move does not make sense when one considers that new hospitals would have to be built to take care of those seamen who will be denied the use of USPHS hospitals when they need medical care.

It is common knowledge that a desperate overcrowding problem exists in most hospitals today. It is easy to say that substitute medical facilities will be obtained for the seamen, but the question is how will it be done without building new hospitals to take care of those seamen who are displaced from the USPHS hospitals. How this can be construed as being an "economy" move is hard to fathom.

We respectfully call to your attention House of Representatives Report No. 272, 1st session of the 89th Congress, which accompanied H.R. 7765, pages 23 and 24—"Hospitals and Medical Care." The Appropriations Committee specifically allocated $864,000 to retain the USPHS hospital facilities at Memphis and Chicago recognizing that closing of those hospitals "runs counter to the current effort to improve the health of the Nation by wider dissemination of medical skills and facilities. A net reduction over the next 2 years under executive proposals, of approximately 3,000 beds in the Veterans' Administration and Public Health

Service combined is not the answer to the problem of improving the health of the Nation, and certainly not of the veterans and the merchant seamen for whom the Government has made special provision.

"The committee can see no justification for closing any of the Public Health Service hospitals under current conditions and will look with extreme disfavor on any action to do so unless a resurvey of this matter brings to light new information to support such action. In any case, the committee will expect that these hospitals be kept open until after such a resurvey has been made and presented to the committee in connection with the hearings on the 1967 budget."

In spite of the above recommendations of the Appropriations Committee and the allocation of funds to retain the Chicago and Memphis facilities, the Chicago hospital has been closed and the Memphis hospital is in the process of being closed at this moment.

It is ironical that the plan to close seven of the USPHS hospitals, which could be the first step in the abandonment of the entire USPHS program, is announced almost simultaneously with President Johnson's design for a massive medical research program and the expansion of medical care and treatment as essential to a better America. The hospital closings would be a step backward for a society that must move forward. In behalf of the American seamen who are dependent upon the PHS hospital program for their physical well-being, we earnestly oppose the plan to shut down the seven hospitals. And we urge the members of this committee and the entire Congress to do everything in their power to prevent this plan from succeeding. We urge you to continue the operations of the USPHS hospitals system which has so clearly demonstrated throughout its long history its competence and capacity to serve the people of the United States.

We can only assume then that the Department of Health, Education, and Welfare intends to pursue its original plan of shutting down 7 of the 12 U.S. Public Health Service hospitals in spite of well-documented evidence submitted to the Merchant Marine and Fisheries Committee, House of Representatives, in hearings held on March 25 through April 6, 1965. It is our feeling that the shutting down of 7 of the 12 U.S. Public Health Service hospitals by Executive order is questionable as to legality. Certainly it is not in the public interest and most assuredly is a clear violation of the intent of Congress when the Public Health Service hospital system was established.

The Department of Health, Education, and Welfare have stated that the authority for their actions in transferring U.S. Public Health Service beneficiaries to veterans hospital facilities rests in the cross-servicing arrangement between Government institutions. We firmly oppose such an interpretation when it is construed to mean a wholesale transfer of services to another Government agency. Particularly so when it is so apparent to all that the Veterans' Administration hospitals are hard pressed to meet their commitments to the veterans and members of the Armed Forces who have first priority when in need of hospitalization or treatment. The present state of world affairs will not lessen but certainly will, unfortunately, place an added load on the Veterans' Administration hospitals further compounding the problem.

The Seafarers International Union of North America, AFL–CIO, has already received complaints from our Chicago office indicating that the closing of the Chicago U.S. Public Health Service hospital has resulted in inadequate medical care for our seamen members at the Veterans' Administration hospital there as compared with previous standards of treatment. We are in the process of documenting this evidence which will be submitted to this committee shortly.

We urge your support in the passage of S. 1917 in the interest of not only our own seamen members, but also for the veterans and other citizens who are directly affected by this legislation.

Senator BARTLETT. I have a letter from Senator Kennedy, of Massachusetts, addressed to me which will be placed in the record.

Senator Kennedy asks that there be incorporated in this hearing the text of a statement he made before the Senate Appropriations Subcommittee on Labor, Health, Education, and Welfare, and related agencies, and that will be done, and he says he is very, very concerned with the proposed closure of the Brighton Marine Hospital at Boston.

(The letter and statement follow:)

U.S. SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
June 11, 1965.

Hon. E. L. (BOB) BARTLETT,
Merchant Marine and Fisheries Subcommittee,
Senate Commerce Committee, Washington, D.C.

DEAR BOB: I am deeply concerned with the arbitrary decision of the Department of Health, Education, and Welfare to close certain Public Health Service hospitals. I regret that my scheduled testimony at other hearings this morning has made it impossible for me to appear before your committee and register my full support for keeping open these very important facilities. You can be sure that I intend to do everything possible to seek a reversal of the Department's order.

My particular concern is with the proposed closing of the Brighton Marine Hospital at Boston, Mass. I would be most appreciative if you would place in the record of your hearings today, a copy of a statement I have made before the Senate Appropriations Subcommittee on Labor, Health, and Welfare, and related agencies. I feel that this is a comprehensive expression of my views on this vital matter, and will be particularly relevent to the subject matter being considered under S. 1917.

Sincerely,

EDWARD M. KENNEDY.

STATEMENT DELIVERED BY SENATOR EDWARD M. KENNEDY BEFORE THE SUBCOMMITTEE ON LABOR, HEALTH, AND WELFARE, AND RELATED AGENCIES, OF THE SENATE APPROPRIATIONS COMMITTEE, JUNE 11, 1965

Mr. Chairman, I very much appreciate the opportunity to appear before the committee this morning and seek support for the continuation of the Brighton Marine and other Public Health Service hospitals which have been scheduled to be closed. I feel that these closings have been a dangerous decision on the part of the Department of Health, Education, and Welfare. They also have been a hasty decision, without sufficient study of the medical and hospital needs of the communities involved, and of the potential medical demand which lies ahead. The situation indeed merits serious inquiry by Congress before it should be allowed to proceed.

My particular concern is with the Brighton Marine Hospital in Boston. This hospital is an active part of the Boston medical complex. It serves a major seaport and the New England area. It has treated hundreds of thousands of patients from the merchant marine, the fishing fleets, the Coast Guard, the military, and the Federal service. It is deeply involved in major research and special treatment. It is one of the newest of the Public Health hospitals, having been built in 1940. Mr. Chairman, it is incredible that this medical facility has been chosen for elimination.

One of the major reasons given by the Public Health Service for closing the Boston facility is that the hospital has limited training potential, and the opportunities for medical school affiliation and expansion of training are poor. Nothing could be farther from the fact.

The Boston University Medical Center has its staff serving as consultants to the hospital, and it has a very effective student program at work in the wards. At the time of the announcement of the closing, the university was ready to sign an extensive agreement with the hospital for a major training and research program in conjunction with the center. Plans had been made for the exchange of residencies, and the teaching of third- and fourth-year medical students by members and resident staff of Brighton Marine Hospital.

Let me say this is most significant, Mr. Chairman. The teaching and training contract had been negotiated with the Public Health Service and the hospital—all the work had been done except for the signing, and yet, knowing the basic importance of the hospital to the long-range plans of the university, the Department arbitrarily included Brighton Marine in its closing order.

On February 8 of this year, Dr. Lewis Rohrbaugh, director of the Boston University Medical Center, wrote to the administrator of the Brighton Marine Hospital: "I need not recite to you the many affirmative results which we had expected would flow from our close cooperation * * * both to our own medical center in the teaching of students and to your hospital and the functions it carries on."

Dr. Richard Egdahl, chairman of the department of surgery at the university center, pointed out in a letter to the Director of Science and Technology that Brighton Marine's surgical staff attend the surgical grand rounds of the university every week, and "have participated in and actually presented case material * * * and have shown themselves to be good contributors."

Dr. Egdahl went on to say: "In short, the Public Health Service hospital is becoming an extremely active affiliate of the Boston University Medical Center and this affiliation has broad foundation."

I should like to submit various statements from faculty members of the Boston University Medical Center expressing their opinions as to the serious importance of this Public Health Service hospital to the education and training of doctors in the Boston area.

Mr. Chairman, here was a unique opportunity for the Federal Government, and for a major university, to join together in the development of young doctors, medical technicians, researchers, and nurses, under a program which was ready to proceed, with excellent facilities, with good staffing, and modern research equipment.

We all recognize the need to increase our medical capability. We constantly look to the universities to do this. Yet with Brighton Marine, and I am told with other hospitals scheduled to be closed, the Department has ignored the university affiliation. The Boston medical complex is undergoing accelerated growth. Hospital needs are at a premium, and good training hospitals are needed. I think Congress should look into this situation.

One of the more important areas of training and research contributed by Brighton Marine involved the cancer chemotherapy program. This is the major hospital for this research program in the Boston area. It coordinates with Dr. Sidney Farber of the Children's Cancer Research Foundation, and with the Arthur D. Little Co., which is doing basic research. It is a member of the Eastern Solid Tumor Group, carrying out very important investigations for the National Institutes of Health.

I have asked Dr. Farber to prepare a statement of the importance of Brighton Marine in the cancer research field, and I ask unanimous consent that this be printed following my statement.

The hospital is particularly well suited to perform this type of research because it is equipped to handle very ill people, and chronic cases, and it has on hand surgical and medical specialists and laboratory facilities geared to cancer treatment and analysis. This is an important backup to its outpatient facility in the detection of cancer and other serious diseases.

The American College of Surgeons have inspected the facility, and have certified it for surgical residencies for a 4-year program. Dr. James Bougas, one of the country's outstanding open-heart surgeons has been performing his surgery at this hospital for several years. Dr. Bougas is associated with the Boston University Medical Center. I am informed that this is one of the few hospitals in the country which specializes in open-heart surgery, and that it is the only Public Health hospital having such an extensive program.

Certainly Brighton Marine's close association with Boston University and the Boston medical community, together with its experience in heart, stroke, and cancer programs soon to be passed by Congress; and its direct connection with the National Institutes of Health make it of strategic importance.

While emphasizing this training and research point, the Department of Health, Education, and Welfare indicated other problems in justification of the closing.

It found the average daily patient load to be declining over the past few years. Such a statement by itself does not mean very much, and can be most misleading. The facts are that hospital admissions have had a steady increase since 1960. With the modern equipment and drugs, more people can be treated at the hospital and sent home for bed care. The statistics show from the summary of the Division of Hospitals that the number of outpatient visits have increased from 42,000 in 1960, to 55,000 in 1964—and it appears that there will be a major increase this year. My information shows that this very large and necessary outpatient program is successful because of the clinical backup provided by the hospital staff and facilities, including the laboratories and research areas.

I am a layman at these things, but I have been told by competent medical men that high-quality outpatient care cannot be maintained without hospital connection. The Public Health Service says it intends to keep the outpatient service. It must keep the hospital.

The Department stated that there are safety and fire hazards which must be eliminated. A special engineering study was made in 1963, directed to fire and accident prevention. As a result of this study, all combustible ceilings

were eliminated, fire doors were installed, a new sprinkler system was constructed, fire detection devices were put in, and other improvements were made. I am told that a new survey would indicate that the hazards referred to by the Department have been removed.

It claimed that clinical laboratories and research facilities are urgently needed. For the great research potential of this hospital in heart and cancer programs, such expansion would probably be welcomed. It should be pointed out, however, that the entire seventh floor of the hospital is now devoted to laboratories and research. It is very clean with modern equipment. The hospital handles about 180,000 laboratory tests a year. I understand that Dr. Farber will be testifying before this committee in the next few weeks on another matter, and that he would like, at that time, to describe the research conditions, and potential of the hospital. I have great respect for Dr. Farber and his work with the Children's Cancer Research Foundation. The fact that he is working at Brighton Marine Hospital is significant testimony to the importance of this facility.

Mr. Chairman, in closing I should like to say that the Brighton Marine Hospital has a special and historic significance for New England. It was the Boston Marine Society in 1790, which initiated the idea that there should be Federal hospitals for sick and disabled seamen. This organization carried its petition to Congress, and thereafter, U.S. marine hospitals were established in all of our larger seaport cities. I was pleased during the past Congress to work for the inclusion of fishermen in this medical program. This is a very important program for New England fishermen.

The hospital is steeped in history, and we are proud of it, but it is also a modern hospital, with modern equipment, and a well-trained staff. It has a basic medical function, provided under law by this Congress. It offers a particular service to our area. It is an important source of Federal research and special treatment.

I was encouraged by the action taken by the House with respect to these hospital closings. There, sufficient funds were included in the appropriation to keep the hospitals in question functioning and continuing. More important, the House incorporated specific language in its report that it could see "no justification for closing any Public Health Service hospital under current conditions."

I, therefore, respectfully request that this committee study this important matter with equally serious concern, and provide the necessary recommendations and funds which will lead to the continuation of these hospitals, particularly where potential university training and research are involved.

Senator Bartlett. The committee will stand in recess until the call of the Chair.

(Whereupon, at 1:10 p.m., the subcommittee was adjourned, subject to the call of the Chair.)

American Medical Association,
Chicago, Ill., June 11, 1965.

Hon. Warren G. Magnuson,
Merchant Marine and Fisheries Subcommittee,
Senate Commerce Committee, Washington, D.C.

Dear Senator Magnuson: The American Medical Association appreciates the opportunity to present its comments concerning S. 1917, 89th Congress, presently before your committee, and respectfully requests that this letter be made part of the record of the hearings on this bill.

S. 1917 deals specifically with the transfer of care from Public Health Service facilities to other Federal departments or agencies, and would prohibit termination of such care in any Public Health Service facility without congressional consent.

Our comments will not be directed to these specific provisions, but rather to the more basic question, whether the Federal Government should have the responsibility of providing medical, surgical, and dental care, and hospitalization, to merchant seamen.

In 1963 and 1964, the Association's Council on Medical Service and its Committee on Federal Medical Services conducted a detailed review of this program. The historical background of the program, its justification when founded in the early years of our Nation, the arguments offered for its continuance today, its relationship to the merchant shipping industry, and the statistical data relating to the program all were considered.

It was the council's conclusion, approved in May 1964 by the American Medical Association board of trustees and later in 1964 by the house of delegates of the American Medical Association, that care of merchant seamen is no longer a logical Federal responsibility.

At present, neither the national interest nor the economic situation and working conditions of merchant seamen warrant the maintenance of Federal hospitals and outpatient clinics and of a large staff of medical and paramedical personnel to provide for their personal health services.

With the development of voluntary health insurance and prepayment plans, care for this segment of the population can be financed adequately and effectively.

Accordingly, the American Medical Association respectfully urges your committee to take this opportunity to examine the basic issue involved—whether a program initiated in 1798 to encourage the growth of a young Nation's merchant fleet is still necessary or whether, as is the considered recommendation of this association, this special subsidy to a single national industry should now be terminated.

Sincerely,

F. J. L. BLASINGAME, M.D.

STATEMENT SUBMITTED BY JOHN J. CORCORAN, DIRECTOR, NATIONAL REHABILITATION COMMISSION, THE AMERICAN LEGION ON S. 1917

Mr. Chairman and members of the subcommittee, the American Legion appreciates the opportunity to express its views on S. 1917, a bill to amend the Merchant Marine Act, 1936, in order to protect and promote the health of seamen on vessels of the United States, and for other purposes.

The intent of S. 1917 is to prohibit the partial or total transfer or assignment of the responsibility and function of providing medical, surgical, and dental treatment and hospitalization for seamen and other Public Health Service beneficiaries to any other department or Government agency, or the termination of such service at any Public Health Service institution, hospital, or station without the consent of the appropriate committees of the Congress.

The announcement on January 19, 1965, by the Secretary of Health, Education, and Welfare, that he intends to close seven Public Health Service hospitals revealed that merchant seamen previously hospitalized in those facilities would, in the future, be provided care in the Veterans' Administration hospital system. The announcement also revealed that a study would be conducted for the purpose of determining the merits of transferring the health care program for American seamen and the operation of the five modernized hospitals from the Public Health Service to the Veterans' Administration.

Subsequently, it was learned that commercial fishermen, being Public Health Service beneficiaries, would be entitled also to care in Veterans' Administration hospitals. As a part of the transfer plan, the Veterans' Administration agreed to assign both the seamen and the fishermen an admission priority second only to the service-connected disabled.

The American Legion opposes this so-called cross-servicing agreement for several reasons. Our paramount reason is that such an arrangement will substantially reduce the Veterans' Administration's ability to provide needed care to eligible veterans. One need only look at the number of veterans on the Veterans' Administration's national waiting list to recognize that our contention is well founded.

At present there are 18,000 veterans on the Veterans' Administration national waiting list—veterans who have already been declared by the Veterans' Administration to be medically and legally eligible for hospital care but who cannot be admitted because of the shortage of beds. A specific illustration of the hardship that will be inflicted upon veterans is the plan announced for the care of 9 active duty personnel and 95 seamen from the Galveston Public Health Service hospital. It was announced that those persons would be transferred to the Houston Veterans' Administration hospital. Yet, on March 31, 1965, the Houston Veterans' Administration facility had a waiting list of 388 veterans.

Aggravating the national situation was the decision by the Veterans' Administration to close 6 hospitals containing 1,796 beds. That reduction will leave the capacity of the hospital system at 117,121 beds, a figure far below the authorized 125,000. Further, the House recently reduced by $9,421,000 the funds requested by the Veterans' Administration for construction of hospital facilities.

Our two main objections to the announced transfer of the care of Public Health Service beneficiaries to Veterans' Administration and the concomitant Health,

Education, and Welfare study aimed at assigning to Veterans' Administration the balance of the marine hospitalization program are as follows: First, such an action would constitute an abdication by the Surgeon General of the responsibility imposed upon him by Congress, and would involve an assumption by the Administrator of Veterans' Affairs of an unwarranted and unauthorized power. Second, the admission-to-hospital priority granted Public Health Service beneficiaries delays and, perhaps, prevents the treatment of veterans eligible and waiting for medical care.

In view of these convictions, we are deeply interested in S. 1917 as its enactment would insure that the appropriate jurisdictional committees of Congress would be given the opportunity to examine the propriety of actions such as proposed by the Secretary of Health, Education, and Welfare on January 19, 1965.

In our judgment, the need for this legislation is further evidenced by the opinion, rendered June 7, 1965, by the Comptroller General of the United States on the legality of the cross-servicing agreement and transmitted to the chairman of the House Committee on Merchant Marine and Fisheries.

First, the Comptroller General held that, despite the broad discretion granted the Surgeon General, the transfer of the remaining five Public Health Service hospitals to Veterans' Administration would be unauthorized. Thus, he supported the view that the Surgeon General has a responsibility for the care of Public Health Service beneficiaries which he fails to fulfill when he transfers to another Federal agency the actual operation of his hospital program.

Next, the Comptroller General considered the admission-to-hospital priority the VA had granted to PHS beneficiaries. He ruled that 31 United States Code 686 did, under appropriate circumstances, permit the Veterans' Administration to furnish hospital care on a reimbursable basis to beneficiaries of other Federal agencies. He ruled, however, that "the use of section 686" would require the Veterans' Administration to be in a position to supply or be equipped to render the requested services (see 23 Comp. Gen. 935). And we are of the opinion that the situation of being in a position to render service cannot be artificially created by the promulgation of an administrative regulation under 38 United States Code 621, which would subordinate statutory beneficiaries of the Veterans' Administration to beneficiaries of other agencies and constitute a relinquishment of the Veterans' Administration's primary responsibility."

We submit that under 38 United States Code 610 a war veteran in need of hospitalization for a non-service-connected disability, if unable to defray the expenses of necessary care, is a statutory beneficiary of the VA and cannot be subordinated to beneficiaries of other Federal agencies by promulgation of an administrative regulation under 38 United States Code 621.

It will be interesting to see what effect the Comptroller General's opinion will have on the "cross-servicing" agreement.

The Deputy Assistant Secretary for Administration, Department of Health, Education, and Welfare, when testifying before the House Committee on Government Operations, stated that the admission priority for Public Health Service beneficiaries was an essential element of the HEW plan to close PHS hospitals. He strongly indicated that if the admission priority could not be granted, HEW would have to reconsider and revise its proposal. Yet, we understand that for all practical purposes the PHS facilities at Chicago and Memphis have been closed.

Had the provisions of S. 1917 been in effect, the appropriate committees of Congress would have had the authority to examine the propriety and legality of all aspects of the HEW proposal before action was instituted to phase out certain Public Health Service hospitals.

For the reasons stated above, the American Legion urges favorable action on S. 1917. Thank you.

STATEMENT SUBMITTED TO THE SENATE MERCHANT MARINE AND FISHERIES SUBCOMMITTEE OF THE SENATE COMMITTEE ON COMMERCE CONSIDERING S. 1917, ON BEHALF OF THE AMERICAN MARITIME ASSOCIATION

My name is Reginald A. Bourdon and I am assistant legislative director of the American Maritime Association. This association has a membership of approximately 150 shipping companies which operate in both the domestic and foreign commerce of the United States. As employers of seamen, these companies are vitally interested in marine hospitals and their continued operation. For that reason this association endorses S. 1917 and urges its speedy passage.

S. 1917 would amend the 1936 Merchant Marine Act by adding a new section which would prohibit the transfer of the responsibilities and functions of providing medical, surgical, and dental treatment and hospitalization for seamen, in whole or in part, to any other department or agency of the United States and would prohibit the termination of any such services of the Public Health Service without the consent of the appropriate committees of Congress. The American Maritime Association believes that such a measure merely reiterates the intent of Congress and the many declarations of congressional policy that have been expressed in the past.

One of the most recent expressions of this policy occurred during the 88th Congress and is recorded in Report 1923 accompanying H.R. 12711. At that time the Senate Committee on Appropriations for Independent Offices stated "that this hospital program has been in effect for well over a century and a half and that its continuance is a matter of congressional policy—not one of abstract executive discretion." Unfortunately the Bureau of the Budget has often hampered the administration of marine hospitals under the Public Health Service. With the advent of each new administration its refusal to provide adequate funds for capital improvements and major repairs has led to the deterioration of many facilities. The legislation under consideration would serve warning to the Bureau of the Budget that Congress has a vital interest in the continued operation of such hospitals and may serve to convince it of congressional determination to provide medical assistance to U.S. seamen.

This legislation would also prevent the initiation of plans to close seven Public Health Service hospitals and the transfer of seamen in other hospitals to Veterans' Administration installations. The testimony which has been presented before various committees of Congress during this session offered factual evidence that such closings and transfers are based on an unrealistic appraisal of current Veterans' Administration hospital capabilities and an apparent lack of understanding for the needs of merchant seamen.

The possible loss of medical care for U.S. seamen, which is threatened by administration plans to close seven Public Health Service hospitals, cannot be regarded lightly by the maritime industry. Should medical care and treatment be curtailed, the industry would be forced to provide substitutes. No program devised by the maritime industry, however, could equal or measure up to the medical care now provided by marine hospitals. Also of great significance is the fact that the maritime industry cannot afford to provide substitute programs.

The American Maritime Association believes that S. 1917 is the proper vehicle for overseeing the continued operation of marine hospitals under the Public Health Service. A system of marine hospitals is essential to the continued efficiency and health of America's seamen. This association does not believe that any substitute under consideration by this administration is lawful. No substitute should be permitted. We urge that this committee give favorable consideration to S. 1917 and hope that this measure will be acted upon favorably by both Houses of Congress.

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