to the control of outdoor advertising; to the Committee on Public Works.

H.R. 11285. A bill to amend section 131 of title 23 of the United States Code relating to the control of outdoor advertising; to the Committee on Public Works.

By Mr. TALCOTT:

H.R. 11286. A bill to amend titles 18 and 39, United States Code, to make a certain category of material, designed to appeal primarily to the prurient interests of the viewer, reader, or listener, nonmailable to minors, and nonmailable as second-, third-, or fourth-class matter to any person; to the Committee on the Judiciary.

H.R. 11287. A bill to amend title 39, United States Code, to make a certain category of material, designed to appeal primarily to the prurient interests of the viewer, reader, or listener, nonmailable to minors, and nonmailable as second-, third-, or fourth-class matter to any person, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. WALDIE:

H.R. 11288. A bill to repeal the first section of the act of July 15, 1968, relating to the land and water conservation fund; to the Committee on Interior and Insular Affairs.

H.R. 11289. A bill to amend section 4005 of title 39, United States Code, to restore to such section the provisions requiring proof of intent to deceive in connection with the use of the mails to obtain money or property by false pretenses, representations, or promises; to the Committee on Post Office and Civil Service.

By Mr. WAMPLER:

H.R. 11290. A bill to amend title 10 of the United States Code to prohibit the assignment of a member of an armed force to combat area duty if certain relatives of such member died while serving in the Armed Forces in Vietnam; to the Committee on Armed Services.

By Mr. WATTS:

H.R. 11291. A bill to amend title II of the Social Security Act so as to liberalize the conditions governing eligibility of blind persons to receive disability insurance benefits thereunder; to the Committee on Ways and Means.

By Mr. WHALEN:

H.R. 11292. A bill to authorize the Secretary of Commerce to conduct research and development programs to increase knowledge of tornadoes, squall lines, and other severe local storms, to develop methods for detecting storms for prediction and advance warning, and to provide for the establishment of a National Severe Storms Service; to the Committee on Interstate and Foreign Commerce.

By Mr. WHITE:

H.R. 11293. A bill to amend title 5, United States Code, to correct inequities with respect to the overtime, night, holiday, and Sunday pay of certain employees of the Departments of Agriculture and Health, Education, and Welfare, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. WILLIAMS:

H.R. 11294. A bill to amend the Communications Act of 1934 to establish orderly procedures for the consideration of applications for renewal of broadcast licenses; to the Committee on Interstate and Foreign Commerce.

By Mr. CHARLES H. WILSON:

H.R. 11295. A bill to repeal section 14(b) of the National Labor Relations Act, as amended, and section 705(b) of the Labor-Management Reporting and Disclosure Act of 1959, and to amend the first proviso of section 8(a)(3) of the National Labor Relations Act, as amended; to the Committee on Education and Labor.

H.R. 11296. A bill to amend section 8(b)(4) of the National Labor Relations Act, as amended, with respect to strike at the sites of construction projects; to the Committee on Education and Labor.

H.R. 11297. A bill to apply the prevailing wage provisions of the Davis-Bacon Act to the construction, modification, alteration, repair, painting, or decoration of buildings leased for public purposes; to the Committee on Public Works.

By Mr. ZWACH:

H.R. 11298. A bill to provide for an annual conference between representatives of the beef industry, the Secretary of Agriculture, and representative of other departments and agencies of the Federal Government to consider problems relating to the export of beef and beef products from the United States and related international trade problems, and for other purposes; to the Committee on Agriculture.

By Mr. COLLIER:

H.J. Res. 719. Joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for men and women; to the Committee on the Judiciary.

By Mr. MURPHY of New York:

H. Con. Res. 254. Concurrent resolution, support of gerontology centers; to the Committee on Education and Labor.

MEMORIALS

Under clause 4 of rule XXII,

166. Mr. HICKS presented a memorial of the House of Representatives of the Washington State Legislature, through which, by a vote of 96 to 0, the said house seeks to provide that income from increases in social security benefits or public or private pensions or annuities shall not be counted as income for establishing eligibility for Veterans' Administration benefits, which was referred to the Committee on Veterans' Affairs.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. ADDABBO:

H.R. 11299. A bill for the relief of Fabio Rodriguez; to the Committee on the Judiciary.

By Mr. BIAGGI:

H.R. 11300. A bill for the relief of Catello, Garcia, and Adriana Striano; to the Committee on the Judiciary.

By Mr. BROYHILL of Virginia (by request):

H.R. 11301. A bill for the relief of Mrs. Edith Arbogast and her children, Edward Lee Arbogast, and Harold Leroy Arbogast; to the Committee on the Judiciary.

By Mr. DICKINSON:

H.R. 11302. A bill to provide private relief for certain members of the U.S. Navy recalled to active duty from the Fleet Reserve after September 27, 1965; to the Committee on the Judiciary.

By Mr. REES:

H.R. 11303. A bill for the relief of Mr. Dong Yup Lee; to the Committee on the Judiciary.

H.R. 11304. A bill for the relief of Mr. and Mrs. Rinaldo L. I. Mariani and their daughters, Chantal and Fabienne Mariani; to the Committee on the Judiciary.

By Mr. SCHWENGEL:

H.R. 11305. A bill for the relief of James Ryan; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII,

110. The SPEAKER presented a petition of Ralph Borzysewski, Rochester, N.Y., relative to impeachment proceedings, which was referred to the Committee on the Judiciary.

SENATE—*Wednesday, May 14, 1969*

The Senate met at 12 o'clock noon, and was called to order by the Vice President.

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Let your light so shine before men that they may see your good works and glorify your Father who is in Heaven. Matthew 5:16.

Almighty God, renew the energies of our minds and bodies as we dedicate the labor of this day to Thee. Make us to know that the divine vocation is fulfilled in the work of this place as truly as before the altar in the house of worship. Keep our ears open to the call for justice, righteousness, and peace and our souls attuned to the guidance of Thy spirit. May discord and disunity give way to concord and harmony, that this Nation under God may lift high the banner of freemen everywhere and advance Thy kingdom among the nations of the earth.

In the Redeemer's name. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, May 13, 1969, be dispensed with.

The VICE PRESIDENT. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States submitting nominations were communicated to the Senate by Mr. Geisler, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session,

The VICE PRESIDENT laid before the Senate sundry messages from the President of the United States submitting sundry nominations, which were referred to the Committee on the Judiciary.

(For nominations this day received, see the end of Senate proceedings.)

LIMITATION ON STATEMENTS DURING TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that statements in relation to the transaction of routine morning business be limited to 3 minutes.

The VICE PRESIDENT. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees be authorized to meet during the session of the Senate today.

The VICE PRESIDENT. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nominations on the Executive Calendar, beginning with "New Reports."

There being no objection, the Senate proceeded to the consideration of executive business.

The VICE PRESIDENT. The nominations on the Executive Calendar will be stated, as requested by the Senator from Montana.

U.S. ARMY

The bill clerk proceeded to read sundry nominations in the U.S. Army.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The VICE PRESIDENT. Without objection, the nominations are considered and confirmed en bloc.

U.S. NAVY

The bill clerk read the nomination of Vice Adm. Ray C. Needham to be vice admiral.

The VICE PRESIDENT. Without objection, the nomination is considered and confirmed.

U.S. MARINE CORPS

The bill clerk read the nomination of Maj. Gen. Louis B. Robertshaw to be lieutenant general.

The VICE PRESIDENT. Without objection, the nomination is considered and confirmed.

DEPARTMENT OF JUSTICE

The bill clerk read the nomination of Victor Cardosi, of New Hampshire, to be U.S. marshal for the district of New Hampshire.

The VICE PRESIDENT. Without objection, the nomination is considered and confirmed.

NOMINATIONS PLACED ON THE SECRETARY'S DESK—AIR FORCE, ARMY, NAVY, AND MARINE CORPS

The bill clerk proceeded to read sundry nominations in the Air Force, the Army, the Navy, and the Marine Corps, which had been placed on the Secretary's desk.

The VICE PRESIDENT. Without objection, the nominations are considered and confirmed en bloc.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

The VICE PRESIDENT. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to, and the Senate resumed the consideration of legislative business.

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Nos. 157 and 158.

The VICE PRESIDENT. Without objection, it is so ordered.

AUTHORIZATIONS OF APPROPRIATIONS FOR METRIC SYSTEM STUDY

The bill (S. 1287) to authorize appropriations for fiscal years 1970, 1971, and 1972 to carry out the metric system study was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 1287

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there are hereby authorized to be appropriated for the use of the Department of Commerce during fiscal years 1970, 1971, and 1972, such sums, not to exceed a total of $2,500,000, as may be necessary to carry out the purposes of the Act of August 9, 1968 (82 Stat. 693; Public Law 90–472).

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–168), explaining the purposes of the bill.

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

PURPOSE

S. 1287, would authorize the appropriation to the Department of Commerce of a total of $2,500,000, over a 3-year period, to enable the Secretary to conduct the study of the metric system which was authorized last year by Public Law 90–472. In that study, the Secretary is directed to appraise the desirability and practicability of increasing use of metric weights and measures in this country, to examine the feasibility of retaining and promoting international use of engineering and products standards based on our customary measurement units, and to evaluate the costs and benefits of the various alternative courses of action available to the United States.

BACKGROUND AND NEED

The metric system of measurement is a decimalized system of weights and measures based on the meter as the unit of length and the gram as the unit of mass. Since the metric system was first introduced in France in the early 19th century, its use has accelerated rapidly until today an estimated 90 percent of the earth's population uses that system of measurement. With the announcement in 1965 by the United Kingdom that it will convert to metric measurements over a period of 10 years, and the active consideration of similar action by Australia, it is conceivable that the United States and Canada will shortly stand alone in their use of the English or customary inch-pound system of measurement.

Faced with this evidence of expanding world wide use of metric measurement which could adversely affect U.S. trade with other countries as well as international defense and scientific programs, the 90th Congress authorized a study of the advantages and disadvantages of increased use of the metric system within the United States. That law authorized the Secretary to commence the study with funds, not to exceed $500,000, which had been previously appropriated to the Department of Commerce. During fiscal 1969, Commerce will spend approximately $330,000 on this project, but it estimates that an additional $2,500,000 will be necessary if it is to adequately complete the study.

The Commerce Committee held 1 day of hearings on the metric study legislation on November 15, 1967. At this hearing both Government and industry witnesses strongly supported the proposed study. This authorization bill was sent to Congress in January by the Johnson administration, and the Nixon administration has endorsed it.

PROVISIONS

The bill contains a single provision which would authorize the appropriation to the Department of Commerce "during fiscal years 1970, 1971, and 1972, such sums, not to exceed a total of $2,500,000, as may be necessary to carry out * * *" the metric system study authorized by Public Law 90–472.

COST

The bill would authorize the Secretary to expend a total of $2,500,000 over a 3-year period, commencing with fiscal 1970, to conduct the study. The Nixon administration budget for fiscal 1970 has earmarked $700,000 for this project.

EXTENDING THE NATIONAL COUNCIL ON MARINE RESOURCES AND ENGINEERING DEVELOPMENT TO JUNE 30, 1970

The bill (H.R. 8794) to amend the Marine Resources and Engineering Development Act of 1966 to continue the National Council on Marine Resources and Engineering Development, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–169), explaining the purposes of the bill.

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

PURPOSE OF THE BILL

The purpose of the bill, H.R. 8794, is to amend the Marine Resources and Engineering Development Act of 1966 to continue the National Council on Marine Resources and Engineering Development.

In amending the Marine Resources and Engineering Development Act of 1966, the bill would—

(1) Change the expiration date of the National Council on Marine Resources and Engineering Development from June 30, 1969, to June 30, 1970, an extension of authorized existence of one year beyond that provided in Public Law 89–454, as amended by Public Law 90–242.

(2) Reduce the annual authorized appropriation in section 9 of Public Law 89–454 from $1,500,000 to $1,200,000.

An identical bill (S. 1925) to H.R. 8794, was introduced in the Senate cosponsored by 20 Senators, including 17 members of the Committee on Commerce. As the House of Representatives acted first on its identical bill, the Committee on Commerce has accepted the legislation proposed by the House of Representatives without amendment and recommends passage by the Senate.

BACKGROUND OF THE LEGISLATION

The Marine Resources and Engineering Development Act was enacted on June 17,

1966. The act declared a policy and objectives to develop, encourage, and maintain a coordinated, comprehensive, and long-range national program of marine science, created a National Council of Marine Resources and Engineering Development, and also created a Commission on Marine Science, Engineering, and Resources, both for limited periods. The 1966 act as amended provided that the Commission make its final report to the President not later than January 9, 1969, and would expire 30 days after, which have occurred. The act as amended also provided that the life of the Council should expire on June 30, 1969. The pending bill (H.R. 8794) would extend the life of the Council to June 30, 1970.

Reasons for extending the Council for 1 year following the present expiration date appear clear to those participating in the enactment of the Marine Resources and Engineering Development Act of 1966.

One of the duties assigned to the Commission on Marine Science, Engineering, and Resources was to recommit a governmental organizational plan with estimated cost. This, with other Commission recommendations, was to be submitted to the President, via the Council, and to the Congress. This, as stated previously, was done early in January 1969. In addition to the Commission's recommendation of a governmental organizational plan, the Commission report also contained 212 recommendations of significance relating to many aspects of marine affairs.

The 91st Congress began its first session January 3 of this year; the new Executive administration commenced on January 20.

As well stated in the report of Chairman Garmatz of the Merchant Marine and Fisheries Committee of the House of Representatives." * * * the fact, in view of the voluminous and comprehensive scope of the Commission's excellent report, that it is most unlikely that legislation establishing a new organizational structure for a national program in marine sciences can be enacted during the remainder of this fiscal year, it seemed appropriate, and, in fact, essential that the life of the Council should be extended for a reasonable period in order to give Congress and the new administration a reasonable time to review and act upon the numerous recommendations of the Commission."

The Marine Resources and Engineering Development Act of 1966 authorized appropriations not to exceed $1,500,000 for any one fiscal year. This authorization was to provide administrative expenses for both the Council and the Commission. Termination of the Commission makes possible reduction of the authorization stated in section 9 or the act from $1,500,000 to $1,200,000.

COST OF THE LEGISLATION

Enactment of this legislation will not involve any additional cost to the Government.

ORDER OF BUSINESS

The VICE PRESIDENT. Is there further morning business?

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ALLEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The VICE PRESIDENT. Without objection, it is so ordered.

COL. MARION RUSHTON OF MONTGOMERY, ALA.

Mr. ALLEN. Mr. President, it was not until yesterday, after the Senate recessed, that I learned the sad news of the death of Col. Marion Rushton of Montgomery, Ala.

He was an outstanding attorney, an able and dedicated public servant, and a southern gentleman in every lofty sense of the word.

It was my honor and pleasure to be numbered among his friends for some 30 years, so I feel a deep sense of personal loss in his passing.

Speaking on behalf of the people of Alabama and in my own behalf, I say that Alabama and the Nation are poorer because of his death, but richer because of the life he lived and the example he set.

I make these remarks today in order that there may be recorded for all time in the archives of this Nation the respect, the veneration, and the high esteem which the people of Alabama had for this great Alabamian, this great American.

I ask unanimous consent that an editorial published in the Montgomery Advertiser of May 13, 1969, be printed in the RECORD at this point.

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

[From the Montgomery Advertiser, May 13, 1969]

COL. MARION RUSHTON

With the death of Marion Rushton at 75, the thinning ranks of such gentlemen-scholars of the old school are diminished by more than one.

Col. Rushton was worth many score of the kind who attach themselves to a cause—states rights, in his case—but lack the eloquence, conviction, sincerity and philosophical underpinnings he had in such abundance.

The present writer first met him in 1948, after he had resigned as Democratic National Committeeman in protest to the national party's civil rights policies. He joined forces with the Dixiecrats (a word he scorned, since he thought it maligned his concept of states rights).

We were fresh out of college and not at all in sympathy with the Dixiecrats. Thus we assumed that in going to interview Col. Rushton, we would find just another bombastic, unreconstructed rebel, despite his towering reputation, formidable educational background (University of Virginia, Harvard, the Sorbonne) and his military record. Just a few years before he had won the Legion of Merit for organizing a compassionate judicial review of 60,000 desertion cases in Europe at the close of World War II.

The occasion for the interview was an impending debate between him, representing the States Rights Party, a representative of the Democratic loyalists and, of all people, a young crewcut Ph.D. from somewhere who had accepted the invitation to present the case for Henry Wallace's crazy Progressive Party. If memory serves, the Republicans were not represented in the debate, which was held at Lanier Auditorium.

When we arrived, on the afternoon before the debate, at his law office in the Bell Building, the Colonel was the soul of courtesy and goodwill, but something was obviously irritating him. After a few pleasantries, he revealed what it was. An *Advertiser* editorial had treated the Progressive Party's speaker shabbily, in Col. Rushton's opinion.

Of course he regarded Henry Wallace and his party as abominations, but the Colonel was offended by the breach of civility to a guest to the city. His words come back over almost 21 years:

The editorial was "petulant," he said, and unbecoming a city and region which prided itself in hospitality. He did not bother to mention that he opposed everything the Progressive Party stood for. It was characteristic of him that he did not feel compelled to make that disclaimer: his objection was to what he regarded as poor manners.

We have recalled this because national manners have all but vanished. He lived by them as he did by the law. Not to put too fine a point on it, he was that kind of Southern gentleman, of strong opinions, but with a courteous regard for the opposite opinions of others, which many Southerners imagine themselves to be but often are not.

Few men would have declined to join the prosecution of the Nazi war criminals at Nuremburg, but Col. Rushton did because he was fundamentally opposed to the precedent of trying a crime which was defined as such "ex post facto," as he said. He hated the Nazis as much as any man and was revolted by their atrocities, but he stood fast on what he believed: that it was drumhead justice which made the law "an instrument of propaganda."

The attention he gave to deserters was another example of his departure from the conventional wisdom of the military at that time. Desertion in time of war is an enormous crime and even though many cases occurred after victory, the war was not officially over.

"You had to be careful with those cases," Col. Rushton once said. "Some of the boys were just simply homesick and wanted to get back to the farm. But there were others who schemed and plotted to time their desertion with troop pull-outs."

The Legion of Merit citation for his work cited his "rare judgment and understanding" in handling the cases and the fine balance he showed between humanitarianism and discipline.

Nothing less should have been expected of Marion Rushton, among the last of a vanishing breed.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. PASTORE. Mr. President, I ask unanimous consent that the order of the quorum call be rescinded.

The VICE PRESIDENT. Without objection, it is so ordered.

FINANCIAL STATEMENT BY SENATOR PASTORE

Mr. PASTORE. Mr. President, this being May 14, 1969, and having already met the requirements of disclosure as prescribed by the Senate rules, so that there will be no question of conflict of interest, I make the following declaration:

First. Mrs. Pastore and I received dividends in the amount of $1,077.36 during the calendar year 1968 on the following shares of stock:

First National Bank of Boston, 30 shares.

Chase Manhattan Bank, 60 shares.

Columbus National Bank of Providence, 420 shares.

Providence Gas Co., 24 shares.

Washburn Wire Co., 200 shares.

Industrial National Bank of Providence, 110 shares.

Second. For the calendar year 1968 I received $450 in director's fees from the Columbus National Bank.

Third. I received no attorney's fees.

Mr. President, I suggest the absence of a quorum.

The ICE PRESIDENT. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ALLEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The VICE PRESIDENT. Without objection, it is so ordered.

TVA AT 36

Mr. ALLEN. Mr. President, I wish to call to the attention of the Senate that next Sunday, May 18, marks the 36th anniversary of a unique and successful experiment in the history of our Nation and one of the greatest victories ever won for the people of America. I am, of course, speaking of that great engine of democracy, the Tennessee Valley Authority.

In my judgment TVA is a magnificent achievement of which every American should be proud, and in particular the Congress of the United States, for TVA is peculiarly a child of the Congress.

Launched by the initiative and to the credit of the Congress, TVA was bread upon the waters that has come back a three-layered cake. I think it is safe to say that the accomplishments of TVA have far exceeded every expectation of the Congress. Since 1933 across-the-board progress has been the rule in the Tennessee Valley, and I should like to take a few moments to give the Senate some facts and highlights of the TVA records for the past three and a half decades.

We recall that in creating the Tennessee Valley Authority, the Congress told the agency to control the waters of the entire Tennessee River system that floods might be reduced, to provide a navigation channel for the movement of commerce and to produce electricity to be made available to the people of the area at rates which would encourage use. In addition, the Congress instructed TVA to put the idle chemical plants at Muscle Shoals to work in order that the cost of fertilizer to the American farmer might be lowered and the quality improved. The Congress not only told TVA to control a river and operate a chemical facility, but to also undertake a general program of resource development to make certain that the land, the water, and the forests of the Tennessee River Valley would provide a better living for the people. The whole concept was experimental, designed to try out new ideas and new methods.

Yes, boldness and imagination were written into the act creating TVA, and perhaps the most unique part of the law was for Congress to locate the headquarters of a Federal agency away from Washington, D.C., and place its management down in the valley, close to the people it would serve. All too often we have witnessed the ineptness of decisions reached far away from the people those decisions affect. I think that the matchless achievements of TVA can, in large measure, be attributed to the fact that Congress freed it, insofar as possible, from redtape, from the ailments of bureaucracy, from centralized control in Washington, D.C., by giving the powers of decision to the men in the field.

When TVA was created in 1933, navigation on the Tennessee River was negligible. It was a moody and inconstant river, changing from season to season, an angry flood in spring and summer, a sluggish trickle in summer and autumn. Today, a series of majestic dams has converted the 650-mile length of the Tennessee River into an unbroken chain of lakes for year-round navigation for today's big inland barges and towboats.

In 1933 the Tennessee River carried less than a million tons of barge traffic, most of it local sand and gravel movements. Last year this modern water highway carried more than 22½ million tons, most of it interregional traffic between the Tennessee Valley and other inland waterway ports. Freight traffic each year on the Tennessee River now totals more than 2½ billion ton-miles, which is roughly 80 times as much as river traffic was in 1933. In 1933 approximately $100,000 was saved by shippers using barge transportation on the Tennessee River. Last year the savings were approximately $35,000,000. In addition, private industry has invested nearly $2 billion in waterfront plants and terminals, and a system of public docks has been built by the State of Alabama along its portion of the river.

In 1933 there was no significant flood control on the Tennessee River, and the flooding of homes and farms and towns had occurred again and again. Today floods have been controlled. Today the people know that when the rains come and the water rushes down in angry torrents, the same massive dams which created the navigation channel will stand watch through all the days and nights of peril, silent guardians of their safety. Private investment is protected and the people are safe. TVA dams provide more than 12 million acre-feet of storage capacity to regulate floods on the Tennessee River and its major tributaries. These flood control operations have prevented an estimated $369 million in flood damages—not only by controlling floods on the Tennessee, but by helping reduce flood crests downstream on the lower Ohio and Mississippi Rivers.

The TVA power program is perhaps the most famous and important part of the mission of TVA to comprehensively develop the natural resources of the Tennessee Valley. The same dams that provide a modern waterway and control floods also provide vast amounts of electric power. The largest power system in the United States has been developed and serves the electric needs of an 80,000 square mile area. The people of the region are using power in their homes, on their farms and in their private enterprises, and the Nation's security has been fortified by TVA power used for our defense effort. TVA sells power at wholesale rates to 108 municipal, 50 cooperative and two private electric distribution systems. It also sells power direct to 42 industries and 10 Federal installations with large or unusual power requirements.

When TVA began power operations in 1933, only a few of the area's farm homes had electric service, and most city homes used it only for lighting. Today, electricity is available everywhere in the region.

Under the high-use, low-cost approach, the use of electricity has increased faster in the Tennessee Valley than anywhere else in the country. Transmission towers rise high from the valleys and hills, supporting nearly 15,000 miles of lines which carry to the people power generated at the multipurpose dams and gigantic modern steam plants built by TVA. In 1933 there were only 225,000 residential electricity consumers in the Valley. Today TVA reaches more than 1,800,000 homes and farms through local municipal and cooperative electric systems. In 1933 TVA consumers used an average of 600 kilowatt hours of electricity in their homes every year. Today their annual use has increased twentyfold, more than twice the national average.

The great program of rural electrification began in the Tennessee Valley. In 1933 only 3 percent of the farms in the region were connected for electric service. Today more than 95 percent of the farms use electricity in their homes and in their barns. Every year the farms of the area use as much power as all the region used, in all the towns and cities, in all its business enterprise, before TVA.

The use of electricity in the valley is continuing to grow rapidly, and if the present growth in annual sales of electricity to consumers continues as expected, the power requirements of the region will double in the next 10 years. To meet these immense demands, TVA now has under construction or scheduled more new generating capacity than at any time in its history, including the construction of the world's largest nuclear powerplant near Athens, Ala.

TVA has also demonstrated how the same water which generates power, provides navigation, and controls floods can be manipulated to abate malaria. In 1933 malaria was a crippling, enervating disease in the valley. Today malaria is virtually nonexistent, and the demonstration given by TVA in which the manipulation of the water level is combined with the careful use of chemicals has been exported around the globe.

The Tennessee River, however, is only one resource which is providing more abundantly for the people because of TVA. The forests which cover more than half of the Tennessee Valley are one of its key natural resources. Prior to TVA overharvesting and neglect had left the forests of the area poor in quality and thinly stocked with timber. Erosion was rampant and fires destroyed or damaged 10 percent of the forests each year.

Since 1933 more than 603 million seedlings have gone from TVA nurseries to stimulate forestation progress and to control erosion. Today fire is no longer a major hazard to the forests. Loss from

fire has been reduced to less than one-half of 1 percent. Forest owners from large operators to farm woodlots have learned sustained-yield practices which will preserve the productiveness of forest lands into perpetuity.

Wood products make up one of the valley's chief industries, ranking third in the number of jobs it provides. The value of wood products from these industries is more than $700 million a year, seven times greater than it was in the 1930's. Millions of acres of the soil have been rebuilt and the scars of erosion are healing. Where erosion was once a problem on 7 million acres of valley land in the 1930's, it now affects less than 5 percent of that figure. Where acres were gullied and bare in 1933, today trees stand tall and pastures lie green. The landscape is more beautiful and the land more productive.

Hand-in-hand with the reforestation of the area, the soil of the Tennessee Valley is also being rebuilt through new systems of agriculture based on high-analysis phosphate fertilizers which have been developed and experimentally manufactured at the chemical nitrate plants at Muscle Shoals, Ala. Thousands of farms all over the country have demonstrated TVA fertilizers in actual farm operations, and agricultural colleges in almost every State and more than 200 manufacturers and distributors are working with TVA in various fertilizer research and educational projects. Technical information is made available free to industry. More than 450 fertilizer and chemical plants from Maine to California are licensed to use TVA's fertilizer developments. Use of products from the National Fertilizer Development Center at Muscle Shoals has helped to bring about a fivefold growth in U.S. fertilizer consumption since World War II, and with better fertilizers, the cost of plant nutrients to the farmer has dropped steadily.

Fertilizer, together with electricity, has given the farmer the tools he needs to change his whole farm management, to reverse a century's trend of soil depletion, to make his individual prosperity an addition to, and not a drain upon, our common resource base—soil.

TVA's vast experience and fertilizer know-how are also being applied around the world to help meet an impending world food crisis. Each year several hundred technicians visit Muscle Shoals to attend programs and gain knowledge to establish fertilizer industries of their own. In addition, TVA sends teams of specialists abroad to advise governments of developing nations on fertilizer production and use.

The Fertilizer Center at Muscle Shoals is also kept ready to be converted to its original national defense use. We recall that it supplies 60 percent of the total phosphorus requirements of the military for bombs, fire, and smoke screens during World War II, and it has been the sole supplier of phosphorus to the U.S. Army throughout the Vietnam conflict without interruption to nondefense demands.

The Tennessee Valley is no longer the heart of what was once called America's economic problem No. 1. In the last three and a half decades U.S. average income multiplied 8½ times, but the average income in the valley region multiplied more than 13 times, reaching 71 percent of the national average. In 1933, 62 percent of the region's people depended upon agriculture for a living; this has dropped to 12 percent. In 1933 only 12 percent of the region's employment was in manufacturing, but since that time the number of manufacturing employees has multiplied four times. Since 1960 manufacturing employment in the Tennessee Valley has increased 37 percent, compared to 14 percent nationally. Progress toward more finished products has meant higher wages and greater return to valley industry.

Yes, the people of the TVA area have outstripped the Nation in their progress—in their agriculture, their business, their industry, in the increase of their personal incomes and in the comforts and conveniences of modern life.

This amazing economic growth has benefited the entire Nation by making the Tennessee Valley a stronger and more productive part of the national economy, with more purchasing power to use products from other regions. Rising incomes have increased the region's share of tax support for national programs. Federal income tax collections from individuals in the Tennessee Valley area are now twice as much as it would have been if the region's percentage share of the national total had remained as small as it was in 1933.

Mr. President, I am proud when I survey the financial record of the Tennessee Valley Authority. Since 1933 the TVA power program, which is required by law to pay its own way, has covered all the costs of operation, including depreciation, and in addition has provided the Government a return which has averaged nearly 5 percent on investment. More than $646 million from proceeds have been reinvested in the system, enhancing the Government's investment without requiring appropriation. Out of earnings TVA is repaying to the U.S. Treasury all funds which have been appropriated and employed in its power program and is consistently ahead of the schedule fixed by law for this refund.

The TVA unified resource development program is also related to the valley's urban and industrial growth. Today TVA is working with communities on planning programs to make the best use of reservoir shorelines. Through its tributary area development program, TVA is working with citizens associations and public agencies in valley areas that face special needs and opportunities for economic growth. TVA has also stepped up its work on air and water pollution control in cooperation with valley States and with national air and water pollution control agencies. New concepts in recreation development are being demonstrated and planning is underway to develop new programs to protect and preserve still unspoiled scenic resources. In these and other activities, the unified approach to resource development is proving as useful today as it was in meeting the needs of the 1930's.

These, Mr. President, are some of the achievements of the Tennessee Valley Authority in the last three and a half decades. This is a record of men at work with their Government to provide a better living for all the people. This partnership with the people is the hallmark of TVA.

Mr. President, the accomplishments of TVA and the many contributions it has made to the economic well-being of the people and to the strength of our Nation are, of course, immense, breathtaking to see, and stimulating to report. But they are not the end purpose of TVA. The Tennessee Valley Authority was not established by Congress to deal in commodities and statistics. It deals in human happiness. With TVA power production, flood control, navigation, soil improvement, and conservation, malaria eradication, and recreation are all but means to that end.

Judgment upon the TVA balance sheet must be passed with that goal in mind. I am sure that all will agree that TVA's dealings in happiness have to put the ledger of this great enterprise in the black.

EXECUTIVE COMMUNICATIONS, ETC.

The VICE PRESIDENT laid before the Senate the following letters, which were referred as indicated:

REPORT OF DISBURSEMENTS OF APPROPRIATIONS FOR DEFENSE CONTINGENCIES

A letter from the Deputy Secretary of Defense, transmitting, pursuant to law, a report of disbursements made against the contingencies, defense, appropriation contained in the Department of Defense Appropriation Act, fiscal year 1969 (Public Law 90-580); to the Committee on Appropriations.

REPORT ON NUMBER OF CIVILIAN OFFICERS AND EMPLOYEES IN EXECUTIVE BRANCH OF THE GOVERNMENT

A letter from the Director, Bureau of the Budget, Executive Office of the President, reporting, pursuant to law, on the number of civilian officers and employees in the executive branch for the quarter ending March 31, 1969 (with accompanying papers); to the Committee on Finance.

PROPOSED LEGISLATION TO AUTHORIZE THE ADMINISTRATOR OF GENERAL SERVICES TO ENTER INTO CONTRACTS FOR JANITORIAL SERVICES, TRASH REMOVAL, AND SIMILAR SERVICES

A letter from the Acting Administrator, General Services Administration, transmitting a draft of proposed legislation, to amend the Federal Property and Administrative Services Act of 1949, as amended, to authorize the Administrator of General Services to enter into contracts for janitorial services, trash removal, and similar services in federally owned and leased properties for periods not to exceed 3 years, and for other purposes (with accompanying papers); to the Committee on Government Operations.

PROPOSED LEGISLATION TO AUTHORIZE THE APPROPRIATION OF FUNDS FOR PADRE ISLAND NATIONAL SEASHORE

A letter from the Secretary of the Interior, transmitting a draft of proposed legislation

to authorize the appropriation of funds for Padre Island National Seashore in the State of Texas and for other purposes (with accompanying papers); to the Committee on Interior and Insular Affairs.

SUSPENSION OF DEPORTATION OF ALIEN—WITHDRAWAL OF NAME

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, withdrawing the name of Woo Huey Tip from a report relating to aliens whose deportation has been suspended, transmitted to the Senate on October 1, 1968; to the Committee on the Judiciary.

PETITIONS AND MEMORIALS

Petitions, etc., were laid before the Senate, or presented, and referred as indicated:

By the VICE PRESIDENT:

A concurrent resolution of the Legislature of the State of Hawaii; to the Committee on Post Office and Civil Service:

"S. CON. RES. 18

"Concurrent resolution requesting the Congress of the United States to enact legislation providing for automatic increases in annuities for retired civil service employees

"Whereas the Congress from time to time authorizes general increases in wages, salaries and other compensation paid to groups of employees of the United States government; and

"Whereas such increases do not usually provide for any increases in the annuities paid from the retirement and disability fund, so there is an ever-increasing inequity between the compensation paid to active federal employees and the annuities paid to retired employees; and

"Whereas the ever escalating inflation of prices and increased medical needs affect the retirees more than any other group; and

"Whereas H.R. 4280, which was introduced into the 91st Congress, 1st Session, by Congressman Matsunaga would correct this inequity and provide federal retired employees with a more reasonable standard of living: Now, therefore, be it

"Resolved by the Senate of the Fifth Legislature of the State of Hawaii, Regular Session of 1969, the House of Representatives concurring, That the Congress of the United States be, and it hereby is, respectfully requested to enact H.R. 4280, 91st Congress, 1st Session, into law; and be it further

"Resolved, That duly certified copies of this Concurrent Resolution be sent to the Honorable Richard B. Russell, President Pro Tempore of the United States Senate; to the Honorable John W. McCormack, Speaker of the United States House of Representatives, and to all members of Hawaii's delegation to the United States Congress.

"THE SENATE OF THE STATE OF HAWAII, MAY 8, 1969, HONOLULU, HAWAII

"We hereby certify that the foregoing Concurrent Resolution was adopted by the Senate of the Fifth Legislature of the State of Hawaii, Regular Session of 1969 on April 23, 1969.

"DAVID C. MCCLUNG,
"President of the Senate.
"SEICHI HIRAI,
"Clerk of the Senate.

"THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII, MAY 8, 1969, HONOLULU, HAWAII

"We hereby certify that the foregoing Concurrent Resolution was adopted by the House of Representatives of the Fifth Legislature of the State of Hawaii, Regular Session of 1969 on May 6, 1969.

"TADAO BEPPU,
"Speaker, House of Reprsentatives.
"SHIGETO KANEMOTO,
"Clerk, House of Representatives."

REPORTS OF A COMMITTEE

The following reports of a committee were submitted:

By Mr. SPARKMAN, from the Committee on Banking and Currency, without amendment:

S. 1995. A bill to provide for the striking of medals in commemoration of the 150th anniversary of the founding of the State of Alabama (Rept. No. 91–171).

By Mr. HOLLINGS, from the Committee on Banking and Currency, without amendment:

H.R. 6269. An act to provide for the striking of medals in commemoration of the 300th anniversary of the founding of South Carolina (Rept. No. 91–172).

EXECUTIVE REPORT OF A COMMITTEE

As in executive session,

The following favorable report of a nomination was submitted:

By Mr. EASTLAND, from the Committee on the Judiciary:

Ira De Ment, of Alabama, to be U.S. attorney for the middle district of Alabama.

BILLS INTRODUCED

Bills were introduced, read the first time and, by unanimous consent, the second time, and referred as follows:

By Mr. KENNEDY (for himself, Mr. CANNON, Mr. BAKER, Mr. CRANSTON, Mr. FONG, Mr. GORE, Mr. HARRIS, Mr. HART, Mr. HARTKE, Mr. HUGHES, Mr. INOUYE, Mr. MAGNUSON, Mr. MCCARTHY, Mr. MCGEE, Mr. MCGOVERN, Mr. MONDALE, Mr. MOSS, Mr. MUSKIE, Mr. NELSON, Mr. PELL, Mr. RANDOLPH, Mr. RIBICOFF, Mr. STEVENS, Mr. TYDINGS, and Mr. YOUNG of Ohio):

S. 2165. A bill to enable citizens of the United States who change their residence to vote in presidential elections, and for other purposes; to the Committee on the Judiciary.

(See the remarks of Mr. KENNEDY when he introduced the above bill, which appear under a separate heading.)

By Mr. MOSS:

S. 2166. A bill to designate the Spanish Barb and Andalusian Wild Mustangs as endangered species threatened with extinction, and to provide for their protection; to the Committee on Commerce.

(See the remarks of Mr. Moss when he introduced the above bill, which appear under a separate heading.)

By Mr. JAVITS:

S. 2167. A bill to provide additional protection for the rights of participants in employee pension and profit-sharing-retirement plans, to establish minimum standards for pension and profit-sharing-retirement plan vesting and funding, to establish a pension plan reinsurance program, to provide for portability of pension credits, to provide for regulation of the administration of pension and other employee benefit plans, to establish a United States Pension and Employee Benefit Plan Commission, and for other purposes; to the Committee on Labor and Public Welfare, by unanimous consent, then to the Committee on Finance, when reported, if it contains amendment of the Internal Revenue Code.

(See the remarks of Mr. JAVITS when he introduced the above bill, which appear under a separate heading.)

By Mr. BENNETT (for himself, Mr. MCCARTHY, Mr. HATFIELD, Mr. MILLER, Mr. DOMINICK, Mr. NELSON, Mr. MUNDT, Mr. ALLOTT, Mr. MCGOVERN and Mr. PROXMIRE):

S. 2168. A bill to amend the Tariff Schedules of the United States with respect to the rate of duty on whole skins of mink, to the Committee on Finance.

By Mr. BENNETT:

S. 2169. A bill for the relief of Victor Arturo Hurtado; to the Committee on the Judiciary.

By Mr. MCCLELLAN (by request):

S. 2170. A bill to amend the Federal Property and Administrative Services Act of 1949 with respect to the disposal of excess property and surplus property, and for other purposes; to the Committee on Government Operations.

(See the remarks of Mr. MCCLELLAN when he introduced the above bill, which appear under a separate heading.)

By Mr. METCALF:

S. 2171. A bill for the relief of See Ming Lee; to the Committee on the Judiciary.

By Mr. ERVIN:

S. 2172. A bill to amend an act entitled "An act to prescribe penalties for certain acts of violence or intimidation, and for other purposes," approved April 11, 1968; and

S. 2173. A bill to amend an act entitled "An act to prescribe penalties for certain acts of violence or intimidation, and for other purposes," approved April 11, 1968; to the Committee on the Judiciary, by unanimous consent.

(See the remarks of Mr. ERVIN when he introduced the above bills, which appear under separate headings.)

S. 2165—INTRODUCTION OF A BILL—THE VOTING RIGHTS AMENDMENTS OF 1969

Mr. KENNEDY. Mr. President, on behalf of the Senator from Nevada (Mr. CANNON) and myself, together with 25 other Senators: Senators BAKER, BIBLE, FONG, GORE, HARRIS, HART, HARTKE, HUGHES, INOUYE, MAGNUSON, MCCARTHY, MCGEE, MCGOVERN, MONDALE, MOSS, MUSKIE, PELL, RANDOLPH, RIBICOFF, STEVENS, YOUNG of Ohio, NELSON, TYDINGS, CRANSTON, and WILLIAMS of New Jersey, I introduce, for appropriate reference, legislation to enable citizens who change their residences to vote in presidential elections.

The purpose of the bill is to amend the Voting Rights Act of 1965 to enable citizens of the United States who change their residences to vote in presidential elections.

One of the most distressing facts of our modern democratic process is that millions of American citizens are unable to participate in the election of the President of the United States, because they fail to meet the lengthy and unfair residence requirements established by many of the States. Today, more than ever before, we live in a highly mobile society that encourages all Americans, of whatever race or creed or walk of life, to pull up stakes and make a new start or seek a better opportunity. According to data available from the Bureau of the Census,

a total of about one-sixth of our people move their residences from one State to another every decade. In no small measure, the historical development of our Nation and the continuing vitality of our democratic system is attributable to the exercise by our citizens of their constitutionally protected right to travel freely from State to State throughout the Nation.

For far too many of these citizens, however, their change of residence is accompanied by the loss of one of the most cherished American rights—the right to cast their vote for the election of their President. Ironically, the loss of this right to vote falls especially heavily on many of our ablest and most responsible citizens. Scientists, teachers, corporate executives and employees, professional people, craftsmen, foremen, and semiskilled workers—all of these groups are among the citizens who change their residences most frequently, and who therefore bear the heaviest burden of State and local residence requirements for voting.

The problem that exists for these citizens is hardly a new one. As long ago as 1963, the report of President Kennedy's Commission on Registration and Voting Participation turned national attention to the plight of these "lost" voters. As the Commission concluded:

> No American should be deprived of the right to vote for President and Vice President because he changed his address before the election and did not have time to meet State residence requirements.

Yet, in the 1968 election, as in each preceding presidential election, millions of otherwise eligible American voters were disfranchised by existing State and local residence laws. At the time of the 1968 election, for example, four States imposed a State residence requirement of 6 months, 15 States and the District of Columbia required residence for 1 year, and one State required residence for 2 years before a citizen could cast his vote for President.

Equally serious, in addition to the requirement of State residence, the voting laws in the overwhelming majority of the States also impose separate residence requirements in the city or county and in the election precinct or the local voting unit. As a result, a voter who changes his residence can be disfranchised in a presidential election in one or more of three different ways:

Because he moved from one State to another.

Because he moved within his State from one city or county to another.

Because he moved within his city or county from one election precinct to another.

Whatever the merits of lengthy residence requirements in elections for the Senate and the House of Representatives, or for State and local office, such requirements are hardly valid for presidential elections, where the issues are national and transcend State and local boundaries. The vote of an American citizen for his President is no less valued and no less informed because he moves from Maine to California, or from Minnesota to Texas. The President of the United States is the President of all the people, and no one's vote should be sacrificed because of narrow State or local interests.

In recent years, of course, a number of States have embraced the principle that excessive residence requirements unfairly disfranchise voters in presidential elections, and have enacted special remedial legislation to reduce the residence period for such elections. However, there still remain a significant number of States that continue to impose unreasonably long residence requirements for voting in presidential elections. According to the best available estimates from the Bureau of the Census, nearly 2 million Americans were unable to vote for their President in the 1968 election because they failed to meet State or local residence requirements. Possibly, the number may be even larger—a Gallup poll taken immediately after the election suggests that the number may be as high as 5 million.

I believe that the time is now appropriate for action by Congress to eliminate this unjust discrimination. The bill that I have introduced would amend the Voting Rights Act of 1965 to limit State and local residence requirements for voting in presidential elections to a maximum period of 30 days preceding the election. Under this amendment, citizens who change their residences anywhere within the United States will have a maximum opportunity to participate in the election of their President, and a significant burden on the right to travel will be removed. At the same time, the 30-day statutory residence period will provide ample opportunity to the States to establish orderly procedures and to take reasonable precautions for the prevention of voting frauds.

Somewhat similar bills have already been submitted in this Congress and in previous Congresses, but in many cases they take the form of proposed constitutional amendments. I believe that Congress can and should accomplish this important goal by statute, rather than by amending the Constitution. As recent decisions of the Supreme Court make clear, Congress has broad authority to legislate in this area, and we are not compelled to pursue our goal by the arduous route of constitutional amendment.

The power of Congress to legislate with respect to State residence requirements for voting in presidential elections is perhaps best established by the Supreme Court's recent ruling in the case of Katzenbach against Morgan, decided in 1966. In the Morgan case the Court held, by a strong 7 to 2 majority, that a challenged provision of the Voting Rights Act of 1965 was constitutional. At issue in the case was section 4(e) of the act, now section 1973b(e) of title 42 of the United States Code, which provided that no person who had a sixth-grade education and who met certain other requirements could be denied the right to vote in any election—Federal, State, or local—because of his failure to pass a literacy test in English. Section 4(e) originated as an amendment proposed by Senator Robert Kennedy and Senator JACOB JAVITS during the Senate debate on the Voting Rights Act in 1965, and the amendment was primarily designed to give the right to vote to citizens of Puerto Rican descent living in New York and elsewhere within the United States.

In sustaining the validity of this provision of the Voting Rights Act in the Morgan case, the Supreme Court significantly expanded the power of Congress under the 14th amendment of the Constitution to legislate in the area of State laws in general and State voter qualifications in particular. Even though several years earlier, the Court had upheld the use of State literacy tests in the absence of Federal legislation, the Court held in the Morgan case that Congress itself had broad authority to act by statute in this area, even though the effect of the statute was to override certain provisions of State law.

The constitutional principle established by the Supreme Court is clear: where Federal and State interests conflict under the 14th amendment, Congress has power to resolve the conflict in favor of the Federal interest. As the Court stated:

> It is not for us to review the Congressional resolution of these factors. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did.

In fact, legislation to modify State residence requirements for voting in presidential elections would probably be constitutional a fortiori after the decision in Katzenbach against Morgan. Unlike the circumstances of the Morgan case, where the use of an English literacy test could obviously be said to fulfill a significant State interest, there is no such legitimate State interest supporting the use of lengthy residence requirements for voting in a presidential election. Since the election is national, there is no merit to the conventional argument that residence requirements are essential to insure that voters are enlightened in their exercise of the franchise and are familiar with the candidates and issues. All that is required is that the States have an adequate opportunity to establish reasonable procedures for orderly voting and prevention of fraud. That requirement is fully met in the 30-day residence period permitted in the bill I have proposed, since it offers the States ample opportunity to establish appropriate procedures, including voter registration, to safeguard their legitimate interests.

Indeed, as the Morgan case suggests, Congress can almost certainly go a great deal further in the area of voting legislation if it desires to do so. It would probably be constitutionally permissible, for example, for Congress to enact statutes to accomplish the following goals:

Reduce State residence requirements in all elections—Federal, State, and lo-

cal—and not merely for presidential elections.

Enact uniform Federal voter registration and absentee ballot laws.

Reduce the voting age to 18.

In each of these areas, all that would be necessary to sustain the constitutionality of such a statute under the Supreme Court's decision in the Morgan case would be for Congress to make a reasonable determination that a strong Federal interest should prevail over the opposing State interests.

This is not to say, of course, that I necessarily favor legislation at this time to accomplish such results. Especially in the case of the goal of reducing the voting age to 18—a goal that I strongly support—the change is of such fundamental importance to the basic political processes of the Nation that it should be carried out by the route of constitutional amendment, rather than by statute. A proper respect for our federal system and for the rights of the States requires no less.

In the case of residence requirements for voting in presidential elections, however, there is no such compelling reason to employ the cumbersome process of constitutional amendment. Although the goal is important, its implementation by statute involves no abrogation of legitimate State interests, and its overall impact will be far less substantial than the impact of a reduction in the voting age.

One further consideration should be noted with respect to action by Congress in the area of State residence requirements. On May 5, 1969, the Supreme Court accepted for judicial review a case from Colorado, known as Hall against Beals, which challenges the constitutionality of the State's 6-month residence requirement for voting in presidential elections. The mere fact that the issue of the validity of the Colorado law is now pending before the Supreme Court is no reason to delay action on the bill I have proposed. Whatever the decision of the Court, I believe that the issue is one that should properly be handled by Congress through the legislative process.

Even if the Supreme Court sustains the Colorado requirement, the decision would not affect the power of Congress to legislate in this area. It would mean only that the State residence period is not so flagrantly arbitrary that it is per se unconstitutional under the bare language of the 14th amendment itself, in the absence of action by Congress. Such a result would leave the law on State residence requirements in much the same posture as the law on English literacy tests before enactment of section 4(e) of the Voting Rights Act in 1965.

On the other hand, even if the Supreme Court holds that the Colorado requirement is invalid under the 14th amendment—and a number of constitutional law experts believe that this will be the likely result in the case, in light of the Court's recent decision on April 21 of this year in Shapiro against Thompson, invalidating lengthy State residence requirements as a condition of eligibility for welfare payments—the decision would not establish the specific length of a residence period that would be constitutionally permissible. Thus, the decision would not affect the election laws now in force in numerous other States having residence requirements shorter than the Colorado requirement, but still too long to justify their application to presidential elections. Obviously, Congress, acting through the legislative process—not the Supreme Court acting through the judicial process—is the proper institution to determine the length of residence requirements for voting in presidential elections.

In addition, there is a distinct possibility that the issue before the Supreme Court in the Hall case may have become moot because of legislation recently enacted in Colorado. Less than 2 weeks before the Supreme Court agreed to hear the case, the Governor of Colorado signed into law a provision reducing the State residence period for voting in presidential elections from 6 months to 2 months. If the new Colorado law had been in effect for the 1968 election, it seems clear that the plaintiffs in the Hall case would have been entitled to cast their votes for President in that election. As a result, there is substantial doubt, even under the more liberalized doctrines of jurisdiction and mootness recently enunciated by the Supreme Court for reviewing cases in such circumstances, that the Court will actually proceed to a decision in the Hall case.

In sum, there is no impediment, either constitutional or practical, to prevent Congress from giving prompt consideration to the legislation I have proposed. I therefore urge Congress to act at the earliest opportunity to eliminate the unfair disfranchisement that now exists because of the unreasonable residence requirements for voting in presidential elections. For far too long, we have tolerated the fact of millions of lost voters in the Nation's most important election. Their cry for help is urgent, and relief for their plight is long overdue.

Moreover, when the proposed legislation is considered, it may also be desirable to consider the enactment of additional provisions to help another large group of lost voters in presidential elections—the millions of Americans at home and abroad unable to vote in such elections because they are absent from the place of their residence at the time of the election. The problem is especially acute for our oversea citizens. According to the Passport Office of the State Department, approximately 750,000 American citizens are officially registered at American embassies and consular offices throughout the world. Obviously, the total number of persons disfranchised may be far larger, since the State Department figure does not include either those unregistered abroad, or the large number of citizens within the United States away from home on election day.

In the past, proposals have been put forward to enfranchise these citizens by encouraging or requiring the States to adopt more lenient requirements for absentee voting and absentee registration. Indeed, in 1968, Congress amended the Federal Voting Assistance Act to include hortatory provisions urging the States to make the act's simplified absentee voting and registration procedures available to all overseas Americans, and not only to members of the Armed Forces, Federal civilian employees, and certain other groups of citizens. Unfortunately, little information is currently available on the status of such citizens or the specific provisions of State or local law that disfranchise them. At a time when increasing numbers of Americans—both public servants and private citizens—are pursuing the interests of the United States around the world, it is encumbent on us to take every reasonable step to insure them of a voice in electing their President. I am hopeful, therefore, that Congress will take the present opportunity to examine all aspects of the problem of disfranchised Americans in presidential elections, and to enact comprehensive legislation resolving the many inequities in our present laws.

Mr. President, I ask unanimous consent that the proposed legislation be printed in the RECORD, as well as the following other materials relating to the proposal that may be of interest to Members of Congress:

Table I, listing State and local residence requirements for voting in presidential and other elections, according to the most recently available data on State and local laws; and table II, grouping the States according to the length of the existing requirement of State residence for voting in presidential elections. I have asked the Bureau of the Census to determine the number of persons disqualified from voting in the 1968 presidential election because of failure to meet State, county, or precinct residence requirements; the estimate, which is being compiled from the Bureau's data on interstate, intrastate, and intracounty migration, should be available soon on a State-by-State basis. According to preliminary figures made available by the Bureau, a total of 1,900,000 citizens in the Nation as a whole were disfranchised by State or local residence requirements in the 1968 presidential election.

A Gallup poll released in December 1968, estimating that 5 million Americans were unable to vote in the 1968 presidential election because of State residence requirements.

The Supreme Court's decision in *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966), the case in which the Court granted broad authority to Congress to legislate in the area of voter qualifications.

The VICE PRESIDENT. The bill will be received and appropriately referred; and, without objection, the bill and material will be printed in the RECORD.

The bill (S. 2165) to enable citizens of the United States who change their residence to vote in presidential elections, and for other purposes, introduced by Mr. KENNEDY (for himself and other Senators), was received, read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

S. 2165

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this

Act may be cited as the "Voting Rights Amendments of 1969."

SEC. 2. Section 4 of the Voting Rights Act of 1965 (Pub. L. 89–110; 79 Stat. 437, 438; 42 U.S.C. 1973b) is amended by adding the following new subsection at the end thereof:

"(f)(1) Congress hereby declares that to secure the constitutional right of citizens to travel freely from State to State, to enjoy equal access to the right to vote in the election for President and Vice President of the United States, and to be free of discrimination in public services, it is necessary to prohibit the States from conditioning the right to vote on the fulfillment of lengthy requirements of residence or registration.

"(2) No citizen of the United States who is otherwise qualified to vote in any election for, or for the choice of electors for, President and Vice President of the United States shall be denied the right to vote for such electors in such election because of any requirement of residence or registration: *Provided,* That such citizen has resided in the State or political subdivision, with respect to which the requirement of residence applies, for the period of thirty days next preceding such election, and has complied with the requirements of registration during such period.

"(3) In the exercise of the powers of the Congress under section 5 of the fourteenth amendment to the Constitution, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of residence or registration as a precondition to voting, as he may determine to be necessary to implement the purposes of this subsection.

"(4) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section, which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited."

The material presented by Mr. KENNEDY, follows:

TABLE I.—MINIMUM LENGTH OF RESIDENCE REQUIREMENTS FOR 1968 GENERAL ELECTION BY STATE

State	Federal, State, and local offices			President and Vice President only (for recent movers to the State)
	In State	In county	In precinct	
Alabama	1 yr	6 months	3 months [1]	Not applicable.
Alaska	1 yr	None	30 days	No minimum.
Arizona [2]	1 yr	30 days	do	60 days.
Arkansas	1 yr	6 months	do	Not applicable.
California	1 yr	90 days	54 days	54 days.
Colorado	1 yr	do [1]	20 days	2 months in State, 2 months in county, 15 days in precinct.
Connecticut [3]	6 months	6 months in town	None	60 days.
Delaware	1 yr	3 months	30 days	3 months.
District of Columbia	1 yr	None	None	Not applicable.
Florida	1 yr	6 months	45 days	30 days.
Georgia	1 yr	do	None	Do.
Hawaii	1 yr	3 months	3 months	Not applicable.
Idaho	6 months	30 days	90 days for county seat election.	60 days,
Illinois	1 yr	90 days	30 days	60 days in election district.
Indiana	6 months	60 days in township	do	Not applicable.
Iowa	do	60 days	10 days for municipal and elections.	Do.
Kansas	do	None	30 days	45 days in township or precinct.
Kentucky	1 yr	6 months	60 days	Not applicable.
Louisiana	1 yr	do	3 months [1]	Do.
Maine	6 months	3 months in city or town	None	30 days.
Maryland	1 yr	6 months	6 months [1]	45 days in ward or election district.
Massachusetts	1 yr	None	do	31 days in city or town.
Michigan	6 months	30 days in city or township.[1]	None	No minimum.
Minnesota	do	None	30 days [3]	30 days.
Mississippi	2 yrs	do	1 yr	Not applicable.
Missouri	1 yr	60 days	None	60 days.
Montana	1 yr	30 days	do	Not applicable.
Nebraska	6 months	40 days	10 days	No minimum.
Nevada	do	30 days	do	Not applicable.
New Hampshire	do	6 months in town [1]	None	30 days.
New Jersey [1 2]	do	40 days	do	40 days in county
New Mexico	1 yr	90 days	30 days	30 days in county.
New York [2]	3 months	3 months	3 months	30 days in election district.
North Carolina	1 yr	None	30 days [1]	60 days.
North Dakota	1 yr	90 days	do. [1]	No minimum.
Ohio	1 yr	40 days	40 days	Do.
Oklahoma	6 months	2 months	20 days	Do.
Oregon	do	30 days	30 days	Do.
Pennsylvania	90 days	None	60 days in district	Not applicable,
Rhode Island	1 yr	6 months in town or city	None	Do.
South Carolina	1 yr	6 months	3 months	Do.
South Dakota	1 yr	90 days	30 days [1]	Do.
Tennessee	1 yr	3 months	None	Do.
Texas [2]	1 yr	6 months	do	60 days.
Utah	1 yr	4 months	60 days	Not applicable.
Vermont	1 yr	90 days in town [1]	None	Do.
Virginia	1 yr	6 months	30 days	Do.
Washington	1 yr	90 days	do	60 days.
West Virginia	1 yr	60 days	None	Not applicable.
Wisconsin [2]	6 months	None	10 days [1]	No minimum.
Wyoming [2]	1 yr	60 days	do [1]	Not applicable.

[1] If less may vote in old precinct.
[2] State permits former residents to vote for President and Vice President where not qualified in new State of residence.
[3] If less may vote in old precinct if in same municipality.

Source: U.S. Senate, Office of the Secretary, "Nomination and Election of the President and Vice President of the United States," U.S. Government Printing Office, January 1968. Corrected to Sept. 18, 1968. (Table as published by the Bureau of the Census in "Current Population Reports," series P–25, No. 406, Oct. 4, 1968.) (Colorado requirements corrected to Apr. 23, 1969.)

TABLE II.—MINIMUM STATE RESIDENCE REQUIREMENTS FOR VOTING IN PRESIDENTIAL ELECTIONS

2 years	1 year	6 months	3 months	60 days	54 days	45 days	40 days	31 days	30 days	No minimum
Mississippi	Alabama Arkansas District of Columbia Hawaii Kentucky Louisiana Montana Rhode Island South Carolina South Dakota Tennessee Utah Vermont Virginia West Virginia Wyoming	Indiana Iowa Nevada	Delaware [1] Pennsylvania	Arizona [1] Colorado [1] Connecticut [1] Idaho [1] Illinois [1] Missouri [1] North Carolina [1] Texas [1] Washington [1]	California [1]	Kansas [1] Maryland [1]	New Jersey [1]	Massachusetts [1]	Florida [1] Georgia [1] Maine [1] Minnesota [1] New Hampshire [1] New Mexico [1] New York [1]	Alaska [1] Michigan [1] Nebraska [1] North Dakota [1] Ohio [1] Oklahoma [1] Oregon [1] Wisconsin [1]

[1] Special provisions applicable only to presidential elections.

Source: Table I.

[From the Gallup opinion index, December 1968]

A LOOK AT THE NONVOTER: 15 MILLION DISINTERESTED VOTERS SAT OUT 1968 ELECTION

An estimated 15 million eligible voters "sat out" the 1968 presidential election out of disinterest in politics or dissatisfaction with the three candidate choices.

This startling statistic comes from an exhaustive look at the non-voter, part of the Gallup Poll's in-depth analysis of the 1968 balloting. Results in this report are based on a post-election survey conducted No. 8–16 with 1530 adults in over 300 localities across the nation.

Of the approximately 120 million men and women living in the U.S. and of voting age, about 72 million voted and 48 million did not. Among this 48 million, close to 4 million are aliens or inmates of prisons and mental institutions and thus ineligible to vote.

REASONS FOR NON-VOTING

Here are the reasons given for not going to the polls, with the percentages projected into numbers of people:

15 million were registered but were disinterested or didn't like the candidates.

10 million could have registered but did not.

7 million were sick or disabled.

5 million were prevented from voting by residence requirements.

3 million were away from home.

3 million said they could not leave their jobs.

1 million did not obtain absentee ballots.

As the above table indicates, more than half of non-voters (25 million) could have voted if they had made an extra effort to register and to vote.

The remaining 19 million have a good excuse for not voting—sickness, being away from home, working, or prevented by residence requirements.

STATISTICAL PROFILE OF THE NONVOTER

A statistical picture of the person least likely to vote—among those meeting voting requirements—is a woman in her twenties with little formal education and married to a manual worker.

The person most likely to vote is a man, 50 years or older, college-educated and a member of the business and professional class.

GETTING OUT THE VOTE

Every presidential election offers valuable lessons for the vanquished party and one that comes through loud and clear this year is the importance of "getting out the vote."

At this writing, it appears that only 60 per cent of all individuals of voting age actually cast their ballots this year, a lower turnout ratio than in 1964 (62 per cent) and lower than in 1960 (63 per cent).

NINETEEN MILLION VOTERS CHANGED MIND

Apathy among voters—and many were unenthusiastic about the candidate choices this year—is difficult to overcome. However, greater party activity on the part of Democrats (as well as Republicans) would likely have paid dividends.

For example, as many as 19 million voters said they had at some point during the campaign intended to vote for a candidate other than the one they supported on November 5.

In addition, one voter in four said that, even two weeks before the election, he had not "definitely" made up his mind how he would vote.

Finally, party lines showed considerable fragility in this election. A majority of 54 per cent of voters in the latest post-election Gallup survey said they "split" their ticket and voted for candidates of different parties.

KATZENBACH, ATTORNEY GENERAL, ET AL. *v.* MORGAN ET UX.—APPEAL FROM THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[No. 847. Argued Apr. 18, 1966.—Decided June 18, 1966. 384 U.S. 641 (1966)]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

These cases concern the constitutionality of § 4(e) of the Voting Rights Act of 1965.[1] That law, in the respects pertinent in these cases, provides that no person who has successfully completed the sixth primary grade in a public school in, or a private school accredited by, the Commonwealth of Puerto Rico in which the language of instruction was other than English shall be denied the right to vote in any election because of his inability to read or write English. Appellees, registered voters in New York City, brought this suit to challenge the constitutionality of § 4(e) insofar as it *pro tanto* prohibits the enforcement of the election laws of New York[2] requiring an ability to read and write English as a condition of voting. Under these laws many of the several hundred thousand New York City residents who have migrated there from the Commonwealth of Puerto Rico had previously been denied the right to vote, and appellees attack § 4(e) insofar as it would enable many of these citizens to vote.[3] Pursuant to § 14(b) of the Voting Rights Act of 1965, appellees commenced this proceeding in the District Court for the District of Columbia seeking a declaration that § 4(e) is invalid and an injunction prohibiting appellants, the Attorney General of the United States and the New York City Board of Elections, from either enforcing or complying with § 4(e).[4] A three-judge district court was designated. 28 U.S.C. §§ 2282, 2284 (1964 ed.). Upon cross motions for summary judgment, that court, one judge dissenting, granted the declaratory and injunctive relief appellees sought. The court held that in enacting § 4(e) Congress exceeded the powers granted to it by the Constitution and therefore usurped powers reserved to the States by the Tenth Amendment. 247 F. Supp. 196. Appeals were taken directly to this Court, 28 U.S.C. §§ 1252, 1253 (1964 ed.), and we noted probable jurisdiction. 382 U.S. 1007. We reverse. We hold that, in the application challenged in these cases, § 4(e) is a proper exercise of the powers granted to Congress by § 5 of the Fourteenth Amendment[5] and that by force of the Supremacy Clause, Article VI, the New York English literacy requirement cannot be enforced to the extent that it is inconsistent with § 4(e).

Under the distribution of powers effected by the Constitution, the States establish qualifications for voting for state officers, and the qualifications established by the States for voting for members of the most numerous branch of the state legislature also determine who may vote for United States Representatives and Senators, Art. I, § 2; Seventeenth Amendment; *Ex parte Yarbrough*, 110 U.S. 651, 663. But, of course, the States have no power to grant or withhold the franchise on conditions that are forbidden by the Fourteenth Amendment, or any other provision of the Constitution. Such exercises of state power are no more immune to the limitations of the Fourteenth Amendment than any other state action. The Equal Protection Clause itself has been held to forbid some state laws that restrict the right to vote.[6]

The Attorney General of the State of New York argues that an exercise of congressional power under § 5 of the Fourteenth Amendment that prohibits the enforcement of a state law can only be sustained if the judicial branch determines that the state law is prohibited by the provisions of the Amendment that Congress sought to enforce. More specifically, he urges that § 4(e) cannot be sustained as appropriate legislation to enforce the Equal Protection Clause unless the judiciary decides—even with the guidance of a congressional judgment—that the application of the English literacy requirement prohibited by § 4(e) is forbidden by the Equal Protection Clause itself. We disagree. Neither the language nor history of § 5 supports such a construction.[7] As was said with regard to § 5 in *Ex parte Virginia*, 100 U.S. 339, 345, "It is the power of Congress which has been enlarged. Congress is authorized to *enforce* the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective." A construction of § 5 that would require a judicial determination that the enforcement of the state law precluded by Congress violated the mendment, as a condition of sustaining the congressional enactment, would depreciate both congressional resourcefulness and congressional responsibility for implementing the Amendment.[8] It would confine the legislative power in this context to the insignificant role of abrogating only those state laws that the judicial branch was prepared to adjudge unconstitutional, or of merely informing the judgment of the judiciary by particularizing the "majestic generalities" of § 1 of the Amendment. See *Fay* v. *New York*, 332 U.S. 261, 282–284.

Thus our task in this case is not to determine whether the New York English literacy requirement as applied to deny the right to vote to a person who successfully completed the sixth grade in a Puerto Rican school violates the Equal Protection Clause. Accordingly, our decision in *Lassiter* v. *Northampton Election Bd.*, 360 U.S. 45, sustaining the North Carolina English literacy requirement as not in all circumstances prohibited by the first sections of the Fourteenth and Fifteenth Amendments, is inapposite. Compare also *Guinn* v. *United States*, 238 U.S. 347, 366; *Camacho* v. *Doe*, 31 Misc. 2d 692, 221 N.Y.S. 2d 262 (1958), aff'd 7 N.Y. 2d 762, 163 N.E. 2d 140 (1959); *Camacho* v. *Rogers*, 199 F. Supp. 155 (D.C.S.D.N.Y. 1961). *Lassiter* did not present the question before us here: Without regard to whether the judiciary would find that the Equal Protection Clause itself nullifies New York's English literacy requirement as so applied, could Congress prohibit the enforcement of the state law by legislating under § 5 of the Fourteenth Amendment? In answering this question, our task is limited to determining whether such legislation is, as required by § 5, appropriate legislation to enforce the Equal Protection Clause.

By including § 5 the draftsmen sought to grant to Congress, by a specific provision applicable to the Fourteenth Amendment, the same broad powers expressed in the Necessary and Proper Clause, Art. I, § 8, cl. 18.[9] The classic formulation of the reach of those powers was established by Chief Justice Marshall in *McCulloch* v. *Maryland*, 4 Wheat. 316, 421:

"Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."

Ex parte Virginia, 100 U.S., at 345–346, decided 12 years after the adoption of the Fourteenth Amendment, held that congressional power under § 5 had this same broad scope:

"Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power."

Strauder v. *West Virginia*, 100 U.S. 303, 311; *Virginia* v. *Rives*, 100 U.S. 313, 318. Section 2 of the Fifteenth Amendment grants Congress a similar power to enforce by "appropriate legislation" the provisions of that amendment; and we recently held in *South Carolina* v. *Katzenbach*, 383 U.S. 301, 326 that "[t]he basic test to be applied in a case involving § 2 of the Fifteenth Amendment is the same as in all cases concerning the express powers of Congress with relation to the reserved powers of the States." That test was identified as the one formulated in *McCulloch* v. *Maryland*. See also *James Everard's Breweries* v. *Day*, 265 U.S. 545, 558–559 (Eighteenth Amendment). Thus the *McCulloch* v. *Maryland* standard is the measure of what constitutes "appropriate legislation" under § 5 of the Fourteenth Amendment. Correctly viewed, § 5 is a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment.

We therefore proceed to the consideration whether § 4(e) is "appropriate legislation" to enforce the Equal Protection Clause, that is, under the *McCulloch* v. *Maryland* standard, whether § 4(e) may be regarded as an enactment to enforce the Equal Protection Clause, whether it is "plainly adapted to that end" and whether it is not prohibited by but is consistent with "the letter and spirit of the constitution."[10]

There can be no doubt that § 4(e) may be regarded as an enactment to enforce the Equal Protection Clause. Congress explicitly declared that it enacted § 4(e) "to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English." The persons

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Footnotes at end of article.

referred to include those who have migrated from the Commonwealth of Puerto Rico to New York and who have been denied the right to vote because of their inability to read and write English, and the Fourteenth Amendment rights referred to include those emanating from the Equal Protection Clause. More specifically, § 4(e) may be viewed as a measure to secure for the Puerto Rican community residing in New York nondiscriminatory treatment by government—both in the imposition of voting qualifications and the provision or administration of governmental services, such as public schools, public housing and law enforcement.

Section 4(e) may be readily seen as "plainly adapted" to furthering these aims of the Equal Protection Clause. The practical effect of § 4(e) is to prohibit New York from denying the right to vote to large segments of its Puerto Rican community. Congress has thus prohibited the State from denying to that community the right that is "preservative of all rights." *Yick Wo* v. *Hopkins*, 118 U.S. 356, 370. This enhanced political power will be helpful in gaining nondiscriminatory treatment in public services for the entire Puerto Rican community.[11] Section 4(e) thereby enables the Puerto Rican minority better to obtain "perfect equality of civil rights and the equal protection of the laws." It was well within congressional authority to say that this need of the Puerto Rican minority for the vote warranted federal intrusion upon any state interests served by the English literacy requirement. It was for Congress, as the branch that made this judgment, to assess and weigh the various conflicting considerations—the risk or pervasiveness of the discrimination in governmental services, the effectiveness of eliminating the state restriction on the right to vote as a means of dealing with the evil, the adequacy or availability of alternative remedies, and the nature and significance of the state interests that would be affected by the nullification of the English literacy requirement as applied to residents who have successfully completed the sixth grade in a Puerto Rican school. It is not for us to review the congressional resolution of these factors. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did. There plainly was such a basis to support § 4(e) in the application in question in this case. Any contrary conclusion would require us to be blind to the realities familiar to the legislators.[12]

The result is no different if we confine our inquiry to the question whether § 4(e) was merely legislation aimed at the elimination of an invidious discrimination in establishing voter qualifications. We are told that New York's English literacy requirement originated in the desire to provide an incentive for non-English speaking immigrants to learn the English language and in order to assure the intelligent exercise of the franchise. Yet Congress might well have questioned, in light of the many exemptions provided,[13] and some evidence suggesting that prejudice played a prominent role in the enactment of the requirement,[14] whether these were actually the interests being served. Congress might have also questioned whether denial of a right deemed so precious and fundamental in our society was a necessary or appropriate means of encouraging persons to learn English, or of furthering the goal of an intelligent exercise of the franchise.[15] Finally, Congress might well have concluded that as a means of furthering the intelligent exercise of the franchise, an ability to read or understand Spanish is as effective as ability to read English for those to whom Spanish-language newspapers and Spanish-language radio and television programs are available to inform them of election issues and governmental affairs.[16] Since Congress undertook to legislate so as to preclude the enforcement of the state law, and did so in the context of a general appraisal of literacy requirements for voting, see *South Carolina* v. *Katzenbach supra*, to which it brought a specially informed legislative competence,[17] it was Congress' prerogative to weigh these competing considerations. Here again, it is enough that we perceive a basis upon which Congress might predicate a judgment that the application of New York's English literacy requirement to deny the right to vote to a person with a sixth grade education in Puerto Rican schools in which the langauge of instruction was other than English constituted an invidious discrimination in violation of the Equal Protection Clause.

There remains the question whether the congressional remedies adopted in § 4(e) constitute means which are not prohibited by, but are consistent "with the letter and spirit of the constitution." The only respect in which appellees contend that § 4(e) fails in this regard is that the section itself works an invidious discrimination in violation of the Fifth Amendment by prohibiting the enforcement of the English literacy requirement only for those educated in American-flag schools (schools located within United States jurisdiction) in which the language of instruction was other than English, and not for those educated in schools beyond the territorial limits of the United States in which the language of instruction was also other than English. This is not a complaint that Congress, in enacting § 4(e), has unconstitutionally denied or diluted anyone's right to vote but rather that Congress violated the Constitution by not extending the relief effected in § 4(e) to those educated in non-American-flag schools. We need not pause to determine whether appellees have a sufficient personal interest to have § 4(e) invalidated on this ground, see generally *United States* v. *Raines*, 362 U.S. 17, since the argument, in our view, falls on the merits.

Section 4(e) does not restrict or deny the franchise but in effect extends the franchise to persons who otherwise would be denied it by state law. Thus we need not decide whether a state literacy law conditioning the right to vote on achieving a certain level of education in an American-flag school (regardless of the language of instruction) discriminates invidiously against those educated in non-American-flag schools. We need only decide whether the challenged limitation on the relief effected in § 4(e) was permissible. In deciding that question, the principle that calls for the closest scrutiny of distinctions in laws *denying* fundamental rights, see n. 15, *supra*, is inapplicable; for the distinction challenged by appellees is presented only as a limitation on a reform measure aimed at eliminating an existing barrier to the exercise of the franchise. Rather, in deciding the contsitutional propriety of the limitations in such a reform measure we are guided by the familiar principles that a "statute is not valid under the Constitution because it might have gone farther than it did," *Roschen* v. *Ward*, 279 U.S. 337, 339, that a legislature need not "strike at all evils at the same time," *Semler* v. *Dental Examiners*, 294 U.S. 608, 610, and that "reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind," *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 489.

Guided by these principles, we are satisfied that appellees' challenge to this limitation in § 4(e) is without merit. In the context of the case before us, the congressional choice to limit the relief effected in § 4(e) may, for example, reflect Congress' greater familiarity with the quality of instruction in American-flag schools,[18] a recognition of the unique historic relationship between the Congress and the Commonwealth of Puerto Rico,[19] an awareness of the Federal Government's acceptance of the desirability of the use of Spanish as the language of instruction in Commonwealth schools,[20] and the fact that Congress has fostered policies encouraging migration from the Commonwealth to the States.[21] We have no occasion to determine in this case whether such factors would justify a similar distinction embodied in a voting-qualification law that denied the franchise to persons educated in non-American-flag schools. We hold only that the limitation on relief effected in § 4(e) does not constitute a forbidden discrimination since these factors might well have been the basis for the decision of Congress to go "no farther than it did."

We therefore conclude that § 4(e), in the application challenged in this case, is appropriate legislation to enforce the Equal Protection Clause and that the judgment of the District Court must be and hereby is

Reversed.

MR. JUSTICE DOUGLAS joins the Court's opinion except for the discussion, at pp. 656–658, of the question whether the congressional remedies adopted in § 4(e) constitute means which are not prohibited by, but are consistent with "the letter and spirit of the constitution." On that question, he reserves judgment until such time as it is presented by a member of the class against which that particular discrimination is directed.

Mr. Justice Harlan, whom Mr. Justice Stewart joins, dissenting.[22]

Worthy as its purposes may be thought by many, I do not see how § 4 (e) of the Voting Rights Act of 1965, 79 Stat. 439, 42 U.S.C. § 1973b (e) (1964 ed. Supp. I), can be sustained except at the sacrifice of fundamentals in the American constitutional system—the separation between the legislative and judicial function and the boundaries between federal and state political authority. By the same token I think that the validity of New York's literacy test, a question which the Court considers *only* in the context of the federal statute, must be upheld. It will conduce to analytical clarity if I discuss the second issue first.

I.

The Cardona Case (No. 673)

This case presents a straightforward Equal Protection problem. Appellant, a resident and citizen of New York, sought to register to vote but was refused registration because she failed to meet the New York English literacy qualification respecting eligibility for the franchise.[23] She maintained that although she could not read or write English, she had been born and educated in Puerto Rico and was literate in Spanish. She alleges that New York's statute requiring satisfaction of an English literacy test is an arbitrary and irrational classification that violates the Equal Protection Clause at least as applied to someone who, like herself, is literate in Spanish.

Any analysis of this problem must begin with the established rule of law that the franchise is essentially a matter of state concern, *Minor* v. *Happersett*, 21 Wall. 162; *Lassiter* v. *Northampton Election Bd.*, 360 U.S. 45, subject only to the overriding requirements of various federal constitutional provisions dealing with the franchise, *e.g.*, the Fifteenth, Seventeenth, Nineteenth, and Twenty-fourth Amendments,[24] and, as more recently decided, to the general principles of the Fourteenth Amendment. *Reynolds* v. *Sims*, 377 U.S. 533; *Carrington* v. *Rash*. 380 U.S. 89.

The Equal Protection Clause of the Fourteenth Amendment, which alone concerns us here, forbids a State from arbitrarily discriminating among different classes of persons. Of course it has always been recognized that nearly all legislation involves some sort of classification, and the equal protection test applied by this Court is a narrow one: a state enactment or practice may be struck down under the clause only if it cannot be justified as founded upon a rational and permissible state policy. See,

Footnotes at end of article.

e.g., Powell v. *Pennsylvania,* 127 U.S. 678; *Lindsley* v. *Natural Carbonic Gas Co.,* 220 U.S. 61; *Walters* v. *City of St. Louis,* 347 U.S. 231.

It is suggested that a different and broader equal protection standard applies in cases where "fundamental liberties and rights are threatened," see *ante,* p. 655, note 15; dissenting opinion of DOUGLAS, J., in *Cardona, post,* pp. 676–677, which would require "a State to show a need greater than mere rational policy to justify classifications in this area. No such dual-level test has ever been articulated by this Court, and I do not believe that any such approach is consistent with the purposes of the Equal Protection Clause, with the overwhelming weight of authority, or with well-established principles of federalism which underlie the Equal Protection Clause.

Thus for me, applying the basic equal protection standard, the issue in this case is whether New York has shown that its English-language literacy test is reasonably designed to serve a legitimate state interest. I think that it has.

In 1959, in *Lassiter* v. *Northampton Election Bd., supra,* this Court dealt with substantially the same question and resolved it unanimously in favor of the legitimacy of a state literacy qualifications. There a North Carolina English literacy test was challenged. We held that there was "wide scope" for State qualifications of this sort. 360 U.S., at 51. Dealing with literacy tests generally, the Court there held:

"The ability to read and write . . . has some relation to standards designed to promote intelligent use of the ballot. . . . Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise. . . . It was said last century in Massachusetts that a literacy test was designed to insure an 'independent and intelligent' exercise of the right of suffrage. *Stone* v. *Smith,* 159 Mass. 413–414, 34 N.E. 521. North Carolina agrees. We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards." 360 U.S., at 51–53.

I believe the same interests recounted in *Lassiter* indubitably point toward upholding the rationality of the New York voting test. It is true that the issue here is not so simply drawn between literacy *per se* and illiteracy. Appellant alleges that she is literate in Spanish, and that she studied American history and government in United States Spanish-speaking schools in Puerto Rico. She alleges further that she is "a regular reader of the New York City Spanish-language daily newspapers and other periodicals, which . . . provide proportionately more coverage of government and politics than do most English-language newspapers," and that she listens to Spanish-language radio broadcasts in New York which provide full treatment of governmental and political news. It is thus maintained that whatever may be the validity of literary tests *per se* as a condition of voting, application of such a test to one literate in Spanish, in the context of the large and politically significant Spanish-speaking community in New York, serves no legitimate state interest, and is thus an arbitrary classification that violates the Equal Protection Clause.

Although to be sure there is a difference between a totally illiterate person and one who is literate in a foreign tongue, I do not believe that this added factor vitiates the constitutionality of the New York statute. Accepting appellant's allegations as true, it is nevertheless also true that the range of material available to a resident of New York literate only in Spanish is much more limited than what is available to an English-speaking resident, that the business of national, state, and local government is conducted in English, and that propositions, amendments, and offices for which candidates are running listed on the ballot are likewise in English. It is also true that most candidates, certainly those campaigning on a national or statewide level, make their speeches in English. New York may justifiably want its voters to be able to understand candidates directly, rather than through possibly imprecise translations or summaries reported in a limited number of Spanish news media. It is noteworthy that the Federal Government requires literacy in English as a prerequisite to naturalization. 66 Stat. 239, 8 U.S.C. § 1423 (1964 ed.), attesting to the national view of its importance as a prerequisite to full integration into the American political community. Relevant too is the fact that the New York English test is not complex,[25] that it is fairly administered,[26] and that New York maintains free adult education classes which appellant and members of her class are encouraged to attend.[27] Given the State's legitimate concern with promoting and safeguarding the intelligent use of the ballot, and given also New York's long experience with the process of integrating non-English-speaking residents into the mainstream of American life, I do not see how it can be said that this qualification for suffrage is unconstitutional. I would uphold the validity of the New York statute, unless the federal statute prevents that result, the question to which I now turn.

The Morgan cases (Nos. 847 and 877)

These cases involve the same New York suffrage restriction discussed above, but the challenge here comes not in the form of a suit to enjoin enforcement of the state statute, but in a test of the constitutionality of a federal enactment which declares that "to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language." Section 4(e) of the Voting Rights Act of 1965: Section 4(e) declares that anyone who has successfully completed six grades of schooling in an "American-flag" school, in which the primary language is not English, shall not be denied the right to vote because of an inability to satisfy an English literacy test.[28] Although the statute is framed in general terms, so far as has been shown it applies in actual effect only to citizens of Puerto Rican background, and the Court so treats it.

The pivotal question in this instance is what effect the added factor of a congressional enactment has on the straight equal protection argument dealt with above. The Court declares that since § 5 of the Fourteenth Amendment[29] gives to the Congress power to "enforce" the prohibitions of the Amendment by "appropriate" legislation, the test for judicial review of any congressional determination in this area is simply one of rationality; that is, in effect, was Congress acting rationally in declaring that the New York statute is irrational? Although § 5 most certainly does give to the Congress wide powers in the field of devising remedial legislation to effectuate the Amendment's prohibition on arbitrary state action, *Ex parte Virginia,* 100 U. S. 339, I believe the Court has confused the issue of how much enforcement power Congress possesses under § 5 with the distinct issue of what questions are appropriate for congressional determination and what questions are essentially judicial in nature.

When recognized state violations of federal constitutional standards have occurred, Congress is of course empowered by § 5 to take appropriate remedial measures to redress and prevent the wrongs. See *Strauder* v. *West Virginia,* 100 U.S. 303,, 310. But it is a judicial question whether the condition with which Congress has thus sought to deal is in truth an infringement of the Constitution, something that is the necessary prerequisite to bringing the § 5 power into play at all. Thus, in *Ex parte Virginia, supra,* involving a federal statute making it a federal crime to disqualify anyone from jury service because of race, the Court first held as a matter of constitutional law that "the Fourteenth Amendment secures, among other civil rights, to colored men, when charged with criminal offenses against a State, an impartial jury trial, by jurors indifferently selected or chosen without discrimination against such jurors because of their color." 100 U.S., at 345. Only then did the Court hold that to enforce this prohibition upon state discrimination, Congress could enact a criminal statute of the type under consideration. See also *Clyatt* v. *United States,* 197 U.S. 207, sustaining the constitutionality of the antipeonage laws, 14 Stat. 546, now 42 U.S.C. § 1994 (1964 ed.), under the Enforcement Clause of the Thirteenth Amendment.

A more recent Fifteenth Amendment case also serves to illustrate this distinction. In *South Carolina* v. *Katzenbach,* 383 U.S. 301, decided earlier this Term, we held certain remedial sections of this Voting Rights Act of 1965 constitutional under the Fifteenth Amendment, which is directed against deprivations of the right to vote on account of race. In enacting those sections of the Voting Rights Act the Congress made a detailed investigation of various state practices that had been used to deprive Negroes of the franchise. See 383 U.S., at 308–315. In passing upon the remedial provisions, we reviewed first the "voluminous legislative history" as well as judicial precedents supporting the basic congressional finding that the clear commands of the Fifteenth Amendment had been infringed by various state subterfuges. See 383 U.S., at 309, 329–330, 333–334. Given the existence of the evil, we held the remedial steps taken by the legislature under the Enforcement Clause of the Fifteenth Amendment to be a justifiable exercise of congressional initiative.

Section 4(e), however, presents a significantly different type of congressional enactment. The question here is not whether the statute is appropriate remedial legislation to cure an established violation of a constitutional command, but whether there has in fact been an infringement of that constitutional command, that is, whether a particular state practice or, as here, a statute is so arbitrary or irrational as to offend the command of the Equal Protection Clause of the Fourteenth Amendment. That question is one for the judicial branch ultimately to determine. Were the rule otherwise, Congress would be able to qualify this Court's constitutional decisions under the Fourteenth and Fifteenth Amendments, let alone those under other provisions of the Constitution, by reporting to congressional power under the Necessary and Proper Clause. In view of this Court's holding in *Lassiter, supra,* that an English literacy test is a permissible exercise of state supervision over its franchise, I do not think it is open to Congress to limit the effect of that decision as it has undertaken to do by § 4(e). In effect the Court reads § 5 of the Fourteenth Amendment as giving Congress the power to define the *substantive* scope of the Amendment. If that indeed be the true reach of § 5, then I do not see why Congress should not be able as well to exercise its § 5 "discretion" by enacting statutes so as in effect to dilute equal protection and due process decisions of this Court. In all

Footnotes at end of article.

such cases there is room for reasonable men to differ as to whether or not a denial of equal protection or due process has occurred, and the final decision is one of judgment. Until today this judgment has always been one for the judiciary to resolve.

I do not mean to suggest in what has been said that a legislative judgment of the type incorporated in § 4(e) is without any force whatsoever. Decisions on questions of equal protection and due process are based not on abstract logic, but on empirical foundations. To the extent "legislative facts" are relevant to a judicial determination, Congress is well equipped to investigate them, and such determinations are of course entitled to due respect.[30] In *South Carolina* v. *Katzenbach, supra,* such legislative findings were made to show that racial discrimination in voting was actually occurring. Similarly, in *Heart of Atlanta Motel, Inc.* v. *United States,* 379 U.S. 241, and *Katzenbach* v. *McClung,* 379 U.S. 294, this Court upheld Title II of the Civil Rights Act of 1964 under the Commerce Clause. There again the congressional determination that racial discrimination in a clearly defined group of public accommodations did effectively impede interstate commerce was based on "voluminous testimony," 379 U.S., at 253, which had been put before the Congress and in the context of which it passed remedial legislation.

But no such factual data provide a legislative record supporting § 4(e) [31] by way of showing that Spanish-speaking citizens are fully as capable of making informed decisions in a New York election as are English-speaking citizens. Nor was there any showing whatever to support the Court's alternative argument that § 4(e) should be viewed as but a remedial measure designed to cure or assure against unconstitutional discrimination of other varieties, *e.g.,* in "public schools, public housing and law enforcement," *ante,* p. 652, to which Puerto Rican minorities might be subject in such communities as New York. There is simply no legislative record supporting such hypothesized discrimination of the sort we have hitherto insisted upon when congressional power is brought to bear on constitutionally reserved state concerns. See *Heart of Atlanta Motel, supra; South Carolina* v. *Katzenbach, supra.*

Thus, we have here not a matter of giving deference to a congressional estimate, based on its determination of legislative facts, bearing upon the validity *vel non* of a statute, but rather what can at most be called a legislative announcement that Congress believes a state law to entail an unconstitutional deprivation of equal protection. Although this kind of declaration is of course entitled to the most respectful consideration, coming as it does from a concurrent branch and one that is knowledgeable in matters of popular political participation, I do not believe it lessens our responsibility to decide the fundamental issue of whether in fact the state enactment violates federal constitutional rights.

In assessing the deference we should give to this kind of congerssional expression of policy, it is relevant that the judiciary has always given to congressional enactments a presumption of validity. *The Propeller Genesee Chief* v. *Fitzhugh,* 12 How. 443, 457–458. However, it is also a canon of judicial review that state statutes are given a similar presumption, *Butler* v. *Commonwealth,* 10 How. 402, 415. Whichever way this case is decided, one statute will be rendered inoperative in whole or in part, and although it has been suggested that this Court should give somewhat more deference to Congress than to a state legislature,[32] such a simple weighing of presumptions is hardly a satisfying way of resolving a matter that touches the distribution of state and federal power in an area so sensitive as that of the regulation of the franchise. Rather it should be recognized that while the Fourteenth Amendment is a "brooding omnipresence over all state legislation, the substantive matters which it touches are all within the primary legislative competence of the States. Federal authority, legislative no less than judicial, does not intrude unless there has been a denial by state action of Fourteenth Amendment limitations, in this instance a denial of equal protection. At least in the area of primary state concern a state statute that passes constitutional muster under the judicial standard of rationality should not be permitted to be set at naught by a mere contrary congressional pronouncement unsupported by a legislative record justifying that conclusion.

To deny the effectiveness of this congressional enactment is not of course to disparage Congress' exertion of authority in the field of civil rights; it is simply to recognize that the Legislative Branch like the other branches of federal authority is subject to the governmental boundaries set by the Constitution. To hold, on this record, that § 4(e) overrides the New York literacy requirement seems to me tantamount to allowing the Fourteenth Amendment to swallow the State's constitutionally ordained primary authority in this field. For if Congress by what, as here, amounts to mere *ipse dixit* can set that otherwise permissible requirement partially at naught I see no reason why it could not also substitute its judgment for that of the States in other fields of their exclusive primary competence as well.

I would affirm the judgments in each of these cases.[33]

FOOTNOTES

[1] The full text of § 4(e) is as follows:

"(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English." 79 Stat. 439, 42 U. S. C. § 1973b(e) (1964 ed., Supp. I).

[2] Article II, § 1, of the New York Constitution provides, in pertinent part:

"Notwithstanding the foregoing provisions, after January first, one thousand nine hundred twenty-two, no person shall become entitled to vote by attaining majority, by naturalization or otherwise, unless such person is also able, except for physical disability, to read and write English."

Section 150 of the New York Election Law provides, in pertinent part:

". . . In the case of a person who became entitled to vote in this state by attaining majority, by naturalization or otherwise after January first, nineteen hundred twenty-two, such person must, in addition to the foregoing provisions, be able, except for physical disability, to read and write English. A 'new voter,' within the meaning of this article, is a person who, if he is entitled to vote in this state, shall have become so entitled on or after January first, nineteen hundred twenty-two, and who has not already voted at a general election in the state of New York after making proof of ability to read and write English, in the manner provided in section one hundred sixty-eight."

Section 168 of the New York Election Law provides, in pertinent part:

"1. The board of regents of the state of New York shall make provisions for the giving of literacy tests.

"2. . . . But a new voter may present as evidence of literacy a certificate or diploma showing that he has completed the work up to and including the sixth grade of an approved elementary school or of an approved higher school in which English is the language of instruction or a certificate or diploma showing that he has completed the work up to and including the sixth grade in a public school or a private school accredited by the Commonwealth of Puerto Rico in which school instruction is carried on predominantly in the English language or a matriculation card issued by a college or university to a student then at such institution or a certificate or a letter signed by an official of the university or college certifying to such attendance."

Section 168 of the Election Law as it now reads was enacted while § 4(e) was under consideration in Congress. See 111 Cong. Rec. 19376–19377. The prior law required the successful completion of the eighth rather than the sixth grade in a school in which the language of instruction was English.

[3] This limitation on appellees' challenge to § 4(e), and thus on the scope of our inquiry, does not distort the primary intent of § 4(e). The measure was sponsored in the Senate by Senators Javits and Kennedy and in the House by Representatives Gilbert and Ryan, all of New York, for the explicit purpose of dealing with the disenfranchisement of large segments of the Puerto Rican population in New York. Throughout the congressional debate it was repeatedly acknowledged that § 4(e) had particular reference to the Puerto Rican population in New York. That situation was the almost exclusive subject of discussion. See 111 Cong. Rec. 11028, 11060–11074, 15666, 16235–16245, 16282–16283, 19192–19201, 19375–19378; see also Voting Rights, Hearings before Subcommittee No. 5 of the House Committee on the Judiciary on H.R. 6400, 89th Cong., 1st Sess., 100–101, 420–421, 508–517 (1965). The Solicitor General informs us in his brief to this Court, that in all probability the practical effect of § 4(e) will be limited to enfranchising those educated in Puerto Rican schools. He advises us that, aside from the schools in the Commonwealth of Puerto Rico, there are no public or parochial schools in the territorial limits of the United States in which the predominant language of instruction is other than English and which would have generally been attended by persons who are otherwise qualified to vote save for their lack of literacy in English.

[4] Section 14(b) provides, in pertinent part:

"No court other than the District Court for the District of Columbia . . . shall have jurisdiction to issue . . . any restraining order or temporary or permanent injunction against the . . . enforcement of any provision of this Act or any action of any Federal officer or employee pursuant hereto." 79 Stat. 445, 42 U.S.C. § 1973*l* (b) (1964 ed., Supp. I).

The Attorney General of th United States was initially named as the sole defendant. The New York City Board of Elections was joined as a defendant after it publicly announced its intention to comply with § 4(e); it has taken the position in these proceedings that § 4(e) is a proper exercise of congressional power. The Attorney General of the State of New York has participated as *amicus curiae* in the proceedings below and in this Court, urging § 4(e) be declared unconstitutional. The United States was

granted leave to intervene as a defendant, 28 U.S.C. § 2403 (1964 ed.); Fed. Rule Civ. Proc. 24(a)

[5] SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

It is therefore unnecessary for us to consider whether § 4(e) could be sustained as an exercise of power under the Territorial Clause, Art. IV, § 3; see dissenting opinion of Judge McGowan below, 247 F. Supp., at 204; or as a measure to discharge certain treaty obligations of the United States, see Treaty of Paris of 1898, 30 Stat. 1754, 1759; United Nations Charter, Articles 55 and 56; Art. I, § 8, cl. 18. Nor need we consider whether § 4(e) could be sustained insofar as it relates to the election of federal officers as an exercise of congressional power under Art. I, § 4, see *Minor* v. *Happersett*, 21 Wall. 162, 171; *United States* v. *Classic*, 313 U.S. 299, 315; Literacy Tests and Voter Requirements in Federal and State Elections, Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary on S. 480, S. 2750, and S. 2979, 87th Cong., 2d Sess., 302, 306–311 (1962) (brief of the Attorney General); nor whether § 4(e) could be sustained, insofar as it relates to the election of state officers, as an exercise of congressional power to enforce the clause guaranteeing to each State a republican form of government, Art. IV, § 4; Art. I, § 8, cl. 18.

[6] *Harper* v. *Virginia Board of Elections*, 383 U.S. 663; *Carrington* v. *Rash*, 380 U.S. 89. See also *United States* v. *Mississippi*, 380 U.S. 128; *Louisiana* v. *United States*, 380 U.S. 145, 151; *Lassiter* v. *Northampton Election Bd.*, 360 U.S. 45; *Pope* v. *Williams*, 193 U.S. 621, 632–634; *Minor* v. *Happersett*, 21 Wall. 162; cf. *Burns* v. *Richardson*, *ante*, p. 73, at 92; *Reynolds* v. *Sims*, 377 U.S. 533.

[7] For the historical evidence suggesting that the sponsors and supporters of the Amendment were primarily interested in augmenting the power of Congress, rather than the judiciary, see generally Frantz, Congressional Power to Enforce the Fourteenth Amendment Against Private Act, 73 Yale L. J. 1353, 1356–1357; Harris, The Quest for Equality, 33–56 (1960); tenBroek, The Antislavery Origins of the Fourteenth Amendment 187–217 (1951).

[8] Senator Howard, in introducing the proposed Amendment to the Senate, described § 5 as "a direct affirmative delegation of power to Congress," and added:

"It casts upon Congress the responsibility of seeing to it. for the future, that all the sections of the amendment are carried out in good faith, and that no State infringes the rights of persons or property. I look upon this clause as indispensable for the reason that it thus imposes upon Congress this power and this duty. It enables Congress, in case the States shall enact laws in conflict with the principles of the amendment, to correct that legislation by a formal congressional enactment." Cong. Globe, 39th Cong., 1st Sess., 2766, 2768 (1866).

This statement of § 5's purpose was not questioned by anyone in the course of the debate. Flack, The Adoption of the Fourteenth Amendment 138 (1908).

[9] In fact, earlier drafts of the proposed Amendment employed the "necessary and proper" terminology to describe the scope of congressional power under the Amendment. See tenBroek, The Anti-slavery Origins of the Fourteenth Amendment 187–190 (1951). The substitution of the "appropriate legislation" formula was never thought to have the effect of diminishing the scope of this congressional power. See, *e. g.*, Cong. Globe, 42d Cong., 1st Sess., App. 83 (Representative Bingham, a principal draftsman of the Amendment and the earlier proposals).

[10] Contrary to the suggestion of the dissent, *post*, p. 668, § 5 does not grant Congress power to exercise discretion in the other direction and to enact "statutes so as in effect to dilute equal protection and due process decisions of this Court." We emphasize that Congress' power under § 5 is limited to adopting measures to enforce the guarantees of the Amendment; § 5 grants Congress no power to restrict, abrogate, or dilute these guarantees. Thus, for example, an enactment authorizing the States to establish racially segregated systems of education would not be—as required by § 5—a measure "to enforce" the Equal Protection Clause since that clause of its own force prohbits such state laws.

[11] Cf. *James Everard's Breweries* v. *Day*, *supra*, which held that, under the Enforcement Clause of the Eighteenth Amendment, Congress could prohibit the prescription of intoxicating malt liquor for medicinal purposes even though the Amendment itself only prohibited the manufacture and sale of intoxicating liquors for beverage purposes. Cf. also the settled principle applied in the *Shreveport Case* (*Houston, E. & W. T. R. Co.* v. *United States*, 234 U.S. 342), and expressed in *United States* v. *Darby*, 312 U.S. 100, 118, that the power of Congress to regulate interstate commerce "extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end . . . ." Accord, *Atlanta Motel* v. *United States*, 379 U.S. 241, 258.

[12] See, *e. g.*, 111 Cong. Rec. 11061–11062, 11065–11066, 16240; Literacy Tests and Voter Requirements in Federal and State Elections, Senate Hearings, n. 5, *supra*, 507–508.

[13] The principal exemption complained of is that for persons who had been eligible to vote before January 1, 1922. See n. 2, *supra*.

[14] This evidence consists in part of statements made in the Constitutional Convention first considering the English literacy requirement, such as the following made by the sponsor of the measure: "More precious even than the forms of government are the mental qualities of our race. While those stand unimpaired, all is safe. They are exposed to a single danger, and that is that by constantly changing our voting citizenship through the wholesale, but valuable and necessary infusion of Southern and Eastern European races . . . The danger has begun. . . . We should check it." III New York State Constitutional Convention 3012 (Rev. Record 1916). See also *id.*, at 3015–3017, 3021–3055. This evidence was reinforced by an understanding of the cultural milieu at the time of proposal and enactment, spanning a period from 1915 to 1921—not one of the enlightened eras of our history. See generally Chafee, Free Speech in the United States 102, 237, 269–282 (1954 ed.). Congress was aware of this evidence. See *e.g.*, Literacy Tests and Voter Requirements in Federal and State Elections, Senate Hearings, n. 5, *supra*, 507–513; Voting Rights, House Hearings, n. 3, *supra*, 508–513.

[15] Other States have found ways of assuring an intelligent exercise of the franchise short of total disenfranchisement of persons not literate in English. For example, in Hawaii, where literacy in either English or Hawaiian suffices, candidates' names may be printed in both languages, Hawaii Rev. Laws § 11–38 (1963 Supp.); New York itself already provides assistance for those exempt from the literacy requirement and are literate in no language, N.Y. Election Law § 169; and, of course, the problem of assuring the intelligent exercise of the franchise has been met by those States, more than 30 in number, that have no literacy requirement at all, see *e.g.*, Fla. Stat. Ann. §§ 97.061, 101.061 (1960) (form of personal assistance); New Mexico Stat. Ann. §§ 3–2–11, 3–3–13 (personal assistance for those literate in no language), §§ 3–3–7, 3–3–12, 3–2–41 (1953) (ballots and instructions authorized to be printed in English or Spanish). Section 4(e) does not preclude resort to these alternative methods of assuring the intelligent exercise of the franchise. True, the statute precludes, for a certain class, disenfranchisement and thus limits the States' choice of means of satisfying a purported state interest. But our cases have held that the States can be required to tailor carefully the means of satisfying a legitimate state interest when fundamental liberties and rights are threatened; see, e.g., *Carrington* v. *Rash*, 380 U.S. 89, 96; *Harper* v. *Virginia Board of Elections*, 383 U.S. 663, 670; *Thomas* v. *Collins*, 323 U.S. 516, 529–530; *Thornhill* v. *Alabama*, 310 U.S. 88, 95–96; *United States* v. *Carolene Products Co.*, 304 U.S. 144, 152–153, n. 4; *Meyer* v. *Nebraska*, 262 U.S. 390; and Congress is free to apply the same principle in the exercise of its powers.

[16] See, *e. g.*, 111 Cong. Rec. 11060–11061, 15666, 16235. The record in this case includes affidavits describing the nature of New York's two major Spanish-language newspapers, one daily and one weekly, and its three full-time Spanish-language radio stations and affidavits from those who have campaigned in Spanish-speaking areas.

[17] See, *e. g.*, 111 Cong. Rec. 11061 (Senator Long of Louisiana and Senator Young), 11064 (Senator Holland), drawing on their experience with voters literate in a language other than English. See also an affidavit from Representative Willis of Louisiana expressing the view that on the basis of his thirty years' personal experience in politics he has "formed a definite opinion that French-speaking voters who are illiterate in English generally have as clear a grasp of the issues and an understanding of the candidates, as do people who read and write the English language."

[18] See, *e.g.*, 111 Cong. Rec. 11060–11061.

[19] See Magruder, The Commonwealth Status of Puerto Rico, 15 U. Pitt. L. Rev. 1 (1953).

[20] See, *e.g.*, 111 Cong. Rec. 11060–11061, 11066, 11073, 16235. See Osuna, A History of Education in Puerto Rico (1949).

[21] See, *e.g.*, 111 Cong. Rec. 16235; Voting Rights, House Hearings, n. 3, *supra*, 362. See also Jones Act of 1917, 39 Stat. 953, conferring United States citizenship on all citizens of Puerto Rico.

[22] [This opinion applies also to *Cardona* v. *Power*, *post*, p. 672.]

[23] The pertinent portions of the New York Constitution, Art. II, § 1, and statutory provisions are reproduced in the Court's opinion, *ante*, pp. 644–645, n. 2.

[24] The Fifteenth Amendment forbids denial or abridgment of the franchise "on account of race, color, or previous condition of servitude"; the Seventeenth deals with popular election of members of the Senate; the Nineteenth provides for equal suffrage for women; the Twenty-fourth outlaws the poll tax as a qualification for participation in federal elections.

[25] The test is described in McGovney, The American Suffrage Medley 63 (1949) as follows: "The examination is based upon prose compositions of about ten lines each, prepared by the personnel of the State Department of Education, designed to be of the level of reading in the sixth grade. . . . These are uniform for any single examination throughout the state. The examination is given by school authorities and graded by school superintendents or teachers under careful instructions from the central authority, to secure uniformity of grading as nearly as is possible." The 1943 test, submitted by the Attorney General of New York as representative, is reproduced here:

NEW YORK STATE REGENTS LITERACY TEST

(To be filled in by the candidate in ink)

Write your name here_____
First name Middle initial Last name

Write your address here_____

Write the date here_____
Month Day Year

Read this and then write the answer to the questions. Read it as many times as you need to.

The legislative branch of the National Government is called the Congress of the United States. Congress makes the laws of the Nation. Congress is composed of two houses. The upper house is called the Senate and its members are called Senators. There are 96 Senators in the upper house, two from each State. Each United States Senator is elected for a term of six years. The lower house of Congress is known as the House of Representatives. The number of Representatives from each state is determined by the population of that state. At present there are 435 members of the House of Representatives. Each Representative is elected for a term of two years. Congress meets in the Capital at Washington.

The answers to the following questions are to be taken from the above paragraph:

1. How many houses are there in Congress?
2. What does Congress do?
3. What is the lower house of Congress called?
4. How many members are there in the lower house?
5. How long is the term of office of a United States Senator?
6. How many Senators are there from each state?
7. For how long a period are members of the House of Representatives elected?
8 In what city does Congress meet?

[26] There is no allegation of discriminatory enforcement, and the method of examination, see n. 3, *supra*, makes unequal application virtually impossible. McGovney has noted, *op. cit. supra*, at 62, that "New York is the only state in the Union that both has a reasonable reading requirement and administers it in a manner that secures uniformity of application throughout the state and precludes discrimination, so far as is humanly possible." See *Camacho* v. *Rogers*, 199 F. Supp. 155, 159–160.

[27] See McKinney's Consolidated Laws of New York Ann., Education Law § 4605. See generally Handbook of Adult Education in the United States 455–465 (Knowles ed. 1960).

[28] The statute makes an exception to its sixth-grade rule so that where state law "provides that a different level of education is presumptive of literacy," the applicant must show that he has completed "an equivalent level of education" in the foreign-language United States school.

[29] Section 5 of the Fourteenth Amendment states that "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

[30] See generally Karst, Legislative Facts in Constitutional Litigation, 1960; The Supreme Court Review 75 (Kurland ed.); Alfange, The Relevance of Legislative Facts in Constitutional Law, 114 U. Pa. L. Rev. 637 (1966).

[31] There were no committee hearings or reports referring to this section, which was introduced from the floor during debate on the full Voting Rights Act. See 111 Cong. Rec. 11027, 15666, 16234.

[32] See Thayer, The Origin and Scope of the American Doctrine of Constitutional Law, 7 Harv. L. Rev. 129, 154–155 (1893).

[33] A number of other arguments have been suggested to sustain the constitutionality of § 4(e). These are referred to in the Court's opinion, *ante*, pp. 646–647, n. 5. Since all of such arguments are rendered superfluous by the Court's decision and none of them is considered by the majority, I deem it unnecessary to deal with them save to say that in my opinion none of those contentions provides an adequate constitutional basis for sustaining the statute.

Mr. CANNON. Mr. President, the senior Senator from Massachusetts and I are cosponsoring, together with other Members of the Senate, a bill to enfranchise hundreds of thousands, perhaps millions, of deserving citizens in presidential elections.

The 1963 report issued by the Commission on Registration and Voting, appointed by President John F. Kennedy, cited annual changes of residence by more than 20 million adults.

Mobility of citizens in this country is a sign of the times and our laws should keep pace with progress.

Whether one moves east to west, north to south, his choices remain the same in presidential elections and national issues do not change. Almost half of the States today grant new residents the right to vote for President and Vice President if they establish their residences within 30 to 60 days prior to the date of the election.

The choosing of a President is a privilege which ought to be enjoyed by every American.

S. 2166—INTRODUCTION OF A BILL TO PROTECT WILD MUSTANGS

Mr. MOSS. Mr. President, ever since I came to the Senate I have heard recurring discussions about the wild horses and burros who roam the western plains—and what should be done with them. It is estimated that there are over 25,000 and they can be found primarily in 10 States: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Wyoming, and Utah.

They are variously considered as marauders who threaten domestic herds and damage crops, as swift and colorful accessories to our western scenery, or as nuisances who eat forage intended for other livestock.

Some of these horses are domestic animals who have strayed from ranches and farms, but among the herds are a few blooded Spanish mustangs, descendants of animals which escaped from early Spanish explorers and missions. There are two main types: First, the Spanish Barb; and second, the Andalusian, an offshoot of the Barb. I am told there are points of confirmation by which the species can be identified.

These blooded mustangs will soon become extinct if we do not do something about them. They are being killed off along with other wild horses and burros as they aggravate stockmen and farmers. They are being lost through disease, epidemics, and starvation. And their blood is gradually being diluted through crossbreeding with domestic stock.

I am today introducing a bill to authorize the Secretary of the Interior to round up all wild horses and burros on lands under his jurisdiction, and to have separated from them any Spanish barb and Andalusian mustangs, and to place these animals on selected lands under his jurisdiction for conservation, protection, restoration, and propagation.

The bill also authorizes the Secretary to dispose of all horses rounded up which are not suitable for conservation or propagation by sale or any other such means as he determines to be in the public interest. The bill anticipates that when and as the wild mustangs under the protection of the Secretary become too numerous they may also be disposed of by sale for use or further propagation.

Finally, the bill provides that in rounding up the wild horses, the Secretary may enter into contracts or other agreements with any person or private organizations for assistance. In this provision, I have in mind the National Mustang Association which has taken great interest in the wild mustang and in his preservation. I feel its many dedicated members could be used to good advantage in riding the range to round up the wild horses, and helping to select the blooded mustangs which should be protected and bred so this remarkable animal will not be lost to us.

In introducing this bill, I make no case that it presents the only solution for the wild mustang problem, or even the best solution. I say only that it seems the most realistic way to handle the problem after some months of study and discussion. My primary purpose in introducing the measure is to provide a vehicle for further study, further discussion, congressional hearings, and eventual legislation.

Mr. President, I introduce the bill for appropriate reference, and ask that the full text be printed in the RECORD.

The VICE PRESIDENT. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 2166) to designate the Spanish Barb and Andalusian Wild Mustangs as endangered species threatened with extinction, and to provide for their protection, introduced by Mr. Moss, was received, read twice by its title, referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

S. 2166

Be is enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the administration of the Act entitled "An Act to provide for the conservation, protection, and propagation of native species of fish and wildlife, including migratory birds, that are threatened with extinction; to consolidate the authorities relating to the administration by the Secretary of the Interior of the National Wildlife Refuge System; and for other purposes", approved October 15, 1966 (80 Stat. 926), the Spanish Barb and Andalusian Wild Mustangs shall be considered endangered species threatened with extinction and the Secretary of the Interior shall take such action under this Act and the Act of October 15, 1966, as may be necessary to conserve, protect, restore, and propagate such species.

SEC. 2. (a) In carrying out the provisions of this Act and the Act of October 15, 1966 (80 Stat. 926), the Secretary of the Interior is authorized to take such action as may be necessary to round up wild horses on lands under his jurisdiction. With respect to such wild horses so acquired, the Secretary shall inspect or cause to be inspected such horses with a view to separating therefrom any Spanish Barb and Andalusian Wild Mustangs which he determines should be conserved, protected, restored, and propagated. Following his determination, the Secretary shall place such Mustangs so selected on lands under his jurisdiction or acquired by him in accordance with the provisions of the Act of October 15, 1966.

(b) With respect to wild horses acquired by the Secretary of the Interior pursuant to subsection (a) of this section and determined by the Secretary to be not suitable for conservation, protection, restoration, and propagation in accordance with this Act and the Act of October 15, 1966, such horses shall be disposed of by the Secretary by sale or by

such other means as he determines to be in the public interest.

(c) The Secretary of the Interior is authorized to enter into contracts or other agreements with any person or private organization to assist the Secretary in carrying out the provisions of subsection (a) of this section.

SEC. 3. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

S. 2167—INTRODUCTION OF THE PENSION AND EMPLOYEE BENEFIT ACT OF 1969

Mr. JAVITS. Mr. President, I introduce, for appropriate reference, a bill entitled "The Pension and Employee Benefit Act of the 1969." This bill is a comprehensive legislative proposal to deal with the major problems and defects in our private pension plan system, and would accomplish the following:

First, the bill would establish minimum vesting standards for pension plans, thereby giving assurance that no pension plan could set its eligibility standards so high as to deny pension eligibility to all but a few employees.

Second, the bill would establish minimum funding standards, thereby giving assurance that pension funds will be operated on a sound and solvent basis, enabling the fund to deliver the benefits which have been promised.

Third, the bill would establish a program of pension plan reinsurance so that plans meeting the vesting and funding standards of the bill would be insured against termination, and retirees would be insured against loss of benefits if an employer goes out of business before the plan has been fully funded.

Fourth, the bill would provide for the establishment of a special central portability fund, participation in which would be on a voluntary basis, enabling pension plans to have a central clearinghouse of pension credits for persons transferring from one employer to another.

Fifth, the bill would establish certain minimum standards of conduct, restrictions on conflicts of interest, and other ethical criteria which are to be followed in the administration of pension plans and other plans providing benefits for employees.

Sixth, the bill would establish a U.S. Pension and Employee Benefit Plan Commission to administer the requirements of this bill. The Commission would be given sufficient enforcement powers to insure compliance, but the bill also provides for judicial review, insuring to the maximum feasible extent against arbitrary exercise of the Commission's powers.

Seventh, the bill consolidates in the Commission most existing Federal regulatory standards relating to pension and welfare plans, thereby relieving employers, unions, insurance companies, and banks of the necessity of dealing with multiple Federal agencies—such as the Labor Department under the Disclosure Act or the Treasury Department under the pension provisions of the tax code. Under this bill, a qualification certificate from the Pension Commission will be sufficient to satisfy substantially all Federal regulatory statutes governing employee benefit plans.

And eighth, the bill establishes Federal court jurisdiction of suits involving pension plans, and provides a simplified method for enforcement and recovery of pension rights.

I. BACKGROUND

Mr. President, there are now over $100 billion in private pension plans, yet there is almost no Federal regulation of the conduct of these plans' affairs, no minimum standards governing their establishment or operation, and, far too often, no practical means by which a beneficiary can secure his rights.

Mr. President, I am committed to preserving, fostering, and improving the private pension plan system. I join those who also want to improve social security, but I have no illusions that social security will, or ought to, replace private pension plans.

For private plans serve a dual purpose of supplementing the limited benefits payable under social security while at the same time providing very substantial funds for investment, thereby fostering the growth of this Nation's economy.

Four years ago, the President's Committee on Corporate Pension Funds issued a report in which it was recommended that every pension plan be required to "provide some reasonable measure of vesting for the protection of employees"; that minimum funding standards be established because "inadequate funding of private pension plans under present standards places an unwarranted financial risk on employees during their retirement years"; that "the possibility of developing an institutional arrangement for transferring and accumulating private pension credits deserves serious study"; and that, although funding provides some measure of protection for retirees, it "may not protect plan participants from losing at least some of their equity in the event of a plan's termination," and, to meet the latter problem, the idea of reinsurance "is worthy of serious study."

The Cabinet Committee's report has stimulated a great deal of thought and discussion during the past 4 years. Various congressional committees have begun to look into the problem. Thus, the Fiscal Policy Subcommittee of the Joint Economic Committee, of which I am also a member, held several hearings growing out of many complaints received from all parts of the country protesting that people who had worked long years for a pension were denied benefits on various grounds which seemed unfair or that the funds set aside to provide the benefits they had been promised proved far from sufficient. Other hearings looked into the feasibility of a pension reinsurance program and the possibility of amending the Taft-Hartley provision dealing with labor-management trust funds. And, of course, the Senate Permanent Investigations Subcommittee, of which I am also a member, held several very revealing investigations of the affairs of certain plans, and unearthed shocking misapplication of plan assets—some $4 million in one case—all without violation of any State or Federal law.

Finally, last year, the General Subcommittee on Labor of the House held hearings on S. 1024, the administration's fiduciary standards bill, and the Senate Labor Subcommittee held 1 day of hearings on that bill as well as my own comprehensive bill, S. 1103, and the administration's minimum standards bill, S. 3421.

These hearings, however, constitute no more than a beginning.

II. THE BASIS FOR THIS BILL

The subject of employee benefit plans, particularly pension plans, is very complex, so much so that in the absence of a specific legislative proposal, the dialog tends to remain abstract and diffuse.

The bill I introduce today represents the distillation of years of inquiry and thought by my staff and myself on this problem. I do not, however, claim that this bill represents the only way of dealing with problems in the pension field; there are other approaches which can and should be explored. It is my hope that this bill will serve as a focal point for the pension debate and that out of subsequent discussions of it and other proposals which have and will be made, will emerge specific legislation designed to cope with the problems which exist in the pension field.

III. THE NEED FOR A COMPREHENSIVE APPROACH

I believe that all of these problems are so interrelated that they cannot be solved without a comprehensive legislative program dealing not only with malfeasance of administrators, and not only with the consequences of plant shutdowns and plant terminations, but also with the broad spectrum of questions such as adequacy of funding, reasonable minimum standards of vesting, transferability of credits under some circumstances, and, in short, the establishment of certain general minimum standards to which all private pension plans must conform.

That is by no means to say that we should create a legislative straightjacket which would destroy the flexibility and inventiveness which have been one of the foundations of the enormous growth of pension plans in recent years. But I do think there ought to be some minimum standards in this field. And, in my judgment, those minimum standards will no more force all pension plans to be the same than the minimum wage law forces all employees' wages to be the same. The minimum is merely the basic level which decency and order require.

A. FUNDING AND VESTING

When we speak of adequate "funding," we mean setting aside sufficient funds to pay the benefits provided in the plan. When we speak of "vesting," on the other hand, we ordinarily mean the establishment of a participant's interest in a fund which he will retain even if he loses his job.

It is easy enough to "fund" a plan with no vesting—as there are no vested liabilities, there is no need for funds to pay those liabilities. For example, if a fund promises to pay "such benefits as the trustees may decide from time to time to pay," the plan can never be "unfunded" because the trustees can always decide to cut benefits.

Conversely, a "vested interest" in an unfunded plan may be worth very little, because no matter how "vested" a pension right may be, it is worthless if the trust fund is depleted.

Either way—a vested interest in an unfunded plan, or a funded plan with no vested interests—an employee may learn after years of faithful service that his expected pension was a cruel hoax.

There is no easy solution, however, for industry needs vary widely; vesting after 20 years may work well in an industry with a stable workforce, while in certain high-labor-turnover trades such 20-year vesting may set the standards so high as to make pension almost unattainable for most employees.

I refuse to believe, however, that the problem is insoluble.

This bill sets the standards at a point which is, in my judgment, a bare minimum: As to vesting, the bill requires that an employee after 6 years of service must receive a nonforfeitable right to at least 10 percent of his pension benefits, and an additional 10 percent for each additional year of service under the plan, so that full vesting would occur after 15 years.

This approach is generally referred to as "deferred graded vesting"; it not only assures men and women who have devoted years of their lives to working under a pension plan that they will not be deprived of benefits to which they are, in fairness, entitled, but it also eliminates the possibility of a worker losing all of his pension rights because he loses his job 1 day, or 1 month, before benefits are to vest.

In the Committee on Government Operations, where we looked into these matters, we have found plans where no one was entitled to any benefits, and some millions of dollars were left floating in the air, so strict were eligibility standards.

As to funding, again this bill is minimal, for it gives existing plans 40 years to amortize their unfunded liabilities, and 30 years for new plans. That is a long time, but it is considered a reasonable amortization period by most pension planners.

Nevertheless, it has been suggested that this bill, without further qualifications, could have a damaging effect on pension plans in certain low-wage industries. In some of those industries, it is argued, payment of even minimal pensions depends upon marginal funding and eligibility standards so high that most employees do, in fact, forfeit their rights before retirement. That is an unhappy situation, but if it is true that the choice in those industries is between such a plan or no pension plan at all, then we need to find out the facts—the precise details—and I call upon the pension planners and administrators, the Government agencies, and others with specific knowledge and experience in the field to come forward with what information they have so that we can be sure that whatever law we enact will help and not hinder the development, solvency, and fairness of private pension plans.

Conversely, it may also turn out, in some multiemployer plans, that, because of the added opportunity for continued employment under these plans even after involuntary separation from a particular job, vesting standards may not need to be as high as elsewhere and can still assure eligibility of a reasonable proportion of the participants. Once again, we need the facts, the precise details of as many varied types of pension plans as we can find, to be sure that this legislation is refined and tailored to fit the needs of the private pension industry. But the only way, in my judgment, to find those facts is to focus on a particular bill, a precise legislative proposal, and see exactly how it will work.

Finally there is provision in the bill for granting a delay of 5 years in complying with the vesting and funding standards to plans which would face real hardships if compliance were required immediately. This 5-year delay could be granted to plans which would otherwise be threatened with termination because of the added cost of immediate compliance or where a reduction in wages or plan benefits might be necessary to allow the plan to comply.

B. PORTABILITY

The problem of portability is intimately related to funding and vesting. As long as plans have no minimum standards, it will be difficult indeed to devise any effective portability scheme—for how can an employee with a vested interest in an inadequately funded plan convert that interest into an "equivalent" participation in another plan which has lots of money but no vested interests. At first the employee had an enforceable interest in nothing and now he wants to exchange that for an unenforceable interest in something.

On the other hand, I want to make it very clear—and the bill specifically provides—that the portability clearinghouse feature of this bill is completely voluntary. It is a convenience to those funds which already have, or will have, benefit and funding structures similar enough to permit transferability. It is my hope that this portability service will be attractive enough to induce many plans to participate, but it will be up to them.

There is, however, another feature in this bill which is, in effect, a kind of a defacto portability. The bill permits special funding standards for multiemployer plans, allowing them to fund over a longer period of time on a less stringent basis, under certain specified conditions. The theory of this less stringent funding for multiemployer plans is that, while employers come and go, many industries, as such, go on "forever," and therefore there is much less risk that a plan will be terminated before its unfunded liabilities are amortized. As a result, multiemployer plans are made comparatively more attractive by this bill, and, of course, a multiemployer plan gives to each participant a kind of "portability" of his pension credits, as long as he works for any employer under the plan.

Finally, the mere existence of minimum vesting standards creates, if not portability, at least a substitute for it. An employee with a vested pension right may not be able to take it with him when he moves to another job, but at least he can come back and get the pension when he reaches retirement age. The result may be that he will get two small pension checks instead of one larger one later on, but the total will often be the same.

Thus, voluntary portability under the bill, plus incentives for multiemployer plans, plus minimum standards for vesting, all aim in the same direction—giving the employee the right to some protection from forfeiture when circumstances require that he change jobs.

C. REINSURANCE

Reinsurance, like portability, sounds fine all by itself, but it is part and parcel of the vesting-funding package. If we are to insure employees that their pensions will be paid even if the employer's business terminates, then we must regulate the pension fund itself, at least to a limited extent. Surely we would not ask the Federal Deposit Insurance Corporation to reinsure bank deposits without some control of the bank's affairs. Yet, if we regulate the fund itself, it seems inevitable that we require some minimum standard of vesting, or else we may be insuring that the money will be there, without insuring that anyone will have a right to receive it when he retires.

This bill reinsures against only one contingency: termination of the employer's business before the unfunded liabilities of the pension plan are funded. The premium is geared to the amount of such unfunded liabilities, and cannot exceed 1 percent of that amount.

This is not the maximum type of pension reinsurance which would be devised. But it meets the major problem: It would, if it had been on the books 10 years ago, have protected against the tragedy in the Studebaker shutdown in South Bend, when one employee who was 59 years old and had worked for Studebaker for 43 years, starting at the age of 16, forfeited 85 percent of his pension rights. And he was not alone, for there were 20 other Studebaker employees, each with more than 40 years of service, who were in the same boat. Studebaker's plan was a good one. It would have met the funding standards of this bill, and it could have been reinsured, and those employees could have been 100 percent protected.

I am not prepared to ask for compulsory reinsurance of pension plans without some minimum standards for all. It is easy enough to set up an actuarily unsound plan which is bound to go broke, and then make the solvent plans pay higher premiums to cover the unsound ones. But I do think we can devise a scheme which will let each plan bear a minimal cost of reinsurance, each knowing that every other participant in the reinsurance program is held to the same minimum standards of solvency. That is what this bill would do.

D. ETHICAL STANDARDS OF ADMINISTRATION

Title IV of this bill establishes certain basic standards for the administration of all employee benefit funds—not just pension funds. Conflicts of interest, kickbacks, pay-roll-padding, and so forth are prohibited. This title of the bill is spe-

cifically designed to outlaw the practices disclosed several years ago in hearings before the Permanent Investigations Subcommittee.

But beyond such standards, the bill provides for jurisdiction in the Federal courts and a wide battery of remedies to insure not only that benefit plans are administered without conflicts of interest, but also in accordance with the contract or trust agreement, as well as pursuant to the fiduciary standards which we have developed over the years in our courts of equity.

E. REMEDIES

Title V of the bill gives the Commission the right to sue in Federal court to require compliance with the vesting-funding-reinsurance provisions of the bill, and it gives the Federal district courts equivalent jurisdiction to entertain a suit by a plan administrator to test any action of the Commission. This title also gives the Commission authority to sue to enforce the ethical standards established by title IV of the bill. And it also permits private parties to sue for rights guaranteed by the bill, as well as for breach of any contract or trust guaranteeing them any rights.

The alternative remedies are important; too often a beneficiary who has wrongfully been denied his rights will not bring suit because his costs in maintaining a legal action will exceed the small amount of his pension. It is in cases like these in which a pensioner—or a group of pensioners—with a meritorious case can request the Commission to bring suit in their behalf.

The district courts, in turn, are authorized to issue injunctions or other orders to compel compliance with the law, and, if necessary, to put a fund into receivership until its affairs are put in order.

The bill does not attempt to spell out all the fiduciary standards to which every trustee must adhere. It does specifically prohibit certain conflicts of interest, but, beyond that, the bill leaves the matter of trustee standards to the courts—as has been done with great success for hundreds of years under our Anglo-American legal tradition. The law the courts will apply under this bill in such cases will vary—if the trust agreement specifies the law of a particular State, that State's law will apply unless it is contrary to the policy of Federal law; otherwise, it will be Federal common law, as developed by the Federal courts. In my judgment, that is the best way to develop fiduciary standards—and it is the way most consistent with our legal traditions.

F. SPECIAL PROBLEMS OF PROFIT-SHARING RETIREMENT PLANS

Profit-sharing plans, which I have long sought to encourage as a valuable inducement to labor-management cooperation in the interest of stability and higher productivity, present many significant differences from pension plans, even when profit sharing involves payment of benefits on retirement. This was clearly brought out in recent hearings on private pension plans held by the Joint Economic Committee. These differences in operation necessitate differences in treatment, although in both cases the goal should be to insure fulfillment of the legitimate expectations of the participants.

The bill I am introducing today seeks to reflect these important differences. It defines profit-sharing retirement plans separately from ordinary pension plans, and reflects the fact, for example, that true profit-sharing retirement plans are automatically fully funded because benefits are entirely dependent upon the employer's profits.

IV. THE PENSION COMMISSION—A SINGLE AUTHORITY TO REPLACE MULTIPLE AGENCIES

The concept of a single authority to regulate the creation and operation of pension plans is one which should be beneficial to the labor organizations, employers, and participants as well as those who sell and service pension plans, such as the banks, insurance companies, and pension consultants. Presently various aspects of some pension plans are unregulated while other aspects are regulated by State agencies, by the Treasury Department, Labor Department, and the Securities and Exchange Commission, among others. The need for coordination of these efforts together with any new regulation is obvious. Accordingly, this b'll would make the qualification procedures now administered by the Treasury a part of the operations of the proposed Pension Commission. It may be that the entire scope of Treasury operations affecting pension plans should be transferred to the Commission. And, yet, such determinations as the manner of integrating pension benefits with social security benefits and the determination of reasonable levels of compensation obviously have an important impact on Federal revenue considerations. Similarly, the extent to which regulations of pension plan investments is now performed by the Securities and Exchange Commission warrants careful consideration as to what functions, if any, should be transferred to the proposed Commission.

The point to be made here is that a great deal of thought will be required to develop a rational and coordinated system for the regulation of pension and other employee benefit systems without adversely affecting the traditional role of existing agencies now concerned with some aspect of these plans. But the goal is an important one, and worthy of the effort that will be required. For I am convinced that a single agency is required. It will be a very difficult task to regulate the operations of employee benefit plans sufficiently to assure the legitimate expectations of employee participants while at the same time avoiding undue or unnecessary interference with the operation of these plans. Overregulation or unnecessary regulation would be worse than none, for it would deter the installation and improvement of these much needed programs. It is a tortuous course to be steered between the problems of frustrated expectations for pension plan members growing out of no regulation and the equally damaging frustrations growing out of an irrational regulatory scheme which deters the employer from instituting a pension plan for the employees. It seems clear to me that this course could best be steered by an agency which has the general responsibility for encouraging the growth of the private pension system including the implementation of needed rules to protect pension participants.

Mr. President, as I have said, the complexities in this field are awesome. The bill I introduce today is not perfect, but it represents several years work by myself and my staff, in consultation with representatives of the business community, organized labor, and the banking and insurance industries. I hasten to add that none of those groups endorse all of the bill, though each, I suspect, has much to gain from certain features of it.

The bill I introduce today is similar in many respects to S. 1103, which I introduced in the 90th Congress. It is also similar in some respects to provisions of two separate and less comprehensive bills sponsored by the Johnson administration in the last Congress, and I would hope that the Nixon administration would carefully study all these proposals.

One of the principal differences between this bill and S. 1103 is in the vesting provisions. S. 1103 would have permitted two different types of vesting: full vesting at age 45 after 15 years or 50 percent vesting after 10 years and 5 percent per year thereafter, also at age 45.

Upon further reflection, I have become convinced that deferred graded vesting is preferable to full vesting at a given point of time since it eliminates the possibility that a worker can be forced to lose all his pension benefits just because he was laid off or quit 1 day before all his benefits were scheduled to vest. Under the present bill, no benefits would have to vest for 6 years. At the end of the 6th year of continuous service, 10 percent of benefits would have to vest, with an additional 10 percent for each year thereafter until full vesting occurs after 15 years.

Another change from S. 1103 concerns the Commission's power to issue regulations to implement the act and the establishment of a unified scheme of Federal law applicable to employee benefit plans. Under today's bill the Commission is given the power to issue regulations, in accordance with the Administrative Procedure Act; such regulations may define actuarial, accounting, technical and trade terms and may prescribe limitations on actuarial assumption as to such matters as interest rates, mortality and turnover. The Commission is, moreover, required to consult with other Federal agencies which have jurisdiction over employee benefit plans with a view to insuring a unified consistent scheme of regulation of employee benefit plans. Finally, the bill gives the President power to delegate authority to enforce and administer other laws applicable to employee benefit plans from other Federal agencies to the Commission, where such delegation would help in establishing a simplified, unified and consistent scheme of regulation and administration of laws applicable to these plans.

I wish to express my admiration and

gratitude to my administrative assistant, Frank Cummings, for the years of thought and experience as an outstanding labor-management lawyer he has poured into the months of work he spent in drafting this bill. For several years, he was the minority counsel to the Committee on Labor and Public Welfare. It is largely due to his brain and hard work that this entire concept has been established, structured, and presented to the Senate. He has a great right to be proud of this proposal. Also to others who have been consulted or otherwise helped, I express my gratitude and appreciation, and particularly to Eugene Mittleman, the minority counsel of the Senate Committee on Labor and Public Welfare, who has worked with me and Mr. Cummings in refining and revising this bill.

Following my sponsorship of this subject, the previous administration felt it incumbent to come in with a bill. I am hopeful that based on the bill I am introducing today, which is revised and brought up to date, this administration may adopt the concept and come forward with a measure to deal with this problem.

I do not claim that my bill is the only one to deal with this problem. There are other approaches which can and will be explored, but I think this bill can serve as a focal point, and, with other proposals which have been made and will be made, specific legislation can emerge designed to cope with the problems I have outlined as existing in this field.

Mr. President, technical aspects of this bill, as well as other changes from S. 1103, are explained in an explanatory memorandum I have prepared, and I ask unanimous consent that the full text of the bill, together with the text of that explanatory memorandum, be printed in the RECORD at the conclusion of my remarks.

Mr. President, this bill was referred to the Committee on Labor and Public Welfare when it was introduced in the 90th Congress, and I ask unanimous consent that it again be referred to that committee, with the understanding that if the bill is reported, and if it contains any provision, as reported, amending the Internal Revenue Code, the bill shall then be re-referred to the Finance Committee for consideration of any such provision within the jurisdiction of that committee.

The VICE PRESIDENT. The bill will be received and appropriately referred, as requested by the Senator from New York; and, without objection, the bill and the memorandum will be printed in the RECORD.

The bill (S. 2167), to provide additional protection for the rights of participants in employee pension and profit-sharing-retirement plans, to establish minimum standards for pension and profit-sharing-retirement plan vesting and funding, to establish a pension plan reinsurance program, to provide for portability of pension credits, to provide for regulation of the administration of pension and other employee benefit plans, to establish a U.S. Pension and Employee Benefit Plan Commission, and for other purposes, introduced by Mr. JAVITS, was received, read twice by its title, and referred to the Committee on Labor and Public Welfare, by unanimous consent, then to the Committee on Finance, when reported, if it contains amendment of the Internal Revenue Code, and ordered to be printed in the RECORD, as follows:

S. 2167

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Pension and Employee Benefit Act of 1969".

DEFINITIONS

SEC. 2. As used in this Act—

(1) The term "Commission" means the United States Pension and Employee Benefit Plan Commission established under section 3.

(2) The term "employee" means an individual who performs service for a continuous period of not less than six months in one or more States for an employer, and includes an officer or director of a corporation or of an unincorporated organization and an agent acting for his principal on a substantially full-time basis.

(3) The term "employees' benefit plan" means any plan providing for the payment of any of the benefits specified in section 2(4).

(4) The term "employees' benefit fund" means any fund, whether established pursuant to a collective bargaining agreement or unilaterally by an employer or by a labor organization, which is available for the payment either from principal or income, or both, to persons who are employed in an industry affecting commerce or who are members of a labor organization representing employees in an industry affecting commerce, or to members of the families, dependents, or beneficiaries of such persons, of one or more of the following benefits: Medical or hospital care, pension on retirement or death of employees, benefits under a profit-sharing-retirement plan, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness benefits, or accident benefits, or pooled vacation, holiday, severance or similar benefits, or defraying the costs of apprenticeship training programs, or, in the case of a fund subject to the restrictions of section 302(c) of the Labor-Management Relations Act, providing any other benefit which may be permitted by subsections 302(c)(5) or 302(c)(6) of that Act: *Provided,* That any fund to which contributions are made solely to provide workmen's compensation benefits, disability benefits, or other benefits required by State or local law to be provided to employees shall not be deemed to be an employees' benefit fund. To the extent that benefits under an employees' benefit plan are provided through the medium of an insurance contract under which benefits are guaranteed by the insurance company to the extent that insurance premiums are paid, and under which neither the employer nor any labor organization retains the power to instruct the insurance carrier with respect to entitlement to receipt of benefits, disposition of assets or any other matter relating to the moneys received by the insurance carrier pursuant to the plan, such plan shall not be deemed to involve an employees' benefit fund subject to the provisions of title IV.

(5) The term "employer" means any person acting directly as an employer or indirectly in the interest of an employer in relation to a pension plan or employee's benefit fund, and includes a group or association of employers acting for an employer in such capacity.

(6) The term "person" means an individual, partnership, corporation, mutual company, joint stock company, trust, unincorporated organization, association, or employee organization.

(7) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf Lands defined in the Outer Continental Shelf Lands Act.

(8) The term "commerce" means trade, commerce, transportation, or communication, among the several States, or between any foreign country and any State, or between any State and any place outside thereof.

(9) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

(10) The term "life annuity" means an annuity that continues for the duration of the life of the annuitant, whether or not it thereafter continued to some other person.

(11) The term "deferred life annuity" means a life annuity that commences at retirement age under a pension plan, but in no event later than age seventy.

(12) The term "pension benefit" means the aggregate annual, monthly, or other amounts to which an employee will become entitled upon retirement or to which any other person is entitled by virtue of such employee's death.

(13) The term "pension plan" means a pension fund or plan, other than a profit-sharing-retirement plan, organized and administered to provide pension benefits for employees or their beneficiaries, and includes, without limiting the generality of the foregoing:

(A) a unit benefit plan under which pension benefits are determined with reference to remuneration of an employee for each year of service, or for a selected number of years of service.

(B) a money purchase plan under which pension benefits are determined at the retirement of an employee with reference to the accumulated amount of the aggregate contributions paid by or for the credit of the employee, and

(C) a flat benefit plan under which the pension benefits are expressed either as a fixed amount in respect of each year of employment or as a fixed periodic amount.

(14) The terms "registered pension plan" and "registered profit-sharing-retirement plan" mean, respectively, a pension plan or profit-sharing-retirement plan registered with and certified by the Commission as a plan organized and administered in accordance with title I.

(15) The term "reinsured pension plan" means a registered pension plan which has been reinsured under title II and which has been in operation for at least five years and, for each of such years, has met the registration requirements of the title I: *Provided,* That any addition to or amendment of a reinsured pension plan shall, if such addition or amendment involves a significant increase, as determined by the Commission, in the initial unfunded liability of such pension plan, be regarded as a new and distinct pension plan which may become a "reinsured pension plan" only after meeting the five-year operation requirements of this paragraph and section 202(c) and the registration requirements of title I.

(16) The term "supplemental pension plan" includes a pension plan established for employees whose membership in another pension plan is a condition precedent to membership in the supplemental pension plan.

(17) The term "voluntary additional contribution" means an additional contribution by an employee to or under a pension or profit-sharing-retirement plan except a con-

tribution the payment of which, under the terms of the plan, imposes upon the employer an obligation to make concurrent additional contributions to or under the plan.

(18) The term "experience deficiency" with respect to a pension plan means any actuarial deficit, determined at the time of a review of the plan, that is attributable to factors other than (i) the existence of an initial unfunded liability, or (ii) the failure of the employer to make any payment as required by the terms of the plan or by the provisions of title I, other than as required by section 108(b)(3).

(19) The term "fully funded" with respect to any pension plan means that such plan at any particular time has assets actuarily determined by a person authorized under section 108(e) to be sufficient to provide for the payment of all pension and other benefits to all employees and former employees then entitled to an immediate or deferred benefit under the terms of the plan.

(20) The term "provisionally funded" with respect to any pension plan means that such plan at any particular time has insufficient assets to make it fully funded, but has made provision pursuant to section 108 for special payments sufficient to liquidate all initial unfunded liabilities or experience deficiencies.

(21) The term "initial unfunded liability" means the amount, on the first day of January, 1968, or the effective date of a pension plan or any amendment thereto, whichever is later, by which the assets are required to be augmented to ensure that the plan is fully funded.

(22) The term "special payment" means a payment made to or under a pension plan for the purpose of liquidating an initial unfunded liability or experience deficiency.

(23) The term "fund" shall mean a trust fund, but shall also include a contractual right pursuant to an agreement with an insurance company.

(24) The term "funding" shall mean payment or transfer of assets into a fund, but shall also include payment to an insurance company to secure a contractual right from such company.

(25) The term "profit-sharing-retirement plan" means a plan established and maintained by an employer to provide for the participation in his profits by his employees in accordance with a definite predetermined formula for allocating the contributions made to the plan among the participants and for distributing the funds accumulated under the plan upon retirement or death. Such plan may include provisions permitting the withdrawal or distribution of the funds accumulated upon contingencies other than, and in addition to, retirement and death.

(26) The term "interest in a profit-sharing-retirement plan" means the amount allocated to the account of a participant in a profit-sharing-retirement plan.

(27) The term "service for a continuous period" means service for a period of time without regard to periods of temporary suspension of employment.

(28) The term "administrator" means the person or persons designated by the terms of a pension plan, collective bargaining agreement, trust agreement, or other document establishing or relating to a pension plan or employees' benefit fund as having responsibility for the effective control, disposition or management of the money or other assets contributed to or received by a pension plan or employees' benefit fund; or, in the absence of such designation, the person or persons actually responsible for the control, disposition, or management of such money or other assets, irrespective of whether such control, disposition, or management is exercised directly or through an agent or trustee designated by such person or persons.

ESTABLISHMENT OF PENSION AND EMPLOYEE BENEFIT PLAN COMMISSION

SEC. 3. (a) There is hereby established in the executive branch of the Government an independent agency to be known as the "United States Pension and Employee Benefit Plan Commission". The Commission shall be composed of five members to be appointed by the President, by and with the advice and consent of the Senate. Members of the Commission shall serve for terms of six years, except that (i) of the members first appointed, two shall be appointed for a term of two years, two shall be appointed for a term of four years, and one shall be appointed for a term of six years, and (ii) members appointed to fill vacancies occurring by reason of death or resignation shall be appointed for the unexpired term of their predecessors. Not more than three members of the Commission shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable. No member of the Commission shall engage in any business, vocation, or employment other than that as serving as a member, nor shall any member participate, directly or indirectly (except as a beneficiary) in the management of any plan or fund subject to regulation under this Act. One of the members shall be designated by the President as Chairman of the Commission. Three members shall constitute a quorum of the Commission.

(b)(1) Section 5314 of title 5, United States Code (which lists positions in level III of the Executive Schedule) is amended by adding at the end thereof the following:

"(46) Chairman, United States Pension Commission."

(2) Section 5315 of such title (which lists positions in level IV of the Executive Schedule) is amended by adding at the end thereof the following:

"(78) Members, United States Pension Commission."

(c) The Commission is authorized to appoint and fix the compensation of such officers and employees, and to incur such expenses, as may be necessary to enable it to carry out its functions.

POWERS AND DUTIES OF COMMISSION

SEC. 4. (a) It shall be the duty of the Commission—

(1) to promote the establishment, extension, and improvement of pension, profit-sharing-retirement and other employee benefit plans;

(2) to accept for registration all pension and profit-sharing-retirement plans required and qualified to be registered with the Commission under title I, and to reject any pension or profit-sharing-retirement plan that does not qualify for registration;

(3) to cancel certificates of registration of pension and profit-sharing-retirement plans registered under such title which cease to be qualified for such registration;

(4) to direct and administer the pension reinsurance program established by title II;

(5) to direct and administer the pension portability program established by title III;

(6) to enforce the provisions of title IV; and

(7) to perform such other functions as may be necessary to administer the provisions of this Act.

(b) The Commission or its duly authorized representatives shall have power, at any reasonable time—

(1) to inspect the books, files, documents, and other records respecting pension and profit-sharing-retirement plans kept by an administrator, employer, insurer, trustee, or other person in relation to such plans: *Provided*, That the Commission may delegate its powers under this subsection (b) to the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation in cases involving books, files, documents, or other records held by a bank or trust company, subject to their respective supervisory power, and

(2) to require any such administrator, employer, insurer, trustee, or other person to furnish, in a form acceptable to the Commission, such information as the Commission deems necessary for the purpose of ascertaining whether this Act and regulations of the Commission hereunder have been or are being complied with.

(c) The Commission is authorized by regulation to prescribe minimum standards and qualifications for persons performing services required by the provisions of this Act to be performed by actuaries and, upon application of any person, to determine whether such person meets the standards and qualifications so prescribed. The Commission shall issue certificates of qualification to applicants determined by the Commission after such examination, investigation, or other procedure as it may deem necessary, to meet such standards and qualifications.

(d) The Commission is authorized by regulation to prescribe reasonable fees for the registration of pension and profit-sharing-retirement plans and other services to be performed by it in connection with such plans under this Act, and to make and enforce such other regulations as may be necessary to enable it to carry out its functions and duties under this Act. All fees collected by the Commission shall be paid into the general fund of the Treasury.

(e) The Commission shall transmit to the Congress annually a report of its activities under this Act during the preceding fiscal year.

(f) In accordance with the Administrative Procedure Act, the Commission may prescribe such rules and regulations as may be necessary or appropriate to carry out the purposes of this Act. Among other things, such rules and regulations may define actuarial, accounting, technical, and trade terms; may prescribe reasonable limitations or actuarial assumptions as to interest rates, mortality, turnover rates and other matters; may prescribe the form and detail of all reports required to be made under this Act; and may provide for the keeping of books and records and the inspection of such books and records. Prior to promulgating rules or regulations, the Commission shall consult with other Federal departments or agencies which have jurisdiction over employee benefit plans with a view to avoiding unnecessary conflict, duplication or inconsistency in the rules and regulations which are applicable to such plans under other laws of the United States.

APPROPRIATIONS

SEC. 5. There are authorized to be appropriated such sums as may be necessary to enable the Commission to carry out its functions and duties.

ADMINISTRATION OF WELFARE AND PENSION PLANS DISCLOSURE ACT

SEC. 6. (a) The functions of the Secretary of Labor and the Department of Labor under the Welfare and Pension Plans Disclosure Act, as amended, are hereby transferred to and shall be administered by the Commission.

(b) All personnel, property, records, and unexpended balances of appropriations, which the Director of the Bureau of the Budget determines are used or intended for use by the Secretary of Labor or the Department of Labor primarily in the administration of functions transferred under the provision of this section, are transferred to the Commission.

(c) In addition to the filing requirements of the Welfare and Pension Plan Disclosure Act, it shall be a condition of compliance

with section 7 of such Act that each annual report hereinafter filed under that section shall be accompanied by a certificate or certificates in the name of and on behalf of the plan, the administrator, and any employer or labor organization participating in the establishment of the plan, designating the Commission as agent for service of process on the persons and entities executing such certificate or certificates in any action arising under the Welfare and Pension Plans Disclosure Act or this Act.

TITLE I—BENEFIT STANDARDS

PLANS TO WHICH TITLE APPLIES

SEC. 101. (a) Except as provided by subsection (b), this title applies to any pension plan and, to the extent hereinafter provided, to any profit-sharing-retirement plan, established by an employer engaged in commerce or in any industry or activity affecting commerce or by any employee organization or organizations representing employees engaged in commerce or in an industry or activity affecting commerce or by both.

(b) This title shall not apply to a pension or profit-sharing-retirement plan if—

(1) such plan is administered by the Federal Government or the government of a State or subdivision thereof, or by an agency or instrumentality thereof;

(2) such plan is administered by an organization which is exempt from taxation under the provisions of section 501(a) of the Internal Revenue Code of 1954 and is administered as a corollary to membership in a fraternal benefit society described in section 501(c)(8) of the Internal Revenue Code of 1954 or by an organization described in section 501(c) (3) or (4) of such Code: *Provided*, That the provisions of this paragraph shall not exempt any plan administered by a fraternal benefit society or organization which represents its members for purposes of collective bargaining;

(3) such plan is established by a self-employed individual for his own benefit or for the benefit of his survivors or established by one or more owner-employers exclusively for his or their benefit or for the benefit of his or their survivors;

(4) such plan covers not more than twenty-five participants;

(5) such plan is established and maintained outside the United States by an employer primarily for the benefit of employees who are not citizens of the United States; or

(6) such plan is unfunded and is established by an employer primarily for the purpose of providing deferred compensation for a select group of management employees and is declared by the employer as not intended to meet the requirements of section 401(a) of the Internal Revenue Code.

REGISTRATION OF PLANS

SEC. 102. (a) Every administrator of a pension or profit-sharing-retirement plan to which this title applies shall file with the Commission an application for registration of such plan. Such application shall be in such form as shall be prescribed by regulation of the Commission, and shall be accompanied by a copy of the plan, a copy of the trust deed, insurance contract, by law, or other document under which the plan is constituted. Thereafter, while such plan is in force, the administrator shall maintain its qualification for registration under this title.

(b) In the case of plans established on or after January 1, 1968, the filing required by subsection (a) shall be made within six months after such plan is established. In the case of plans established prior to January 1, 1968, such filing shall be made on such date or on such later date as may be specified by the Commission.

(c) If after examination of a pension or profit-sharing-retirement plan filed under this section, the Commission is satisfied that such plan is qualified for registration under this title the Commission shall issue a certificate of registration with respect to such plan. If the Commission is not so satisfied it shall notify the administrator.

(d) If at any time subsequent to the issuance of a certificate under subsection (c) with respect to any plan, the Commission determines that such plan is no longer qualified for registration under this title, it shall notify the administrator.

(e) A notification under subsection (c) or (d) shall set forth the deficiency or deficiencies in the plan or in its administration by reason of which the notification is given, and shall give the administrator, the employer of the employees covered by the plan, and the labor organization, if any, representing such employees a reasonable time within which to remove such deficiency or deficiencies. If the Commission thereafter determines that the deficiency or deficiencies have been removed it shall issue or continue in effect the certificate, as the case may be. If it determines that the deficiency or deficiencies have not been removed it shall enter an order denying or canceling the certificate of registration.

ANNUAL REPORTS ON REGISTERED PLANS

SEC. 103. The Commission may, by regulations promulgated pursuant to the Administrative Procedures Act, provide for the filing of single reports satisfying the reporting requirements of this Act and the Welfare and Pension Plans Disclosure Act.

AMENDMENTS OF REGISTERED PLANS

SEC. 104. Where a pension or profit-sharing-retirement plan filed for registration under this title is amended subsequent to such filing, the administrator shall within six months after the effective date or the date of adoption of such amendment, whichever is later, within sixty days after the effective date of such amendment file with the Commission a copy of the amendment and such additional information and reports as the Commission by regulation requires to determine the amount of any initial unfunded liability created by the amendment and the special payments required to liquidate such liability.

QUALIFICATION OF PLAN FOR REGISTRATION

SEC. 105. A pension or profit-sharing-retirement plan shall be deemed to be qualified for registration under section 102 if it conforms to, and is administered in accordance with, the standards and requirements set forth in section 102 and sections 106 to 110, inclusive.

GENERAL REQUIREMENTS

SEC. 106. (a) Every pension plan and, to the extent required by regulations issued by the Commission, every profit-sharing-retirement plan shall define the benefits provided by such plan, the method of determination and payment of benefits, conditions for qualification for membership in the plan and the financial arrangements made to ensure provisional or full funding of benefits under the plan. Each such plan shall provide for the furnishing of a written explanation to each member of the plan of the terms and conditions of the plan and amendments thereto applicable to him, together with an explanation of the rights and duties of the employee with reference to the benefits available to him under the terms of the plan and such other information as may be required by regulations of the Commission.

(b) The Commission shall by regulation require each plan to furnish each participant, upon termination of service with a vested right to a deferred life annuity, pension, or other vested interest, with a certificate setting forth the benefits to which he is entitled, including but not limited to the name and location of the entity responsible for payment, the amount of benefits, and the date when payment shall begin, as such regulations shall specify. A copy of each such certificate shall be filed with the Commission. In any proceeding arising under this Act, such certificate shall be deemed prima facie evidence of the facts and rights set forth in such certificate.

(c) A pension or profit-sharing-retirement plan filed for registration under this title, and any trust forming a part of such plan, shall meet all the requirements set forth in section 401 of the Internal Revenue Code of 1954, as determined by the Commission, except to the extent such requirements are inconsistent with the provisions of subsection (a) of this section or of sections 107 to 110, inclusive.

VESTING OF BENEFITS

SEC. 107. (a) A pension or profit-sharing-retirement plan filed for registration under this title shall provide, under the terms of the plan in respect of service on or after the effective date of this Act, or by amendment to the terms of the plan or by the creation of a new plan on or after such date in respect of service on or after the effective date of such amendment or new plan, that—

(1) a member of the plan who has been in the service of the employer, or has been a member of the plan, for a continuous period of six years is entitled upon termination of his employment or membership in the plan prior to attaining retirement age (i) in the case of a pension plan to a deferred life annuity commencing at his normal retirement age, and (ii) in the case of a profit-sharing-retirement plan to a nonforfeitable right to his interest in such plan, equal to 10 per centum of full pension benefits as provided by the plan in respect of such service or of such interest, respectively, and such entitlement shall increase by at least 10 per centum per year of continuous service thereafter until the completion of fifteen years of continuous service, after which such member shall be entitled upon termination of employment or membership in the plan prior to attaining retirement age to a deferred life annuity commencing at his normal retirement age equal to the full pension benefits as provided by the plan in respect of such service, or to the full amount of such interest in the profit-sharing-retirement plan, respectively;

(2) the pension benefits provided under the terms of a pension plan, the deferred life annuity referred to in paragraph (1), and an interest in a profit-sharing-retirement plan referred to in paragraph (1) shall not be capable of assignment or alienation and shall not confer upon any employee, personnel representative or dependent, or any other person, any right or interest in such pension benefits, deferred life annuity, or profit sharing retirement plan, capable of being assigned or otherwise alienated: *Provided*, That the Commission may by regulation provide for the final disposition of plan assets when beneficiaries cannot be located or ascertained within a reasonable time.

(b) Anything in subsection (a) to the contrary notwithstanding, a pension or profit-sharing-retirement plan may provide for vesting upon service or membership in the plan for a lesser period than is provided in such subsection.

(c) Anything in subsection (a) to the contrary notwithstanding, when a plan so provides, an employee may receive in discharge of his rights thereunder upon termination of employment prior to attaining normal retirement age as defined in the plan, or upon attaining such retirement age, a lump sum amount equal to the command value of the annuity prescribed by the plan, or, in the case of a profit-sharing retirement plan, the value of his interest in such plan.

(d) If a pension plan so provides, a person who is entitled to a deferred life annuity under subsection (a) may, before the commencement of payment of such life annuity, elect to receive, partly or wholly in lieu of

the deferred life annuity described by subsection (a)—

(1) a deferred life annuity the amount of which is reduced or increased by reason of early or deferred retirement, by provision for the payment of an optional annuity to a survivor or to the estate of the employee, or by variation of the terms of payment of such annuity to any person after the employee's death, and

(2) a payment or series of payments by reason of a mental or physical disability as prescribed by regulations of the Commission.

(e) For the purposes of subsections (b)(2) and (c), the commuted value of a deferred life annuity shall be computed on the basis of such interest rate and mortality tables and in such manner as may be approved by the Commission.

FUNDING OF PLANS

SEC. 108. (a) A pension plan filed for registration under this title shall provide for funding, in accordance with the tests for solvency prescribed by this title, that is adequate to provide for payment of all pension benefits, deferred life annuities and other benefits required to be paid under the terms of the plan. A pension plan shall be deemed to be solvent for the purposes of this title if it is fully funded or provisionally funded.

(b) Provisions for funding shall set forth the obligation of the employer to contribute both in respect of the current service cost of the plan and in respect of any initial unfunded liability and experience deficiency. The contribution of the employer, including any contributions made by employees, shall consist of the payment currently into the plan or fund of—

(1) all current service costs;

(2) where the plan has an initial unfunded liability, special payments consisting of equal annual amounts sufficient to liquidate such initial unfunded liability over a term not exceeding,

(A) in the case of an initial unfunded liability existing on the effective date of this Act, in any plan established before that date, forty years from that date, and

(B) in the case of an initial unfunded liability resulting from an amendment to a pension plan made on or after the effective date of this Act, or resulting from the establishment of a pension plan on or after the effective date of this Act, thirty years from the date of such amendment or establishment; and

(3) where the plan has an experience deficiency, special payments consisting of equal annual amounts sufficient to liquidate such experience deficiency over a term not exceding five years from the date on which the experience deficiency was determined: *Provided,* that the Commission may suspend the special payments requirements or extend the five year period provided in this subparagraph (3) in cases involving business necessity or substantial risk to the continuation of the employing enterprise.

Notwithstanding the provisions of this subsection, (i) the liquidation of initial unfunded liabilities or experience deficiencies may be accelerated at any time, and (ii) where an insured pension plan established before the effective date of this Act, is funded by level annual premiums to retirement age for each individual member and benefits are guaranted by the insurance company to the extent that premiums have been paid, it shall be deemed to meet the requirements of paragraph (2)(A) of this subsection.

(c) one year after the effective date of this Act, in the case of pension plans registered on or before that date, or within six months after the date of establishment of the plan in other cases, the Administrator shall submit a report of the person authorized by subsection (e) certifying—

(1) the estimated cost of benefits in respect of service in the first year during which such plan is required to register and the rule for computing such cost in subsequent years up to the date of the next report;

(2) the initial unfunded liability, if any, for benefits under the pension plan as of the date on which the plan is required to be registered; and

(3) the special payments required to liquidate such initial unfunded liability in accordance with subsection (b).

Where an insured pension plan is funded by level annual premiums extending not beyond the retirement age for each individual member and benefits are guaranteed by the insurance company to the extent that premiums have been paid, the report required by this subsection may certify the adequacy of the premiums to provide for the payment of all benefits under the plan in lieu of the matters required to be certified under clauses (1), (2), and (3).

(d) The administrator in respect of a registered pension plan shall cause the plan to be reviewed by a person authorized by subsection (e) not more than three years after registration and at intervals of not more than three years thereafter and the person reviewing the plan shall prepare a report certifying—

(1) the estimated cost of benefits in respect of service in the next succeeding year and the rule for computing such cost in subsequent years up to the date of the next report;

(2) the surplus or the experience deficiency in the pension plan after making allowance for the present value of all special payments required to be made in the future by the employer as determined by previous reports; and

(3) the special payments which will liquidate any such experience deficiency over a term not exceeding five years.

If any such report discloses a surplus in a pension plan, the amount of any future payments required to be made to the fund or plan may be reduced by the amount of such surplus. A report under this subsection shall be filed with the Commission by the administrator upon its receipt.

(e) The reports and certificates referred to in subsections (c) and (d) shall be made by an actuary certified by the Commission under section 4(c): *Provided,* That the Commission may exempt any plan, in whole or in part, from the requirement that such reports and certificates be filed where the Commission finds such filings to be unnecessary.

(f) Anything in this section 108 to the contrary notwithstanding, if evidence satisfactory to the Commission shall be filed on behalf of a pension plan in connection with an application for registration under this title demonstrating that (i) such pension plan is a multiemployer plan in which at least 25 per centum of the employees in the industry covered by the plan, either nationally or in a particular region in which a substantial number of employees in such industry is employed, participate, and (ii) no single employer employs more than 20 per centum of the employees covered by the plan, and (iii) the history and present business condition of the industry make it improbable that there will be a substantial decrease in employment in the industry within the foreseeable future—

(I) the Commission may register such plan without regard to the funding requirements of section 108 if such plan meets the following alternative funding requirements:

(1) annual payment into the fund of all current service costs;

(2) annual payment into the fund of an amount equal to the interest, at such rate of interest as the Commission shall prescribe, but not more than 6 per centum per annum, on the unfunded liability of such fund at the date each such payment is made;

(3) annual payment into the fund of an amount equal to the insurance premium for such year required to be paid on behalf of such fund by section 203 of title II of this Act; and

(4) in computing unfunded liability under this subsection (f), the Commission may permit a multiemployer plan to compute such liability solely on the basis of information obtained from participants pursuant to a requirement of the plan under which each such participant, upon reaching the age of forty and completing ten years of continuous service, is required to file with the Administrator of the plan notification of his status under the plan.

(II) the Commission may by regulation approve alternative requirements for payments into the fund other than those specified in subparagraph I of this subsection (f) when, in the opinion of the Commission, such standards will provide reasonable assurance of sufficient assets in the fund of the multiemployer plan to provide for payment of anticipated benefits.

(g) Each pension plan shall, as a condition of registration under this title, apply for reinsurance and pay the reinsurance premiums provided in title II.

(h) For the purpose of this section, a profit-sharing-retirement plan, within the meaning of section 2(26) of this Act, which meets the requirements of title I insofar as they are made specifically applicable to such a plan by section 105 shall be deemed fully funded.

DISCONTINUANCE OF PLANS

SEC. 109. (a) Upon complete termination, or substantial termination as determined by the Commission, of a pension plan—

(1) All contributions by an employer, a labor organization, an employee or other person made after January 1, 1968, in respect of the deferred life annuity prescribed in section 107(a) shall be applied under the terms of the plan—

(A) first, in the case of persons who have already retired and begun to draw benefits under the plan, or who, on the date of such termination, had the right to retire and begin to draw such benefits immediately, to provide the life annuities to which such persons were entitled at the date of termination of their employment;

(B) second, in the case of persons who have vested rights under the plan but have not reached retirement age and begun to draw benefits, to provide the deferred life annuities to which they were entitled at the date of such termination of the plan; and

(C) third, in the case of any other participants in the plan, to provide deferred life annuities to which they are entitled under the plan pursuant to the requirements of section 401(a)(7) of the Internal Revenue Code of 1954, as amended; and

(D) in any case, the Commission may approve payment of survivor benefits with priorities equal to those of the employees or former employees on whose service such benefits are based.

(2) The employer, and the employees if the plan so provided, shall be liable to pay all amounts that would otherwise have been required to be paid to meet the tests of solvency prescribed by section 108, up to the date of such termination, to the insurer, trustee, or administrator of the plan.

(3) No part of the assets of the plan shall revert to the employer until provision has been made for all pensions and other benefits vested or otherwise payable under section 109 according to the plan in respect of age and service up to the date of the discontinuance to members of the plan and for all benefits to pensioners and their pension beneficiaries in accordance with the terms of the plan.

(b) Upon complete termination, or substantial termination as determined by the Commission, of a profit-sharing-retirement plan, the interests of all participants in such plan shall fully vest.

PAYMENTS TO SURVIVORS

SEC. 110. (a) Where in accordance with the terms of a pension or profit-sharing-retirement plan an employee or former employee has designated a person or persons to receive a benefit payable under the plan in the event of the employee's death—

(1) the employer's liability to provide the benefit shall be discharged upon payment to such person or persons of the amount of the benefit; and

(2) such person or persons may upon death of the employee or former employee enforce payment of the benefit, but the employer shall be entitled to set up any defense that he could have set up against the employee or former employee. As used in this subsection, the term "employer" includes a trustee or insurer under a pension or profit-sharing-retirement plan.

(b) An employee or former employee may from time to time alter or revoke a designation made under a pension or profit-sharing-retirement plan, but any such alteration or revocation may be made only in the manner set forth in the plan.

AMENDMENT TO INTERNAL REVENUE CODE

SEC. 111. (a) Section 401 of the Internal Revenue Code of 1954 (relating to qualified pension, etc. plans) is amended by redesignating subsection (j) as (k) and by inserting after subsection (i) the following new subsection:

"(j) PENSION AND PROFIT-SHARING-RETIREMENT PLANS TO WHICH THE PENSION AND WELFARE BENEFITS ACT OF 1969 APPLIES.—For purposes of this part, any pension or profit-sharing-retirement plan to which title I of this Act applies, and any trust forming a part of such plan—

"(1) shall be treated as meeting the requirements of this section during any period for which a certificate of registration with respect to such plan issued by the United States Pension Commission under such title is in effect or an application therefor is pending before the Commission, and

"(2) shall be treated as not meeting the requirements of this section during any period for which such application has not been timely filed or such certificate has been denied or cancelled by such Commission."

(b) The amendment made by the subsection (a) shall apply with respect to periods after the effective date of this Act, except that with respect to any pension plan established before the effective date of this Act, such amendment shall not apply to any period before the date specified by the Commission under section 102(b).

MINIMUM WAGE QUALIFICATION

SEC. 112. Contributions by an employer to a registered pension or profit-sharing-retirement plan shall not be deemed to be part of or to affect the "regular rate" as that term is used in section 7 of the Fair Labor Standards Act.

DELEGATION OF OTHER REGULATORY AUTHORITY

SEC. 113. The President, as may be necessary or appropriate to establish and maintain a uniform, consistent and simplified system of law applicable to employee benefit plans, may be Executive Order delegate to the Commission authority to administer and enforce any other provisions of the laws of the United States insofar as such provisions regulate or affect employee benefit plans.

DELAY IN THE APPLICATION OF TITLE I

SEC. 114. If the Commission finds that the application of this Title to any employee benefit plan would increase the costs of the parties to the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of pension benefit levels or the levels of employees' compensation it may grant to such plan a delay, not to exceed five years, in satisfying the requirements of this Title, under such conditions as it may prescribe as necessary or appropriate to effectuate the policies of this Act.

TITLE II—PENSION REINSURANCE

ESTABLISHMENT OF PROGRAM

SEC. 201. There is hereby established a program to be known as the Federal pension reinsurance program (hereinafter referred to as the "program"). The program shall be administered by, or under the direction and control of, the Commission.

CONTINGENCY INSURED AGAINST UNDER PROGRAM

SEC. 202. (a) The program shall insure (to the extent provided in subsection (b)) beneficiaries of a reinsured pension plan against loss of benefits to which they are entitled under such pension plan arising from substantial cessation of one or more of the operations carried on by the contributing employer in one or more facilities of such employer before funding of the unfunded liabilities of the fund.

(b) The rights of beneficiaries of a reinsured pension plan shall be insured under the program only to the extent that such rights do not exceed—

(1) in the case of a right to a monthly retirement or disability benefit for the employee himself, the lesser of 50 per centum of the average monthly wage he received from the contributing employer in the five-year period after the registration date of the plan for which his earnings were the greatest, or $500 per month;

(2) in the case of a right on the part of one or more dependents, or members of the family, of the employee, or in the case of a right to a lump sum survivor benefit on account of the death of an employee, an amount found by the Commission to be reasonably related to the amount determined under subparagraph (1). In the case of a periodic benefit which is paid on other than a monthly basis, the monthly equivalent of such benefit shall be regarded as the amount of the monthly benefit for purposes of clauses (1) and (2) of the preceding sentence.

(c) If a registered pension plan has not been registered under title I for each of at least the five years preceding the time when there occurs the contingency insured against the rights of beneficiaries shall not be insured: *Provided*, That the Commission may, in its discretion, credit against the five year requirement of section 202(c) one or more years prior to the effective date of this Act for any pension plan which, during such prior years, would have satisfied the registration requirements of title I had this Act been in effect.

PREMIUM FOR PARTICIPATION IN PROGRAM

SEC. 203. (a) Each registered pension plan shall pay an annual premium for reinsurance under the program upon payment of such annual premium as may be established by the Commission. Premium rates established under this section shall be uniform for all pension funds insured by the program and shall be applied to the amount of the unfunded liability to catch insured pension fund. The premium rates may be changed from year to year by the Commission, when the Commission determines changes to be necessary or desirable to give effect to the purposes of this title; but in no event shall the premium rate exceed 1 per centum for each dollar of unfunded liability. Premiums under this title shall be payable as of the effective date of this Act, or for plans adopted after that date, as of the effective date of such plans.

(b) If the Commission determines that, because of the limitation on rate of premium established under subsection (a) or for other reasons, it is not feasible to insure against loss of rights of all beneficiaries of reinsured pension plans, then the Commission shall insure the rights of beneficiaries in accordance with the following order of priorities—

First: individuals who, at the time when there occurs the contingency insured against, are receiving benefits under the pension plan, and individuals who have attained normal retirement age or if no normal retirement age is fixed have reached the age when an unreduced old-age benefit is payable under title II of the Social Security Act, as amended, and who are eligible, upon retirement, for retirement benefits under the pension plan;

Second: individuals who, at such time, have attained the age for early retirement and who are entitled, upon early retirement, to early retirement benefits under the pension plan; or, if the pension plan does not provide for early retirement, individuals who, at such time, have attained age sixty and who, under such pension plan, are eligible for benefits upon retirement;

Third: in addition to individuals described in the above priorities, such other individuals as the Commission shall prescribe.

(c) Participation in the program by a pension plan shall be terminated by the Commission upon failure, after such reasonable period as the Commission shall prescribe, of such pension fund to make payment of premiums due for participation in the program.

REVOLVING FUND

SEC. 204. (a) In carrying out its duties under this title, the Commission shall establish a revolving fund into which all amounts paid into the program as premiums shall be deposited and from which all liabilities incurred under the program shall be paid.

(b) The Commission is authorized to borrow from the Treasury such amounts as may be necessary, for deposit into the revolving fund, to meet the liabilities of the program. Moneys borrowed from the Treasury shall bear a rate of interest determined by the Secretary of the Treasury to be equal to the average rate on outstanding marketable obligations of the United States as of the period such moneys are borrowed. Such moneys shall be repaid by the Commission from premiums paid into the revolving fund.

(c) Moneys in the revolving fund not required for current operations shall be invested in obligations of, or guaranteed as to principal and interest by, the United States.

TITLE III—PENSION PORTABILITY PROGRAM

ACCEPTANCE OF DEPOSITS

SEC. 301. (a) It is declared to be the policy of the Congress that a system of pension portability should be established by the Federal Government to facilitate the voluntary transfer of credits between registered pension or profit-sharing-retirement plans having similar benefit features and actuarial assumptions. Nothing in this title nor in the regulations issued by the Commission hereunder shall be construed to require participation in such portability system by a plan as a condition of registration under this Act.

(b) The Commission is authorized and directed, in accordance with regulations prescribed by it, to receive amounts which are transferred to it from a registered pension or profit-sharing-retirement plan and which are in settlement of an individual's rights under the plan when such individual is separated from employment covered by the plan before the time prescribed for payments under the plan to such individual or to his beneficiaries.

SPECIAL FUND

SEC. 302. Amounts received by the Commission pursuant to section 301 shall be deposited in a special fund which shall be established by it for the purposes of this title The amounts in the fund which are not needed to meet current withdrawals shall be invested as provided under regulations prescribed by the Commission.

INDIVIDUAL ACCOUNTS

SEC. 303. There shall be established and maintained in accordance with regulations prescribed by the Commission, an account for each individual with respect to whom the Commission receives amounts under this title. The amount credited to each such account shall be adjusted at the times and in the manner provided by such regulations to reflect earnings of the special fund and transfers from the special fund for costs of administration.

PAYMENTS FROM INDIVIDUAL ACCOUNTS

SEC. 304. Amounts credited to the account of any individual under this title may, in accordance with regulations prescribed by the Commission, be paid by the Commission—

(1) to a registered plan, if such individual becomes an employee covered by such plan and if such plan has benefit features and actuarial assumptions similar to those of the plan which such amount was originally transferred, or

(2) to such individual or his beneficiaries, if he dies or reaches the age of sixty-five.

Payments under this section shall be made at such times, in such manner, and in such amounts in a lump sum or otherwise as may be determined under such regulations. The amount of any periodic payments shall be determined on an actuarial basis.

COST OF ADMINISTRATION

SEC. 305. There are authorized to be made available out of the special fund established pursuant to section 302 such amounts as the Congress may deem appropriate to pay the costs of administration of this title.

EFFECTIVE DATE

SEC. 306. No amount may be transferred to the Commission pursuant to section 301 of this title before the first day of the twelfth month following the month in which this Act is enacted.

TECHNICAL ASSISTANCE

SEC. 307. The Commission and the Secretary of Labor are authorized to provide technical assistance to employers, trade unions, and administrators of pension and profit-sharing-retirement plans in their efforts to provide greater retirement protection for individuals who are separated from employment covered under such plans. Such assistance may include, but is not limited to (1) the development of reciprocity arrangements between plans in the same industry or area, and (2) the development of special arrangements for portability of credits within a particular industry or area.

TITLE IV—ADMINISTRATION OF EMPLOYEES' BENEFIT FUNDS

SEC. 401. Every employees' benefit fund established to provide for the payment of benefits under an employees' benefit plan shall be established pursuant to a duly executed trust agreement which shall set forth the purpose or purposes for which such fund is established and the detailed basis on which payments are to be made into and out of such fund.

SEC. 402. Moneys in an employees' benefit fund shall be available for expenditure only for the sole and exclusive purpose of paying to employees or their families, dependents, or beneficiaries the benefits for which it was established, and for defraying the reasonable costs of administration of such fund. None of the assets of an employees' benefit fund shall be held, deposited, or invested outside the United States unless the indicia of ownership remain within the jurisdiction of a United States district court. Any such assets remaining upon dissolution or termination of the fund shall, after complete satisfaction of the rights of all beneficiaries to benefits accrued to the date of dissolution or termination, be distributed ratably to the beneficiaries thereof or, if the trust agreement so provides, to the contributors thereto: *Provided,* That in the case of a registered pension or profit-sharing-retirement plan, such distribution shall be subject to the requirements of the previous titles of this Act.

SEC. 403. The person or persons responsible for the administration of an employees' benefit fund shall cause an independent audit to be made of the fund annually, and shall make the results thereof available for inspection by interested persons at the principal office of the fund and at such other places as may be designated in the agreement or instrument pursuant to which the fund is established.

SEC. 404. No person who is an officer or employee of an employer or association of employers or a labor organization, which is a party to any agreement establishing or relating to an employee's benefit fund, shall receive or accept, directly or indirectly, whether through a corporation or other entity owned or controlled in any substantial degree by such person or otherwise, any payment, loan, pledge, hypothecation, assignment, or other transfer out of the assets of such fund (other than benefits to which such person is entitled as an employee), except that if such person is an officer or employee of such fund, reasonable fees or expenses of attending meetings in connection with the business thereof may be paid from the fund to any such officer or employee attending such meetings in an official capacity. Nothing herein contained shall prohibit the purchase by a profit-sharing-retirement plan or other profit-sharing plan, in the ordinary course of business, of the securities or indebtedness of any corporation or other business entity employing directly or through a subsidiary or parent entity a substantial number of the beneficiaries of such fund.

SEC. 405. All investments and deposits of the funds of an employees' benefit fund and all loans made out of any such fund shall be made in the name of the fund or its nominee, and no officer or employee of the fund, no trustee or administrator or officer or employee thereof, no employer or officer or employee thereof, and no labor organization, or officer or employee thereof shall either directly or indirectly accept or be the beneficiary of any fee, brokerage, commission, gift, or other consideration for or on account of any loan, deposit, purchase, sale payment or exchange made by or on behalf of the fund.

SEC. 406. The provisions of this title shall not be applicable to a bank, trust company, or insurance company which is subject to examination and regulation by the Federal Government or a State government, nor to the employees or representatives, acting in an authorized capacity, of such a bank, trust company, or insurance company, nor to the assets owned or held by such a bank, trust company, or insurance company: *Provided,* That this section shall not exempt from the coverage of this title any person other than such a bank, trust company, insurance company, or their employees or representatives, acting in an authorized capacity, issuing instructions or otherwise dealing with such a bank, trust company, or insurance company in connection with an employees' benefit fund.

TITLE V—ENFORCEMENT

SEC. 501. Whenever the Commission—

(1) determines, in the case of a pension or profit-sharing-retirement plan required to be registered under title I, that no application for registration has been filed in accordance with section 102(a), or

(2) issues an order under section 102(e) denying or canceling the certificate of registration of a pension or profit-sharing-retirement plan,

the Commission may petition any district court of the United States having jurisdiction of the parties, or the United States District Court for the District of Columbia, for an order requiring the employer or other person responsible for the administration of such plan to comply with such requirements of title I as will qualify such plan for registration under title I.

SEC. 502. Whenever the Commission has reasonable cause to believe that an employees' benefit fund is being or has been administered in violation of the requirements of title IV, the Commission may petition any district court of the United States having jurisdiction of the parties or the United States District Court for the District of Columbia for an order (1) requiring return to such fund of assets transferred from such fund in violation of the requirements of such title, (2) requiring payment of benefits denied to any beneficiary in violation of the requirements of such title, and (3) restraining conduct in violation of the requirements of such title by any person performing duties in connection with the administration of such fund.

SEC. 503. Upon the filing of any petition pursuant to section 501 or 502, the district court may, in its discretion, appoint a receiver to take possession of the assets of the plan or fund which is the subject of the petition and to administer them until such time as the violations of law alleged in such petition no longer exist.

SEC. 504. Suits by persons entitled, or who may become entitled, to benefits from employees' benefit funds or plans may be brought in any district court of the United States having jurisdiction of the parties, or in the United States District Court for the District of Columbia without respect to the amount in controversy and without regard to the citizenship of the parties (1) against any such fund or plan to recover benefits required to be paid from an employees' benefit fund or plan pursuant to the terms of the agreement pursuant to which such fund or plan is established or other constituent instrument; or (2) on behalf of and in the name of an employees' benefit fund against any person who shall have transferred or received any of the assets of such fund in violation of any such agreement or of the requirements of title IV.

SEC. 505. The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (29 U.S.C. 101–115) shall not be applicable with respect to suits brought under this title.

SEC. 506. Suits by an administrator of a pension plan, a profit-sharing-retirement plan, or an employees' benefit fund, to review any final order of the Commission, to restrain the Commission from taking any action contrary to the provisions of this Act, or to compel action required under this Act, may be brought in the name of the plan or fund in the district court of the United States for the district where the fund has its principal office, or in the United States District Court for the District of Columbia.

SEC. 507. In any case in which a trust agreement relating to a fund subject to this Act contains a provision stating that it shall be construed under the law of a particular State, such provision shall be controlling in any suit arising under this Act for breach of any agreement or trust relating to an employees' benefit fund, unless such State law shall be contrary to the provisions or policy of this Act.

SEC. 508. Nothing in this Act shall be deemed to nullify any provision of any State or Federal law not in direct conflict with a provision of this Act. If any provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

The explanatory memorandum presented by Mr. JAVITS is as follows:

EXPLANATORY NOTES CONCERNING PRINCIPAL PROVISIONS OF THE PENSION AND EMPLOYEE BENEFIT ACT

DEFINITIONS

The definitions, as well as title I of the bill, follow the general format, after extensive revision, of the Pension Benefits Act, 1965, of the Province of Ontario, Canada. While the language of that Act obviously required substantial re-working to fit within the special framework of United States law and the different pattern of United States pension plans, nevertheless the general outlines of the Ontario Act may be useful, as a statute *in pari materia*, in interpreting this bill. The full text of the Ontario Act, as well as its interpretative regulations and an explanatory statement by the Prime Minister of Ontario, are set forth in *Private Pension Plans, Hearings Before the Subcommittee on Fiscal Policy of the Joint Economic Committee* 89th Cong., 2d Sess. 6–21 (1966).

The term "Commission" (section 2(2)) refers to a new agency, the United States Pension and Employee Benefit Plan Commission, which would be established under section 3 and would be given enforcement jurisdiction over all provisions of this Act, as well as over other existing laws dealing with employee benefit plans which are now administered by other agencies.

The terms "employee benefit plan" and "employee benefit fund" are used only in title IV and the enforcement provisions of title V. Title IV does not regulate employee benefit plans which do not provide for benefits through the medium of an employee benefit fund. Only one section of the Act in any way affects an employee benefit plan without a fund, and that is section 504, which permits suits by private parties for breach of an agreement relating to an employee benefit plan.

The "commerce" language (section 2(9)) is intended to reach the outer limits of the Constitutional power to regulate interstate commerce, subject to the specific exemptions and exclusions set forth in the bill.

The term "pension plan" (section 2(13)) does not include a plan meeting the definition of a "profit-sharing-retirement plan" (section 2(25)). Profit-sharing-retirement plans are dealt with separately in the bill. To the extent that a deferred profit sharing plan does not meet the terms of the definition set forth in section 2(25), however, it could nevertheless be considered a pension plan subject to the requirements of the bill applicable to such plans. A regular profit-sharing plan, however, as distinguished from a profit-sharing-retirement plan, ordinarily would not fall within either definition and would not be covered by title I, because no retirement benefits would be provided.

The term "reinsured pension plan" (section 2(14)), which is used in title II, is, strictly speaking, a misnomer, as the program provided under title II is really an insurance, rather than a "reinsurance", program, except in cases involving plans funded originally through the medium of an insurance contract. Note also that, while plans are required to pay premiums from the first day of coverage under the Act, they do not become effectively "reinsured" until 5 years have expired. Note further that an amendment to a plan resulting in a substantial increase in unfunded liability may be deemed a new "plan" for reinsurance purposes.

ESTABLISHMENT OF COMMISSION

The Commission established by section 3 would be an independent agency organized on the SEC pattern. The language of section 3(a) is similar to the language establishing the SEC. The general intent of the bill is to centralize all federal regulation relating to employee benefit plans in a single agency, thereby to the maximum feasible extent relieving plan administrators of the burden of multiple-agency regulation and avoiding the necessity of multiple applications, multiple inspections, and overlapping jurisdictions. Thus, Sections 111 and 112 would have the effect of consolidating within the Commission jurisdiction over the principal existing regulatory laws concerning pension plans—tax and minimum wage qualification. It is understood that jurisdiction over section 401 of the Internal Revenue Code has been jealously guarded by the Treasury. Nevertheless, section 111 recognizes that the Treasury may have conflicting policy considerations: on the one hand, it seeks to implement the policy of encouraging pension plans, which is inherent in section 401 of the Code, yet on the other hand the Treasury is legitimately concerned with maximization of revenue. The transfer of section 401's enforcement to the Commission would ensure that that section will be interpreted in a manner most sympathetic to the growth and soundness of private pension plans.

In order to further the objective of consolidation and simplification, two provisions have been added to this bill which were not contained in S. 1103 of the 90th Congress. Sec. 113 would allow the President to delegate power from other agencies concerned with administering or enforcing other laws covering employee benefit plans to the Commission for the purpose of establishing a unified, simplified and consistent scheme of regulation of employee benefit plans. Sec. 4(f) requires the Commission, prior to adopting regulations, to consult with other federal agencies concerned with administering or enforcing other laws affecting employee benefit plans with a view to ensuring consistency among the regulations of different agencies, insofar as they affect employee benefit plans. This latter provision is in recognition of the fact that it may not be possible to consolidate all regulations in this field under the Commission. Thus, the SEC will continue to have responsibility to enforce the securities laws, and the Federal Reserve and other agencies will continue to regulate banks. Section 4(b)(1) also recognizes this fact and attempts to avoid duplication by allowing the Commission to delegate its functions in certain cases to other agencies which would be inspecting banks in any event.

Section 6(a) transfers to the Commission the administration of the Welfare and Pension Plans Disclosure Act. Ideally, that Act should be consolidated with and made a part of the provisions of this bill, and no doubt such would be the case in the long run. As an interim matter, however, Section 103 does permit the Commission to consolidate the reporting requirements of the two Acts into a single report form.

Section 4(c) would authorize the Commission to license persons performing actuarial services and certifications under the bill. Despite the rather extended series of definitions in section 2 and rather technical statement of funding and vesting requirements in title I, a great deal will inevitably depend on the accuracy of actuarial determinations. It would be impractical to regulate actuarial assumptions such as life expectancy and rate of labor turnover by setting forth requirements in statutory form. The approach of this bill, therefore, is to regulate to some extent the persons competent to make certifications based on such assumptions and to permit the Commission to promulgate regulations concerning actuarial assumptions. This bill contains a provision, not included in S. 1103 of the 90th Congress, which would permit the Commission to promulgate such regulations. The long-term accuracy of actuarial assumptions and certifications is also subject to a check under section 108(b)(3), which requires that an actuarial error resulting in an experience deficiency would need to be corrected and funded over a much shorter period of time than any other unfunded liability.

Section 6(c) should be read together with the enforcement provisions of title V. While title V permits institutions of legal proceedings in any of the United States District Courts, there are often problems of obtaining service of process upon all the necessary parties. Section 6(c) of my bill would permit an action to be brought against a plan or person in only one district outside his home district, and that would be the District of Columbia, as service of process could always be made upon the necessary parties merely by serving the Commission as statutory agent.

FUNDING AND VESTING

As indicated above, this title uses the Ontario Pension Benefits Act as a general model (see comments on definitions, above). It should be noted that the enforcement provisions relating to title I do not, however, appear in this title but rather are placed in title V, along with all other enforcement provisions under the Act. Enforcement of title I is not based on the typical device of an administrative hearing followed by review in the Court of Appeals, where the Commission's findings would be final and binding. Rather, the Commission would be required in any case in which, for example, registration is denied, to bring an action in a District Court to compel compliance with the registration requirements of the Act, and the Commission would have to prove its case *de novo*. In addition, any person aggrieved by an action of the Commission, as, for example, in a case in which registration is denied, would not be required to wait for the Commission to seek enforcement but could bring an action in a District Court immediately to review the Commission's action. Thus, maximal judicial review is provided.

The notice requirements of section 106(a) require not only that each participant receive an explanation of his rights under a plan, but also that an employee leaving his job with a vested interest in a pension must receive a certificate telling him what kind of a right he has, so that, years later when he reaches retirement age, he will know percisely what he can expect. This bill also provides (S. 1103 did not) that a copy of the certificate must be filed with the Commission and that the certificate will constitute prima-facie evidence of the facts stated therein in a proceeding under the Act.

One of the major differences between S. 1103 of the 90th Congress and this year's bill concerns vesting. This bill requires what has come to be called "graded deferred vesting." The requirement is that 10% of benefits must be vested by the end of six years of service, plus 10% per year thereafter so that full vesting must be achieved by the end of 15 years. There are no minimum age requirements.

The funding provisions of section 106 are basically 40 year funding for old plans, and 30 years funding for new plans or new amendments. Thus, a plan starting out anew with an initial unfunded liability based upon past credited service occurring prior to the effective date of the plan would be required to pay into the plan sufficient money to cover current service costs plus sufficient additional moneys to amortize the initial unfunded liability over 30 years. But in any case in which the estimate of the sums necessary to achieve such 30-year funding is in error and an "experience deficiency" develops, the deficiency must be made up in 5 years, subject to the hardship proviso set forth in section 108(b)(3).

In the case of multiemployer plans meeting the requirements of section 108(f), alternative funding requirements are provided, in recognition of the fact that such plans tend to be more stable and less susceptible to termination. Section 108(f) is designed to meet some of the problems of such industries as the apparel and clothing industries, where, because the plans' continuance

does not depend on the continuance of any particular employer, full funding need not be achieved as rapidly. Even so, it has been suggested that an additional alternative funding arrangement in such industries may be warranted, requiring that in such plans, for example:

(A) The projected income throughout the ensuing 10-year period, based on expected contributions at contribution rates stipulated in existing collective bargaining agreements, plus expected interest, shall be at least as great as the projected expenses of the plan, provided that such plan (i) has been in existence and has paid benefits for at least 10 years prior to the registration of the plan, and (ii) has retired at least 5 per centum of the employees covered by the plan at the time of registration and thereafter; and

(B) The calculation of the projections under paragraph (A) above shall be based on the following numbers of employees: (1) employees who may be anticipated to receive retirement payments during the succeeding 10 years, including those already on the retirement rolls and (2) employees who within one year prior to acquiring vested rights hereunder notify the plan administrator in writing of their expectation to acquire such rights under the plan during the following year.

The viability and soundness of such additional alternatives, along with such others as may be proposed, are certainly worthy of serious consideration.

REINSURANCE

This feature of the bill is based in part on a measure sponsored by Senator Hartke in the 89th Congress. The two major differences between this title and that bill are that this bill does *not* insure against loss of plan assets through bad investments, and it does undertake to insure pension plans without regulating them. Instead, this title insures against one contingency only—termination of the employing enterprise before full funding—and insurance applies only to plans meeting the vesting and funding standards of title I, and then only after 5 years compliance. The bill sponsored by Senator Hartke made reinsurance a condition of tax qualification, while this bill makes reinsurance a mandatory requirement, under section 203 (a), as well as a condition of registration under section 108(g).

PORTABILITY

The portability program under title III is completely voluntary, and section 301(a) sets forth a specific declaration of policy prohibiting the Commission from making participation in the portability program a condition of registration under title I. The existence of a portability clearing house, however, may be a useful service to those organizations which have already begun to seek ways of developing reciprocal credit systems. Certain labor organizations, particularly in the building trades, have pension plans in various regions of the country with similar benefit and funding features and have sought to establish reciprocity systems between such regional plans. The existence of a central pension credit clearing house may be a useful accommodation and catalyst for such reciprocity arrangements.

ADMINISTRATION OF EMPLOYEES' BENEFITS FUNDS

Title IV deals with many of the same problems as are dealt with in the Administration bill introduced by Senator Yarborough, S. 1024, and Mr. Perkins, H.R. 5741. There are a number of significant differences, however.

Section 401 requires that if there is a fund, it must be established pursuant to a duly executed trust agreement, thus, in effect, producing substantially the same effect as is accomplished by the Administration's bill, which clothes the administrators of such funds with the responsibilities of "fiduciaries."

The basic difference here is that establishes the familiar standard of "a man of ordinary prudence" and then turns the interpretation of that term over to the Federal courts exclusively. (Sections 14(a) and 9). The result of those provisions of the Administration bill would seem to be to wipe out the vast body of State case law on the subject of trusts and fiduciary responsibility, except to the extent that it is incorporated into the development of federal case law on the subject. Such a development of a federal case law of trusts, however, will only occur after many years, as the cases arise one by one in the federal courts. In the meantime, there will be considerable uncertainty among trustees as to what the law really is. Such uncertainty for an extended period may well be too high a price to pay for the establishment of federal fiduciary standards.

Titles IV and V of this bill, on the other hand, take a more moderate approach. Insofar as trust agreement contain "choice of law" provisions designating the trust law of a particular state as applicable, such provisions are required to be honored, pursuant to section 507, provided they do not conflict with the policy of this Act (this proviso was not included in S. 1103). If no such "choice of law" provisions is included in the trust agreement, then the federal courts would apply federal law. Under this system, certainty would be preserved for those trustees who require it—typically banks and trust companies—while the development of federal trust law would proceed in those cases where no specific State law is spelled out.

Along the same lines, the Administration bill again attaches no importance to the historical development of trust law, in that it provides, in section 14(k), that no "exculpatory provision" shall relieve any fiduciary from any of his responsibilities. Of course, the law of trusts, as it has developed in the cases down through the centuries, has developed various standards for enforcing or nullifying such "exculpatory clauses," depending on the circumstances. For example, in many pension trusts, responsibility is divided between the trustee (often a bank or trust company) and a labor-management "Committee," which typically is given power to "instruct" the trustee as to certain matters. Typically, a trust company or bank simply will not accept appointment as a trustee under these circumstances unless the trust agreement provides that the Bank shall not be held responsible for any action taken in reliance on instructions from the "Committee" as provided in the agreement. Is this an illegal "exculpatory clause" under the Administration bill? It seems likely. Nor can all such problems be spelled out in the statute. The answer, once again, is to leave such matters to development through the case law, and to preserve what certainly we already have by allowing existing case law to continue in existence where it is specifically made applicable under the terms of the trust agreement.

The "conflict of interest" provisions of this bill and the Administration bill are quite similar. As indicated above, title IV applies only to funds, not to plans without funds—i.e., those whose benefits are payable solely out of the general assets of the employer. A principal difference between the provisions of this bill and the administration bill concerns the prohibition against being on two payrolls at once. The administration bill, like this bill, prohibits fiduciaries from receiving any assets out of the fund, except as regular benefits. The administration bill attempts to accomplish this first, by stating that the moneys in the fund shall be used "for the sole and exclusive purpose" of providing benefits and defraying "reasonable costs of administering the plan." (Section 14(c)). The Administration bill also prohibits the making of loans from the fund to any fiduciary (Section 14(f)), and prohibits a fiduciary from dealing with the fund in his own account (section 14(e)(3)). These provisions will *probably* cover most conflict of interest situations, unless a dishonest person is quite clever. The trouble is that recent hearings have shown the development of the most ingenious schemes for siphoning off pension funds, and a bill such as this ought to be drafted with such ingenious schemes in mind.

The administration concentrates on the possible misdeeds of the fiduciary—the trustee himself, while my bill concentrates on the representatives of the employer or the union. My bill controls the actions of the truly independent trustee only by application of the law of trusts, without attempting to spell out every detail of that law as it exists in the cases, but my bill does specifically prohibit the representatives of the employer or the union from siphoning off fund assets to their own use, and this is done in much more comprehensive language than that used in the administration bill (section 404).

One other major difference between the two bills relates to payroll padding. Last year's Investigations Subcommittee hearings disclosed that one of the most effective ways of depleting a fund was to permit an officer of the employer or the union to draw a salary from both the fund and the employer or union, as the case may be. The theory of my bill is that if a union officer is serving as a trustee and still drawing his salary from the union, he may not also draw a salary from the fund itself—though he may receive expense money and a reasonable fee for attending fund meetings, and the same prohibition is applied to management officers. (Section 404). The Administration bill allows such officers to be on both payrolls at once, but instead limits fiduciaries to "reasonable compensation". Such a provision may well get the Labor Department into the business of passing on the reasonableness of every fee paid to every trustee in the Nation, which seem to me to be neither necessary nor wise. I would rather focus on those salaries which are paid in the true conflict of interest situation, and, when it comes to the hiring of the truly independent trustee in a truly arms-length business situation, rely on the ordinary law of trusts.

ENFORCEMENT

Title V contains enforcement provisions covering the whole bill. These provisions should be read in connection with the notes under section 6 (service of process) and Title I (judicial review of Commission determinations with respect to funding and vesting). Basically, section 501 permits the Commission to sue to enforce title I, and section 502 permits the Commission to sue to enforce title IV. Section 503 authorizes the Court to appoint a receiver where necessary, in either case. Section 504 provides a private remedy in case of violation of title IV or in case of violation of any provision of a plan. The law applicable in any such case based upon a breach of contract or breach of trust, however, would be State law in any case in which the agreement designates the law of a State as applicable, and in all other cases, federal common law would apply, although, of course, the federal courts would be expected to draw upon the State common law as a source for the development of a federal common law in this area. Of particular importance are the provisions of sections 502 and 504 which permit suit to be brought by the Commission or a participant *either* against the fund to compel payment of benefits, *or* "in the name of the fund" against any other person to compel return of misappropriated assets—a remedy comparable to the familiar "stockholders derivative suit" under the law of corporations.

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

Mr. JAVITS. I yield.

Mr. GOLDWATER. I wonder if the Senator from New York, during the period in which he will hold hearings, would extend his investigations to include the retirement fund provided for civil service. I make this request because the last report I heard on that fund, which was sometime ago, showed this fund to be in dangerous arrears.

While I know it does not come within the purview of what the Senator is trying to do, and I am in full accord with what he is trying to do, I think the hundreds of thousands of Federal workers looking forward to retirement and retirement income would be very interested in the current status of the fund provided for by reductions from our payrolls and their payrolls and which are supposed to be matched by the Government. However, my information is they have not been for a good many years.

I would ask the Senator if he could extend his inquiry that far.

Mr. JAVITS. Mr. President, I would like to do so, but that matter falls so peculiarly within the purview of the Committee on Post Office and Civil Service that they might think it amiss. However, I would say that I am very sympathetic with the Senator, and I know that he is correct. Undoubtedly, we will have questions of comparability as to the way in which the Federal Government handles its plan, its funding, and vesting, and so forth.

I deeply believe that quite legitimately, therefore, in connection with that evaluation we can dig into the facts and then it would so intrigue the Committee on Post Office and Civil Service, because they have legislative jurisdiction, that they would push further along that line.

Mr. GOLDWATER. I shall depend on the Senator's ingenuity.

Mr. JAVITS. I thank the Senator.

S. 2170—INTRODUCTION OF A BILL TO AMEND THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

Mr. McCLELLAN. Mr. President, I introduce, by request, a bill to amend the Federal Property and Administrative Services Act of 1949, as amended, with respect to the disposal of excess and surplus property, and for other purposes.

This bill is introduced at the request of the National Association of State Agencies for Surplus Property, which is the nationwide organization responsible for screening surplus property to ascertain whether it is usable for health, education or civil defense purposes. The members of this organization are composed of State employees, who are affiliated with the offices of education, or the State procurement offices. They are authorized to screen surplus property at Federal installations and if needed, the property is transported to a State warehouse where it is placed on display for selection by local school or public health administrators.

Since the enactment of the Federal Property and Administrative Services Act of 1949, more than $6.7 billion—Federal acquisition cost—of surplus property has been made available to health and educational institutions of which $1.3 billion was real property and $5.4 billion was the original cost of personal property transferred to such activities. The transfer of surplus property to public schools, colleges, universities, and other nonprofit educational institutions since the end of World War II has contributed substantially to improve the level of education throughout the United States. Many school districts and institutions have depended on the use of surplus property to supplement their limited budgets, and have thereby made possible classroom and educational facilities which otherwise would not have been possible.

Mr. President, I have recently directed the staff of the Committee on Government Operations, of which I am chairman, to review this program and obtain information on the amount of property which becomes surplus each year, together with an analysis of what disposition is made of such property. According to the latest figures available, personal property which cost the Government more than $2.6 billion became surplus to the needs of all the Federal agencies in the fiscal year 1968. Of that amount, property with an acquisition cost of $774 million was sold, $51 million was abandoned or destroyed, $15 million was transferred to other users, $1.8 billion was disposed of as scrap, and $218 million or about 8 percent was donated to public instrumentalities.

The bill I am introducing today is intended to clarify certain phases of the surplus property program, by defining more precisely those eligible to receive such property. It will strengthen and support the main objectives of the basic surplus property statute, and at the same time eliminate some of the administrative interpretations which have hindered rather than helped the program. Enactment of this proposed legislation will incorporate almost all of the authority over surplus property disposition in one place; namely, the Federal Property and Administrative Services Act of 1949; it will modify or eliminate some of the priorities which cause considerable delay and confusion; eliminate or minimize competition, duplication, and overlapping of functions between the Federal agencies and result in more efficient Federal, State, and local administration.

The following section-by-section analysis of the bill clearly identifies the areas to be improved, the objectives to be attained, and other background information which support the proposed legislation. I ask unanimous consent that this section-by-section analysis of the bill, together with a report and statement of surplus property generated and disposed of for the period 1964–68, be inserted in the RECORD at this point, and made a part of my remarks.

The VICE PRESIDENT. The bill will be received and appropriately referred; and, without objection, the section-by-section analysis of the bill, together with a report and statement will be printed in the RECORD.

The bill (S. 2170) to amend the Federal Property and Administrative Services Act of 1949 with respect to the disposal of excess property and surplus property, and for other purposes, introduced by Mr. McCLELLAN, by request, was received, read twice by its title, and referred to the Committee on Government Operations.

The material, presented by Mr. McCLELLAN, follows:

SECTION-BY-SECTION ANALYSIS

Section 2 of this bill would continue the authority of the Secretary of Defense to determine whether a school or a national organization such as, the Boy Scouts of America, are of special interest to the armed services, but would transfer the responsibility of determining whether surplus property is usable and needed for educational purposes to the Secretary of the Department of Health, Education and Welfare. It would also provide for an orderly transfer of certain types of surplus property to the National Military Academies which are now eligible to receive such property, as well as to any similar educational institution which may be established or operated by any executive department or agency.

Section 3 is intended to encourage the acquisition of excess property for Federal utilization, including those agencies specifically identified in Section 109(f), but would prohibit such agencies from obtaining excess property for transfer to State related activities; and from obtaining excess property for the purpose of exchanging it for new-procurement as authorized by Section 201(c) of the Act. This proposal would eliminate some of the abuse and the broad administrative interpretations which has been made in the past without Congressional sanction, but would retain the advantages of permitting private concerns who have cost reimbursement contracts to obtain supplies at a discount in the same manner as in the past.

Section 4 of this bill would clarify the intent of Congress with respect to the exchange sale of certain items of equipment and the trade-in allowance as credited against the price of the new procurement. This is designed to clarify the existing law and procedures, by restricting the items exchanged to a rigid similarity test—based on a one-for-one exchange. It would prohibit the sale of items by one agency for another with the proceeds going into a no-year fund which can be obligated without a fiscal year limitation, and require a determination that it is more economical to exchange than to purchase without a trade.

Section 5 would increase the dollar value of property donated on which certain restrictions, limitations or conditions were placed by the HEW. At the present time property which had an original acquisition cost of $2,500 or more is subject to a number of restrictions which the HEW places thereon, and which must be enforced or supervised for a number of years after the property is transferred to a donee. The detailed paperwork involved in this procedure frequently costs more than the property is worth, because the true value is not $2,500 but more like $250. By raising the basic original cost from $2,500 to $3,500 less paperwork, less coordinating with GSA and the over-all administrative costs will be substantially reduced without impairing the integrity of the donation program.

A similar reduction in the cost of operation will be possible by the enactment of Section 6 of this bill. Section 203(k)(2)(A) through (E) of the Federal Property and Administrative Services Act of 1949 now requires the Secretary of HEW to enforce all of the restrictions, terms and conditions placed on the conveyance, or use of surplus property, but the cumbersome procedure of notifying the administrator of GSA, the Secretary of the Interior, or the Secretary of the Army—

whoever is involved, and then permitting those officials to veto the action contemplated by HEW has pyramided the paperwork, delayed enforcement, created confusion and increased the cost of administration. This procedure compels the donee, and the State Agency representative to deal simultaneously with two Federal agencies on the same property. My bill would simplify this by placing the responsibility in a single agency—the HEW—with authority to notify the GSA that compliance action will be instituted but the Administrator would not have any authority to veto the contemplated enforcement action.

Section 7 of the proposed legislation would amend Sec. 203(j)(3) of the Property Act by eliminating the enumeration of a long list of schools, colleges, clinics, hospitals, radio and television stations with respect to organizations eligible to receive surplus personal property and in lieu thereof substitute the same broad general language which has been in use and applicable for the donation of surplus real property. No change is anticipated in the number or type of donees, but the same broad general statutory authority would prevail for both real and personal property. This is another amendment which should improve administration, reduce the cost of operation and be beneficial to the Federal and State organizations involved in administering the program. If this amendment is enacted it would eliminate the need for laborious interpretations of the statute every time a potential donee contends he is eligible to receive surplus property under the statute. Under the existing authority of law counsel for the operating agencies spend a great deal of time settling disputes, and reconciling the rationale of this provision of law. It is believed that this change in the law will contribute much to the stability and confidence in the program.

Sections 8 and 9 of the bill are clarifying amendments with respect to the availability of surplus property for institutions engaged in research, and establishes a definite time, when title to surplus property passes to the respective donees.

Section 10 is designed to transfer to, and incorporate in section 203 of the Federal Property and Administrative Services Act of 1949, sections 13(d), 13(g) and 13(h) of the Surplus Property Act of 1944.

Section 13(d) of the Surplus Property Act of 1944 restricts the lease or sale of power transmission lines which are needed by a State or political subdivision thereof, for at least one year or pursuant to a specific act of Congress.

Section 13(g) of the 1944 Act permits the Administrator of General Services or other agency designated by him, to convey surplus real property and the related personal property to any State, political subdivision, municipality or tax-supported institution, which is determined by the Administrator of Federal Aviation Agency (Department of Transportation) as essential, suitable, or desirable for operation of a public airport.

This amendment would not change or modify the authority of the Administrator of FAA, nor affect the jurisdiction of the Administrator of the GSA, but would incorporate existing authority of law in the Federal Property and Administrative Services Act of 1949.

Section 13(h) of the 1944 Act would continue the existing authority and control over surplus property which could be transferred to the Department of the Interior for inclusion in the National Park Service. The determination of use and conveyance of property which is needed for historical monuments would continue in the same manner as is now administered under the provisions of Section 13(h) but the substantive authority would be transferred to the appropriate title of the Federal Property and Administrative Services Act of 1949.

Section 11 of this bill would authorize the Administrator of General Services, on approval of the Secretary of Defense, to transfer property from the National Industrial Reserve to the State Agencies designated by Section 203(j) of the Federal Property and Administrative Services Act of 1949, to distribute surplus property to the eligible designees in each State.

The Secretary of the Department of Health, Education and Welfare would be required to determine that such property is usable and necessary for the purpose of education, research, or training, and the Secretary of Defense would be required to determine that transfer of the property to non-profit educational institutions was deemed to be in the interest of national security.

This is an extension of a practice which has existed under 5 U.S.C. 456 for almost twenty years, however, at the present time only those schools which are near the industrial reserve storage centers, or have large budgets can afford to send screeners to the storage centers for selection and acquisition of machine tools or other needed items of supply.

Enactment of this section of my bill will provide a more equitable method of making property available to all schools which have need, or are interested in acquiring property on a loan basis from the industrial reserve.

Section 12 would repeal Sections 13(d), 13(g) and 13(h) of the Surplus Property Act of 1944 because the provisions of these sections would be incorporated in section 302 of the Federal Property and Administrative Services Act of 1949, as amended.

Provision is also included in this bill to repeal section 505 of the Agriculture Act of 1958 which permits the Secretary of Agriculture to donate cotton acquired through the Commodity Credit Corporation to educational institutions for the training of students in the processing and manufacture of cotton into textiles.

It would appear that very little cotton is utilized for this purpose, however, if this material is needed and usable for training of students it should either be obtained from excess or surplus and processed through the State Agencies for Surplus Property rather than under specialized legislation authority, thereby undermining the general procedure of transferring excess or surplus to a local entity in preference to the old established procedure of transferring surplus, without regard to, or in compliance with, the general disposal process.

The need or justification for such legislation is not challenged, but in fairness to the State and local interests it was determined that the specific authority which in most cases establishes a priority should be repealed, or incorporated in the general statute for the utilization and disposal of property which is surplus to the needs of the Government.

REPORT OF SENATOR JOHN L. MCCLELLAN, SHOWING THE ACQUISITION COST OF SURPLUS PROPERTY GENERATED BY THE MILITARY AND CIVILIAN AGENCIES TOGETHER WITH THE DISPOSITION OF SUCH PROPERTY FOR FISCAL YEARS 1964–68

Mr. President, the Federal Property and Administrative Services Act of 1949, as amended, provides, that personal property which becomes surplus to all Federal requirements may be donated for educational, public health, and civilian defense purposes upon a determination by the Secretary of Health, Education, and Welfare that the property is useful and needed for such purposes. The Act also provides that certain types of surplus property may be destroyed, abandoned, or in those instances where the property has no commercial value, or the cost of care and handling would exceed the estimated sale such property may be donated to States, Territories or other public bodies. The Property Act and certain related statutes authorizes the Administrator of General Services, or in some instances the agency in possession of the property which has been declared surplus to sell, transfer to non-profit institutions, give to other Federal Agencies, or convey to cities or municipalities for public airport use.

In view of the recent interest in the high cost of Government and the public concern over the large amount of property which is used by the armed forces, I have requested the staff of the Committee on Government Operations to ascertain how much Government property becomes surplus each year, together with the disposition thereof.

In cooperation with the officials involved in the administration of the surplus property program, the staff has prepared a report showing the acquisition cost of the property generated each fiscal year since 1964, together with the disposition of such property, and the proceeds realized from the sale of surplus property. The figures used in compiling these statistics are based on the original acquisition cost of the property, rather than the value at the time of disposal. This basis is used throughout the government because all property is recorded at cost with no provision for depreciation as is commonly followed by private enterprise.

The report indicates that the total surplus property generated by the civilian and military departments in 1968 was in excess of $2.6 billion and the total for the last five years exceeded $17 billion dollars. Mr. President, I repeat, during the past five years, personal property which cost the American taxpayer more than $17 billion dollars, became obsolete, worn-out, broken, destroyed, or otherwise lost its useful life and was declared surplus to the needs of the Government.

I believe it is safe to assume that some of this property was purchased during World War II, while in other cases it may have been acquired and placed in the supply system during the Korean conflict, or during our involvement in Viet Nam. Regardless, as to when it was purchased, it has lost its value and useful life to the military or civilian agencies and was therefore declared surplus. When property reaches this status, it is moved out of the warehouse or supply system to make room for its replacement.

An examination of the latest figures available reveal that of the $2.6 billion dollars worth of surplus generated last year almost 96% originated from the military installations while only 4% was generated by the civilian departments and agencies.

This report is not intended to pass judgment on the management or control of our Defense Establishment but is presented here today to indicate that the very nature of our military posture, and our world-wide military commitments have created a condition where obsolescences, changes in military requirements, science, technology and the deterioration of existing equipment, supplies and facilities forces a large amount of property out of the military supply system. The disposition of property which has become surplus to the needs of the Government is big business, not only in the United States but throughout western Europe, and certain other areas of the free world, as indicated by the figures shown on the staff report.

Of the total amount of property which became surplus last year, $1.8 billion or more than one half of the total amount was sold as scrap. Commercial type property which cost $774 million was sold to the public or to other users while $51 million was abandoned or destroyed because it had no sale or commercial value. Usable property costing in excess of $15 million was transferred to other agencies of the Government. While

at the same time more than $218 million of surplus property which was usable and needed by schools, colleges, public health, civil defense and other users, was donated to those institutions where the public will continue to benefit in many ways.

Proceeds from the sale of surplus property classified as "scrap" was sold for $47 million, while $35 million was received from the sale of commercial type property during the year. The average return from salable commercial type property realized only 4.5 percent of the original cost during 1968, however the average for the other years fluctuated from 4.4 to 10.1 percent of the cost thereof.

In conclusion, Mr. President, I wish to point out that the amount of property which has generated together with the disposal of such property during the past five years, remained fairly constant except during 1964 when a substantial amount of high-cost, electronic, and military hardware was phased-out of the system under an accelerated retirement program.

COMPARATIVE REPORT OF SURPLUS PERSONAL PROPERTY GENERATED, DISPOSALS, AND PROCEEDS FROM SALES BY FISCAL YEAR

	1968	1967	1966	1965	1964	Total
Generated	$2,671,623,312	$2,446,678,429	$2,923,996,045	$4,665,313,760	$4,797,359,821	$17,504,971,367
Military departments	2,561,858,167	2,318,649,173	2,722,290,688	4,539,308,279	4,701,285,680	16,843,391,987
Civilian agencies	109,765,145	128,029,256	201,705,357	126,005,481	96,074,141	661,579,380
Total donated	[1] 218,193,716	261,957,821	320,544,410	316,066,588	298,538,506	1,415,301,041
Education (73.0 percent)	159,281,413	191,229,209	233,997,419	230,728,609	217,933,109	1,033,169,759
Health (10.5 percent)	22,910,340	27,505,571	33,657,163	33,186,992	31,346,543	148,606,609
Civilian defense [2] (11.5 percent)	25,092,277	30,125,149	36,862,607	36,347,658	34,331,928	162,759,619
Public airports [3] (1.4 percent)	3,054,712	3,667,410	4,487,622	4,424,932	4,179,539	19,814,215
DOD educational activities [4] (1.9 percent)	4,145,681	4,977,199	6,090,344	6,005,265	5,672,232	26,890,721
Public bodies (1.7 percent)	3,709,293	4,453,283	5,449,255	5,373,132	5,075,155	24,060,118
Sold	773,972,747	849,759,165	608,313,577	787,433,544	777,611,536	3,797,090,569
Abandoned or destroyed	51,056,323	34,883,296	106,445,990	117,302,397	107,569,149	417,257,155
Transferred to other agencies	15,749,360	30,723,150	212,196,576	79,768,567	22,092,427	360,530,080
Scrap	1,791,754,077	1,821,646,905	2,204,983,126	2,537,691,301	3,363,643,521	11,719,718,930
Military	1,784,669,592	1,814,685,787	2,199,788,539	2,531,222,454	3,358,970,798	11,689,337,170
Civilian	7,084,485	6,961,118	5,194,587	6,468,847	4,672,723	30,381,760
Proceeds from sales:						
Scrap	47,002,843	48,828,699	44,141,231	47,428,590	37,953,234	225,354,597
Other property	34,833,324	37,632,567	61,299,687	50,619,060	44,964,110	229,348,748
Total proceeds	81,836,167	86,461,266	105,440,918	98,047,650	82,917,344	454,703,345
Percent other than scrap	4.5	4.4	10.1	6.4	5.8	6.0

[1] 0.08+ of generations.
[2] Civil defense.
[3] Public airports.
[4] Educational activities of special interest to the Department of Defense.

S. 2172—INTRODUCTION OF A BILL TO AMEND SECTION 201 OF TITLE II OF AN ACT ENTITLED "AN ACT TO PRESCRIBE PENALTIES FOR CERTAIN ACTS OF VIOLENCE OR INTIMIDATION, AND FOR OTHER PURPOSES"

Mr. ERVIN. Mr. President, prior to April 11, 1968, Indians residing on reservations had no fundamental rights which they could assert for their protection against arbitrary action of their tribal councils and other governing bodies. When the bill which became Public Law 90–284, 90th Congress, on April 11, 1968, was being considered by the Senate, I offered an amendment in behalf of myself and certain other Senators to give such basic rights to Indians residing on reservations. This amendment was approved by the Senate and finally became title II of the act entitled "An act to prescribe penalties for certain acts of violence or intimidation, and for other purposes."

The primary purpose of this amendment was to give the basic rights set forth in title II to Indians residing on reservations. It has been suggested, however, that title II should be amended so as to make it clear that it does not confer such rights upon non-Indians.

In order to afford the Congress an opportunity to consider the advisability of amending title II in this fashion, I am introducing today for appropriate reference a proposed amendment to this effect.

I ask unanimous consent that a copy of such bill be printed at this point in the body of the RECORD as a part of my remarks.

Since the original bill was considered and reported by the Senate Committee on the Judiciary, I also ask unanimous consent that the proposed amendment be referred to that committee.

The VICE PRESIDENT. The bill will be received, referred to the Committee on the Judiciary by unanimous consent; and, without objection, will be printed in the RECORD.

The bill (S. 2172) to amend an act entitled "An act to prescribe penalties for certain acts of violence or intimidation, and for other purposes," approved April 11, 1968, introduced by Mr. ERVIN, was received, read twice by its title, referred to the Committee on the Judiciary, by unanimous consent, and ordered to be printed in the RECORD, as follows:

S. 2172

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 201 of Title II of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes", approved April 11, 1968 (25 U.S.C. 1301), is amended by inserting immediately before paragraph (1) thereof the following new paragraphs:

"(1) 'Person' means American Indian;

"(2) 'People' means American Indians;"

(b) Such section 201 is further amended by redesignating paragraphs numbered (1), (2), and (3) as paragraphs (4), (5), and (6), respectively.

S. 2173—INTRODUCTION OF A BILL TO AMEND CERTAIN PROVISIONS OF THE ACT ENTITLED "AN ACT TO PRESCRIBE PENALTIES FOR CERTAIN ACTS OF VIOLENCE OR INTIMIDATION, AND FOR OTHER PURPOSES," APPROVED APRIL 11, 1968

Mr. ERVIN. Mr. President, since Congress adopted as titles II and III, Public Law 90–284 of the 90th Congress, an amendment offered by me on behalf of myself and certain cosponsors, giving certain basic rights to Indians residing upon reservations and providing for the preparation of a model code of Indian offenses by the Secretary of the Interior, some misapprehensions have arisen that the amendment goes beyond the language in which the amendment is couched and affects rights of property of Indian tribes in tribal lands and abridges the powers of self-government of Indian tribes in a manner inconsistent with the language of the amendment.

To allay these misapprehensions, I am introducing a bill which will amend the original amendment and make it plain that title II does not affect the property rights of any Indian tribe in its tribal lands or abridge any of the rights of self-government of any Indian tribe except to the extent of the prohibitions upon governmental action expressly set forth in title II.

The bill which I introduce makes it clear that the model code mentioned in title III of the act will not become applicable to any tribe unless it is first adopted by the tribal council or other governing body of the tribe.

I introduce the bill for appropriate reference and ask unanimous consent that a copy of the bill be printed in the RECORD immediately following this statement and that the bill be referred to the Senate Committee on the Judiciary which considered and reported the original act to which my amendment was attached.

The VICE PRESIDENT. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 2173) to amend an act en-

titled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes," approved April 11, 1968, introduced by Mr. ERVIN, was received, read twice by its title, referred to the Committee on the Judiciary, and was ordered to be printed in the RECORD as follows:

S. 2173

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

SECTION 1. That section 202 of Title II of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation and for other purposes", approved April 11, 1968 (25 U.S.C. 1302), is amended by inserting "(a)" between "Sec. 202" and "No Indian tribe" and by adding after such Section the following new subsection:

"(b) Subsection (a) shall not be construed (1) to affect any rights in tribal lands secured to any Indian tribe by any law or treaty, or (2) to abridge the powers of self-government of any Indian tribe except to the extent specified in the prohibitions set out in subsection (a), or (3) to affect any tribal law or custom of any Indian tribe regulating the selection of the officers, bodies, or tribunals by or through which the powers of self-government of the tribe are executed, or (4) to invalidate any tribal law or custom of any Indian tribe which is consistent with the prohibitions set out in subsection (a), or (5) to deprive any Indian court of the power to impose in any case within its jurisdictions any penalty or punishment sanctioned by tribal law or custom which does not constitute cruel and unusual punishment within the purview of paragraph 7 of subsection (a) or exceed the limits of punishment as therein specified."

SEC. 2. That Section 301 of Title III of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes", approved April 11, 1968, (25 U.S.C. 1311) is amended by substituting "July 1, 1973" for "July 1, 1968" and by adding at the end thereof the following new sentence:

"Nothwithstanding any provisions of this section, no model code recommended to the Congress by the Secretary of the Interior pursuant to this section shall be applicable with respect to any Indian tribe unless the body exercising the legislative powers of the tribe has first adopted such code."

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

Mr. BURDICK. Mr. President, I ask unanimous consent that, at their next printing, the name of the Senator from Arizona (Mr. GOLDWATER) be added as a cosponsor of the bill (S. 1229) to amend the Omnibus Crime Control and Safe Streets Act of 1968 in order to make assistance available to Indian tribes on the same basis as to other local governments, and of the bill (S. 1230) to amend the Juvenile Delinquency Prevention and Control Act of 1968 in order to make assistance available to Indian tribes on the same basis as to other local governments.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. DIRKSEN. Mr. President, I ask unanimous consent that, at their next printing, the name of the Senator from Illinois (Mr. PERCY) be added as a cosponsor of the bill (S. 2073) to prohibit the use of interstate facilities, including the mails, for the transportation of certain materials to minors, and of the bill (S. 2074) to prohibit the use of interstate facilities, including the mails, for the transportation of salacious advertising.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, at the request of the Senator from Alaska (Mr. GRAVEL), I ask unanimous consent that, at its next printing, the name of the Senator from Oregon (Mr. HATFIELD) be added as a cosponsor of the joint resolution (S.J. Res. 108) to provide for a study and evaluation of the relationship between underground nuclear detonations and seismic disturbances.

The VICE PRESIDENT. Without objection, it is so ordereed.

Mr. DOMINICK. Mr. President, I am glad that the Senator from Arizona (Mr. GOLDWATER) is in the Chamber. The Senator from Arizona has a bill on voting rights.

Mr. GOLDWATER. The Senator is correct.

Mr. DOMINICK. I do not know whether that bill has been introduced or not.

Mr. GOLDWATER. Yes, it has been.

Mr. DOMINICK. If it has been introduced, I wonder if the Senator would consent to having my name added as a cosponsor at the next printing of the bill. I have forgotten the number.

Mr. GOLDWATER. Mr. President, I ask unanimous consent that the name of the Senator from Colorado (Mr. DOMINICK) be added as a cosponsor at the next printing of the bill (S. 1911) to expand the time for voting in presidential elections to a 24-hour period and to provide that such period shall be uniform throughout the United States.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. GOLDWATER. I have a joint resolution which is a constitutional amendment (S.J. Res. 59) proposing an amendment to the Constitution of the United States providing that citizens of the United States shall be entitled to vote for President and Vice President without regard to excessive residence and physical requirements.

Mr. DOMINICK. I believe it is the constitutional amendment I am thinking of.

I should like to be on both of them, as a matter of fact. I do this because during my 4 years in the State Legislature of Colorado, I tried to get the Democratic majority to lower the residency requirements for voting for President and Vice President from 1 year to 6 months. I was not successful. When I came to Congress, we got the Republican majority to get it through immediately. Now we have in our State a 6-months' residency requirement for voting for President and Vice President, but 1 year's requirement for voting on other offices. I think it should be lowered even more than that. I have received letter after letter after letter from people objecting to the fact that they have lost their voting rights, and I think they properly should object. In fact, it is now coming up, as I understand it, before the Supreme Court.

Thus, I appreciate the initiative which has been shown by the distinguished Senator from Arizona on this subject and would like to participate with him.

Mr. GOLDWATER. Let me say to my distinguished friend from Colorado that this constitutional amendment is prompted by the knowledge that somewhere between 12 and 18 million people were denied the right to vote for President and Vice President in the last election. My constitutional amendment would not extend to races other than the Presidency and Vice Presidency but, broadly, it would allow any American to vote for President and Vice President regardless of where he or she might be in the world. Coming from a State like the Senator's, Colorado, which is a fast-growing State and attracting many people all over the country, we find tens of thousands of people each year who cannot vote either in Colorado or Arizona, which has rather broad voting provisions, or voting in their old State because they are not a citizen, technically, of either one.

My constitutional amendment would erase that and allow a period of 30 days for residency in voting for President and Vice President, and in the event of absence from the country, to vote by absentee ballot up to 7 days before election in any State he happened to call home.

Mr. DOMINICK. I think that is an admirable step and I hope we move on it. It is one of the reforms we need very badly in this country. I am positive of that. I tried to take it piecemeal in my State, as I said, just to get it to half what it was, and I was not successful, but I think this is the better approach. If we put in a constitutional amendment on it, then no State can deny to anyone in the country the right to vote because he happens to be moving from one job to another.

Mr. GOLDWATER. I thank the Senator.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that, at its next printing, the name of the Senator from South Carolina (Mr. HOLLINGS) be added as a cosponsor of the bill (S. 2146) to encourage the flow of credit to urban and rural poverty areas in order to stimulate the rate of economic growth and employment in those areas, and to provide the residents thereof with greater access to consumer, business, and mortgage credit at reasonable rates.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, at the request of the Senator from Washington (Mr. MAGNUSON), I ask unanimous consent that, at its next printing, the name of the Senator from Texas (Mr. YARBOROUGH) be added as a cosponsor of the bill (S. 1400) to amend title II of the Merchant Marine Act, 1936, to create an independent Federal Maritime Administration, and for other purposes.

The VICE PRESIDENT. Without objection, it is so ordered.

SENATE CONCURRENT RESOLUTION 25—CONCURRENT RESOLUTION EXPRESSING THE SENSE OF CONGRESS THAT PROGRAMS OF SCIENTIFIC RESEARCH AND TRAINING IN AGING BE ENCOURAGED AND SUPPORTED

Mr. MONTOYA submitted the following concurrent resolution (S. Con. Res. 25); which was referred to the Committee on Labor and Public Welfare:

S. CON. RES. 25

Resolved by the Senate (the House of Representatives concurring), That—

Whereas there are over 19 million older Americans 65 and over; and

Whereas the number of older Americans increases by over three hundred thousand per year; and

Whereas by the year 2000, 35% of our population will be 65 and older; and

Whereas the average life span of an American child born today is 70 years as compared with 47 years in 1900; and

Whereas Gerontology is a relatively new science; and

Whereas Congress is continually concerned with the well-being of older Americans, said concern having been demonstrated by the establishment of the Administration on Aging (P.L. 89–73); therefore,

It is the sense of Congress that programs of scientific research and training in Aging, such as The Ethel Percy Andrus Gerontology Center located at the University of Southern California, be encouraged and supported.

BOBBY BAKER ASSOCIATE'S TAXES FORGIVEN

Mr. WILLIAMS of Delaware. Mr. President, I ask unanimous consent to have printed in the RECORD an article by Clark Mollenhoff entitled "Baker Associate's Taxes Forgiven," which was published in the Minneapolis Tribune on Saturday, May 10, 1969.

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

ADMINISTRATION REPORTS ON IRS ACTION: BAKER ASSOCIATE'S TAXES FORGIVEN

(By Clark Mollenhoff)

WASHINGTON, D.C.—The Johnson administration forgave Fred B. Black Jr., for $122,213 in delinquent federal income taxes in the last months the administration was in power, it was learned Friday.

The Nixon administration found that the Internal Revenue Service (IRS) wrote off the taxes as "uncollectable."

Black, former Washington representative for North American Aviation, was a key figure in the investigation of Robert G. (Bobby) Baker and was involved in what the Senate Rules Committee called "gross improprieties" in connection with the creation and operations of the Serv-U Vending Co.

Black was indicted on a federal tax evasion charge in 1961 during the Kennedy administration. That charge went to trial while Robert F. Kennedy was attorney general early in 1964, and resulted in a conviction. Black was sentenced to a prison term of from 15 months to four years and was to be fined $10,000.

Although the IRS had the right to act immediately and file liens against Black's property, there was no action taken.

At the time of the conviction he owned stock in the Serv-U firm which had an estimated value of $500,000. He also owned a large home in the exclusive Spring Valley section in Washington with an estimated value of more than $150,000.

The IRS filed no liens against Black until after he had lost title to the $500,000 in Serv-U stock through a transfer to Baker that put his stock outside the government's reach.

During the same period in 1964 and 1965, Black borrowed more than $100,000 on his Washington home, that was already encumbered by a mortgage of $65,000.

The mortgages totaling $165,000 on the home closed out his second major asset and put it beyond the reach of the IRS. Tax agents have been unable to find what Black did with any substantial amount of the money.

In the spring of 1965 when it appeared almost certain that Black would serve his prison term, a newly appointed assistant attorney general, Mitchell Rogovin revealed that he had found that an eavesdropping device had been used on Black's Carlton Hotel suite.

Rogovin, appointed by President Johnson only a few weeks earlier, insisted that the evidence of the FBI eavesdropping be taken to the Supreme Court in an unprecedented move.

Over the objections of the FBI and other lawyers, who said the eavesdropping was totally unrelated to Black's tax evasion conviction, Rogovin insisted that the disclosure be made. It was, the conviction was voided, and the case was sent back for retrial.

The second trial under a Rogovin-headed tax division resulted in acquittal for Black. There was sharp dispute within the Justice Department as to the manner in which the trial should be conducted, and as to whether there were even better counts.

Black still is subject to government tax claims totaling more than $600,000.

Although the Johnson administration wrote off the $122,213 as "uncollectable" in 1968, in the period just before the Nixon administration took over Black received notice that he owed $228,000 in back taxes for the years 1960 through 1965.

No fraud penalties were assessed in those records that were filed in the U.S. Tax Court in December, 1968.

Early this year, the Nixon administration sent Black a letter claiming he owed $389,027 in back taxes and fraud penalties for the years 1956 through 1959.

FORTAS MAY SIT OUT CATHOLIC UNIVERSITY CASE

Mr. WILLIAMS of Delaware. Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "Fortas May Sit Out Catholic University Case," as written by Dan Thomasson, a Scripps-Howard staff writer.

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

PROFESSOR CITES "PARTNERSHIP": FORTAS MAY SIT OUT CATHOLIC UNIVERSITY CASE

(By Dan Thomasson)

Besieged Supreme Court Justice Abe Fortas' real estate interests here are expected today to bring a demand that he disqualify himself from ruling on an appeal motion brought by a university law professor.

Dr. William Roberts, professor of international law and relations at Catholic University, will file a petition with the Supreme Court seeking disqualification of Justice Fortas and a fellow associate justice, William Brennan, on grounds they are business partners with two lower court judges whose decisions in the case are under challenge by Dr. Roberts.

This latest challenge to Justice Fortas follows reports by congressional sources that the Justice Department has been checking into Justice Fortas' connections with real estate syndicates in the district area. The sources said some of these associations might constitute a conflict with Justice Fortas' court duties.

RESIGNATION RUMORS

The continuing furor over Justice Fortas' dealings with jailed Florida financier Louis E. Wolfson produced a new round of reports today that Justice Fortas' resignation is "imminent."

Sen. Paul Fannin, R-Ariz., who said Monday that Justice Fortas would quit before week's end, said today he had been informed the resignation will be announced Friday.

And House Republican leaders have asked Rep. H. R. Gross, R-Iowa, to hold up until next week filing of a resolution to impeach Justice Fortas, implying that Justice Fortas by then will have resigned. House GOP Leader Gerald Ford (Mich.) told Rep. Gross "the Fortas matter will be resolved within the next few days."

In his petition to the high court, Dr. Roberts will charge that Justice Fortas and Justice Brennan are limited partners in a Virginia apartment complex with David L. Bazelon, chief judge of the U.S. Court of Appeals for the District of Columbia, and J. Skelly Wright, also a Court of Appeals judge here.

The Washington Daily News and other Scripps-Howard newspapers disclosed in November that Justice Fortas, Justice Brennan, Justice Wright, Judge Bazelon, Mrs. Bazelon, Mrs. Fortas (Washington tax attorney Carolyn Agger), former United Nations Ambassador Arthur Goldberg and Sen. Abraham Ribicoff, D-Conn., all had an interest in Concord Village Associates, which operates a 531-garden apartment complex in Arlington.

The project was described by tax experts as a legal "tax shelter" in which the partners could deduct from taxes on ordinary income their share of theoretical depreciation losses on the apartment complex.

Dr. Roberts also will note in his petition to the court that Judges Bazelon and Wright, who ruled on his case, are limited partners in a downtown Washington office building.

Dr. Roberts' petition stems from his efforts to prevent the university from abolishing an Institute of International Law and Relations which Dr. Roberts had a contract to head.

Two motions filed in 1967 and 1968 asked the District Court here to issue an injunction halting the dissolution of the institute. Both motions were rejected and Dr. Roberts appealed to the U.S. Court of Appeals headed by Judge Bazelon.

After numerous delays, the appeals were denied and Dr. Roberts turned to the Supreme Court, asking for a writ of certiorari. His impending petition seeks to disqualify Justice Fortas and Justice Brennan from taking part in the court's decision on whether to grant the writ and go into the case.

As partners in the Virginia complex, Dr. Roberts charges, Justice Fortas and Justice Brennan should not be sitting in judgment of decisions made by two other partners in the same venture, Judge Bazelon and Judge Wright.

In addition to his holdings in Concord Village, Justice Fortas also has a limited partnership in Duke Associates, which also operates a Virginia apartment complex.

Last fall, Justice Fortas conceded to Scripps-Howard Newspapers that he was interested in obtaining the tax breaks such ventures offered. He said this was particularly true when he was practicing law.

Last night, almost at the last minute, Justice Fortas cancelled a scheduled appearance before the First Circuit Judicial Conference in New Castle, N.H. No reason was given.

MEDICARE AND MEDICAID

Mr. WILLIAMS of Delaware. Mr. President, the Finance Committee has developed some important material in its investigation into the operations and status of the medicare and medicaid programs.

This investigation was undertaken following the committee's unanimous agreement in February to direct its staff to initiate the inquiry and to request the cooperation of the General Accounting Office.

All of this is in addition to the review work which the committee and its staff

have been doing since the inception of medicare and medicaid.

For example, even before medicare started we held an executive hearing with Health, Education, and Welfare officials where we were highly critical of the proposed hospital reimbursement formula. Unusually liberal methods of paying for depreciation and a 2 percent bonus on top of actual costs were among the specific items questioned at that time.

I urged the Finance Committee to expand its review activities because the present and projected financial difficulties of those two programs far exceed my earlier pessimistic estimates.

We are not talking about small change, either. Without a modification in the program the total costs of parts A and B of medicare during the next 25 years will equal or exceed the present national debt of about $370 billion. The latest report of the trustees of the hospital insurance fund states that under present financing that fund will be broke by 1976. According to Social Security's Chief Actuary, current experience with part B of medicare indicates that the $4 monthly premium will be insufficient for fiscal 1970.

Medicaid is also running wild. For example, in a report published just this past September the Advisory Commission on Intergovernmental Relations forecast a total medicaid cost of "$6 or 7 billion a year, or more by 1975." But in January the budget estimated that level of expenditure would be reached in fiscal 1970—5 years sooner.

The new administration has just proposed some steps to limit medicaid costs. I do not know to what extent these partial measures will prove effective, but I do know that in every single year since medicaid started we have had to approve a supplemental appropriation to pay for it. The Department of Health, Education, and Welfare is asking for more than $278 million in additional funds for fiscal 1969 alone.

One indication of the depth of this Finance Committee undertaking is that detailed questionnaires were mailed to every Governor, to every medicare intermediary and carrier, to every State hospital association, and to every State medical society, as well as to every major national organization concerned with medicare and medicaid. Additionally, the Department of Health, Education, and Welfare was requested to provide the names and addresses of every health practitioner who was paid $25,000 or more in 1968 under either medicare or medicaid. Other background information relating to these people was also requested.

The formal staff report to the committee may not be available for another month or more, but enough data has already been gathered to more than justify the committee's request for the report. The Senate—indeed the American people—will, I think, be extremely interested in some of the initial results.

First, in 1968 the medicare program paid $25,000 or more to each of at least 5,000 physicians.

Second, thousands of health practitioners—doctors, dentists, optometrists, and others—were each paid $25,000 or more under the welfare health care programs in 1968. The total number of these is no yet known—names and addresses are still coming in. A surprising note is the large number of dentists appearing on the lists from welfare agencies.

The staff is handling the data carefully so as to prevent misunderstanding.

The committee's request for complete information as to each person who was paid $25,000 or more in public funds was difficult to comply with for both medicare and medicaid. The Social Security Administration had neglected to require a uniform nonduplicating identification system for physicians. Consequently each medicare carrier employs his own code, which all too often is indecipherable and incomplete. Currently we have confusion rather than control.

Apparently all of these different systems function more to obscure than to identify. Oddly enough, it was the Social Security Administration—of all people—which did not take the obvious step of requiring that each physician be identified by his social security number so as to have one simple national system. Such reporting would also facilitate regular reporting to the Internal Revenue Service of the amounts paid. Obviously this same commonsense approach should also be applied to medicaid.

Data has also been gathered and detailed tables prepared comparing the average medicare payments for the most common surgical procedures for older people with the maximum payments allowed under the most widely held Blue Shield contract in the same geographical area.

The results are startling. Medicare's average payments run as much as two to four times as high as Blue Shield maximums. For example, in two areas of the country medicare's average payment for a cataract operation is more than four times as much as the Blue Shield allowance. These are not isolated cases. There is a pronounced pattern of inflated payments by medicare.

The report to the committee will include pinpointing the causes underlying these extremely generous handouts of public funds.

Another unusual situation has occurred in Social Security's pressing carriers to pay for so-called supervisory services rendered by a teaching physician even though the actual care is provided by an intern or resident. Before medicare virtually no insurer paid for such services.

At the beginning of the program a special group was set up by Social Security to draft regulations which would require payment for this type of service. The group consisted solely of individuals and representatives of organizations which stood to benefit directly from this new and unusual sort of payment.

They did an excellent job of telling the Government exactly how to give themselves tens of millions of dollars. One large medicare carrier told us that it wrote Social Security advising that the courts in its State had held that patients were under no legal obligation to pay for the services of supervising physicians in teaching hospitals. The carrier told Social Security that payment for such services in the absence of a legal obligation to pay on the part of the patient would be in violation of an express prohibition in section 1862(a)(2) of the Social Security Act.

Despite several requests the carrier was not given a written response by Social Security. They then were given general instructions, along with all carriers, to make such payments. That one carrier alone has already paid out several million dollars despite an unequivocal statutory enjoinder prohibiting such payments. Social Security officials knew of the prohibition—they had notice that no legal obligation to pay existed in that State—yet they ordered those payments.

This sort of decision is pyramiding the costs of medicare, but it is not contributing one bit to the quality of care provided under the program. For example, in one large Midwestern hospital alone claims for supervisory physician services are already well above $2½ million. Encouraged by this success, these people are getting ready to do the same thing to medicaid.

Their abuse of medicare has been systematic and flagrant. It involves formal arrangements worked out with the cooperation of the medicare carrier.

In fact, the medical staff of that institution has virtually tripled the salary of the individual they hired to show them how to take medicare for a ride. His salary, of course, comes from the results of his success. Along with other areas of concern the committee is examining this situation in detail.

Since medicare started there has been a remarkable increase in the number of chains entering the for-profit hospital and nursing home field. These groups, whose stocks have soared to unbelievable price-earnings ratios, are obviously lured by medicare's generous reimbursement. The 1½ percent bonus paid on top of reimbursable costs, the prospect of getting accelerated depreciation allowances and then selling a facility at an inflated price, the fact that medicare will pick up all of the costs of a 100-bed facility even if its total patient load consists of just five medicare beneficiaries, the fact that there is no effective review of the utilization of beds and services in these facilities, and the fact that the nursing home or hospital can choose the Government agent who will determine how much it is to be paid have certainly encouraged the get-rich-quick operations.

Furthermore, if a chain owns an extended care facility as well as a hospital it can see that patients go from its hospital to its nursing home. A chain may also own pharmacies or sell hospital supplies to a ready-made captive market in its hospitals and nursing homes at high noncompetitive prices. Chains actively solicit and sell stock to local doctors who thereafter are inescapably subject to questions of conflict of interest any time they place patients in and order medical services in the facilities in which they have an ownership interest.

Sometimes these conflicts of interest are quite open and blatant. For example,

we have a report that the director of medicare operations for one of our largest intermediaries and carriers sits on the board of directors of a nursing home chain.

Perhaps the principal victims of this spurt in chain profitmaking operations are our community nonprofit hospitals. They find their paying patients siphoned off to one of those institutions which does not have to worry about providing such money losing but vital community services as 24-hour emergency room care.

The investigation has expanded the evaluation of carrier and intermediary performance to determine whether the Government is getting what it is certainly paying for and the extent to which intermediaries and carriers are carrying out specific functions assigned to them by the medicare statute.

Thus far a wide variance and level of performance has been observed. Clearly, the medicare administrators have been unwilling to insist that all carriers and intermediaries be "efficient and economical" as Congress required when it enacted medicare.

The law requires intermediaries and carriers to exercise effective controls on utilization of services. This provision was designed to prevent abuse of the program by doctors and hospitals as well as by beneficiaries who might seek unnecessary care simply because the Government paid for it.

Yet some carriers and intermediaries appear virtually to ignore performance of this vital function while others seem to be doing a reasonably effective job.

There is uncertainty regarding the effectiveness of the utilization review required in hospitals and extended care facilities. For example, one State medical society said that utilization review only worked where hospital beds are in short supply, that elsewhere the economic pressure of an empty bed on the administrator of a hospital or nursing home far outweighed the "token" pressure of a utilization review committee for conserving program funds.

Of course, in addition to the problems that I have just outlined there are other areas of concern which are now being investigated. It is gratifying that honest employees and individuals have, on their own, reported questionable activities and situations. Among these are: Allegations of "kickback" arrangements by pharmacists, podiatrists, and physical therapists with nursing homes; billing and payment for services never provided; "gang visits" by physicians to 20, 30, and 40 patients at a single time in nursing homes with each patient billed separately at the full fee, regardless of whether the visit was medically necessary.

Mr. President, we know that the fact that many pertinent questions have been raised and asked in the course of the study initiated by the Finance Committee has led others into healthy reexaminations of their policies and procedures.

I fear that many people regarded the medicare program as an invitation to concoct money-making schemes at the expense of the taxpayers. Unfortunately, up to this point profiteers have had a field day with the program, and their schemes for cheating medicare are still coming to light. I now fully appreciate why the private insurance actuaries added 10 percent to the original medicare cost estimates solely because this was to be a Government program.

One handicap has been that while States pay from 20 percent to 50 percent of the costs of the medicaid program, far too often neither the State nor the Federal Government has been auditing the expenditures, with the result that great abuse and inefficiency have developed.

Recently some States have initiated a more extensive review of these programs; grand juries have been convened, and several indictments have resulted.

Today I shall cite a few examples of some of the more glaring abuses that have been uncovered in the administration of this program in California. The names of the individuals, nursing homes, and so forth, are being withheld since some of the cases are under active study by the courts.

The following are excerpts from an investigative report as compiled by officials of the California Department of Justice. In California the medicaid program is referred to as Medi-Cal.

EXCERPTS FROM THE CALIFORNIA MEDI-CAL REPORT

Of the money spent under the Medi-Cal Program, approximately fifty per cent is paid by the federal government with the state and counties contributing the remainder of such funds.

Our investigation indicates that illegal and unethical activities of persons providing services under Medi-Cal are siphoning millions of dollars annually from the program. Poor administration of the program has contributed to further needless expenditure of money by Medi-Cal. . . .

Our investigation leads us to conclude that six to eight million dollars annually is being drained from the program by illegal and unethical activities by various professionals involved in Medi-Cal. This would not include funds paid out in error and as a result of faulty administration. . . .

In addition to the violations of the laws and regulations of Medi-Cal by the vendors, the investigation disclosed that an effective enforcement program to discover, investigate and deter such activities does not exist. . . .

There is a lesson here for both the state and federal governments. The enactment of federal legislation which requires immediate response from the states to take advantage of federal funding is laden with peril, as well as with token prosperity. Unprepared and without sufficient analysis, the states are rushed into formulating programs which are both essential and ill-considered. There should be an effort by both federal and state governments to transform such programs into more meaningful and fruitful cooperative actions. . . .

NURSING HOMES

. . . The investigation revealed that nursing homes are engaged in numerous activities which violate the laws and regulations governing Medi-Cal.

. . . Many nursing homes require beneficiaries or their relatives to pay money 'under the table' to secure admission of the beneficiary into the home. Such payments are often required not just upon the initial admission of the beneficiary but also for each month the beneficiary is kept in the home. . . .

In one case, for example, it was found that a nursing home was in possession of some $2,000 which belonged to persons who either died or who were discharged from the home. . . . Several nursing homes have been found to be submitting claims to Medi-Cal for services rendered to patients who either died or who had been discharged from the home prior to the period covered in the billing.

One home, for example, received $3,000 for rendering services to patients who had in fact died prior to the date of the alleged services. . . .

Duplicate payments also occur where a nursing home has patients who are eligible to receive benefits from both Medi-Cal and Medicare. While Medi-Cal is only supposed to pay that amount which Medicare does not cover, the submission of duplicate claims under both welfare programs often results in the nursing homes getting paid in full from both Medi-Cal and Medicare. One nursing home, for example, received a duplicate payment of approximately $50,000 by billing in this manner.

Nursing homes may also receive duplicate payment in another manner. A home is reimbursed by Medi-Cal for providing a service, yet it also bills and receives payment for this same service from the patient or his relatives. Many persons receiving Medi-Cal benefits do not know that the services they are billed for have already been paid by Medi-Cal.

. . . The investigation revealed that it is common practice for nursing homes to require vendors with whom they deal to give kickbacks in order to provide their services to persons in the nursing home.

"In some instances the kickbacks ranged as high as 35 per cent of the fee received by the vendor.

"Kickbacks are prohibited by Medi-Cal regulations. Nevertheless, it is a common practice for vendors such as pharmacists, therapists, X-ray technicians and laboratory clinics to give kickbacks in order to obtain business from nursing homes.

. . . Nursing homes often provide services to their residents which are greatly in excess of the services actually needed. Such overservicing is cause for dropping a nursing home from the Medi-Cal program. . . .

For example, one nursing home had a patient who was to take three pills a day. A prescription of 100 pills would have lasted an entire month. The home, however, ordered three prescriptions, each for 100 pills, during this one month. . . .

Another method by which excessive services are provided is where nursing homes have arrangements with vendors such as physicians, dentists, optometrists, podiatrists, etc., which permit them to examine persons in the home whether or not their services are required or requested.

Indications of 'mass examinations' by such vendors have been observed by county consultants throughout the state in the course of their processing requests for prior authorization. Persons in the home seldom object to such examination since they are not usually required to pay for such services. . . .

PHYSICIANS

. . . The Primary fraudulent activity engaged in by physicians as disclosed by the investigation has been submitting claims for services which were not in fact rendered by the physicians.

One area in particular where this type of activity occurs relates to physicians submitting claims for having examined patients in nursing homes, although such examinations were not in fact performed. . . .

For example, our investigation revealed incidents where physicians signed blank prescriptions which were given to them by the nursing home and which were subsequently completed by the home itself. . . .

In another case, 75 blank prescriptions signed by a doctor were found in a nursing home. Review of claims by consultants have also given rise to suspicion that it is the

nursing home which prepares the forms describing the physical condition of persons who seek admission into the home. The 'house physicians' sign such forms although they, in fact, have not examined the patients. . . .

Over 3 million dollars in payments have been made to just 35 physicians in a period of one year, with payments ranging from $70,000 to $131,000 each. Investigation disclosed overservicing by many of these physicians.

Physicians with a financial interest in pharmacies, laboratories and hospitals are also presented with the opportunity of subjecting Medi-Cal beneficiaries to these services, although they may not be required for medical reasons. For example, of four hospitals whose claims are under constant review by Blue Cross to determine if excessive services are being provided, all four are owned by physicians.

One blatant example of unnecessary services in a physician-owned hospital concerns a patient who was hospitalized for sixteen days. Ten blood tests, many of them identical, were taken each day the patient was hospitalized. Of the 160 tests taken, not one revealed an abnormal finding.

PHARMACISTS

Pharmacists are instructed not to charge the state a price which is in excess of the price charged to the public for the same drug. Based upon investigations made both before and since the enactment of Medi-Cal, it appears that a large number of pharmacies are violating this instruction.

Indeed, spot-checks which have been made on pharmacies since Medi-Cal revealed that a majority of the pharmacies visited are still charging prices to the state which are in excess of those charged to the public.

There is a special problem involving the difference in drug prices charged to public agencies and private individuals. This involves private health programs which may pay less for drugs than the public welfare program. For example, the United Auto Workers is negotiating a contract under which Blue Shield would cover the expense of drugs purchased by members of the union. Under the proposed contract, the UAW Program would pay less for drugs than the state welfare program.

Examples of the difference in price can be seen by a comparison of the cost of some leading brand name drugs with the cost of comparable generic drugs.

Brand name		*Comparable generic*	
Achromycin caps, 250 mg: 100	$11.22	Tetracycline caps, 250 mg: 100	$4.20
Peritrate tabs, 100 mg:		Pentaerythritol tetranitrate tabs, 10 mg:	
100	2.50	100	.65
1,000	22.50	1,000	3.00
Seconal sodium, 1½ gr:		Secobarbital sodium, 1½ gr:	
100	2.16	100	1.25
1,000	19.92	1,000	8.80
Tedral tabs:		Theophylline, ephedrine and phenobarbital tabs:	
100	3.18	100	.60
1,000	28.60	1,000	4.65
Noctec caps, 7½ gr: 100	4.20	Chloral hydrate caps, 7½ gr: 100	1.75

. . . Some pharmacies dispense an excessive number of prescriptions for a particular patient or family on one day, or within a relatively short period of time.

In one case, 15 prescriptions were dispensed to a single family on a given day. The family consisted of a husband, wife and three children. The 15 prescriptions involved only three different medicines. An identical prescription for each member of the family was written for each of the three medicines. (E.g., each member of the family got a prescription for 4 ounces of the same cough medicine; each member of the family got a prescription for 2 ounces of the same antibiotic.). . . .

Nursing homes usually order all the drugs required by persons residing in the homes. This often amounts to the purchase of a few thousand dollars worth of drugs per month. The investigation revealed that many pharmacies are giving kickbacks to nursing homes in order to obtain their business. One pharmacy has even sent letters to nursing homes offering to give discounts for their business. . . .

One pharmacy submitted 15 prescriptions, all of which were given to one family in a single day. Five of the prescriptions were identical, each being for four ounces of the same cough medicine. . . .

A pharmacy dispensed in a period of 33 days 300 pills to a single patient. If taken as directed (one pill three times a day) 100 pills would have sufficed for the entire period. . . .

A pharmacy employing one pharmacist dispensed 290 Medi-Cal prescriptions in a single day. These prescriptions amounted to his being reimbursed $1,190. Many of these prescriptions were preprinted. Around fifty per cent of these prescriptions were written by two physicians, one of whom sees 75 to 100 patients a day and prescribes 100 to 125 prescriptions a day. For comparison purposes, a major chain drugstore employing seven pharmacists in a thirteen hour day writes an average of 300 prescriptions a day. . . .

DENTISTS

. . . Just as suspicion of overservicing is raised when large fees are paid to physicians, the same is equally true when big fees are received by dentists. Eleven dentists received close to one million dollars in fees in the year 1967. The activities of many of these dentists are, in fact, suspect by dental consultants at the county level.

OPTOMETRISTS

. . . Fraudulent activities by optometrists have primarily involved requesting prior authorization to provide appliances based upon the submission of false information. . . .

In one case, for example, an optometrist requested approval for a pair of expensive prescription sun glasses for a patient. Investigation disclosed that the patient was blind. . . .

HOSPITALS

. . . There have been numerous instances where vendors have received double and triple payment for services they have rendered.

Preliminary investigation has disclosed that one hospital, for example, has received duplicate payments involving some 59 different patients amounting to $17,000 in overpayments.

. . . Various reasons exist for such duplicate payments. In the case of the hospital it was found that employees of the fiscal agent insert a diagnostic code on the claim received from the hospital. The code is determined by the diagnosis set forth on the claim. If a duplicate claim is submitted a different employee might interpret the same diagnosis in such a way so as to insert a different code number on the claim. Due to the difference in code numbers the computer will not detect the duplicate claim and payment will be made upon both claims.

. . . Another means in which duplicate payments can occur is where a vendor initially submits a claim for $1,000 which shows that the patient's liability for such services is $100. The claim would thus request a net payment to the vendor of $900. If it was subsequently determined that the patient's liability should have been $200 a duplicate claim might be submitted by the vendor requesting $800. Due to the difference in the net amount claimed the computer would once again be unable to detect the duplicate claim and again it is probable that payments of both $800 and $900 would be made to the vendor. . . .

Computers are presently used by both fiscal agents in the reviewing and processing of claims. Efforts should be made to improve control procedures and the programming of computers to assist them in their handling of claims.

Improved procedures in the computer program should eliminate errors such as making payments to persons who do not participate in the program and in making duplicate payments. . . .

FINANCE COMMITTEE INQUIRY—MEDICARE AND MEDICAID

Mr. LONG. Mr. President, for several months the staff of the Committee on Finance has been compiling data and information with respect to the medicare and medicaid programs. Together, these two health programs involve total Federal expenditure of $8.6 billion during this fiscal year. The medicaid program also requires outlays by State and local governments of another $2.2 billion.

The medicare program, employing the trust fund concept of the social security system, is providing medical care in hospitals, nursing homes and physicians' offices for literally millions of our aged citizens. In a great many instances these people would have been without this sort of help if it had not been for the passage of medicare. They just did not have the money to pay for it on their own.

But medical care has become far more costly than Congress imagined when medicare was enacted in 1965. We now have cost estimates which indicate that the hospital insurance trust fund will be broke by 1976. These same cost estimates show that if we are to keep the program as we now know it in operation then we must increase medicare taxes by at least $44 billion over the next 25 years. This $44 billion is on top of the $230 billion that we understood the program would cost in the same period of time. Not only that, but the $230 billion estimate includes many additional billions in medicare taxes we voted in 1967.

Now, not all of the higher costs can be blamed on the hospitals and doctors, although we have a lot of data that there have been costly changes in their pricing practices that seem to have come about, not naturally, but because of the Federal programs. In addition to these costly changes there are indications that the reimbursement rules fixed by the Department of Health, Education, and Welfare may be more generous than they need be and not in accord with congressional intent. And the fiscal intermediaries and carriers appear to be lax in a number of respects as to their responsibilities under the medicare program.

All these factors are hurting the program and seem to be encouraging some ruthless providers of health services to take advantage of medicare, and of the aged, for their own selfish enrichment. I am sure no one wants to do away with medicare and I am equally sure no one wants to deny providers a fair return for the services they render under the program. On the other hand, I think the American people have a right to expect that their tax dollars are not filtering out of the program into the pocket of someone whose aim is to cheat medicare for all he can get.

For the sake of the program we must find these abusers and deal with them.

In this respect I want to applaud the efforts of the distinguished senior Senator from Delaware who is the ranking minority member of the Committee on Finance. He has been aroused for sometime about allegations of abusers of medicare—and of medicaid. Earlier this year he talked with me about a Finance Committee inquiry into the whole area. I agreed with him that it would be desirable and a few days later the committee itself approved the study and directed the staff to begin work. We wanted them to take a long, hard and thorough look at the problems and potential of titles 18 and 19 of the Social Security Act. When the results of that effort are reported to the Finance Committee within the next month or so, I anticipate that the committee will want to begin formal hearings.

Of course, we have been carefully watching developments in these programs from the beginning. In fact, the Finance Committee in an executive hearing in May 1966, raised serious questions concerning an over-generous formula for reimbursing hospitals.

Some of us were particularly critical of the idea of paying hospitals on a cost-plus basis. Payment of a 2-percent bonus on top of liberal reimbursement for actual costs did not seem to be an inspired method of encouraging efficiency and economy. Quite simply, the existence of the 2-percent bonus served as an open invitation to inflate costs—the more you could run those costs up the greater the bonus.

Some months back, I wrote Secretary Finch pointing out the inappropriateness of the regulation requiring States to pay the 2-percent bonus under medicaid—a cost estimated at $50 million in Federal and State funds in fiscal year 1970. I am pleased to say that 2 weeks ago the Department announced that it was dropping the 2-percent bonus from both medicare and medicaid. The medicare reduction in cost is estimated at another $65 million for fiscal 1970.

Of course, I will continue to support appropriate assistance with hospital capital needs through programs such as Hill-Burton which are designed specifically for that purpose, and under which funds are allocated according to demonstrated need. The purpose of medicare was not to provide capital to hospitals, but rather to pay for the cost of medical care provided for our senior citizens.

As word of the Finance Committee inquiry has spread, more and more concerned citizens are beginning to write us of their own experiences with apparent abuses of medicare and medicaid. We welcome such letters and we are taking appropriate followup action where indicated.

Let me illustrate for the Senate a few examples of the kind of mail we are receiving.

A Michigan resident writes concerning the alleged forging of his name to two different claims for medicare payment which were submitted by a physician. He said that he had not been that doctor's patient for one and a half years previous to the submission of those claims, and medicare paid the claim.

A California resident writes that doctors in her area charge from $25 to $50 to have a patient admitted to a hospital. She reports that this is in addition to any fees for office or house calls and the first $44 of the patient's hospital costs. She says medicare approves of this in California and pays 80 percent of the charge. She reports that this was not the practice prior to medicare.

A lady in Pennsylvania tells of a doctor who keeps people on medicare coming regularly to his office and setting up appointments for them every month. She reports that she refuses to comply and accordingly she is not one of his favorite patients. She feels most doctors are doing the same thing and in so doing are becoming wealthy at the Government's expense.

A writer from Florida advises of a doctor who visits the widow of a former colleague. He says most of the visits to her home consist only of friendly visits. But, he charges medicare for them as if they were professional visits. Besides collecting from medicare he submits a bill to the widow every month. When the widow inquires about it she is told to forget it. The writer reports that the doctor involved is "robbing the Government's medicare department blind."

From New York comes a report which reads in part as follows:

> I have proof positive where a doctor rendered a bill to medicare without having obtained the patient's signature, where no medical service had been rendered and was paid off by Medicare.
>
> The patient was shocked upon receiving this doctor's bill; she notified the doctor's secretary that this bill would not be paid; the secretary told the patient not to worry because Medicare will pay it and she would send the patient a Medicare form to sign; was told by the patient not to dare send any Medicare form to be signed, that she will not be a party to defrauding our government. Patient assumed the matter was closed.
>
> Some time later, the patient received from her area Medicare payment branch a carbon copy indicating that this doctor had been paid by Medicare, and the fact that he did not press the patient for the balance is proof that he knew he rendered no service (patient never saw this man in her life), and was just satisfied with what he received from Medicare for it was all gravy.

As one aspect of the staff study, data has been assembled which indicates that more than 5,000 doctors were paid $25,000 or more by medicare in 1968. Additional thousands of health care practitioners are on our lists of those who where paid $25,000 or more in 1968 under medicaid, and other welfare health programs. Those lists are, of course, being cross-checked and analyzed carefully so the committee can view it in proper perspective. For example, a physician's name on that list would by no means indicate any wrongdoing or profiteering. He might, for example, have a large portion of his practice consist of medicare and medicaid patients.

I hope we will not find any misconduct. But if these Federal health programs are being abused we should know about it so that proper actions may be taken—whether by changes in the statute or by prosecution, if necessary, or by some other means.

The Finance Committee takes its jurisdictional and legislative oversight responsibilities for medicare and medicaid quite seriously. Our objective is to pursue our inquiry and subsequent activity to whatever lengths are necessary to set those two programs aright.

When we receive and evaluate the staff report, I anticipate that the committee will want to hold hearings to determine just what might be done to tighten the lines and purse-strings of medicare and medicaid.

We want the medicaid program to provide help to people who need it and we want the medicare program to look after the medical needs of our senior citizens. We want that care to be high quality. But, we think it should be provided on a basis that is effiicent and economical, not on a basis which is wasteful and extravagant.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. PEARSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The VICE PRESIDENT. Without obligation, it is so ordered.

PRESIDENT COMMENDED FOR PROPOSAL TO REVISE AND REFORM SELECTIVE SERVICE SYSTEM

Mr. PEARSON. Mr. President, I commend and endorse President Nixon's proposal to revise and reform the Selective Service System.

This proposal whereby each young man will be eligible for the draft for only 1 year, at age 19, the continuation of college deferments with subsequent eligibility for the draft, the lottery method whereby the days of the year and names of the young men eligible for the draft are picked at random, provide a new element of fairness and reasonableness concerning a most difficult problem regarding our national security.

Moreover, Mr. President, I commend the administration for making this proposal at this time without waiting for the end of the conflict in Vietnam. The President's proposal very closely follows the legislation I cosponsored on March 25 of this year. It seems to me that it will go a long way toward equality of treatment in permitting the young men of America to serve their nation on as non-disrupting a basis as possible.

President Nixon's proposal shall have my support.

TAX-DODGE FARMING MUST BE CURBED

Mr. PEARSON. Mr. President, in recent years the practice of what is commonly referred to as tax-loss or tax-dodge farming has attracted considerable attention. A number of bills aimed at curbing this practice have been introduced in Congress. And more recently, President Nixon has proposed a number of changes in the tax code intended to help reduce tax-dodge abuses.

The fact that the Internal Revenue code can be "farmed" by high-bracket taxpayers has been well established.

A Treasury Department study of 1966 income tax returns shows that 75 percent of the 4,778 individuals with incomes in excess of $100,000 per year who also engaged in some type of farm operation reported farm losses totaling $72 million. A breakdown of the farm returns of these high-income individuals is particularly interesting:

Of the 103 millionaires, only 15 showed a profit, 88 reported a loss.

Of the 228 with total incomes between $500,000 and $1,000,000, only 27 showed a profit, 201 or 88 percent reported a loss.

Of the 1,104 with total incomes between $200,000 and $500,000 only 209 showed a profit, 895 or 81 percent reported a loss.

Of the 3,343 with total incomes of $100,000 to $200,000 only 986 showed a profit, 2,357 or 70.5 percent reported a loss.

Another study of 1965 returns reveals that the "farmers" of Los Angeles reported $42 million more in farm losses than in profits. Dallas "farmers" reported $10 million of net farm losses, Houston $20 million of net losses, and San Antonio another $5 million in net farming losses.

An analysis of 1963 tax returns of all individuals reporting farm income by the Department of Agriculture shows that the more wealthy the individual the more likely he is to report a farm loss. For example, 86 percent of those classified as poor—total income of less than $2,500—reported a net profit on their farm return, while only 31 percent of the wealthy—those with total income of more than $25,000—reported a net profit on their farm operation.

Now, of course, not all of these farm losses were deliberately contrived. On the other hand, I think it is now quite clear that many, too many, high income individuals are using farm investments as a tax haven; many of these are "tax losses," not true economic losses.

For the most part tax-dodge farming has its basis in two provisions of the tax code which have been adopted in recognition of the special circumstances of the working farmer and rancher, the cash method of accounting and the special handling of certain capital costs.

Cash method: In most businesses the taxpayer is required to use the accrual accounting method of reporting, which requires the maintenance of inventory accounts so that the costs of the merchandise are deducted in the accounting period in which the income from the sale of the merchandise is reported.

Farmers, however, are permitted to use the cash method of reporting. They are not required to report year-end inventories of their crops, cattle, and so forth. Production expenses are reported and deducted at the time the expense is incurred even though the income from the sale of the final product or commodity may not be realized until a later reporting date.

Capital costs: The costs incurred in developing a capital asset are normally treated as a capital expenditure which may not be deducted as incurred but may be covered only by depreciation over the useful life of the asset. Farmers, however, are allowed to deduct as they are incurred the costs of developing certain capital assets such as breeding herds and citrus groves.

These special accounting practices are permitted for farm operations in order to spare the ordinary working farmer and rancher the bookkeeping chores associated with inventories and accrual accounting. The need and justification for the use of this simplified accounting procedure has been recognized and upheld by the U.S. Supreme Court.

Over the long run, these regulations do not result in any net reduction in taxes for the individual who depends upon his farm operations for his principal source of livelihood. However, the high bracket taxpayer, whose primary economic activity is other than farming, is in a position to plan and control his farm operations in such a way that he can use the regulations to achieve considerable tax savings.

The greatest potential for tax savings occurs where deductions are associated with eventual capital gains income such as in the purchase and sale of livestock breeding herds. The Treasury cites the following general example to illustrate: A top bracket taxpayer invests in a cattle breeding herd. Under existing laws, he chooses not to capitalize his cost of raising the herd, which, say, is $200,000. The entire $200,000 is treated as an ordinary expense item and deducted from his other income, saving him $140,000 in income taxes. On the sale of the herd, however, the sales price will be taxed at the 25 percent capital gain rate, or $50,000 in this example which is less than half the tax savings realized in earlier years. Thus, he realized a tax profit of $90,000 from a transaction which economically is merely a breakeven. Actually the "tax farmer" could sell the herd for as little as half what he invested in it and still come out ahead.

While the most glaring examples of tax-dodge abuses are to be found in operations involving livestock breeding and citrus groves, additional abuses are to be found in almost all types of operations from large scale land development schemes to cattle feeding investments.

Several different proposals have been advanced to get at this problem of tax-dodge farming. One approach would allow the claiming of farm losses only by defined bona fide farmers. Another approach, as recently proposed by the administration, would require all farm operations to establish an excess deduction account—EDA—for losses over $5,000. This account would be reduced by net farm income in any subsequent year while on the other hand future capital gains would be treated as ordinary income to the extent of the amount in the EDA in the year of the sale. The administration proposal would also extend depreciation recapture provisions to breeding livestock.

Another approach would seek to get at the problem by setting a limit on the amount of farm losses which could be offset against nonfarm income. This approach has wide support in the Congress at this time. And I have joined 23 other Senators in cosponsoring the tax-loss bill—S. 500—introduced by the distinguished junior Senator from Montana.

Generally speaking, this bill would set a limit of $15,000 in farm losses which can be offset against nonfarm income. Setting the limit at this level means that farmers can earn at least $15,000 a year in nonfarm income without being affected by this bill.

Taxes, interest, casualty losses, losses from drought, and losses from the sale of farm property are exempted from the $15,000 limitation. These are deductions which are generally beyond the control of the operator and which occur regardless of the intent of the operator. The bill also allows losses to be carried back 3 years and forward 5 years so long as these losses do not exceed the farm income in those years.

With these two provisions an individual would not likely be affected by this bill unless he rather consistently lost upwards of $20,000 a year and unless nonfarm income against which these losses could be offset, was generally in excess of this figure.

The loss limitation would not apply to the taxpayer who adopts a system of strict accrual accounting and capitalizes all costs of capital items rather than reporting them as ordinary expenses fully deductible in the current year.

Thus the objective of this bill is quite simple; it seeks to curb the practice whereby individuals operate their agricultural investment in such a way that they are able to report sizable losses year after year, with these losses being offset against their nonfarm income and thereby reducing their total tax payment.

This type of approach to the tax-dodge problem has been endorsed by all three of the general farm organizations, the American Farm Bureau Federation, the National Grange, and the National Farmers Union. Other endorsing groups include: the National Association of Wheat Growers, the National Association of Farmer Elected Committeemen, the Mid-Continent Farmers Association, the National Council of Farmer Cooperatives, the Cooperative League of the U.S.A., and the Farmland Industries Cooperative.

Mr. President, those who engage in agricultural operations primarily for tax reasons are, of course, vigorously opposed to this type of legislation. But I have also heard expressions of concern from a number of other people who would not in actual fact be affected. After reviewing these objections it is clear that they are based on a misunderstanding of the bill. Therefore, I want to make it clear what the bill would not do.

First. Working farmers and ranchers would not be forced to shift from the cash reporting method to the accrual accounting method. If the bill did this then indeed every farmer and rancher should be vigorously opposed to it. But the bill does not do this. I am unalterably opposed to any proposal that would require the working farmer and rancher to change his present system of income tax reporting. I know that Senator METCALF is of the same view and believe I can say without fear of contradiction that all the other cosponsors of this and similar proposals share this view.

It is true, of course, that certain individuals with large nonfarm incomes and who rather consistently lose over $15,000 a year on their farm and ranch operations might find it necessary to adopt the accrual system.

But very, very few working farmers and ranchers would fall into this category. And those who claim otherwise are either trying to deliberately mislead farmers and ranchers or are ill informed about the economics of the agricultural sector. Considering the source of some of these claims, I imagine both factors are involved.

Second. This bill would not stop the flow of outside capital into agriculture. The objective of this type of proposal, of course, is to stop the flow of the "tax gimmick" dollar into agriculture. I believe that it would go a long way toward solving this problem. But it certainly would not stop serious, legitimate investment as some opponents, in their frenzy, have proclaimed.

Third. It would not force down land values or stop the progress in the improvement of breeding lines.

Here we see the reason why some opponents have tried to peddle the nonsense that this type of legislation would stop all, or virtually all, outside investment. For once you assert such a proposition you then can wave the red flag of lower land values. It is hoped, of course, that this legislation would help to prevent those situations whereby the "tax gimmick" investor goes in and buys up land at a price far above its true economic producing value, thereby denying the working farmer and rancher access to land he needs for expansion in order to maintain an economically viable operation.

The argument that such legislation would slow the advance in livestock breeding is even more tenuous. For it is based not only on the proposition that all or most outside investment would be halted but also on the proposition that outside money has been the principal cause of breeding improvements.

Mr. President, the question is no longer whether something should be done but what should be done. For my own part, I believe we need to enact legislation embodying the basic principle of S. 500. Enactment of such legislation would help a great deal. However, additional steps will likely be necessary.

For example, it may be desirable to include breeding livestock under the depreciation recapture provisions. The present exemption of livestock from depreciation recapture tends to encourage the outside investor to buy a breeding herd, depreciate it at an accelerated rate and then sell it after a relatively short period of time. Another possible step would be to extend the holding period—the time required to qualify as a capital asset—for breeding livestock from 12 months to 24 months. And an effective prohibition against the practice of trading male for female calves is in the must category of the type of more vigorous enforcement action which can be taken by the Internal Revenue Service.

In another important area, tougher regulations are needed to crackdown on land promotion schemes. Outside high bracket taxpayers abuse present regulations by buying land, running up lavish "improvement" expenses which are offset against nonfarm income and then selling the land in a few years at capital gains rate. The National Livestock Tax Committee has proposed a system for recapturing these deductions. I believe this proposal has considerable merit.

Mr. President, in considering corrective actions to be taken we must judge each proposal first on the basis of whether or not it would have any adverse effect on the bona fide farmer and rancher. Working farmers and ranchers have too many economic problems as it is. We must not add to those problems by writing well-intentioned, but poorly designed tax reforms.

Mr. President, tax regulations as applied to agricultural operations today are being abused by skillful outside investors to reduce their overall tax obligations. The Treasury Department estimates that S. 500-type legislation would recover at least $145 million a year in taxes just from individual—corporations were not included in the study—tax-dodge "farmers."

Serious as this is, an even more important consideration is the fact that the tax-dodge operators constitute unfair competition for the bona fide, working farmer and rancher. The individual who is trying to make a living in agriculture today is plagued by many problems. He should not have to endure the additional problem of unfair competition from the "tax gimmick" investor.

These abuses can be stopped. They must be stopped. And to help assure that effective and speedy action is taken, our bona fide farmers and ranchers need to express themselves loudly and clearly. They must make sure that Congress hears their views as well as the views of the tax-dodge operators who try to wear the cloak of the "agriculturalists."

Mr. PEARSON. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The VICE PRESIDENT. Without objection, it is so ordered.

IMPENDING RESIGNATION OF LEE WHITE AS CHAIRMAN OF FEDERAL POWER COMMISSION

Mr. PROXMIRE. Mr. President, yesterday news reported that Lee White is resigning as Chairman of the Federal Power Commission, effective not later than the end of July. His resignation will mean the loss of a dedicated and effective public servant.

Lee White has had a long and illustrious career in the legislative and executive branches of the Government. Following his graduation from law school, he joined the Tennessee Valley Authority in Knoxville, Tenn., as an attorney in the Law Division. He left TVA in 1954 to join the staff of then Senator John F. Kennedy as a legislative assistant.

He served with Senator John Kennedy through 1956, and in January 1957 he was named counsel to the Senate Small Business Committee. The following year he became administrative assistant to Senator JOHN SHERMAN COOPER, and he served in that capacity for 3 years.

After President Kennedy's election in the fall of 1960, Lee White was named assistant special counsel to the President, and he served continuously on the White House staff from January 1961 to March 1966. Early in 1966 President Johnson nominated him Chairman of the Federal Power Commission, and he took the oath of office as Commissioner on March 2, 1966.

Since becoming Chairman of the FPC, Lee White has done an outstanding job of handling one of the most demanding jobs in Government. It is a job which requires a delicate balance between consumer protection on the one hand and promotion of a vital industry on the other. The Chairman must play the role of judge, juror, intermediary, negotiator, and prosecutor, and often he must wear several of these hats simultaneously. Lee White has shown that he can handle all of these jobs—and with consummate skill.

Several items in particular deserve mention. In November 1965, the Northeast was hit by a massive power failure—a crisis of enormous magnitude but fortunately of short duration. To do everything that is humanly and mechanically possible to prevent repetition of this situation, the FPC under Lee White's leadership has played a very active role in seeking to further electric power reliability. A great deal of progress has been made in this area, but, of course, much more is necessary. To this end, the Commission proposed an electric reliability bill during the last session of Congress, and still believes such legislation necessary.

In the area of natural gas regulation, the last few years have seen continued growth within the industry. At the same time, thanks to Lee White's effective leadership, gas prices to the consumer have been kept down. In addition, the Commission has worked closely with the gas industry in developing the network analysis program for designing offshore pipelines. This should result in significant cost savings in offshore pipeline construction. The Commission has played a leading role in trying to resolve the problems of the interrelationship between the electric and gas industries and the environment.

Lee White has done a splendid job as FPC Chairman. His departure leaves a void which it will not be easy to fill.

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

Mr. PROXMIRE. I am delighted to yield to the distinguished chairman of the Commerce Committee.

Mr. MAGNUSON. I join the Senator from Wisconsin in his tribute to Lee White. The Commerce Committee, of course, has had many dealings with Mr. White as Chairman of the Federal Power Commission. He has always been fair and objective. As the Senator from Wisconsin has pointed out, his is a most difficult job, but I think in the field of gas rates he did more than many, many prior Commissioners to stir matters up to see that rates were not raised unreasonably. The gas pipe safety bill is one matter in which he took leadership, as well as many others.

I am sorry to see Mr. White leave. He has contributed a great deal to the very sensitive field of power and gas regulation. I think he has the respect not only of management but of consumers and everybody else in that field.

I thank the Senator from Wisconsin for making his remarks. I join him.

Mr. PROXMIRE. I thank the distinguished Senator from Washington. No one in the Senate is more expert in this area, and I think his praise is something that Mr. White will cherish.

Mr. PEARSON. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. PEARSON in the chair). Without objection, it is so ordered.

ELECTING THE PRESIDENT: TIME FOR A CHANGE

Mr. YARBOROUGH. Mr. President, Thomas Jefferson once wrote:

> I am not an advocate for frequent changes in laws and constitutions. But, laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of their barbarous ancestors.

In this instance, as in many others, I find myself in complete agreement with Mr. Jefferson, for we must change our institutions to keep pace with the changing times.

One change which the times have made it imperative that we make is a change in our present method of electing a President. Our present system is old, outdated, cumbersome, and undemocratic. Pressures of life in a modern nation in a rapidly changing world make a change in this system necessary to correct the first three deficiencies in the present system. A changing and broadening concept of democracy and the suffrage makes change necessary to correct the fourth deficiency.

Several measures to change the presidential electoral system have been introduced in the 91st Congress, including my proposal contained in Senate Joint Resolution 18.

What I propose is to amend the Constitution in order to expedite and to democratize the election process prescribed for those occasions when the electors cannot choose a President. Currently, the House of Representatives is supposed to select a President on such occasions, and the House ballots with one vote for each State delegation. A simple majority is required for election.

I should like to have this provision changed to give each Member of the House one vote. I believe that such a change would speed up a contingent election, would further reduce the chance that the House might be deadlocked, and would make this vote by the House more accurately reflect the wishes of the people. I feel that by making this change, we can eliminate what Jefferson called "the most dangerous blot on our Constitution."

GEORGE WASHINGTON ADDRESS BY FORMER GOV. CECIL H. UNDERWOOD

Mr. MUNDT. Mr. President, on April 30, at the annual George Washington Dinner of the American Good Government Society held in the Sheraton Park Hotel, former Gov. Cecil H. Underwood, of West Virginia, delivered a stirring address which I take great pleasure in bringing to the attention of Congress and the country by asking unanimous consent that it be reprinted in the RECORD at this point in my remarks.

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

ADDRESS BY HON. CECIL H. UNDERWOOD

Coming from a state whose early lands were surveyed by the young engineer, George Washington, I am highly honored tonight to participate in this program to honor the first inauguration of George Washington, the first President of these United States of America. For seventeen years, the American Good Government Society has honored outstanding leadership in modern America as a means of keeping faith with the tradition and character of leadership established at the beginning of our republic by George Washington.

I congratulate Senator Bennett of Utah and Congressman Mahon of Texas for the honors they will receive here tonight, but more importantly the service they have rendered this nation which entitles them to be here tonight.

The qualities of leadership exhibited by Washington are worthy of honor by any generation of mankind and they will be in public demand as long as mankind survives on this earth. His towering strength takes on monumental dimenions when we remember that his greatest contributions to this republic were made without the benefit of prior experience or precedent—he was the first Commander in Chief of American Armies; he was the first President of an American Constitutional Convention; he was the first President of these United States.

After the work of the Constitutional Convention was completed, Washington commented on the new document in a letter to Bushrod Washington, November 10, 1787:

"The warmest friends and the best supporters the Constitution has do not contend that it is free from imperfections; but they found them unavoidable and are sensible, if evil is likely to arise therefrom, the remedy must come hereafter; for in the present moment, it is not to be obtained; and, as there is a Constitutional door open for it, I think the people (for it is with them to judge) can as they will have the advantage of experience on their side, decide with as much propriety on the alterations and amendments which are necessary as ourselves."

For the past twenty years, American Presidential elections have alternated between landslides and cliffhangers. A significant third party movement emerged during the 1968 election, and for awhile threatened to render an indecisive result in the election. These developments are probably responsible for the renewed concern expressed currently about the manner by which we elect the President of the United States.

Widely expressed fears of what might happen in a presidential election tend to blind our appreciation for a historically successful electoral system. This system comes to us partly from constitutional origins and partly from custom.

Most knowledgeable people agree that America has problems in the present electoral system; but few leaders agree on the proper remedy for these problems. The several proposals advanced and the widespread public comment have left confusion among the electorate.

Much the same situation existed among the delegates at the 1787 Convention in Philadelphia. The method of electing the President came up for discussion on June 1, just twelve days after the Convention opened, but the question was not decided finally until the closing hours of the Convention.

Delegates James Wilson and Gouverneur Morris of Pennsylvania were the leading proponents of popular election of the executive. Wilson argued, "If the President is to be the guardian of the people, let him be appointed by the people."

Elbridge Gerry of Massachusetts was the chief opponent of popular election. He was so strongly opposed that he refused to sign the completed document, fearing it did not have enough safeguards against democracy: "The people are uninformed and will be misled by a few designing men . . . popular voting is radically vicious."

Sensing he could not carry the day for popular election, Wilson came forth on June 2nd with a proposal to enable the people to select the executive through representative electors: From districts, into which all states would be divided, the qualified voters would choose persons to serve as electors of the executive; then the electors would meet and elect a president by ballot. Wilson gained only the support of Delaware, and his plan was defeated, 8–2.

The Convention then proceeded to provide that the executive would be elected by Congress. But Morris and Wilson waged a relentless attack on this method, arguing that an executive elected by Congress would be controlled by the legislative branch, especially if he were permitted more than one term in office. Although the election-by-congress method prevailed on four ballots, the Convention finally reversed its earlier decisions and defeated this method. Once more the conflict between small and large states had brought the Convention to a deadlock. To resolve the impasse, a committee of eleven delegates was named to seek a compromise.

After four days of deliberation, the committee reported a plan authored by James Wilson to create intermediary electors as representatives of the people. The plan called for an electoral vote, providing two votes for

each state corresponding to their Senators and one elector for each member of the House of Representatives. The winner must have a majority of the electoral votes, and inconclusive votes would be resolved by the House of Representatives.

This compromise broke the convention impasse. Later it aided materially in the ratification of the new constitution by the states. It was destined to become a cornerstone of success for the newly-created federal union.

The founding fathers were happy with this compromise plan—they felt they had found a logical scheme to strengthen the federal system and protect the rights of people. In fact, this part of the Constitution attracted little debate during the ratification period. Madison did question the House election in case of ties or inconclusive elections. But Hamilton wrote:

"The mode of appointment of the chief magistrate of the United States is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents."

The Electors met in their own states in 1789; they considered the best talent available and elected George Washington President by a vote of 69–0. The Electors gave Washington a second term in 1792 by a vote of 132–0. Factions which developed during the Washington administrations reflected themselves in the 1796 electoral vote of 71 for John Adams and 68 for Thomas Jefferson.

Then came the 1800 election when political maneuvering first entered American presidential elections. The Electors gave Thomas Jefferson and Aaron Burr 73 votes each. The House of Representatives, in its first effort to elect a president, found itself deadlocked for 35 consecutive ballots. Finally, Jefferson was elected on the 36th ballot. Alexander Hamilton, who had been a personal friend and social companion of Burr and, at the same time, a bitter political enemy of Jefferson, could not see Burr as president and joined the support for Jefferson. This split became so bitter that it led to the duel in which Burr killed Hamilton.

The constitution makers apparently had no concept of political parties and never dreamed they would rise in America. But political parties did rise, even though they had no constitutional basis. The parties, once established, changed materially the workings of the electoral system. The method changed from outstanding men meeting in the respective states to choose a national leader to political party leaders maneuvering straight party votes among the states.

Three major problems have arisen in our electoral system: (1) election of the electors; (2) binding of the electors; and (3) the winner-take-all concept. These problems are the direct result of custom, and they have no relation to the original Constitution or any subsequent amendment.

The original Constitution left to the states the method of selecting the Electors. The states employed various methods during the early years and moved to the state-wide election of Electors only in response to pressure from political parties.

Today, sixteen states and the District of Columbia require by law the Electors to be bound by the popular vote of their respective states. Even so, this custom has been firmly established since 1804 and challenged only in recent elections.

The constitutional delegates never anticipated that states would vote their electoral votes by blocks. But political practice soon taught the big states the advantages they held if they could control their electoral votes. Hence, the winner-take-all concept has been a part of our electoral system since 1836, and is perhaps the most unfair, unreasonable custom we have created.

These problems and their resulting frustrations have caused the American voters to follow a pattern they have been content to accept for the past three decades: look for a national solution to every problem. Many strong voices in America today call for the national election of our President. I say that a national election is the greatest threat to what remains of our federal system, and to the balance of power historically residing between the states and the national government.

The original Constitution provided that United States Senators would be elected by the state legislatures and that the Senators would, in effect, be the voices of the states in the national government. Repeated failure by the states to exercise this important responsibility led to the 13th amendment to the national constitution in 1913 and the popular election of United States Senators. Since that time Senators have come to look upon themselves as representatives of the majority voter blocks within their respective states and not as the voices of the states. Since 1913, we have witnessed a steady decline of the states' influence in the federal system, because they have no voice in national decisions. Recently, we gave the cities a voice in the national government through a cabinet officer, but where is the voice of the states?

Election of the President by a direct vote would wipe out the last vestige of the state's role in the American federal system. If the states cannot function in the making of national government, how can they influence the direction of national government?

Voting qualifications and standards would have to be nationalized and removed from the states to prevent bargain discount approaches to political advantage. Elections would come to hinge on big-city leverage, and big-city bosses would likely emerge stronger than any we have ever known before. Corruption through stolen votes, mishandling of absentee ballots and pressures on certifying election officials would be enhanced. Pockets of corruption, now contained by state boundaries, could contaminate the whole national election.

Let us in America not make haste to destroy a historically sound and successful electoral system which we have allowed political custom and voter lethargy to corrupt and weaken. The office of Presidential Elector has lost its prestige and become meaningless only because the voters have allowed political cancer to consummate its historical prominence and honor.

Let us make the Presidential Elector an office of honor and responsibility, elect him by a fair and representative manner, and restore rather than destroy our famous checks-and-balances system. George Washington persided over a convention which gave America a republic; let us keep it.

In September, 1788, contemplating the first meeting of the Electors, Alexander Hamilton wrote to George Washington:

"Your signature to the proposed system pledges your judgement for its being such an one as upon the whole was worthy of the public approbation. If it should miscarry (as men commonly decide from success or the want of it) the blame will in all probability be laid on the system itself. And the framers of it will have to encounter the disrepute of having brought about a revolution in government, without substituting any thing that was worthy of the effort."

We bear no less responsibility today. We dare not tear down one column of our republic to substitute a weaker column or nothing in its place.

Washington replied to Hamilton, expressing, as he often had, his dedication to public service and his longing for private life:

"If I should receive the appointment and if I should be prevailed upon to accept it, the acceptance would be attended with more diffidence and reluctance than ever I experienced before in my life. It would be, however, with a fixed and sole determination of lending whatever assistance might be in my power to promote the public weal, in hopes that at a convenient and an early period, my services might be dispensed with, and that I might be permitted once more to retire—to pass an unclouded evening, after the stormy day of life, in the bosom of domestic tranquillity."

Such noble purpose might be hard to sell in today's political market. But let us not forget—the future of the federal republic may be determined by the nobility of our purpose as we seek to shape anew the very form in which the highest political office in America is chosen.

Mr. MUNDT. Mr. President, for 17 years the American Good Government Society has honored two Americans annually who in its opinion have made outstanding contributions to the building of a better America through their careers of public service. This year, Senator WALLACE BENNETT of Utah and Congressman GEORGE MAHON of Texas were cited by the American Good Government Society for their distinguished public service.

I ask unanimous consent that the program for the dinner on April 30 be printed at this point in the RECORD.

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

PROGRAM

Presiding: The Honorable Louise Gore, vice president of the American Good Government Society and member of the Senate of Maryland.

Invocation: The Reverend Daniel E. Powers, S.J., Georgetown University.

The George Washington Address: The Honorable Cecil H. Underwood, Governor of West Virginia, 1957–1961.

Presentation of the George Washington Awards to the Honorable WALLACE F. BENNETT, a United States Senator from Utah by the Honorable JOHN C. STENNIS, a United States Senator from Mississippi and to the Honorable GEORGE H. MAHON, a representative in Congress from Texas by the Honorable FRANK T. BOW, a representative in Congress from Ohio.

Benediction: The Reverend Doctor Thomas A. Stone, associate minister, the National Presbyterian Church.

Mr. MUNDT. Mr. President, I ask unanimous consent that the names of the trustees of the American Good Government Society, be printed at this point in the RECORD.

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

TRUSTEES OF THE AMERICAN GOOD GOVERNMENT SOCIETY

Mr. Frank M. Cruger, Mr. D. Jack Gibson, Hon. Louise Gore, Hon. Harold O. Lovre, Mrs. Edmund C. Lynch, Jr., Hon Charles E. Potter, Hon. Hayes Robertson, and Mr. J. Harvie Williams.

Mr. MUNDT. Mr. President, in the tradition of the American Good Government Society's annual George Washington dinner, the address of the evening delivered by former Governor Underwood dealt with one of the current problems confronting our Republic. The Underwood address contains a most interesting and informative analysis of the actions and discussions of the constitutional forefathers at Philadelphia as they were putting together the constitutional mechanics employed in the elec-

tion of our President. In view of the growing interest in electoral college reform, both in Congress and around the country, it seems to me that the address by former Governor Underwood was not only especially appropriate to the occasion but contains some valuable background material which many Americans will want to read and evaluate before finally making up their mind as to the optimum course to be followed in connection with the programs and problems of Electoral College reform.

Mr. President, I commend the careful reading of Governor Underwood's discussion of the whole electoral college spectrum at all thoughtful Americans and especially to those who may be giving speeches or writing articles about the little understood but highly important factors involved not only in the creation of the electoral college but in finding a way to preserve its values while at the same time eliminating the defects which have crept into the system.

In conclusion, Mr. President, I wish to read into the RECORD the list of previous recipients of the George Washington awards and the years in which they were so honored:

PREVIOUS RECIPIENTS OF THE GEORGE WASHINGTON AWARDS

1953: U.S. Senator Harry Flood Byrd, of Virginia, and U.S. Senator Robert A. Taft, of Ohio.

1954: Former President Herbert Hoover, and Governor Allan Shivers, of Texas.

1955: Representative Howard W. Smith, of Virginia, and General Robert E. Wood, of Illinois.

1956: U.S. Senator Walter F. George, of Georgia, and Secretary of the Treasury George M. Humphrey.

1957: Representative William M. Colmer, of Mississippi, and U.S. Senator Karl E. Mundt, of South Dakota.

1958: U.S. Senator William F. Knowland, of California, and U.S. Senator Richard B. Russell, of Georgia.

1959: U.S. Senator John L. McClellan, of Arkansas, and Secretary of Commerce Lewis L. Strauss.

1960: Representative Graham A. Barden, of North Carolina, and U.S. Senator Barry Goldwater, of Arizona.

1961: Representative Charles A. Halleck, of Indiana, and U.S. Senator Spessard L. Holland, of Florida.

1962: Representative John W. Byrnes, of Wisconsin, and Representative Wilbur D. Mills, of Arkansas.

1963: U.S. Senator A. Willis Robertson, of Virginia, and U.S. Senator John J. Williams, of Delaware.

1964: U.S. Senator Frank J. Lausche, of Ohio, and U.S. Senator Everett McKinley Dirksen, of Illinois.

1965: Representative Oren Harris, of Arkansas, and U.S. Senator Roman L. Hruska, of Nebraska.

1966: U.S. Senator Sam J. Ervin, Jr., of North Carolina, and Representative Gerald R. Ford, of Michigan.

1967: Representative Melvin R. Laird, of Wisconsin, and Speaker Jesse M. Unruh of the California Assembly.

1968: U.S. Senator Thruston B. Morton, of Kentucky, and U.S. Senator John C. Stennis, of Mississippi.

Finally, Mr. President, to complete this report and to help those who read it or hear it to better understand the significance of the American Good Government Society and its annual George Washington dinner awards, I ask unanimous consent that the list of sponsors comprising the George Washington Dinner Committee be printed in the RECORD.

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

GEORGE WASHINGTON DINNER COMMITTEE

Mr. L. D. (Don) Anderson, Crosbyton, Tex.
Mr. and Mrs. Richard A. Armstrong, Boyd's, Md.
Mr. Sidney Bean, Waco, Tex.
Hon. and Mrs. John W. Bricker, Columbus, Ohio.
Mr. Ralph W. Brite, San Antonio, Tex.
Hon. and Mrs. John W. Byrnes, Green Bay, Wisc.
Charles Max Cole, M.D., Dallas, Tex.
Hon. and Mrs. William M. Colmer, Pascagoula, Miss.
Hon. and Mrs. Everett McKinley Dirksen, Pekin, Ill.
Hon. and Mrs. Sam J. Ervin, Jr., Morganton, N.C.
Mr. and Mrs. Mark Evans, Washington, D.C.
Hon. and Mrs. Gerald R. Ford, Grand Rapids, Mich.
Mr. Daniel C. Gainey, Owatonna, Minn.
Mr. John F. Geis, Beaumont, Tex.
Hon. Barry M. Goldwater, Phoenix, Ariz.
Mr. and Mrs. H. Grady Gore, Potomac, Md.
Mr. Rufus W. Gosnell, Aiken, S.C.
Hon. and Mrs. Ed Gossett, Dallas, Tex.
Mr. W. P. Gullander, New York, N.Y.
Mr. Elmo W. Hamilton, Riverton, Utah.
Hon. and Mrs. Oren Harris, El Dorado, Ark.
Hon. and Mrs. George M. Humphrey, Mentor, Ohio.
Hon. James S. Kemper, Chicago, Ill.
Hon. William F. Knowland, Oakland, Calif.
Hon. and Mrs. Melvin R. Laird, Marshfield, Wisc.
Hon. and Mrs. Frank J. Lausche, Cleveland, Ohio.
Hon. and Mrs. John L. McClellan, Camden, Ark.
Mr. and Mrs. J. Willard Marriott, Washington, D.C.
Hon. and Mrs. Wilbur D. Mills, Kensett, Ark.
Hon. and Mrs. Thruston B. Morton, Louisville, Ky.
Hon. and Mrs. Karl E. Mundt, Madison, S. Dak.
Mr. Frank A. Nelson, Murray, Utah.
Hon. A. Willis Robertson, Lexington, Va.
Hon. Richard B. Russell, Winder, Ga.
Hon. and Mrs. Allan Shivers, Austin, Tex.
Homer E. Smith, M.D., Salt Lake City, Utah.
Hon. and Mrs. Howard W. Smith, Broad Run, Va.
Hon. and Mrs. John C. Stennis, DeKalb, Miss.
Hon. and Mrs. Lewis L. Strauss, Washington, D.C.
Hon. Jesse M. Unruh, Los Angeles, Calif.
Hon. and Mrs. John J. Williams, Millsboro, Del.
General Robert E. Wood, Lake Forest, Ill.

CORPUS CHRISTI CALLER-TIMES ENDORSES S. 4, BIG THICKET NATIONAL PARK BILL, AND CALLS FOR ACTION THIS YEAR

Mr. YARBOROUGH. Mr. President, the Corpus Christi Caller-Times of January 31, 1969, endorsed S. 4, my bill to establish a Big Thicket National Park of not less than 100,000 acres in southeast Texas. In an editorial entitled "Congress Should Act Now To Preserve Big Thicket," the paper declared that "Congress should take action this year to create the Big Thicket National Park."

Also appearing in the February 8, 1969, edition of the newspaper is a letter from Mrs. A. A. Luckenback of Odem, Tex., expressing her concern that immediate action be taken to preserve the Big Thicket area.

I ask unanimous consent that the editorial and the letter, expressing support for my Big Thicket National Park bill, be printed in the RECORD.

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

[From the Corpus Christi Caller-Times, Jan. 31, 1969]

CONGRESS SHOULD ACT NOW TO PRESERVE BIG THICKET

Sen. Ralph Yarborough, dissatisfied with some proposals that would create a "monument" or a "playground" in the area, has introduced a bill calling for the creation of a Big Thicket National Park in East Texas of not less than 100,000 acres. This bill expresses in concrete terms a general and unspecific measure he introduced first in 1966.

Most Texans by now probably are aware that there is an area known as the Big Thicket in East Texas. But all too few have actually penetrated that wilderness of great trees and dense undergrowth, of scattered lakes and boggy sloughs, abounding with animal and exotic plant life. The noise and the stress of civilization seem far away indeed around a campfire while the wind sighs among the leaves of the lofty trees.

When the first white man found this wilderness it encompassed an area of approximately 3.5 million acres. But lumbering and agriculture have reduced the Thicket to an area of ony about 300,000 acres in Hardin, Liberty, San Jacinto, Polk, and Tyler Counties. The encroachment proceeds at the rate of about 50 acres a day. It will be gone if prompt steps are not taken to set aside a portion of it for the enjoyment of this and future generations of Americans.

Congress should take action this year to create the Big Thicket National Park.

[From the Corpus Christi Caller-Times, Feb. 8, 1969]

PRESERVATION OF BIG THICKET

EDITOR, THE CALLER: Wonder what will be done about the proposed "Big Thicket National Park" under the new administration. Some of us are a bit concerned over what the policy of our new secretary of the interior may be, since publication of his remark about "conservation for conservation's sake." (I have read since that he was misquoted.)

Anyhow, there is a possibility that he could give prior consideration to the lumbering interests that have already destroyed irreplaceable trees.

A recent copy of the Texas Parks and Wildlife magazine told about a kind of woodpecker that depends for living quarters on a certain variety of mature pinetree—a living tree. There is danger that this bird will become extinct unless measures are taken to preserve such trees.

And I wonder if maybe there are such trees among those in the Big Thicket—I don't know, I do know however, that there is animal life that will be dispossessed if we don't preserve the Big Thicket. We need to be alert to what is going on: Such things cannot be replaced.

Mrs. A. A. LUCKENBACK.

THE NEW GENERATION—AN ANALYSIS

Mr. JAVITS. Mr. President, the New York Times Sunday Magazine of April 27, 1969, contains a most incisive and

provocative article about the present student generation and the discontent which has come to characterize so many of our college and university campuses. The author of the article, Dr. Kenneth Keniston, an associate professor of psychology at Yale University, is the author of "The Uncommitted" and "Young Radicals," and he is widely regarded as one of the most objective and thoughtful analysts of this "new generation" of Americans and of the processes of change and turmoil which have marked their lives.

Dr. Keniston in this article and in his previous writings repeatedly cites the need to view campus turmoil in some broader context. He has pointed out that the existing value structure of our society has seemed outdated and irrelevant to the lives of many young people and to the realities of the decisions which they face. The result has been, to quote Dr. Keniston, a "mood," rather than an ideology, of young people searching for new goals and new values:

> . . . Students . . . are searching for a new vision, a new set of values, a new set of targets appropriate to the post-industrial era—a myth, an ideology or a set of goals that will concern itself with the quality of life and answer the question, "Beyond freedom and affluence, what?"

I commend this important statement by this thoughtful scholar to the attention of Senators and ask unanimous consent that it be printed in the RECORD.

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

[From the New York Times Magazine, Apr. 27, 1969]

YOU HAVE TO GROW UP IN SCARSDALE TO KNOW HOW BAD THINGS REALLY ARE

(By Kenneth Keniston)

The recent events at Harvard are the culmination of a long year of unprecedented student unrest in the advanced nations of the world. We have learned to expect students in underdeveloped countries to lead unruly demonstrations against the status quo, but what is new, unexpected and upsetting to many is that an apparently similar mood is sweeping across America, France, Germany, Italy and even Eastern European nations like Czechoslovakia and Poland. Furthermore, the revolts occur, not at the most backward universities, but at the most distinguished, liberal and enlightened—Berkeley, the Sorbonne, Tokyo, Columbia, the Free University of Berlin, Rome and now Harvard.

This development has taken almost everyone by surprise. The American public is clearly puzzled, frightened and often outraged by the behavior of its most privileged youth. The scholarly world, including many who have devoted their lives to the study of student protest, has been caught off guard as well. For many years, American analysts of student movements have been busy demonstrating that "it can't happen here." Student political activity abroad has been seen as a reaction to modernization, industrialization and the demise of traditional or tribal societies. In an already modern, industrialized, detribalized and "stable" nation like America, it was argued, student protests are naturally absent.

Another explanation has tied student protests abroad to bad living conditions in some universities and to the unemployability of their graduates. Student revolts, it was argued, spring partly from the misery of student life in countries like India and Indonesia. Students who must live in penury and squalor naturally turn against their universities and societies. And if, as in many developing nations, hundreds of thousands of university graduates can find no work commensurate with their skills, the chances for student militancy are further increased.

These arguments helped explain the "silent generation" of the nineteen-fifties and the absence of protest, during that period, in American universities, where students are often "indulged" with good living conditions, close student-faculty contact and considerable freedom of speech. And they helped explain why "superemployable" American college graduates, especially the much-sought-after ones from colleges like Columbia and Harvard, seemed so contented with their lot.

But such arguments do not help us understand today's noisy, angry and militant students in the advanced countries. Nor do they explain why students who enjoy the greatest advantages—those at the leading universities—are often found in the revolts. As a result, several new interpretations of student protest are currently being put forward, interpretations that ultimately form part of what Richard Poirier has termed "the war against the young."

Many reactions to student unrest of course, spring primarily from fear, anger, confusion or envy, rather than from theoretical analysis. Governor Wallace's attacks on student "anarchists" and other "pin-headed intellectuals," for example, were hardly coherent explanations of protest. Many of the bills aimed at punishing student protesters being proposed in Congress and state legislatures reflect similar feelings of anger and outrage. Similarly, the presumption that student unrest *must* be part of an international conspiracy is based on emotion rather than fact. Even George F. Kennan's recent discussion of the American student left is essentially a moral condemnation of "revolting students," rather than an effort to explain their behavior.

If we turn to more thoughtful analyses of the current student mood we find two general theories gaining widespread acceptance. The first, articulately expressed by Lewis S. Feuer in his recent book on student movements, "The Conflict of Generations," might be termed the "Oedipal Rebellion" interpretation. The second, cogently stated by Zbigniew Brzezinski and Daniel Bell, can be called the theory of "Historical Irrelevance."

The explanation of Oedipal Rebellion sees the underlying force in all student revolts as blind, unconscious Oedipal hatred of fathers and the older generation. Feuer, for example, finds in all student movements an inevitable tendency toward violence and a combination of "regicide, parricide and suicide." A decline in respect for the authority of the older generation is needed to trigger a student movement, but the force behind it comes from "obscure" and "unconscious" forces in the child's early life, including both intense death wishes against his father and the enormous guilt and self-hatred that such wishes inspire in the child.

The idealism of student movements is thus, in many respects, only a "front" for the latent unconscious destructiveness and self-destructiveness of underlying motivations. Even the expressed desire of these movements to help the poor and exploited is explained psychoanalytically by Feuer: Empathy for the disadvantaged is traced to "traumatic" encounters with parental bigotry in the students' childhoods, when their parents forbade them to play with children of other races or lower social classes. The identification of today's new left with blacks is thus interpreted as an unconscious effort to "abreact and undo this original trauma."

There are two basic problems with the Oedipal Rebellion theory, however. First, although it uses psychoanalytic terms, it is bad psychoanalysis. The real psychoanalytic account insists that the Oedipus complex is universal in all normally developing children. To point to this complex in explaining student rebellion is, therefore, like pointing to the fact that all children learn to walk. Since both characteristics are said to be universal, neither helps us understand why, at some historical moments, students are restive and rebellious, while at others they are not. Second, the theory does not help us explain why some students (especially those from middle-class, affluent and idealistic families) are most inclined to rebel, while others (especially those from working-class and deprived families) are less so.

In order really to explain anything, the Oedipal Rebellion hypothesis would have to be modified to point to an unusually *severe* Oedipus complex, involving especially *intense* and unresolved unconscious feelings of father-hatred in student rebels. But much is now known about the lives and backgrounds of these rebels—at least those in the United States—and this evidence does not support even the modified theory. On the contrary, it indicates that most student protesters are relatively *close* to their parents, that the values they profess are usually the ones they learned at the family dinner table, and that their parents tend to be highly educated, liberal or left-wing and politically active.

Furthermore, psychological studies of student radicals indicate that they are no more neurotic, suicidal, enraged or disturbed than are non-radicals. Indeed, most studies find them to be rather more integrated, self-accepting and "advanced," in a psychological sense, than their politically inactive contemporaries. In general, research on American student rebels supports a "Generational Solidarity" (or chip-off-the-old-block) theory, rather than one of Oedipal Rebellion.

The second theory of student revolts now being advanced asserts that they are a reaction against "historical irrelevance." Rebellion springs from the unconscious awareness of some students that society has left them and their values behind. According to this view, the ultimate causes of student dissent are sociological rather than psychological. They lie in fundamental changes in the nature of the advanced societies—especially, in the change from industrial to post-industrial society. The student revolution is seen not as a true revolution, but as a counter-revolution—what Daniel Bell has called "the guttering last gasp of a romanticism soured by rancor and impotence."

This theory assumes that we are moving rapidly into a new age in which technology will dominate, an age whose real rulers will be men like computer experts, systems analysts and technobureaucrats. Students who are attached to outmoded and obsolescent values like humanism and romanticism unconsciously feel they have no place in this post-industrial world. When they rebel they are like the Luddites of the past—workers who smashed machines to protest the inevitable industrial revolution. Today's student revolt reflects what Brzezinski terms "an unconscious realization that they [the rebels] are themselves becoming historically obsolete"; it is nothing but the "death rattle of the historical irrelevants."

This theory is also inadequate. It assumes that the shape of the future is already technologically determined, and that protesting students unconsciously "know" that it will offer them no real reward, honor or power. But the idea that the future can be accurately predicted is open to fundamental objection. Every past attempt at prophecy has turned out to be grievously incorrect. Extrapolations from the past, while sometimes useful in the short run, are usually fundamentally wrong in the long run, especially when they attempt to predict the quality of human life, the nature of political and social organization, international relations or the shape of future culture.

The future is, of course, made by men. Technology is not an inevitable master of man and history, but merely provides the possibility of applying scientific knowledge

to specific problems. Men may identify with it or refuse to, use it or be used by it for good or evil, apply it humanely or destructively. Thus, there is no real evidence that student protest will emerge as the "death rattle of the historical irrelevants." It could equally well be the "first spark of a new historical era." No one today can be sure of the outcome, and people who feel certain that the future will bring the obsolescence and death of those whom they dislike are often merely expressing their fond hope.

The fact that today's students invoke "old" humanistic and romantic ideas in no way proves that student protests are a "last gasp" of a dying order. Quite the contrary: *All* revolutions draw upon older values and visions. Many of the ideals of the French Revolution, for example, originated in Periclean Athens. Revolutions do not occur because new ideas suddenly develop, but because a new generation begins to take *old* ideas seriously—not merely as interesting theoretical views, but as the basis for political action and social change. Until recently, the humanistic vision of human fulfillment and the romantic vision of an expressive, imaginative and passionate life were taken seriously only by small aristocratic or Bohemian groups. The fact that they are today taken as real goals by millions of students in many nations does not mean that these students are "counterrevolutionaries," but merely that their ideas follow the pattern of every major revolution.

Indeed, today's student rebels are rarely opposed to technology *pe se*. On the contrary, they take the high technology of their societies completely for granted, and concern themselves with it very little. What they *are* opposed to is, in essence, the worship of Technology, the tendency to treat people as "inputs" or "outputs" of a technological system, the subordination of human needs to technological programs. The essential conflict between the minority of students who make up the student revolt and the existing order is a conflict over the future direction of technological society, not a counterrevolutionary protest against technology.

In short, both the Oedipal Rebellion and the Historical Irrelevance theories are what students would call "put-downs." If we accept either, we are encouraged not to listen to protests, or to explain them away or reject them as either the "acting out" of destructive Oedipal feelings or the blind reaction of an obsolescent group to the awareness of its obsolescence. But if, as I have argued, neither of these theories is adequate to explain the current "wave" of student protest here and abroad, how can we understand it?

One factor often cited to explain student unrest is the large number of people in the world under 30—today the critical dividing line between generations. But this explanation alone, like the theories just discussed, is not adequate, for in all historical eras the vast portion of the population has always been under 30. Indeed, in primitive societies most people die before they reach that age. If chronological youth alone was enough to insure rebellion, the advanced societies—where a greater proportion of the population reaches old age than ever before in history—should be the least revolutionary, and primitive societies the most. This is not the case.

More relevant factors are the relationship of those under 30 to the established institutions of society (that is, whether they are engaged in them or not); and the opportunities that society provides for their continuing intellectual, ethical and emotional development. In both cases the present situation in the advanced nations is without precedent.

Philippe Aries, in his remarkable book, "Centuries of Childhood," points out that, until the end of the Middle Ages, no separate stage of childhood was recognized in Western societies. Infancy ended at approximately 6 or 7, whereupon most children were integrated into adult life, treated as small men and women and expected to work as junior partners of the adult world. Only later was childhood recognized as a separate stage of life, and our own century is the first to "guarantee" it by requiring universal primary education.

The recognition of adolescence as a stage of life is of even more recent origin, the product of the 19th and 20th centuries. Only as industrial societies became prosperous enough to defer adult work until after puberty could they create institutions—like widespread secondary-school education—that would extend adolescence to virtually all young people. Recognition of adolescence also arose from the vocational and psychological requirements of these societies, which needed much higher levels of training and psychological development than could be guaranteed through primary education alone. There is, in general, an intimate relationship between the way a society defines the stages of life and its economic, political and social characteristics.

Today, in more developed nations, we are beginning to witness the recognition of still another stage of life. Like childhood and adolescence, it was initially granted only to a small minority, but is now being rapidly extended to an ever-larger group. I will call this the stage of "youth," and by that I mean both a further phase of disengagement from society and the period of psychological development that intervenes between adolescence and adulthood. This stage, which continues into the 20's and sometimes into the 30's, provides opportunities for intellectual, emotional and moral development that were never afforded to any other large group in history. In the student revolts we are seeing one result of this advance.

I call the extension of youth an advance advisedly. Attendance at a college or university is a major part of this extension, and there is growing evidence that this is, other things being equal, a good thing for the student. Put in an oversimplified phrase, it tends to free him—to free him from swallowing unexamined the assumptions of the past, to free him from the superstitions of his childhood, to free him to express his feelings more openly and to free him from irrational bondage to authority.

I do not mean to suggest, of course, that all college graduates are free and liberated spirits, unencumbered by irrationality, superstitution, authoritarianism or blind adherence to tradition. But these findings do indicate that our colleges, far from franking out only machinelike robots who will provide skilled manpower for the economy, are also producing an increasing number of highly critical citizens—young men and women who have the opportunity, the leisure, the affluence and the educational resources to continue their development beyond the point where most people in the past were required to stop it.

So, one part of what we are seeing on campuses throughout the world is not a reflection of how bad higher education is, but rather of its extraordinary accomplishments. Even the moral righteousness of the student rebels, a quality both endearing and infuriating to their elders, must be judged at least partially a consequence of the privilege of an extended youth; for a prolonged development, we know, encourages the individual to elaborate a more personal, less purely conventional sense of ethics.

What the advanced nations have done is to create their own critics on a mass basis—that is, to create an ever-larger group of young people who take the highest values of their societies as their own, who internalize these values and identify them with their own best selves, and who are willing to struggle to implement them. At the same time, the extension of youth has lessened the personal risks of dissent: These young people have been freed from the requirements of work, gainful employment and even marriage, which permits them to criticize their society from a protected position of disengagement.

But the mere prolongation of development need not automatically lead to unrest. To be sure, we have granted to millions the opportunity to examine their societies, to compare them with their values and to come to a reasoned judgment of the existing order. But why should their judgment today be so unenthusiastic?

What protesting students throughout the world share is a mood more than an ideology or a program, a mood that says the existing system—the power structure—is hypocritical, unworthy of respect, outmoded and in urgent need of reform. In addition, students everywhere speak of repression, manipulation and authoritarianism. (This is paradoxical, considering the apparently great freedoms given them in many nations. In America, for example, those who complain most loudly about being suffocated by the subtle tyranny of the Establishment usually attend the institutions where student freedom is greatest.) Around this general mood, specific complaints arrange themselves as symptoms of what students often call the "exhaustion of the existing society."

To understand this phenomenon we must recognize that, since the Second World War, some societies have indeed begun to move past the industrial era into a new world that is post-industrial, technological, post-modern, post-historic or, in Brzezinski's term, "technectronic." In Western Europe, the United States, Canada and Japan, the first contours of this new society are already apparent. And, in many other less-developed countries, middle-class professionals (whose children become activists) often live in post-industrial enclaves within pre-industrial societies. Whatever we call the post-industrial world, it has demonstrated that, for the first time, man can produce more than enough to meet his material needs.

This accomplishment is admittedly blemished by enormous problems of economic distribution in the advanced nations, and it is in terrifying contrast to the overwhelming poverty of the Third World. Nevertheless, it is clear that what might be called "the problem of production" can, in principle, be solved. If all members of American society, for example, do not have enough material goods, it is because the system of distribution is flawed. The same is true, or will soon be true, in many other nations that are approaching advanced states of industrialization. Characteristically, these nations, along with the most technological, are those where student unrest has recently been most prominent.

The transition from industrial to post-industrial society brings with it a major shift in social emphases and values. Industrializing and industrial societies tend to be oriented toward solving the problem of production. An industrial ethic—sometimes Protestant, sometimes Socialist, sometimes Communist—tends to emphasize psychological qualities like self-discipline, delay of gratification, achievement-orientation and a strong emphasis on economic success and productivity. The social, political and economic institutions of these societies tend to be organized in a way that is consistent with the goal of increasing production. And industrial societies tend to apply relatively uniform standards, to reward achievement rather than status acquired by birth, to emphasize emotional neutrality ("coolness") and rationality in work and public life.

The emergence of post-industrial societies, however, means that growing numbers of the young are brought up in family environments where abundance, relative economic security, political freedom and affluence are simply facts of life, not goals to be striven

for. To such people the psychological imperatives, social institutions and cultural values of the industrial ethic seem largely outdated and irrelevant to their own lives.

Once it has been demonstrated that a society can produce enough for all of its members, at least some of the young turn to other goals: for example, trying to make sure that society does produce enough and distributes it fairly, or searching for ways to live meaningfully with the goods and the leisure they already have. The problem is that our society has, in some realms, exceeded its earlier targets. Lacking new ones, it has become exhausted by its success.

When the values of industrial society become devitalized, the elite sectors of youth—the most affluent, intelligent, privileged and so on—come to feel that they live in institutions whose demands lack moral authority or, in the current jargon, "credibility." Today, the moral imperative and urgency behind production, acquisition, materialism and abundance has been lost.

Furthermore, with the lack of moral legitimacy felt in "the System," the least request for loyalty, restraint or conformity by its representatives—for example, by college presidents and deans—can easily be seen as a moral outrage, an authoritarian repression, a manipulative effort to "co-opt" students into joining the Establishment and an exercise in "illegitimate authority" that must be resisted. From this conception springs at least part of the students' vague sense of oppression. And, indeed, perhaps their peculiar feeling of suffocation arises ultimately from living in societies without vital ethical claims.

Given such a situation, it does not take a clear-cut issue to trigger a major protest. I doubt, for example, that college and university administrators are in fact more hypocritical and dishonest than they were in the past. American intervention in Vietnam, while many of us find it unjust and cruel, is not inherently more outrageous than other similar imperialistic interventions by America and other nations withn the last century. And the position of blacks in this country, although disastrously and unjustifiably disadvantaged, is, in some economic and legal respects, better than ever before. Similarly, the conditions for students in America have never been as good, especially, as I have noted, at those élite colleges where student protests are most common.

But this is precisely the point: It is because so many of the other problems of American society seem to have been resolved, or to be resolvable in principle, that students now react with new indignation to old problems, turn to new goals and propose radical reforms.

So far I have emphasized the moral exhaustion of the old order and the fact that, for the children of post-industrial affluence, the once-revolutionary claims of the industrial society have lost much of their validity. I now want to argue that we are witnessing on the campuses of the world a fusion of two revolutions with distinct historical origins. One is a continuation of the old and familiar revolution of the industrial society, the liberal-democratic-egalitarian revolution that started in America and France at the turn of the 18th century and spread to virtually every nation in the world. (Not completed in any of them, its contemporary American form is, above all, to be found in the increased militancy of blacks.) The other is the new revolution, the post-industrial one, which seeks to define new goals relevant to the 20th and 21st centuries.

In its social and political aspects, the first revolution has been one of universalization, to use the sociologist's awkward term. It has involved the progressive extension to more and more people of economic, political and social rights, privileges and opportunities originally available only to the aristocracy, then to the middle class, and now in America to the relatively affluent white working class. It is, in many respects, a quantitative revolution. That is, it concerns itself less with the quality of life than with the amount of political freedom, the quantity and distribution of goods or the amount and level of injustice.

As the United States approaches the targets of the first revolution, on which this society was built, to be poor shifts from being an unfortunate fact of life to being an outrage. And, for the many who have never experienced poverty, discrimination, exploitation or oppression, even to witness the existence of these evils in the lives of others suddenly becomes intolerable. In our own time the impatience to complete the first revolution has grown apace, and we find less willingness to compromise, wait and forgive among the young, especially among those who now take the values of the old revolution for granted—seeing them not as goals, but as rights.

A subtle change has thus occurred. What used to be utopian ideals—like equality, abundance and freedom from discrimination—have now become demands, inalienable rights upon which one can insist without brooking any compromise. It is noteworthy that, in today's student confrontations, no one requests anything. Students present their "demands."

So, on the one hand, we see a growing impatience to complete the first revolution. But, on the other, there is a newer revolution concerned with newer issues, a revolution that is less social, economic or political than psychological, historical and cultural. It is less concerned with the quantities of things than with their qualities, and it judges the virtually complete liberal revolution and finds it still wanting.

"You have to have grown up in Scarsdale to know how bad things really are," said one radical student. This comment would probably sound arrogant, heartless and insensitive to a poor black, much less to a citizen of the Third World. But he meant something important by it. He meant that even in the Scarsdales of America, with their affluence, their upper-middle-class security and abundance, their well-fed, well-heeled children and their excellent schools, something is wrong. Economic affluence does not guarantee a feeling of personal fulfillment; political freedom does not always yield an inner sense of liberation and cultural freedom; social justice and equality may leave one with a feeling that something else is missing in life. "No to the consumer society!" shouted the bourgeois students of the Sorbonne during May and June of 1968—a cry that understandably alienated French workers, for whom affluence and the consumer society are still central goals.

What, then, are the targets of the new revolution? As is often noted, students themselves don't know. They speak vaguely of "a society that has never existed," of "new values," of a "more humane world," of "liberation" in some psychological, cultural and historical sense. Their rhetoric is largely negative; they are stronger in opposition than in proposals for reform; their diagnoses often seem accurate, but their prescriptions are vague; and they are far more articulate in urging the immediate completion of the first revolution than in defining the goals of the second. Thus, we can only indirectly discern trends that point to the still-undefined targets of the new revolution.

What are these trends and targets?

First, there is a revulsion against the notion of quantity, particularly economic quantity and materialism, and a turn toward concepts of quality. One of the most delightful slogans of the French student revolt was, "Long live the passionate revolution of creative intelligence!" In a sense, the achievement of abundance may allow millions of contemporary men and women to examine, as only a few artists and madmen have examined in the past, the quality, joyfulness and zestfulness of experience. The "expansion of consciousness"; the stress on the expressive, the aesthetic and the creative; the emphasis on imagination, direct perception and fantasy—all are part of the effort to enhance the quality of this experience.

Another goal of the new revolution involves a revolt against uniformity, equalization, standardization and homogenization—not against technology itself, but against the "technologization of man." At times, this revolt approaches anarchic quaintness, but it has a positive core as well—the demand that individuals be appreciated, not because of their similarities or despite their differences, but because they are different, diverse, unique and noninterchangeable. This attitude is evident in many areas: for example, the insistence upon a cultivation of personal idiosyncrasy, mannerism and unique aptitude. Intellectually, it is expressed in the rejection of the melting-pot and consensus-politics view of American life in favor of a post-homogeneous America in which cultural diversity and conflict are underlined rather than denied.

The new revolution also involves a continuing struggle against psychological or institutional closure or rigidity in any form even the rigidity of a definite adult role. Positively, it extols the virtues of openness, motion and continuing human development. What Robert J. Lifton has termed the protean style is clearly in evidence. There is emerging a concept of a lifetime of personal change, of an adulthood of continuing self-transformation, of an adaptability and an openness to the revolutionary modern world that will enable the individual to remain "with it"—psychologically youthful and on top of the present.

Another characteristic is the revolt against centralized power and the complementary demand for participation. What is demanded is not merely the consent of the governed, but the involvement of the governed. "Participatory democracy" summarizes this aspiration, but it extends far beyond the phrase and the rudimentary social forms that have sprung up around it. It extends to the demand for relevance in education—that is, for a chance for the student to participate in his own educational experience in a way that involves all of his faculties, emotional and moral as well as intellectual. The demand for "student power" (or, in Europe, "co-determination") is an aspect of the same theme: At Nanterre, Columbia, Frankfurt and Harvard, students increasingly seek to participate in making the policies of their universities.

This demand for participation is also embodied in the new ethic of "meaningful human relationships," in which individuals confront each other without masks, pretenses and games. They "relate" to each other as unique and irreplaceable human beings, and develop new forms of relationships from which all participants will grow.

In distinguishing between the old and the new revolutions, and in attempting to define the targets of the new, I am, of course, making distinctions that students themselves rarely make. In any one situation the two revolutions are joined and fused, if not confused. For example, the Harvard students' demand for "restructuring the university" is essentially the second revolution's demand for participation; but their demand for an end to university "exploitation" of the surrounding community is tied to the more traditional goals of the first revolution. In most radical groups there is a range of opinion that starts with the issues of the first (racism, imperialism, exploitation, war) and runs to the concerns of the second (experiential education, new life styles, meaningful participation, consciousness-expansion, relatedness, encounter and community). The first revolution is personified by Maoist-oriented Pro-

gressive Labor party factions within the student left, while the second is represented by hippies, the "acid left," and the Yippies. In any individual, and in all student movements, these revolutions coexist in uneasy and often abrasive tension.

Furthermore, one of the central problems for student movements today is the absence of any theory of society that does justice to the new world in which we of the most industrialized nations live. In their search for rational critiques of present societies, students turn to theories like Marxism that are intricately bound up with the old revolution.

Such theories make the ending of economic exploitation, the achievement of social justice, the abolition of racial discrimination and the development of political participation and freedom central, but they rarely deal adequately with the issues of the second revolution. Students inevitably try to adapt the rhetoric of the first to the problems of the second, using concepts that are often blatantly inadequate to today's world.

Even the concept of "revolution" itself is so heavily laden with images of political, economic and social upheaval that it hardly seems to characterize the equally radical but more social-psychological and cultural transformations involved in the new revolution. One student, recognizing this, called the changes occurring in his California student group, "too radical to be called a revolution." Students are thus often misled by their borrowed vocabulary, but most adults are even more confused, and many are quickly led to the mistaken conclusion that today's student revolt is nothing more than a repetition of Communism's in the past.

Failure to distinguish between the old and new revolutions also makes it impossible to consider the critical question of how compatible they are with each other. Does it make sense—or is it morally right—for today's affluent American students to seek imagination, self-actualization, individuality, openness and relevance when most of the world and many in America live in deprivation, oppression and misery?

The fact that the first revolution is "completed" in Scarsdale does not mean that it is (or soon will be) in Harlem or Appalachia—to say nothing of Bogotá or Calcutta. For many children of the second revolution, the meaning of life may be found in completing the first—that is, in extending to others the "rights" they have always taken for granted.

For others the second revolution will not wait; the question. "What lies beyond affluence?" demands an answer now. Thus, although we may deem it self-indulgent to pursue the goals of the new revolution in a world where so much misery exists, the fact is that in the advanced nations it is upon us, and we must at least learn to recognize it.

Finally, beneath my analysis lies an assumption I had best make explicit. Many student critics argue that their societies have failed miserably. My argument, a more historical one perhaps, suggests that our problem is not only that industrial societies have failed to keep all their promises, but that they have succeeded in some ways beyond all expectations. Abundance was once a distant dream, to be postponed to a hereafter of milk and honey; today, most Americans are affluent. Universal mass education was once a Utopian goal; today in America almost the entire population completes high school, and almost half enters colleges and universities.

The notion that individuals might be free, en masse, to continue their psychological, intellectual, moral and cognitive development through their teens and into their 20's would have been laughed out of court in any century other than our own; today, that opportunity is open to millions of young Americans. Student unrest is a reflection not only of the failures, but of the extraordinary successes of the liberal-industrial revolution. It therefore occurs in the nations and in the colleges where, according to traditional standards, conditions are best.

But for many of today's students who have never experienced anything but affluence, political freedom and social equality, the old vision is dead or dying. It may inspire bitterness and outrage when it is not achieved, but it no longer animates or guides. In place of it, students (and many who are not students) are searching for a new vision, a new set of values, a new set of targets appropriate to the post-industrial era—a myth, an ideology or a set of goals that will concern itself with the quality of life and answer the question, "Beyond freedom and affluence, what?"

What characterizes student unrest in the developed nations is this peculiar mixture of the old and the new, the urgent need to fulfill the promises of the past and, at the same time, to define the possibilities of the future.

PROPOSED REFORM OF SELECTIVE SERVICE PROCESS

Mr. INOUYE. Mr. President, I was delighted to read the press account of President Nixon's proposal to reform the selective service process with the establishment of a lottery system. I was especially delighted because his proposal coincides with S. 1269, which I introduced on March 4, to amend the Selective Service Act of 1967.

The two plans contain a number of similar proposals. Both would retain present deferments. Both would establish a 1-year period of maximum eligibility for all young men immediately following their 19th birthday or for 1 year immediately following the termination of their deferment. Both would establish a lottery system whereby draft eligible young men would be randomly selected for service in the Armed Forces. And both would retain the local draft boards.

While these proposals do not cure all the ills and problems of our Selective Service System, they are, I think, steps in the right direction—the direction toward insuring that all men who are mentally qualified and physically able will share equally the possibility of being drafted. I am sure Senators share my belief that that which may call for the supreme sacrifice is particularly demanding of equality in the imposition of that burden.

The day we must demonstrate our concern for the just treatment of our young men is upon us. The time to act is now. Our security as a nation depends not alone upon our military strength. It depends also upon the apparent justice with which we impose the burdens of her defense.

UNIVERSITY OF WYOMING GOVERNOR'S DAY REVIEW CEREMONIES

Mr. McGEE. Mr. President, last Friday the University of Wyoming Army and Air Force ROTC units conducted their annual Governor's Day review ceremonies. As was to be expected, there was a counterdemonstration. But the day ended, in the words of University President William D. Carlson, as "one of the great days for the State of Wyoming and even the Nation." Dr. Carlson observed that students "stood by their beliefs and clearly demonstrated there can be harmony, that conflicting opinions do not necessarily breed violence."

Prior to the event, the university administration met with student and faculty members planning the demonstration and supported their right to demonstrate, so long as they remained within legal bounds and did not interfere with the annual review. They did not. Both the review and the demonstration were held. There was no violence. And I am inclined to concur with President Carlson in his assessment that the result was a message that bears repeating across the land. In line with that belief, I ask unanimious consent that accounts of the demonstration and the prior negotiations, taken from the Laramie Daily Boomerang, be printed in the RECORD.

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

[From the Larmie Daily Boomerang, May 9, 1969]

CARLSON OFFERS PRAISES TO ALL ON GOVERNOR'S DAY

University of Wyoming President William D. Carlson Thursday praised students, ROTC cadets and officers, and townspeople for their orderly conduct of a peace demonstration on the UW campus.

The peace demonstration was staged during the Governor's Day review of Army and Air Force ROTC units at War Memorial stadium.

"From the outset, leaders of the demonstration assured us there would be no violence," Carlson said. "We fully supported their right to demonstrate, as long as the demonstration was orderly, within legal bounds, and did not interfere with programs of the university.

"There were no incidents," he pointed out. "The ROTC annual review was held as scheduled. Those participating in the peace demonstration stayed behind the fences at the north and south end zones and along the east stands, as was planned. The ROTC review was held on the field and there were no attempts to interrupt or interfere with the execution of the drill."

Other University of Wyoming students were in the west stands of the football stadium in a counter demonstration to the peace marchers. Displaying a large American flag, the students gave a standing ovation to Gov. Stanley K. Hathaway, Carlson, and other dignitaries as they entered the stadium for the review and cheered loudly as the military units passed by the stands.

"I feel today was one of the great days for the State of Wyoming and even the nation," Carlson said. "Today our students stood by their beliefs and clearly demonstrated there can be harmony, that conflicting opinions do not necessarily breed violence. There is a great message in what happened here today, a message that bears repeating across the land."

NO DISRUPTIONS AS HARMONY PREVAILS AT GOVERNOR'S DAY

Air Force and Army ROTC units at the University of Wyoming, their supporters and an estimated 350 peace marchers demonstrated their philosophies in harmonious accord at Laramie Thursday when the annual Governor's Day festivities were conducted.

Students, faculty members, women and children and three members of the clergy, gathered together in front of the Arts and Sciences building about 45 minutes before the annual military review at 11:15 at War Memorial stadium.

The marchers carried banners asking for peace and filed in orderly, silent fashion,

three abreast across Prexy's Pasture and on east to the stadium.

The group stood at either end of the football field and along the east side when they reached the spot where Gov. Stanley K. Hathaway and visiting military dignitaries watched ROTC cadets pass in review.

A large number of UW students held a counter demonstration in support of the ROTC units at the review and greeted Gov. Hathaway, UW President William D. Carlson and other dignitaries with a standing ovation as they entered the stadium.

A bright sun warmed the otherwise slightly chilly morning as the troops passed in review. When the national anthem was played and the American Flag displayed, spectators held their hands over their hearts, saluted or removed their hats in respect to the flag and country. There were no incidents before during, or after the ceremonies.

"I feel today was one of the great days for the nation and the world," UW President William D. Carlson said. "Today our students stood by their beliefs and clearly demonstrated there can be harmony, that conflicting opinions do not necessarily breed violence. There is a great message in what happened here today, a message which bears repeating across the land."

Gov. Hathaway, in speaking at a luncheon following the review said those supporting the ROTC far outnumbered those who did not.

"Although we defend the right of all to demonstrate, there can be no argument the majority must rule. The majority spoke here today," he said. He continued that a lasting peace will come only through strength. If protestors of the Vietnam war have a solution, then "I'm sure President Nixon would welcome their answer."

Hathaway commented if the anti-war demonstrators' answer to hostilities in Vietnam is unilateral withdrawal, then "they had better think of the consequences." The governor noted that between the Revolutionary War and the present time, over 40 million men and women have gone to war in defense of the United States. Over one million have died.

"I believe they died believing they were protecting liberty and freedom in the United States. Like the military, this country cannot survive with an undisciplined society," he concluded.

Telegrams marking the Governor's Day activities were received from Sen. Clifford Hansen, Sen. Gale McGee, and C. E. "Jerry" Hollon, president of the UW Board of Trustees.

Senator Hansen expressed regret at being unable to be present for the review. He offered his thanks "to all of our University of Wyoming students who are participants in the ROTC program. . . . I want to offer my thanks for their demonstrated loyalty to this great country of ours. You young men are the backbone of our nation. I firmly believe that the Reserve Officer Training Corps is vital to our national defense and to our survival as a free nation. . . ."

Hollon wired . . . "I am sure that I speak for all of the Trustees of the University of Wyoming when I say that we are very proud of our fine student participation in this program which is so vital to our American way of life. I only wish that I could have been with you for this splendid event."

Senator McGee's wire said in part: "At a time when the military is under attack from some quarters and when the ROTC has been singled out for criticism by students at some universities in America I am pleased to bring you greetings. . . . For my own part I choose to disregard the sniping directed your way in recent weeks. Instead I would state my belief in the desirability of maintaining a solid source of educated reserve officers for each of the branches of our military establishment. ROTC gives us the benefit of diversity bringing into military ranks junior officers of different backgrounds, different disciplines and with different goals and different philosophies. This, I think is good. . . . I have said nothing here about the fact you are volunteers in the time of danger. You are, and I salute you for that. . . ."

REVIEW WILL BE CONDUCTED THURSDAY; PEACEFUL PROTEST

A statement concerning a planned nonviolent demonstration on the University of Wyoming campus was issued Tuesday by UW President William D. Carlson.

Carlson's statement reads:

"The University has been advised of the intention of a group of students, faculty, and interested people from the community of Laramie to stage a peaceful demonstration during the Governor's Day review of ROTC units Thursday.

"I have met with leaders of the group and they have assured me the demonstration will be peaceful. Their plans have been made known to me and have been reviewed by the administration.

"The ROTC review will be held on the War Memorial football field. Only ROTC cadets, officers, and official guests will be permitted on the field. Those participating in the peace demonstration plan to stand behind the fence at the north and south end zones and along the east stands. To this, the University has no objection.

"We fully support the right of anyone to demonstrate, so long as the demonstrations are orderly, within legal bounds, and do not interfere with programs of the University.

"The ROTC annual review is a part of the regular class schedules of both the Army and Air Force ROTC programs. The review traditionally has been held in such fashion as to permit members of the general public to attend. This year is no exception.

"We do expect that those in attendance will not display any conduct that by any means interrupts or interferes with the execution of the drill. The University is, and always has been, committed to supporting the lawful rights of all individual whether ROTC supporters or peace demonstrators."

CONTRADICTIONS IN GOVERNMENT POLICY

Mr. HART. Mr. President, I have received a letter from one of Detroit's leading clothing retailers which points up some contradictions in Government policy. The gist of the letter is that the imposition of textile import quotas will be paid for by the consumer in the form of higher prices for the products covered by the quotas.

Only a short time ago, the administration negotiated voluntary steel quotas with the Japanese and Europeans. Not unexpectedly, domestic steel producers raised prices on a variety of items. Also, not unexpectedly, they did it in unison. Now the administration is negotiating voluntary textile quotas. If it is successful, we can expect prices on those commodities to go up.

We raise taxes and interest rates hoping to bring down prices. We negotiate quota agreements knowing prices will rise. In either event, it is the consumer who pays. The inconsistency of our goals should, by now, be obvious.

As one who has worked in the antitrust field I have become acutely aware of the relationship between competition and price levels. In industries with few competitors—industries which are highly concentrated—the manufacturers generally set their prices in lock-step fashion and usually only upward.

Manufacturer control of price level depends on two elements: little domestic competition, and keeping low-cost imports off the market.

Domestic competition in the textile business has declined sharply in the last 15 years. In 1954, for example, the eight largest cotton weaving mills controlled 29 percent of the output. By 1966 the eight largest controlled 48 percent of the output. Dozens of mergers linking textile mills with clothing manufacturers and retailers have occurred, further reducing competition.

With domestic competition diminishing, the most serious obstacle to an administered market price in the textile industry is the availability of imports. This is what the "voluntary textile import quotas" are all about. If negotiations on quotas result in an agreement, the price of clothing will increase sharply.

Mr. President, recently newspapers carried yet another report of rising consumer prices. On the average, the Bureau of Labor Statistics said, consumer prices increased 5.1 percent last year. We have been told that the way to change this is to raise taxes and increase interest rates. In my view the way to change it is by insuring price competition.

The American Government should not be party to the elimination of competition in textiles and should not be working to burden the consumer with yet another round of price increases—not if it means what it says about inflation.

Mr. President, I ask unanimous consent that a letter which I received from Mr. Stanley J. Winkelman, a leading retailer in Michigan, which summarizes this situation, be printed at this point in the RECORD; also a recent excellent analysis in Consumer Reports entitled "How Import Quotas Raise Consumer Prices."

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

WINKELMAN'S,
Detroit, Mich., March 7, 1969.

Hon. PHILIP A. HART,
U.S. Senator,
Washington, D.C.

DEAR SENATOR HART: The purpose of my letter is to express to you some thoughts on the subject of textile import quotas and duties.

Our stores, with which I believe you are familiar, offer a full variety of ladies fashions and accessories. Of course, the great preponderance of the items are conceived and made in this country. However, the assortment includes a number of imports, which add a very important element of style, detailing and price variety. Their availability also contributes significantly to the price discipline of the U.S. goods.

We are fully sympathetic to the U.S. industries, and their employees, which might be adversely affected by free trade in textile products. We firmly believe the Federal procedure should be improved to provide prompt and adequate support for anyone who can show injury by reason of a free trade policy.

However, Senator, it appears to us that in the long run the customers of this country will pay the cost of Federal involvement in textile imports; whether it is done through

their taxes, used to support adversely affected U.S. industry and employees, or whether it is spent in the form of necessarily higher prices and from more limited selections.

The American customer's ability to obtain good fashion and design, some hand work, and fabrics . . . many of which simply cannot be produced in the United States . . . is an important part of the low and moderate income budgeting. If these resources are denied to the American consumer, their absence will be reflected not only in the elimination of things they clearly want to buy, but also in the absence of price competition with American goods which has been a very healthy aspect of the fashion business.

I am sure we both believe very strongly in the principle of free competition. It is the customer's best defense against unnecessarily high prices and artificially reduced choices. Whether restraints on this kind of constructive market are imposed by law, in the form of quotas or defensive duties, or through "voluntary quota agreements" is really immaterial, in practical competitive consequences. It can hardly avoid development of international cartels and the elimination from U.S. markets of the small foreign producers whose goods offer so much in both choice and price to the fashion-conscious and price-conscious Americans.

I do not pretend to be an expert on international trade or international financial manipulations. I am sure whatever is done will take into account the real interest of the American consumer, and the retailer whose job it is to serve that consumer wisely and well.

I am writing to ask you to do everything you can to preserve customer choice and maximum value in the huge variety of items in which textiles are involved.

Best personal wishes from all of us here.

Sincerely yours,

STANLEY J. WINKELMAN.

HOW IMPORT QUOTAS RAISE CONSUMER PRICES—THE NEW PROTECTIONISTS NOW PLUMP FOR IMPORT QUOTAS INSTEAD OF TARRIFFS, BUT THE EFFECT IS THE SAME—CONSUMERS PAY MORE

President Nixon brought home from Europe last winter some news that may hit consumers squarely in the wallet. The President's news, couched as it was in dry-as-dust references to tariffs, import quotas and other intricacies of international trade, was scarcely meant to arouse public concern; it was, rather, intended to reassure American manufacturers who have been crying for protection against foreign competition. What Mr. Nixon said he had done was to urge European governments, in no uncertain terms, to cut back on the volume of certain goods their industries are selling in this country.

The political pressures that have been building up in recent years in behalf of protectionism could bring seemingly remote matters, such as import quotas and trade balances, close to home in the form of higher prices and fewer choices in a large array of consumer goods. As the President himself pointed out during a televised news conference in March, 93 bills in the last session of the Senate proposed quotas on various goods imported into this country at the rate of $7.7 billion worth a year—more than 40 per cent of America's dutiable imports—and additional goods would have been affected by omnibus quota schemes. The list of products involved ranges from clothing to typewriters, from glassware to radios, from sewing machines to costume jewelry to meat and dairy products.

The protectionist assault, launched by dozens of industries and supported by dozens of unions and scores of Congressmen, caused Mr. Nixon to point out to foreign leaders "that unless some voluntary restrictions or restraints are worked out . . . the pressure for legislative quotas would be immense." Indeed, not since the eve of the Great Depression has protectionism been so strongly on the offensive as it is today. In 1930, it may be recalled, Congress passed the Smoot-Hawley Act, raising tariffs to the highest level in the nation's history. Unable to compete any longer in U.S. markets, other nations raised trade barriers of their own. As the worldwide depression deepened from 1930 to 1934, the value of American exports took a 70 percent drop; world trade fell by two-thirds. Instead of alleviating the economic slump, protectionist policies of the U.S. and other countries only aggravated it.

THE LESSON OF SMOOT-HAWLEY

A hard but valuable lesson was learned, and in 1934 Congress reversed the protectionist trend by passing a reciprocal trade program based on lower tariffs. In the post-World War II years the shortage of consumer goods and the disarray of foreign industry encouraged further tariff lowerings, as did American policies to foster economic recovery in Europe and Asia. While an economic decline in 1957 brought an upsurge of protectionist demands, the Eisenhower Administration did not entirely succumb. It held to the view that the Government could not go on "building competition shelters for every segment of the economy."

The spirit of trade liberalization was forwarded by the Trade Expansion Act of 1962, and reached its culmination at the Kennedy Round of tariff negotiations completed in Geneva in 1967. There, 50 nations agreed to cut tariffs an average of 35 per cent in five annual stages on an exceedingly wide range of goods. For the American consumer, the Kennedy Round held out the prospect of significantly lower prices on such imported items as cars, cameras, chocolate, chinaware, bicycles, TV sets and perfumes.

Hardly had the Kennedy-Round rejoicing commenced, however, than it was dampened by a large-scale counterattack. Industrial lobbyists in many of the participating countries swiftly began putting on pressure for nontariff import barriers. "Nature abhors a vacuum, and manufacturers abhor free trade," observed an international-trade official. The result has been a crazy quilt of border taxes, "sanitary regulations," quotas and artificial pricing.

ENTER THE QUOTA SYSTEM

In the U.S., for instance, the legislatures of industrial states and municipal governments increasingly have adopted "Buy American" policies under which, at extra cost to the taxpayers, domestic suppliers of equipment and materials get preference over the potentially lower foreign bidders on public works contracts. Then, too, existing quotas limit imports of crude oil, boosting prices on gasoline and home-heating oil.

With tariff protection politically unpalatable and foreign industry bidding keenly for American business, many protectionists are turning to quotas, which set an absolute limit on the amount of a given product that can be shipped to these shores in any given year. As an official of the beleaguered steel industry put it, quotas are the most "effective and prompt" means of limiting imports. Or, as a Washington trade expert put it, "For protectionists there is nothing more delicious than a quota."

The Johnson Administration yielded in some degree to pressures in favor of weakening the Kennedy-Round agreements, and today the protectionists are filled with great expectations. For one thing, they have a powerful argument in the drastic shift of America's foreign-trade balance that has become unhappily apparent during the past two years. This country has long been accustomed to selling more merchandise abroad than it buys, thereby bringing in several billions of dollars annually to help make up for the dollars that keep flowing out in the form of military expenditures, foreign aid, the open-handedness of U.S. tourists and so forth. In 1967 our trade surplus reached $4 billion.

That surplus, however, can no longer be taken for granted; it can come and go, and it appears to be going. Last year it fell to only $726 million, the lowest figure since 1937. Whereas exports rose by about 9 per cent in 1968, imports went up 23 per cent. According to a Federal Reserve Board analysis, "A considerable range of U.S. goods may have become somewhat less competitive since 1965. . . . To some extent this may be a matter of price. . . . But for some products—automobiles, for example—the problem may involve not only prices but also design."

Shoppers with no mind for big numbers can see the evidence of the import boom in their favorite department stores: shoes from Italy, bicycles from Britain, all manner of radios, TV sets, tape recorders and electronic gadgetry from Japan—the list is a long and attractive one. Never have our retail counters showed such tempting variety. But, argue the protectionists, as long as the dollar drain continues, Americans cannot afford to treat themselves to so many foreign-made things.

The protectionists pin their hopes now on the new Republican Administration and the G.O.P.'s strong old-line protectionist elements. One must not make too much of party platforms, but the 1968 Republican platform with its emphasis on "fair trade" rather than "free trade" contained a somewhat ambiguous paragraph that injected new spirit into the old protectionist veins: "Imports should not be permitted to capture excessive portion of the American market but should, through international agreements, be able to participate in the growth of consumption. Should such efforts fail, specific counter-measures will have to be applied. . . ."

TURNING OFF TEXTILES

Philosophically, President Nixon and his new administration have identified themselves as unequivocally favoring unhindered trade relations. For example, the President told one of his first press conferences, "I believe that the interest of the United States and the interest of the whole world will best be served by moving toward freer trade rather than toward protectionism. I take a dim view of this tendency to move toward quotas. . . ." Nevertheless, Mr. Nixon in the next breath went to bat for the textile industry. In its behalf, at least, he seems inclined to use the protectionist tendencies in Congress to help persuade textile-exporting countries to negotiate "voluntary" quotas on their shipments to the U.S.

Free-trade advocates were particularly dismayed at the expanded role being given to Commerce Secretary Stans as the chief international trade negotiator in the Nixon Administration. Under the previous two administrations, the President's Special Representative for Trade Negotiations handled the job and brought to it the single-minded objective of dismantling trade barriers. The Commerce Department, on the other hand, has been traditionally sympathetic to domestic industry in its conflicting pleas for protection from imports and Federal assistance in the promotion of exports.

The President specifically designated Secretary Stans as his trade envoy to discuss import quotas on a trip to Europe in April. Mr. Stans took the occasion to affirm the Administration position. "At heart, we are free traders," he said, and proceeded to the necessity, in his view, of some quotas on imports of synthetic textiles, not only from Europe but also from Japan, Hong Kong, Korea and Taiwan. U.S. textile firms, he said, are faced with an "unbelievable" increase in imports, which could do "great harm" to the industry.

Legislation put forward in 1967 and 1968

would have kept textile imports down to the 1961–1966 level. When Chairman Wilbur Mills kept it bottled up in the House Ways and Means Committee, it was attached as a rider to the Senate bill for an income-tax surcharge and thereby passed overwhelmingly. Mr. Mills finally killed it for that session of Congress in the Senate-House conference on the tax bill.

In view of the fact that textile imports rose an additional 27 per cent in the first nine months of 1968, there is some risk that the last has not been heard of textile-quota legislation. At the least, the nation seems stuck with Mr. Nixon's campaign promise to negotiate textile-quota agreements. If he is successful, he may possibly stave off even more restrictive quotas by act of Congress on a broader assortment of goods. But protectionists aren't so easy to placate. Nor are their arguments entirely foolproof—at least not in the view of persons who refuse to fool themselves about the give and take of international trade. Former Ambassador William M. Roth, who was President Johnson's Special Representative for Trade Negotiations is one such person. He described those who advocate import-quota bills as a means of stopping the outflow of dollars as "dressing up self-serving legislation in the gleaming garments of serving the national interest."

CASHMERE AND HAMBURGER

It takes no gift of prophesy to grasp what even "voluntary" restraints by foreign producers could mean for the American consumer. At present, to take a simple example, a man's cashmere sweater made in England costs an American sweater fancier about $25. The retail price of a comparable sweater manufactured in this country is about $35. If the number of cashmere sweaters that the British may send us is limited at a point where the demand for them is not yet satisfied—which, of course, is the very essence of a quota—then some U.S. customers will find themselves with the choice of paying at least $10 more for a sweater or going without. Moreover, the protected American firms would have no incentive to lower their price and, indeed, might be tempted to raise it, since they would no longer have to worry about price competition from overseas. Would du Pont, for example, have reduced the price of its *Corfam* leather substitute by 20 per cent in 1967 if the Japanese had not been marketing a similar product?

Although connoisseur items and gourmet treats are among the most delightful of our imports, the impact of a quota would by no means be limited to luxury-priced merchandise. Especially affected would be low-income shoppers who have welcomed bargains from abroad in clothing, sporting equipment, toys, chinaware and other goods. The equivalent of a pair of U.S.-made women's sandals that retails for $14 can be had for $10 from a foreign maker. Since our meat imports consist almost entirely of the lower-priced grades of meat used in hamburger, sausage and frankfurters, import quotas in that area would raise the price of the processed meats that occupy a large place in the menus of families that cannot afford more costly cuts? Hamburger and frankfurters would go up an estimated 2c to 3c a pound. John McEwen, trade minister of Australia, from where half of our meat imports come, may have had in mind Mr. Nixon's campaign pledge to cattlemen to act against "cheap foreign beef," when he remarked dryly: "It is difficult to understand why the U.S. should be taking steps to curtail imports at a time when domestic meat prices are at or above record levels."

Any trend toward quotas would predictably spur the present inflation, which is a major factor in our balance-of-trade difficulties. Prices are already too high on some U.S.-made goods to interest foreign markets. As *The Wall Street Journal* has pointed out: "In these inflationary times, import competition is among the few factors working toward holding prices down.

It is not conceivable that our customers overseas will sit still while we block the entry of their goods and hurt their industries without reciprocating. The many U.S. businesses and workers in both agriculture and manufacturing whose livelihoods depend on exports would be hurt in retaliation, and the repercussions would be felt throughout the economy. The Department of Labor estimates that every billion dollars of exports supports nearly 100,000 jobs. When the Belgians were annoyed by an increase in the U.S. tariffs on carpets, they cracked down on our exports of plastics, which deprived a U.S. industry of millions of dollars in sales to an expanding market. (The U.S., for its part, has engaged in much the same tactics. When the Common Market countries put up barriers against our chicken exports, American tariffs were raised on German trucks and French cognac.) As Austria has warned, protectionist measures by the United States will "probably provoke similar measures . . . [which] will eventually affect the interest of American exporters to a much greater degree than those of the foreign importers." Ambassador Roth had such dim prospects in mind when he observed that once the game of retaliation and counterretaliation gets under way, "the effects on our balance of payments would be incalculable."

DISTASTE FOR COMPETITION

No one, not even the most fervent free trader, denies that some Americans will be hurt by increased imports. The Government can hardly overlook the industries, groups of workers and even sections of the country that could be severely injured if they were not protected to some degree from outside competition, and everyone is in favor of granting them assistance. Such assistance was in fact written into the Johnson Administration's Trade Expansion Act of 1968, which did not make its way through Congress. But most of the *efficient* firms in industries calling for protection are not in truth suffering from anything more painful than a distaste for competition. In the long run, the most economical way to help those truly in need of help is to tailor assistance to specific needs—loans for plant modernization, job retraining and so forth—rather than to slap down across-the-board quotas, which would be a windfall for the prosperous as well as a benefit for the ailing.

The national interest would be far better served by a campaign to get Japan and the European trading countries to relax their nontariff trade restrictions, which are in some cases more severe than American ones. As its quid pro quo, the U.S. might relax its own barriers, such as the American Selling Price system, under which certain imported chemicals are valued for tariff purposes not on the basis of their actual foreign price, but on the higher price of the equivalent domestically produced products. The lamented 1968 Trade Expansion Act would have abolished the American Selling Price system in return for an agreement by other countries to reduce their duties on chemicals even below the Kennedy-Round levels.

President Nixon appears to have abandoned the effort. "I think we have to realize," he said after returning from Europe, "that we cannot anticipate in the near future another big round of reductions of tariff barriers. We're going to do well if we can digest what we have on the plate."

Another focus of ostensible-protectionist concern is for the group of industries that have to be subsidized because they would be irreplaceable in case of national emergency. Such industries doubtless exist, but a certain skepticism is in order regarding the discovery by every sort of businessman that he is indispensable to the national security and that patriotism therefore demands that he be coddled. It is on such grounds that the petroleum industry, for example, has convinced the Government to make consumers subsidize it through—among other things—an import quota on crude oil.

Beyond a very few legitimate considerations of national security and individual hardship, the protectionist argument is not powerful. Retailer groups, which in this fight stand with the consumer ("The consumer wants—and we want to give her—the widest selection and the broadest assortment of merchandise at the lowest possible price," says the president of the Hecht Company), point out that far more jobs would be lost and far more industries hurt by raising world trade barriers than by expanding world trade. Good times abroad mean more purchases of U.S. merchandise. The prosperity enjoyed by Europe and Japan in 1964 was reflected in this country in the form of a profitable year for our exporters, and a healthy $6.6 billion export surplus for the country.

The decline in the U.S. export surplus is in significant part attributable to the reluctance of American industry, grown fat and comfortable, to compete with less comfortable and more energetic foreign firms. The outstanding example of this phenomenon is the passenger car. Imported cars have won more than 10 per cent of the U.S. market—one million of them entered the country last year—and their sales are increasing at an embarrassing rate. Volkswagen sells twice as many cars in this country as does American Motors. The implications have not been altogether lost on Detroit; Ford is currently introducing its "smaller-than-compact" *Maverick* in the foreign-dominated $2000 class. Corresponding General Motors and American Motors small cars are due within a year or so.

SOFT AS STEEL

America's formidable steel industry, which for years relied on "administered prices" to keep up its profits, has also been behaving like an aging champion who is reluctant to enter the ring again, and has been asking for quotas to keep down foreign imports. As a writer in *Fortune* summed up that situation last year:

"The steel industry has been a desultory competitor in the international arena. It has until recently been raising prices and has refused to use pricing as a competitive weapon, while foreign steel companies have been cutting export prices—accepting lower profit margins to get added volume. Now U.S. Steel has broken out of the pattern: almost furtively, the company has cut prices sharply on a variety of products to meet foreign quotations. Much of the industry is distressed about this untraditional behavior, but it may be the best thing that's happened in steel for years."

Yet steel interests continue to clamor for protection that will relieve them of the challenge of foreign price competition; in January, in an effort to head off Congressional imposition of quotas on steel imports, the State Department helped negotiate "voluntary" quotas by the major steel producers in Western Europe and Japan—somewhat like an old-fashioned cartel arrangement, if you please. (Indeed, the steel agreements were the immediate precedent for Mr. Nixon's present textile negotiations.) Richard S. Thorn, an economics professor at the University of Pittsburgh, commented: "Quota restrictions are simply an unimaginative effort to preserve profit margins in a manner which will take away most of the incentives from the steel industry to deal with the underlying factors which have prevented it from participating fully in the unprecedented growth in the American and world economies."

Where U.S. companies have exerted themselves and tried to compete, the results have

sometimes been rewarding for them and of benefit to the consumer. A good example comes from a vice president of General Electric: "In early 1960, General Electric chose to make a determined competitive effort in the six-transistor shirt-pocket radio. At that time, our retail price had been in the general range of $36. We were finding that Japanese-made sets were selling for $19 and we projected their price to drop to about $12 by 1970. Accordingly, we had to aim at the same retail price. This represented a formidable task—a reduction of two-thirds of the cost. We not only made the target, but last year we got our price down to about $7 . . . We are now selling our transistors in Japan."

BETTER SEWING MACHINES

The invigorating effects of competition have been demonstrated in other industries, too. We owe most of the improvements in sewing machines since the war to foreign makers. The domestic watch industry, hard hit by foreign competition, was virtually forced to exploit the pin lever watch and the electric watch, both of which have won a sizable market. Surely, that was a healthier response to competition than the tariff boost on watches put through in 1954 by the Eisenhower Administration on the ground that the watch industry was being injured by foreign competition. (Price of those tariff boosts to the U.S. consumer: $7 per wristwatch.)

Not all industries, to be sure, can hope for such technological breakthroughs; those, such as textiles, where labor constitutes a high proportion of costs, are at a considerable disadvantage in world markets. Still, there is room for greater ingenuity. And for all its moaning, the textile industry is doing nicely, thank you. In many industries, furthermore, profits are more to blame for high prices than wages are. The record indicates that though businessmen continue, on public occasions, to pay homage to Free Enterprise, when things threaten to get uncomfortable they are quick to turn to the Federal Government with demands for controls.

The assault of the protectionist forces goes beyond such homely matters as the prices we must pay for goods and the kinds of goods that are permitted to find their way into our stores. Any movement back to the "beggar-thy-neighbor" philosophy of the early 1930's threatens to slam shut doors which, over long and arduous months, have been opened among nations. The hopes of free and fruitful international commerce, raised high by the tariff cuts agreed on at the Kennedy Round, will suffer a thumping rebuff if the U.S. protectionists have their way.

ASSOCIATED STUDENT GOVERNMENTS—MODEL CODE OF CONDUCT

Mr. STEVENS. Mr. President, in this day of emotionalism regarding student unrest, it is more than gratifying to see efforts being made to deal with the campus problems in a logical and rational manner. Recently, I received a copy of the first draft of a model code on student rights, responsibilities and conduct, prepared by members of the Law Student Division of the American Bar Association. This model code represents a commendable attempt to articulate just what rights—legal and moral—students do have as well as to emphasize the need for utilizing lawful methods and techniques to deal with the problems and causes of student unrest.

The model code was brought to my attention by Steve Snyder, former president of the University of Alaska students. Mr. Snyder is now the treasurer of a national student group—the Association of Student Governments—ASG. This organization, I am informed, is dedicated to change through evolution rather than revolution. ASG is distributing the model code to colleges and universities with the hope that similar rules and regulations will be established—regulations which give our institutions of higher learning authority to take effective action when those rules are broken, but, at the same time, provide effective channels for the processing of legitimate student grievances.

It is time that more attention is paid to this group which seeks change through prescribed and lawful channels. It is time that the Nation indicated its support for groups such as ASG which publicly abhor violence and other tactics of disruption and which is willing to meet radical campus organizations—that we all know too well—on their own ground. Above all, it is time we recognized that the generation gap may also bring a communication gap if we do not listen to groups such as ASG and encourage these young men and women to convey our hopes and desires for their generation to the students of today.

It is with this in mind that I wish to bring the draft of the model code to the attention of the Senate. I emphasize that it is a draft—one which could provide the basis for assuring campus justice and freedom. I ask unanimous consent that the draft of the model code be printed in the RECORD.

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

SCHOOL OF LAW,
VILLANOVA UNIVERSITY,
Villanova, Pa., February 11, 1969.

To whom it may concern:

Attached is the February 1 draft of the Proposed Model Code on Student Rights and Responsibilities prepared by the A.B.A. Law Student Division Committee on Student Rights. Please note the following information:

1. The Committee on Student Rights and Responsibilities is a special L.S.D.—Law Student Division— Committee created at the August 1968 meeting. Its mandate is to draft a proposed model code of student rights and responsibilities. The resolution creating the committee cited the need for such a code because, "there is much student unrest prevalent today; and . . . the relationship of the student and his university is in a state of flux."

2. In accordance with the mandate, work on the proposed model code must be completed by August 1969 in time for the Annual Meeting of the Law Student Division in Dallas, Texas.

3. The final draft of the proposed code will include commentary which will explain the various sections and give examples and solutions to various problems that may be met under it. Because of budget limitations it has not been possible to do this with preliminary drafts. The information received from those who review the attached draft will influence the substantive portions of the code as well as the commentary which will include explanations of why we did or did not accept various suggestions. In addition, the commentary will mention controlling case law in this field.

MARVIN L. PEEBLES,
Chairman.

PROPOSED MODEL CODE OF STUDENT RIGHTS, RESPONSIBILITIES, AND CONDUCT—DRAFT, FEBRUARY 1, 1969

SHORT TITLE

Sec. 1. These rules shall be known as the _____ (insert name of institution) Code of Conduct.

BILL OF RIGHTS

Sec. 2. The following enumeration of rights shall not be construed to deny or disparage others retained by students in their capacity as members of the student body or as citizens of the community at large;

A. Free inquiry, expression, and assembly are guaranteed to all students and shall not be abridged.

B. Students are free to pursue their educational goals and appropriate opportunities for learning in the classroom and on the campus shall be provided by the institution.

C. The right of students, living in residence halls, to be secure in their persons, living quarters, papers and effects against unreasonable searches and seizures shall not be abridged.

D. No disciplinary sanctions may be imposed upon any student without notice to the accused of the nature and cause of the charges, and a fair hearing which shall include confrontation of witnesses against him and the assistance of a person of his own choosing.

E. A student accused of violating institution regulations is entitled, upon request, to a hearing before a judicial body composed solely of students.

DEFINITIONS

Sec. 3. When used in this Code—

(1) The term "institution" means _____ (insert name of college or university) and, collectively, those responsible for its control and operation.

(2) The term "student" includes all persons taking courses at the institution both full-time and part-time pursuing undergraduate, graduate, or extension studies.

(3) The term "instructor" means any person hired by the institution to conduct classroom activities. In certain situations a person may be both "student" and "instructor." Determination of his status in a particular situation shall be determined by the surrounding facts.

(4) The term "legal compulsion" means a judicial or legislative order which requires some action by the person to whom it is directed.

(5) The term "organization" means a number of persons who have complied with the formal requirements of institution recognition.

(6) The term "group" means a number of persons who have not yet complied with the formal requirements of becoming an organization.

(7) The term "shall" is used in the imperative sense.

(8) The term "may" is used in the permissive sense.

(9) All other terms have their natural meaning unless the context dictates otherwise.

ACCESS TO HIGHER EDUCATION

Sec. 4. Within the limits of its facilities, the institution shall be open to all applicants who are qualified according to its admission requirements.

A. The institution shall make clear the characteristics and expectations of students which it considers relevant to its programs.

B. Under no circumstances shall an applicant be denied admission because of race or ethnic background.

C. (Optional) Religious preference for applicants shall be clearly and publicly stated.

CLASSROOM EXPRESSION

Sec. 5. Discussion and expression of all views is permitted in the classroom subject

only to the responsibility of the instructor to maintain order.

A. Students are responsible for learning the content of any course for which they are enrolled.

B. Requirements of participation in classroom discussion and submission of written exercises are not inconsistent with this Section.

Sec. 6. Academic evaluation of student performance shall be neither prejudicial nor capricious.

Sec. 7. Information about student views, belief, and political associations acquired by professors in the course of their work as instructors, advisors, and counselors, is confidential and is not to be disclosed to others unless under legal compulsion.

A. Questions relating to intellectual or skills capacity are not subject to this Section except that disclosure must be accompanied by notice to the student.

CAMPUS EXPRESSION

Sec. 8. Discussion and expression of all views is permitted within the institution subject only to requirements for maintenance of order.

A. Support of any cause by orderly means which do not disrupt the operations of the institution is permitted.

Sec. 9. Students and campus organizations may invite and hear any persons of their own choosing subject only to the requirements for use of institutional facilities (Sec. *infra.*)

CAMPUS ORGANIZATIONS

Sec. 10. Organizations may be established within the institution for any legal purpose. Affiliation with an extramural organization shall not, in itself, disqualify the institution branch or chapter from institution privileges.

Sec. 11. Membership in all institution-related organizations, within the limits of their facilities, shall be open to any member of the institution community who is willing to subscribe to the stated aims and meet the stated obligations of the organization.

Sec. 12. Membership lists are confidential and solely for the use of the organization except that names and addresses may be required as a condition of access to university funds.

Sec. 13. Institutional facilities shall be assigned to organizations for regular business meetings, for social programs, and for programs open to the public.

A. Reasonable conditions may be imposed to regulate the timeliness of requests, to determine the appropriateness of the space assigned, to regulate time and use, and to insure proper maintenance.

B. Subject to subsection A of this Section, facilities shall also be assigned to individuals and groups within the institution community.

C. Preference may be given to programs designed for audiences consisting primarily of members of the institutional community.

D. Allocation of space shall be made based on priority of requests and the demonstrated needs of the organization, individual or group.

E. The institution may delegate the assignment function to an administrative official.

E. (Alternate Provision) The institution may delegate the assignment function to a student committee on organizations.

F. Charges may be imposed for any unusual costs for use of facilities.

G. Physical abuse of assigned facilities shall result in reasonable limitations on future allocation of space to offending parties as well as restitution for damages.

H. The individual, group, or organization requesting space must inform the institution of the general purpose of any meeting open to persons other than members and the names of outside speakers.

Sec. 14. The authority to allocate institutional funds derived from student fees for use by organizations shall be delegated to a body in which student participation in the decisional process is assured.

A. Approval of requests for funds is conditioned upon submission of budgets to, and approval by this body.

B. Financial accountability is required for all allocated funds, including statement of income and expenses on a regular basis. Otherwise, organizations shall have independent control over the expenditure of allocated funds.

C. (Optional) Any organization seeking access to institutional funds shall choose a faculty member to be a consultant on institution relations. Such a person may not have a veto power.

Sec. 15. No individual, group, or organization may use the institution name without the express authorization of the institution except to identify the institutional affiliation. Insitution approval or disapproval of any policy may not be stated or implied by any individual, group, or organization.

PUBLICATIONS

Sec. 16. A student or organization may publish and distribute written material on campus without prior approval providing such distribution does not disrupt the operations of the institution.

Sec. 17. The student press is to be free of censorship. The editors and managers shall not be arbitrarily suspended because of student, faculty, administration, alumni, or community disapproval of editorial policy or content. Similar freedom is assured oral statements of views on an institution controlled and student run radio or television station.

A. This editorial freedom entails a corollary obligation under the canons of responsible journalism and applicable regulations of the Federal Communications Commission.

Sec. 18. All institution published and financed student communications shall explicitly state on the editorial page or in broadcast that the opinions expressed are not necessarily those of the institution or its student body.

INSTITUTIONAL GOVERNMENT

Sec. 19. All constituents of the institutional community are free, individually and collectively, to express their views on issues of institutional policy and on matters of interest to the student body. Clearly defined means shall be provided for student participation in the formulation and application of institutional policy affecting academic and student affairs.

Sec. 20. The role of student government and its responsibilities shall be made explicit. There should be no review of student government actions except where review procedures are agreed upon in advance.

Sec. 21. Where the institution acts as landlord, the students have final authority to make all decisions affecting their personal lives, including the imposition of sanctions for violations of stated norms of conduct.

Sec. 22. On questions of educational policy, students are entitled to a participatory function.

A. Faculty-student committees shall be created to consider questions of policy affecting student life.

B. Students shall be designated as members of standing and special committees concerned with curriculum, discipline, and other matters of direct student concern.

C. There shall be an ombudsman who shall hear and investigate complaints and recommend appropriate remedial action.

PROTEST

Sec. 23. The right of peaceful protest is granted within the institutional community. The institution retains the right to assure the safety of individuals, the protection of property, and the continuity of the educational process.

Sec. 24. Orderly picketing and other forms of peaceful protest are permitted on institution premises.

A. Interference with ingress to and egress from institution facilities, interruption of classes, or damage to property exceeds permissible limits.

B. Even though remedies are available through local enforcement bodies, the institution may choose to impose its own disciplinary sanctions.

Sec. 25. Orderly picketing and orderly demonstrations are permitted in public areas within institution buildings subject to the requirements of non-interference in Section 24A.

Sec. 26. Every student has the right to be interviewed on campus by any legal organization desiring to recruit at the institution.

A. Any student, group, or organization may protest against any such organization provided that protest does not interfere with any other student's right to have such an interview.

VIOLATION OF LAW AND UNIVERSITY DISCIPLINE

Sec. 27. If a student is charged with an off-campus violation of law, the matter is of no disciplinary concern to the institution unless the student is incarcerated and unable to comply with academic requirements, except,

A. the institution may impose sanctions for grave misconduct demonstrating flagrant disregard for the rights of others. In such cases, expulsion is not permitted until the student has been adjudged guilty in a court of law.

Sec. 28. Under Section 27A, the institution shall reinstate the student if he is acquitted or there is a failure to bring him to trial within a reasonable period of time.

Sec. 29. The institution may institute its own proceedings against a student who violates a law on campus which is also a violation of a published university regulation.

PRIVACY

Sec. 30. Students have the same rights of privacy as any other citizen and surrender none of those rights by becoming members of the academic community. These rights of privacy extend to residence hall living. Nothing in the institutional relationship or residence hall contract may expressly or impliedly give the institution or residence hall officials authority to consent to a search of a student's room by police or other government officials.

Sec. 31. The institution is neither arbiter or enforcer of student morals. No inquiry is permitted into the activities of students away from the campus where their behavior is subject to regulation and control by public authorities. Social morality on campus, not in violation of law, is of no diciplinary concern to the institution.

Sec. 32. When the institution seeks access to a student room in a residence hall to determine compliance with provisions of applicable multiple dwelling unit laws or for improvement or repairs, the occupant shall be notified of such action not less than twenty-four hours in advance. There may be entry without notice in emergencies where imminent danger to life, safety, health, or property is reasonably feared.

STUDENT RECORDS

Sec. 33. The privacy and confidentiality of all student records shall be preserved. Official student academic records, supporting documents, and other student files shall be maintained only by full-time members of the institution staff employed for that purpose.

Separate files shall be maintained of the following; academic records, supporting documents, and general educational records; records of discipline proceedings; medical and psychiatric records; financial aid records.

Sec. 34. No entry may be made on a student's academic record, and no document may be placed in his file without actual notice to the student.

A. Publication of grades and announcements of honors constitute notice.

B. A student may challenge the accuracy of any entry or the presence of any item by bringing the equivalent of an equitable action against the appropriate person before the judicial body to which the student would be responsible under Sec. —.

Sec. 35. Access to his records and files is guaranteed every student subject only to reasonable regulations as to time, place, and supervision.

Sec. 36. No record may be made in relation to any of the following matters except upon the express written request of the student:

A. Race;

B. Religion; (omit if Section 4C is enacted)

C. Political or social views; and

D. Membership in any organization other than honorary and professional organizations directly related to the educational process.

Sec. 37. No information in any student file may be released to anyone except with the prior written consent of the student concerned or as stated below:

A. Members of the faculty with administrative assignments may have access for internal educational purposes as well as routinely necessary administrative and statistical purposes.

B. The following data may be given any inquirer; school or division of enrollment, periods of enrollment, and degrees awarded, honors, major field, and date.

C. If an inquiry is made in person or by mail, the following information may be given in addition to that in Section 37B; address and telephone number, date of birth, and confirmation of signature.

D. Properly identified officials from federal, state and local government agencies may be given the following information upon express request in addition to that in Section 37B and 37D; name and address of parent or guardian if student is a minor, and any information required under legal compulsion.

E. Unless under legal compulsion, personal access to a student's file shall be denied to any person making an inquiry.

Sec. 38. No record may be preserved beyond graduation or other final departure from the institution except;

A. academic records subject to the limitations of non-disclosure,

B. financial records of continuing obligations, and

C. medical and psychiatric records subject to the normal rules for privileged information.

SANCTIONS

Sec. 39. The following sanctions may be imposed upon students;

A. Admonition. An oral statement to a student that he is violating or has violated institution rules.

B. Warning. Notice, orally or in writing, that continuation or repetition of conduct found wrongful, within a period of time stated in the warning, may be cause for more severe disciplinary action.

C. Censure. A written reprimand for violation of specified regulations, including the possibility of more severe disciplinary sanctions in the event of the finding of a violation of any institution regulation within a stated period of time.

D. Disciplinary probation. Exclusion from participation in privileged or extracurricular institution activities as set forth in the notice for a period of time not exceeding one school year.

E. Restitution. Reimbursement for damage to or missappropriation of property. This may take the form of appropriate service or other compensation.

F. Suspension. Exclusion from classes and other privileges or activities as set forth in the notice for a definite period of time not to exceed two years.

G. Explusion. Termination of student status for an indefinite period. The conditions of readmission, if any, shall be stated in the order of explusion.

Sec. 40. No sanctions may be imposed for violations of rules and regulations for which there is not actual or constructive notice.

PROSCRIBED CONDUCT

Sec. 41. Generally, institutional discipline shall be limited to conduct which adversely affects the institutional community's pursuit of its educational objectives. The following misconduct is subject to disciplinary action;

A. All forms of dishonesty including cheating, plagiarism, knowingly furnishing false information to the institution, and forgery, alteration or use of institution documents or instruments of identification with intent to defraud.

B. Intentional disruption or obstruction of teaching, research, administration, disciplinary proceedings or other institution activities.

C. Physical abuse of any person on institution premises or at institution sponsored or supervised functions.

D. Theft from or damage to institution premises or damage to property of a member of the institutional community on institution premises.

E. Failure to comply with directions of institution officials acting in performance of their duties.

F. Violation of published institutional regulations including those relating to entry and use of institutional facilities, the rules in this Code of Conduct, and any other regulations which may be enacted.

G. Violation of published rules governing residence halls.

H. Violation of law on institutional premises or residence halls in a way that affects the institutional community's pursuit of its proper educational purposes.

PROCEDURAL STANDARDS IN DISCIPLINE PROCEEDINGS

Sec. 42. Any academic or administrative official, faculty member or student may file charges against any student for misconduct. In extraordinary circumstances the student may be suspended pending consideration of the case. Such suspension shall not exceed a reasonable time.

Sec. 43. The institution may make a preliminary investigation to determine if the charges can be disposed of informally without the initiation of disciplinary proceedings.

Sec. 44. All charges shall be presented to the accused student in written form and he shall respond within seven days. The time may be extended for such response. A time shall be set for a hearing which shall not be less than seven or more than fifteen days after the student's response.

Sec. 45. A calendar of the hearings in a disciplinary proceeding shall be fixed after consultation with the parties. The institution shall have discretion to alter the calendar for good cause.

Sec. 46. Hearings shall be conducted in such manner as to do substantial justice, but shall not be unduly restricted by rules of procedure or rules of evidence.

A. Hearings shall be private if requested by the accused student. In hearings involving more than one student, severance shall be allowed upon request.

B. An accused student has the right to be represented by counsel or an adviser who may come from within or without the institution.

C. Any party to the proceedings may request the privilege of presenting witnesses subject to the right of cross-examination by the other parties.

D. Production of records and other records may be required.

Sec. 47. In the absence of a transcript, there shall be both a digest and a verbatim record, such as a tape recording, of the hearing.

Sec. 48. No recommendation for the imposition of sanctions may be based solely upon the failure of the accused student to answer the charges or appear at the hearing. In such a case, the evidence in support of the charges shall be presented and considered.

Sec. 49. An appeal from a decision by the initial hearing board may be made by any party to the appropriate appeal board within ten days of the decision.

A. An appeal shall be limited to a review of the full report of the hearing board for the purpose of determining whether it acted fairly in light of the charges and evidence presented.

B. An appeal may not result in a more severe sanction for the accused student.

C. An appeal by the institution, in which the decision is reversed, shall be remanded to the initial hearing board for a determination of the appropriate sanction.

JUDICIAL AUTHORITY

Sec. 50. Appropriate judicial bodies shall be formed to handle all questions of student discipline. The initial hearing board shall be composed solely of students and any appeal board shall have voting student representation.

Sec. 51. The judicial bodies may formulate procedural rules which are not inconsistent with the provisions of this Code.

Sec. 52. The judicial bodies may give advisory opinions, at their sole discretion, on issues not before any judicial body and where no violation of institution regulations has taken place. Such opinions shall not be binding on the party making the request nor may it be used as precedent in future proceedings.

Sec. 53. A judicial body may be designated as arbiter of disputes within the institutional community. All parties must agree to arbitration and agree to be bound by the decision with no right of appeal.

BRUNO BITKER REMARKS AT CONFERENCE ON HUMAN RIGHTS, UNIVERSITY OF CALIFORNIA, BERKELEY, APRIL 12, 1969

Mr. PROXMIRE. Mr. President, I am proud and honored to count as a friend of mine, Mr. Bruno Bitker, who is a distinguished Milwaukee attorney. Mr. Bitker has been a member of the President's Commission for the Observance of Human Rights Year 1968. For many years, Mr. Bitker has been very active in the human rights field, particularly in behalf of Senate ratification of the Human Rights Conventions. Mr. Bitker appeared as one of the guest speakers at the Conference on Human Rights at the Law School of the University of California, Berkeley, held April 12, 1969.

I ask unanimous consent that his very succinct and erudite remarks be printed in the RECORD.

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

REMARKS OF BRUNO V. BITKER, MILWAUKEE ATTORNEY AND MEMBER OF PRESIDENT'S COMMISSION FOR THE OBSERVANCE OF HUMAN RIGHTS YEAR, 1968, CONFERENCE ON HUMAN RIGHTS, LAW SCHOOL, UNIVERSITY OF CALIFORNIA, BERKELEY, CALIF., APRIL 12, 1969

When the Genocide Convention was under consideration within the United Nations, the United States representatives were among the leaders in its preparation. Mrs. Eleanor Roosevelt was the U.S. Representative to the Human Rights Commission. At that same time, 1948, the Universal Declaration of Human Rights was also under consideration by the General Assembly.

Americans, perhaps in an understandable spirit of chauvinism, have long insisted that they were the principle drafters of both documents, particularly the Universal Declaration. In fact, of course, many of the world's leading statesmen participated in the work. The Honorable Rene's Cassin was one of the most effective among them. But it is true that many of the ideas, even words and phrases, were out of American tradition and national documents. Indeed, at the Teheran Human Rights Conference in 1968, the memory of Mrs. Roosevelt, as a leading spirit in producing the Declaration, dominated the opening sessions of the Conference.

With that in mind it is difficult to understand why the United States has dragged its feet in ratifying human rights treaties. It is not only difficult for other nations to understand it, but is equally so for many Americans, particularly those of the generation to whom the stench of the Nazi gas chambers was something sensed in their own lifetime. It is no less a matter of wonderment to those of a younger generation of Americans even though they know of the horrible crime of the Nazi years only through reading history.

When in 1949, the President of the United States sent the Genocide Convention to the U.S. Senate for its advice and consent, as required by our Constitution, it was assumed that its approval by the required two thirds of that body was more or less routine. As President Truman pointed out in his letter of transmittal to the Senate, "By the leading part the United States has taken in the United Nations in producing an effective international legal instrument outlawing the world shocking crime of Genocide, we have established before the world our firm and clear policy toward that crime."

But to the surprise of our own government, opposition from respected sources to the treaty began to make itself heard. It was inconceivable that, in the post-war atmosphere, serious opposition could exist. But exist it did, and its spokesman was the American Bar Association, the leading organization of American lawyers. Although the ABA was usually regarded as conservative, on questions of international law it had usually taken a forward looking position, contrary to the isolationist philosophy that was again rearing its head as part of the then developing cold war. The ABA had in fact, strongly advocated expansion of the jurisdiction of the International Court. This evidenced its international outlook.

In September, 1949, however, the Bar Association through its policy making body, the House of Delegates, adopted a resolution by a divided vote opposing ratification of the Genocide Convention on the ground that it "involves important constitutional questions" and "raises important fundamental questions but does not resolve them in a manner consistent with our form of government."

In the ensuing debate which took place before the Foreign Relations Committee of the U.S. Senate, it became clear that the opposition was moved more by fears of threats to the sovereignty of states within the United States than by any basic constitutional objections. It was asserted, in effect, for example, that if a citizen of a southern state were accused of the crime of lynching that he would be "seized" by some foreign secret police agency, flown to an unknown destination and tried before a "communist controlled court".

It was clear, of course, from a reading of the Convention that the usual crime of murder, such as lynching, was not intended to be and in fact was not covered by the treaty. It was clear, too, that under the treaty the persons charged with Genocide were to be tried by a court of the nation in which the act was committed. A trial by an international penal tribunal, if one were ever created, was possible only as to those parties which had accepted its jurisdiction. As of 1949 no such tribunal had been established, and during the ensuing 20 years none has been seriously suggested let alone established. Even if one were brought into existence it would require treaty recognition by the United States through its constitutional treaty making process before it became binding on the United States. This means that the President would have to approve it and submit it to the U.S. Senate for its advice and consent by a two thirds vote, before it could be ratified. Certainly no President or Senate would treat this problem lightly.

The hearings before the Senate Sub-committee in 1950 were lengthy. Many prominent members of the bar appeared both for and against ratification. Finally the sub-committee filed a report supporting ratification but, in order to satisfy the real or imagined fears of objectors, recommended certain clarifications which, among other things, would resolve all doubts of the convention's applicability to a single lynching. Despite that, however, the full Senate committee delayed favorable action. By this time the early winds of McCarthyism began to be felt, the cold War had attained a sub-zero level, and anything which seemed to favor cooperation with foreigners became suspect. Finally the Senate committee in 1950, tabled the matter. In other words it took no positive action. The treaty has been in the deep freeze ever since. It was ironic that McCarthyism should have had such an effect because subsequently Senator McCarthy announced his support of ratification.

It is not easy now to understand the atmosphere then existing in the United States which produced the fear that too much traffic with foreigners, particularly through the United Nations, might undermine our sovereignty. But the fact is that this produced substantial support for the proposed Bricker Amendment which amendment to the U.S. Constitution was intended to hamstring the authority of the President in his dealings with other nations. Among the dangers it was claimed would be eliminated by the Bricker Amendment were the human rights treaties that were being supported by our representatives to the United Nations. Many of the lawyers who had opposed Genocide were leaders in support of Bricker.

By 1953, during the presidency of Dwight Eisenhower, support for the Bricker Amendment was strong enough and the likelihood of its adoption disturbingly possible, so as to move the administration to take whatever steps appeared proper and desirable to halt the threat. Human rights treaties were constantly cited as the witches whose evil effects would undermine the American Republic; they could only be stopped by the Bricker Amendment. John Foster Dulles, then Secretary of State, in April 1953, on behalf of the Administration informed a Senate Committee that it did not then intend to become a party to any human rights covenant or press for ratification. By this gesture of appeasement the Administration hoped to take the ammunition away from the Bricker forces. But the act was in vain. The Bricker supporters would not withdraw. Although it now appears that the sacrifice was not necessary, the fact is that the Bricker Amendment lost by only one vote.

From 1953 to 1963 although various citizens groups were urging ratification of other human rights treaties, none were sent by the President to the Senate for its advice and consent and no serious effort was made to force action on Genocide. Finally, recognizing how important to our national interest was our participation in these treaties, President Kennedy did, in 1963, send three new conventions to the Senate. They were considered so innocuous as to almost insure favorable action. They were the Conventions on the Political Rights of Women, Forced Labor, and Slavery. But the Senate took no action on them.

Beginning in January 1967 Senator William Proxmire began issuing a series of statements on the floor of the Senate demanding action on ratification of the three treaties subm..itted by President Kennedy as well as on Genocide. His almost daily demands on the Senate floor is still continuing into the current 1969 session of the new Congress. But his efforts in early 1967 had some effect because Senator Fulbright, Chairman of the Foreign Relations Committee did appoint a special subcommittee to hold hearings on the three Kennedy treaties but not on Genocide.

The Kennedy treaties appeared to avoid any possible constitutional questions. The U.S. Constitution long ago had made slavery and forced labor unlawful and had granted political rights to women. Nevertheless, a number of lawyers, including some of those who had originally opposed Genocide and subsequently supported Bricker, expressed strong opposition to ratification. There was a lengthy debate within the ABA's House of Delegates in August, 1967, with the result that the Association, by a divided vote, resolved to oppose the women's rights treaty, to withhold support of the treaty against forced labor, but to support ratification of the slavery convention.

In November 1967 the U.S. Senate went along with the recommendation by endorsing the Slavery treaty but placed the other two on the table. No consideration was given to Genocide. A year later, in October, 1968, a treaty on refugees, classified as a human rights treaty, was approved by the U.S. Senate.

Thus the ice jam on human rights treaties, caused in part by the cold war, has been broken in the United States. There seems now little reason to doubt the existence of the power of the United States to become parties to human rights treaties which do not contravene a specific prohibition in its Constitution or, if some doubt exists as to a particular provision, ratifying with a reservation or understanding as to such provision.

The President's Commission for the Observance of Human Rights Year in its final report presented in 1969 to President Nixon recommended ratification of the human rights treaties then pending before the Senate, and urged that other conventions be reviewed for submission to the Senate. Although no other convention was specified by that Commission, it would seem that a logical one for present consideration is that on Elimination of Racial Discrimination. It was signed by the United States with an explanatory statement as to freedom of speech. Subject thereto it should be ratified, and many leading lawyers and scholars in the United States have so expressed themselves.

It is difficult enough for many Americans, and more so by others, to understand the real basis for our failure to have been among the leaders in ratifying these treaties as we were among the leaders in drafting them and supporting them in the United Nations and its affiliated organs. But fears and prejudices run deep and with the old concept of the sanctity of sovereignty having

so strong a hold on many politicians it is explainable even though not wholly understandable why there is such failure to move forward on the human rights front through treaties.

As Chief Justice Earl Warren said in December, 1968: "This sad record [failure of the United States to act on these conventions] and the responsibility for it lies squarely with those who have a parochial outlook on world problems. They have failed to measure the climate of change in the world."

Editorial comment among some of America's leading newspapers, such as the New York Times, following the Chief Justice's remarks, indicates a new look at the problem. The position in support of ratification taken by the U.S. National Commission for UNESCO (constituted in part by representatives of leading nongovernmental organizations) and the attitude of the world of education as expressed by the teaching guide recently published by the National Council for the Social Studies (a department of the National Education Association) are additional signs of the widespread endorsement of these treaties. The continued active support of religious bodies is well known.

Conferences at law schools, including this one at the University of California, Berkeley, in April, 1969, shows the trend toward a broader outlook. The public position of the present and of the incoming president of the American Bar Association in support of ratification plus the interest of three sub-committees of the Association in reviewing the Association's position together with the encouraging attitude of a number of local and state bar associations, indicate that a change in the official position of the American Bar may be in the making. All of this is bound to have its effect upon the U.S. Senate and makes the outlook for further ratifications most helpful.

VIRGINIA H. KNAUER—"WOMAN OF THE YEAR"

Mr. SCOTT. Mr. President, Virginia H. Knauer, Special Assistant to the President for Consumer Affairs, today received a well-deserved tribute by the Friends of the March of Dimes, when she was named "Woman of the Year" at an award luncheon at the Warwick Hotel in Philadelphia.

Mrs. Knauer, formerly director of the consumer protection division of the Pennsylvania Department of Justice, was honored for her dedicated work in behalf of the health and protection of our children.

I ask unanimous consent that Mrs. Knauer's remarks at the award luncheon be printed in the RECORD.

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

REMARKS BY VIRGINIA H. KNAUER, MAY 14, 1969

It is a privilege and a pleasure for me to be here today—not only because of our past close association and the great honor you are paying me, but because of your strong dedication to the health of mankind in general and children in particular.

Let me assure you that the health of our citizens is of equal concern to the Federal Government and to me in my new job as Special Assistant to the President for Consumer Affairs. In fact, my assignment as spokesman for the consumer at the highest levels of Government gives me a fine opportunity to consider his health, as well as his pocketbook, and I have already done so on several occasions.

Soon after I was sworn into my new post, I gave strong endorsement to a bill to provide additional protection for children from toys which contain electrical, mechanical or thermal hazards. The general purpose of this bill is to amend the Child Protection Act of 1966, which deals only with certain hazardous substances.

At recent hearings of the Product Safety Commission—and I testified at one of them in Chicago—it was brought out that a child's blow-gun caused serious injury when darts were inadvertently inhaled and imbedded in his lungs. A witness testified that a nine-year old child was blinded in one eye by an exploding cap device which was advertised as harmless. Another witness said that his small son was strangled in a lidded crib. The baby died when his head became wedged between the lid and the side of the crib.

We must take immediate steps to make certain that tragedies such as these will never happen again.

The right to safety is one of our basic consumer rights. This does not apply, however, only to products which we buy over the counter. It applies to our right to clean air, clean water, and a safe environment.

We are surrounded by potential hazards to our health and life in the environment in which we live. Of what use is financial and economic protection in the marketplace if we do not have the elementary and basic protection of clean air to breathe, pure water to drink, and uncontaminated food to eat? If we cannot live and function in our environment, it becomes pretty academic as to how we spend our money or whether the right label is on the right can.

Our overall concern must be environmental health. You, in your dedication to preserving and improving the health and lives of our children, will be particularly interested in environmental safety and the road to reach it—environmental research and education. We have conquered polio, the dread disease that afflicted so many of our children—and adults too—and was the reason the March of Dimes was founded. There are still left the other crippling illnesses and birth defects, many of which science now tells us may very well be harbored in our modern industrial environment.

The Secretary of Health, Education, and Welfare, Robert H. Finch, is concerned by the evidence of pesticides that persist in the environment. This concern has led to his appointment of a Commission on Pesticides and their Relationship to Environmental Health. The Commission, of which I am a member, will explore the field of environmental pollution and its consequent risk to the health of our citizens.

We all know the tremendous benefits that have been derived from the use of pesticides since World War II. However, the disadvantages of pesticides have been receiving increasing scientific attention.

There is no question that DDT, for example, persists in the environment. It has been discovered in the tissues of animal life in virtually every part of the world. But as Secretary Finch has pointed out, modern technology which has brought such assaults upon our environment, has also brought us the means to provide constant vigilant protection. We must have this protection.

Incidentally, it was a Pennsylvania woman, the late Rachel Carson, who first alerted the people—in laymen's language—to the possible dangers arising from the misuse of pesticides.

Rachel Carson did this simply and eloquently in her book, *The Silent Spring*, which was really a clarion call to save the environment for human beings as well as wildlife.

Today, officials at the highest levels of Government are considering naming a National wildlife refuge after this great conservationist to commemorate her service to mankind. When this idea was first brought to my attention in an article in *This Week Magazine*, written by Ann Cottrell Free, I promptly made my support known to our Department of Interior, where Rachel Carson worked for many years.

I know that Pennsylvanians are proud of Rachel Carson—who was born in Springdale, in the western part of our State—just as Americans all over the country are proud of her—and I am hopeful that we will soon have a wildlife refuge bearing her name.

The Administration in Washington is keenly aware of the need for the Federal Government to improve environmental management. The President is establishing an interdepartmental Council on Environment Quality. This new Council will provide a focal point for coordination of environmental protection and management programs within the Federal Government.

It will help provide overview necessary to predict, judge, and control the effects of our environmental actions. It is an important step, one which evidences clearly this Administration's determination to protect and enhance the quality of environment.

The new Council will be no ordinary Cabinet-level committee. It will be chaired by the President himself. Thus this will be no more discussion group but a mechanism for effective decision-making.

Surely such a Presidential commitment to the protection and enhancement of the quality of our environment is the best kind of news we can have for the preservation of our health and the well-being of our children and their children for generations to come.

And now, finally, I must tell you how really touched I am by the tribute you have paid me today. It will become a memory that I shall always cherish. Whatever I have done, I could not have done without the help of my friends in Philadelphia, many of whom are present today.

It's wonderful to be in Washington and my new job is a great challenge, but I miss you all and think of you often—and of your interest and dedication to the important work you are doing as Friends of the March of Dimes.

INNOCENT VICTIMS OF CRIME—S. 9

Mr. YARBOROUGH. Mr. President, we are all aware of the problem of crime in this country. In the Nation's Capital, the problem is particularly acute, and we are reminded almost daily of that fact. I ask unanimous consent to have printed at this point in the RECORD, two brief articles published in the Washington Post of April 15, 1969, concerning two shootings which have taken place recently.

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

MAN BEATEN, ROBBED, SHOOTS AT YOUTHS

Two youths got more than they bargained for yesterday afternoon after they robbed and beat a man in Northeast Washington.

Francis Davidson, 43, of 5635 Eads st. ne., was walking in a field in the 5700 block of Dix Street when the youths grabbed and beat him and tore off his pants, containing a wallet and $6.

Police said Davidson raced to his home, a block away and returned with a .38-caliber revolver. He fired three shots at the fleeing

youths. Police were checking local hospitals last night to see if any of the robbers were wounded.

PARKING LOT WORKER SHOT BY TEENAGER

A pistol-wielding teen-ager shot a Southwest parking lot attendant in the head yesterday, blinding him in the right eye, when he resisted orders to enter his office during an apparent holdup attempt, police reported.

Police said John C. Foushee, 29, of 523 Benning rd. nw., was shot after two youths, one of them armed, approached him at the Consolidated Parking lot, 12th and C Streets sw., and tried to force him into the lot office.

Mr. YARBOROUGH. Mr. President, these two articles tell sad stories, too frequently repeated every day across the entire United States. But one factor not explicitly brought forth in either of these articles is also of concern to me: What will happen to the victims? Perhaps the criminals will be captured. If they are, they will probably be punished, but they will also be cared for, be given medical and maybe psychiatric treatment, food, clothing, housing, and all the other services our society quite properly provides to criminals.

But the victims, the people injured in these crimes, can lay claim to no similar rights. Beyond giving them the dubious satisfaction of seeing their offenders captured, tried, and punished, society gives the victims nothing, and they must bear the burdens of acts which they certainly did not will, and probably did nothing to bring about.

My bill, S. 9, is introduced specifically for the purpose of remedying this situation. This bill, now before the Committee on the Judiciary, would set up a Criminal Injuries Compensation Commission empowered to investigate injured victims and to award them up to $25,000 compensation for wrongs done to them. This is a long-overdue and much needed remedy for one of the cruelest injustices in our entire system. I hope that Congress will take action on this proposal this year.

PROPOSED MODIFICATIONS IN SELECTIVE SERVICE SYSTEM

Mr. HARRIS. I commend President Nixon for his proposed modifications in the existing Selective Service System call-up procedures. President Nixon stated in his message yesterday:

> Under present conditions . . . some kind of draft will be needed for the immediate future.

I agree with the President that as long as a Selective Service System is necessary we must make every effort to see that it is as fair as possible to all persons concerned.

The President has indicated in his message that, given the authority by Congress, he will make the following changes in the existing draft system.

First. Initiate a youngest first order of call so that all 19-year-olds would be drafted first and vulnerability to the draft would diminish according to age. This would be a far better system than we now have under which we draft our young men in their middle or late twenties who have already established themselves with a job, and a family, and other responsibilities.

Second. President Nixon has proposed that we reduce the time for prime draft vulnerability from 7 years to 1 year. I endorse this proposal also, because it will remove a great deal of the uncertainty which all young men now face when they begin to plan their lives. I think we all agree that 7 years is a long time to be faced with the possibility of being removed from one's job and from one's family in order to fulfill a commitment to the Armed Forces. I, therefore, applaud the President for proposing to reduce this period of uncertainty to 1 year.

Third. The President has indicated that he intends to implement a system of random selection of young men for service in the military. I have long advocated this as I have advocated the selection of the youngest first; and I, therefore, endorse this proposed change in the Selective Service System, because I feel that random selection will remove most of the inadequacies which now exist in selection of draftees and will certainly remove a great deal of the pressure on our local Selective Service Boards.

I certainly agree with the President that changes in the Selective Service System are long overdue and that while no system which singles out certain individuals to serve while others are not selected can be totally fair, the utilization of random selection and selection of the youngest first and the adoption of a 1-year prime vulnerability will certainly make the system a great deal fairer than at the present time.

THE PESTICIDE PERIL—VIII

Mr. NELSON. Mr. President, during the current hearings before the Wisconsin State Department of Natural Resources regarding a citizens' petition to ban DDT, the defense of this persistent pesticide has primarily been championed, understandably, by the chemical industry. Also, a few agricultural spokesmen are claiming that "Wisconsin agriculture would collapse if farmers were deprived" of DDT, according to a recent article in the Madison Capital Times.

However, the voices of some of our State's farmers seeem to dispute this statement.

A dairy farmer in the Evansville, Wis., area told of having to withhold all of his milk and beef from the market for 11 years because a chlorinated hydrocarbon pesticide similar to DDT was found in his grain, which in turn was eaten by his cows which produced harmful residues in their milk and fat.

In fiscal year 1968, Wisconsin dairy farmers received $22,302 in reimbursements from the Federal Government, under the pesticide indemnity payment program administered by the U.S. Department of Agriculture.

This program, which I originally proposed in 1964, provides payments to reimburse dairy farmers for milk barred from commercial markets because it contains traces of pesticides approved for use by the U.S. Department of Agriculture. Up to date, farmers in 29 States have been reimbursed nearly a million dollars.

Most pesticide residues have been traced to drift caused by off-farm spraying, to feed purchased off the farm, and to pesticides transferred from the soil to crops used for feeding dairy cattle. Until adequate restrictions are adopted on the use of DDT and other persistent pesticides, this program will be necessary to protect our dairy farmers from financial losses which result from factors far beyond their control.

I ask unanimous consent that the article from the Capital Times be printed in the RECORD.

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

[From the Capital Times, Apr. 28, 1969]

FARM BUREAU DOESN'T SPEAK FOR THEM: WHAT FARMERS REALLY SAY ABOUT DDT

(By Whitney Gould)

Next to spokesmen for the pesticide industry, some of the most vociferous opponents of a ban on the use of DDT in Wisconsin have been representatives of large farm organizations in the state, who have given the impression that Wisconsin agriculture would collapse if farmers were deprived of the pesticide.

One would also conclude, from listening to testimony at recent State Capitol hearings on bills that would either tighten regulations on pesticide use (S-124, S-338), or ban DDT completely (A-163), that Wisconsin farmers are universally enamored of DDT.

Nothing could be farther from the truth.

There is great division among farmers on the merits and dangers of DDT, and for that matter, on the whole question of pesticides.

The impression that DDT is indispensible to farmers comes largely from the testimony of such lobbyists as William Kasakaitas, representing the Wisconsin Farm Bureau Federation, the Wisconsin Potato and Vegetable Growers Association and other farm groups.

Kasakaitas, his orotund voice rising, told an Assembly Agriculture Committee hearing earlier this month on a proposal to ban DDT in Wisconsin, that such a ban would be "courting economic disaster by depriving Wisconsin farmers of the means to protect their crops and keep the quality of their food products competitive with those produced in other states."

Conveniently, copies of Kasakaitas' rhapsodic statement on the benefits of DDT were distributed to the press by public relations representatives of the National Agricultural Chemicals Association of Washington, D.C., which has financed the case for DDT at the state Natural Resources Department's hearings on a petition to ban the pesticide from further use in Wisconsin. (The hearings resume Tuesday at 9 a.m. in Room 144 of the Hill Farms State Office Building in Madison.)

Not heard at public airings like those in the Capitol are the voices of farmers like Ken Schmidt of Evansville, whose experiences with DDT and its relatives have been distinctly negative.

Schmidt, who has 60 milk cows on a 290-acre farm north of Evansville, had to withhold all of his milk and beef from the market from April 4, 1957 to March 2, 1968, after aldrin, a chlorinated hydrocarbon pesticide similar to DDT was found in his grain. The grain was eaten by his cows, and harmful residues showed up in their milk and fat.

"These chemicals have done nothing for the farmer," Schmidt insists. "They claim pesticides like DDT produce abundance for

the farmer, but then that extra production itself turns around and plagues him."

Schmidt contends that at hearings on pesticides, farmers "are being represented by people who belong to agribusiness, who are interested in selling chemicals, but have little to do with real farming."

Some 100,811 pounds of DDT were shipped to Wisconsin last year, according to figures from the State Department of Agriculture. Of that total, 59,000 pounds were used for Dutch elm disease control. Largest agricultural users were carrot producers (over 44,000 pounds), followed by apple growers. The pesticide was used in considerably smaller quantities on cherries, potatoes, snap beans and other crops.

Were the pesticide to be banned completely, "It wouldn't be entirely fatal," says Robert Bodin of Barronett, secretary of the Barron County Farmers Union. "There are other pesticides that would work just as well."

Though the state Farmer's Union rejected endorsement of a complete DDT ban at its state convention in Eau Claire in February, Bodin's unit at least has backed tighter control of persistent pesticide like DDT.

Ray Brandenburg, who raises wheat, corn, oats and hay organically—entirely without pesticides—on a 160-acre farm east of Greenleaf in Brown County, and also owns 64 head of dairy cattle, says he's never used DDT in his life and never will.

He admits, however, to having been subjected to considerable pressure from pesticide salesmen, who laud their products as great developments of advanced technology and savers of lives.

"I just ask them," says Brandenburg, who sells most of his crops to health food outlets, "that if the world is smarter and better educated and healthier than ever before, why are the hospitals fuller than ever? Then they back down a little."

Dairy farmers have every reason to cast a skeptical eye at DDT and its relatives, though DDT has not been recommended as a fly spray in cow barns here for some time.

Some dairy farmers continue to use it. But over the past four years, farmers in 28 states have been reimbursed nearly $1 million for milk contaminated accidentally with pesticides recommended by the U.S. Department of Agriculture. They are compensated under provisions of emergency federal legislation passed in 1964.

Among the long-time supporters of DDT are representatives of canners and freezers associations, who cite possible economic hardships in opposing a ban on the pesticide.

Henry Ochsner of Plain, in Sauk County, however, lists peas among the crops on his 500-acre farm, and says he hasn't used any pesticides for 10 years, and "my pea crop hasn't suffered a bit."

Ochsner has followed recent DDT indictments by scientists with interest, and is convinced the pesticide is no longer necessary. "Other means work just as well, even though they may cost a little bit more."

One of the most vigorous figures in the fight against DDT is Ochsner's sister, Carla (Mrs. Harold Kruse) of Loganville, who with her husband is an active member of the Citizens Natural Resources Association, one of the petitioners in the Wisconsin DDT fight.

The Kruses, too, are dairy farmers, convinced, as Mrs. Kruse puts it, "that most dairy farmers try to stay as far away as possible from DDT."

Brandenburg, Schmidt, Ochsner, the Kruses are small voices among the 480,000 members of Wisconsin's farm population, which is dwindling every year. But they are awake to the stresses of pollutants on the total environment. And they know that a threat to that environment is also a threat to themselves as farmers.

"Maybe we don't get disturbed enough about this DDT thing," says Schmidt, "when we should."

A GROWING RESPECT FOR NIXON'S POLICIES

Mr. MUNDT. Mr. President, the Daily Argus-Leader of Sioux Falls, S. Dak., is the largest newspaper in the largest city of a five-State area in the Upper Midwest and through most of its steady growth, Fred C. Christopherson served as the editor of the Argus. He now is editor emeritus and contributes frequent editorials as well as writing a weekly notebook filled with commentary on current activities.

Recently Mr. Christopherson wrote an "Editor's Notebook" reflecting on the first 100 days of the new Nixon administration and because this report so faithfully and accurately reflects the prevailing opinion of this great area of the country, I ask unanimous consent that it be printed in the RECORD.

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

[From the Argus-Leader, May 4, 1969]

A GROWING RESPECT FOR NIXON'S POLICIES

(By F. C. Christopherson)

It has become an American tradition to appraise a new president after his first 100 days in office. So it is that President Nixon is now being subjected to that test with varied opinions about his performance in the White House.

It is also a tradition to allow a new president a sort of honeymoon of similar length—a period during which comments are restrained and friendly. This is based upon the idea that the new executive should be given time to get his feet on the ground, survey the scene from the White House and develop his program.

Now the honeymoon is over. So are the first 100 days. And what may be said about Nixon?

Much. And some of it is negative in a praiseworthy way. He hasn't mounted his horse and gone charging off in all four directions at once. He hasn't kept the nation awake wondering about what he might do next. He hasn't excited the people with startlingly new programs. He has just plodded along, keeping his cool and studying new and old crises.

A CAUTIOUS PROGRAM

Well, is that bad? Or is it good? It is my impression that the Nixon behavior as of now is comforting to the American people and that his average rating is higher today than it was at the time of the election last November. The polls indicate that his popularity has advanced since the inauguration last January.

His obviously cautious mood, as indicated in his handling of the intelligence airplane that was shot down by the North Koreans, seemingly reflects a common viewpoint. Perhaps the people are looking forward to quiet and stability and are weary of turmoil and unrest. They may be eager for time to digest what has been done in the past. There could be a feeling that too often in the past we have acted first and then studied the course after it had been launched.

Many projects, noble in purpose, have been dismal in operation because of inadequate preparedness and study. Over a period of several years, we have ventured into job programs, educational programs, welfare programs and other similar projects without knowing precisely what we were doing. Now, after the expenditure of billions, we are learning belatedly that our efforts have served only to confuse, complicate and make the problems more difficult.

NO INSTANT ANSWERS

Nixon isn't setting the nation afire or the world for that matter. But he is doing something far more important, constructive and progressive. He appears to be moving steadily ahead with plans to put out some of the destructive fires started by zealots who knew not what they were doing.

In his first 100 days, Nixon hasn't come up with an answer to Vietnam. But let's not forget for a moment that Presidents Kennedy and Johnson struggled with that problem for several years and came up with no answer. The same comment can be made in respect to inflation and other domestic problems.

BUILDING FOUNDATION

The assumption that Nixon has spent his time in the White House just looking out over the greensward and the rose garden is highly erroneous, however. Step by step, he has come forth with a program to stop inflation and already there are some complaints as its impact is being felt. The effort, nevertheless, is determined and very likely will be effective even though it might not be popular.

And there are inklings that the period of watchful waiting and consultation about Vietnam is nearing an end—perhaps nearer than the news dispatches indicate. There's a new hand at the throttle and those in the warring areas are being made aware of it.

As of now at least, there is abundant reason for the thoughtful citizen to be happy over the Nixon approach to the vexing problems of the times. He is justifying the high hopes of those who know him well and establishing the foundation for a program of progress that may be one of the most useful in American history.

RETIREMENT OF FLOYD E. DOMINY, COMMISSIONER OF RECLAMATION

Mr. McGEE. Mr. President, it has become public knowledge that Commissioner of Reclamation Floyd E. Dominy has decided, at the age of 59, to step down and retire after more than 35 years of Federal service, including service in his present position under four Presidents—two of each political persuasion.

Mr. President, Mr. Dominy's long career came to life after he graduated from the University of Wyoming in the class of 1932 with a B.S. in agricultural economics and an A.B. in liberal arts. He taught for a time at Hillsdale, a small community in Laramie County, later becoming the county agent for Campbell County, Wyo.

After holding various Government jobs in the field of agriculture, Mr. Dominy joined the Bureau of Reclamation as a career employee in 1946, rising until he was named, by the late President Eisenhower, as Commissioner of Reclamation in 1959. He served in that post under Presidents Eisenhower, Kennedy, Johnson and, now, under President Nixon.

Mr. President, we in Wyoming take particular pride in Mr. Dominy's contributions and salute him at this juncture. He has chosen to step down at the close of the current congressional session, announcing his decision in a letter to President Nixon. I ask unanimous consent that his letter be printed in the RECORD.

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

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
Washington, D.C., May 8, 1969.

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

DEAR MR. PRESIDENT: As a career civil servant who was first appointed Commissioner of

the Bureau of Reclamation by President Eisenhower on May 1, 1959, it has been my pleasure to have served under four Presidents.

It has been a rich and rewarding experience. Speaking from a background of more than 35 years of Government service, I am greatly impressed with the sense of purpose and stability you are bringing to the Government.

Your determined efforts to control the inflationary processes which threaten the very roots of our democracy are particularly notable. I want you to know that I stand four-square behind you and will do everything in my power to adjust the Bureau of Reclamation budget and operations accordingly. However, this will mean a reduction in our forces which I am seeking to meet by encouraging the older echelon of Bureau of Reclamation employees who are eligible to retire to do so in the hope that an indiscriminate reduction-in-force process can be avoided. My objective is to retain a trained and experienced cadre of younger employees in anticipation of an expanded program when the budgetary emergency and threat of runaway inflation subsides.

Since I am one of those eligible for full retirement, I cannot, in good conscience, urge such a policy on my associates without leading the way. I, therefore, will retire from the Federal service at the close of this first session of the 91st Congress. I have presented on your behalf the proposed Reclamation budget for fiscal year 1970 to both houses of the Congress. I have briefed the House Interior and Insular Affairs Committee in detail on the state of the Reclamation program. This early announcement of my retirement from Federal service will permit ample time for selection of my successor as Commissioner of the Bureau of Reclamation and will assure the opportunity for orderly transfer of important operating responsibilities in water and power production and marketing that affect directly the well-being of millions of people.

If it should be your wish to transfer the Commissioner's responsibilities to a successor prior to adjournment of the first session of the 91st Congress, I will, of course, cooperate fully to accommodate your wishes.

Respectfully,

FLOYD E. DOMINY,
Commissioner.

NEGOTIATIONS WITH THE SOVIET UNION

Mr. ALLOTT. Mr. President, with the fall of Alexander Dubcek in Czechoslovakia, the Soviet Communists have made it clear they are not ready to tolerate freedom in the Eastern European States they control. Not that Dubcek ever granted real freedom, for he was a committed Communist, too; but he did grant certain limited liberties to the people of Czechoslovakia, particularly partial religious freedom.

Obviously, Mr. President, even the modest, liberal efforts of Mr. Dubcek proved too much for Moscow. Though it is clear that the leaders in the Kremlin are unable to accept the nationalistic and freedom-oriented spirit of the East Europeans, I believe the people in these countries are more determined than ever to wrest their freedom from the yoke of communism which was imposed upon them shortly after World War II.

Accordingly, if the Soviets are at all interested in preserving their sphere of influence in this area without sheer and bloody military force, I submit that the time has come for Moscow to recognize its tenuous situation.

In that connection the American Hungarian Federation, the Hungarian Freedom Fighters Federation of the Free U.S.A., and the Federation of the Free Hungarian Jurists have submitted a memorandum to the President, the Secretary of State, and the National Security Council on the entire east central European question.

The report urges negotiations between the United States, Western Europe, and the Soviet Union concerning the establishment of a neutral buffer zone between the NATO nations and the Soviet Union.

This suggestion has much merit and in my judgment fits into the theme of President Nixon's policy relative to the Soviets. The President has said that we now seek negotiation rather than confrontation. I can think of no better matter about which to negotiate than the freedom of the east central European nations.

I strongly urge that our Government take a good, long, hard look at this memorandum. It may not contain all the answers, but certainly its contents must be considered as one alternative which could liberate us from the deadlock in which our foreign policy toward that region of the world has been since the mid-1940's.

SOIL STEWARDSHIP WEEK

Mr. PERCY. Mr. President, this week is Soil Stewardship Week. It is a time when all Americans should pause and consider the personal and national enrichment we have been blessed with as a result of our fertile soil. It is a time when we should consider how to better conserve our soil and water, as these are basic resources on which all other resources, and humanity itself depends.

The concept of Soil Stewardship Week has its roots in antiquity, and the custom of setting aside special days to give thanks for the precious gifts of soil and water is common to many countries around the world.

In recent months, a variety of circumstances both at home and abroad have served to highlight the ever increasing need for effective resource management. The issues centering around resource problems are substantial. They include the population explosion, the spread of hunger, the concern about basic resource quality, and the concern over environmental quality. Increasing emphasis is being placed on outdoor recreation, preservation of wilderness and forest areas, multiple use of resources, soil reclamation, flood control, and others too numerous to mention.

The continuing public discussion on all the resource issues has created a new climate for stewardship. Never before have there been so many reasons for so many people with their organizations and institutions, to become involved in the resource management area.

Clearly, this is a time for initiative, action, and innovation. It is a time when our resource alternatives must be systematically delineated, our resource priorities carefully established, and our national energies effectively mobilized to conserve and protect our precious natural resources.

THE PEOPLE CARE ABOUT POLLUTION

Mr. TYDINGS. Mr. President, in one respect the pollution problems facing this Nation are identical to the other major difficulties confronting the United States today: They will only be solved if the people of our country truly desire it.

A significant indication of how the people in Catonsville, Md., feel about State pollution laws and the water quality of the Chesapeake Bay is revealed in yesterday's Evening Sun.

Fifteen citizens of Catonsville were asked "Do you think Maryland's water pollution laws should be better enforced, especially regarding the Chesapeake Bay?"

I ask unanimous consent that the article now be printed in the RECORD so that we may read their reply.

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

SHOULD POLLUTION LAWS BE BETTER ENFORCED?

Question: Do you think Maryland's water pollution laws should be better enforced, especially regarding the Chesapeake Bay?

JOSEPH A. DALFONZO, barbershop owner. Yes, anyone who is a lover of fishing, I would assume, would resent the pollution the most.

Boat enthusiasts, fishermen, people who like seafood, even the fishing industry, would be highly against it.

I would assume the government will do something about this eventually.

WILLIAM KENNEDY, homebuilder. Yes. It destroys our national natural resources and we won't have the use of them as we have in the past. If we don't do something to protect them they'll be gone.

Mrs. LOUISE JONES, housewife. I definitely do. We go fishing and it seems like when you're looking for a lake that seems decent enough to take your family for a picnic you find pollution in many areas.

If the state would make the laws stricter for ordinary people throwing things in the water, your parks and recreation areas would be better areas for children.

GEORGE BUTTS, truck driver. I do. Because I like to fish and I think it would be more healthy. I've seen quite a bit of it.

RONALD DELPH, farmer. Definitely. Something should be done about it. If it keeps going the way it is pollution will kill all the sea animals.

I think it should be up to the state to enforce the laws more. The state should see that industries adopt methods to prevent pollution.

Mrs. JOYCE KEPAS, housewife. Yes. Because the disease that is caused by pollution spreads not only along the waterfront but to the counties as well. There are many streams in the county that are unsafe to let your children play in.

We happened to put a down payment on a house that had a polluted stream on the ground around it, so I know first hand it exists.

For an area such as Baltimore, which is supposed to be highly civilized, I think we are way behind.

WAYNE CAVEY, student. Well, I think they should have a law not to throw anything into the bay or have any pollution.

They should investigate the industries and see what they dump into the bay, individually, like dyes or some kinds of chemicals, and if they don't revise their methods, they should be fined.

EUGENE J. SWANN, fireman. I definitely think they should. There's so many things that are a thermal threat to the bay. At certain times of the year the fish are attracted to that hot water that is poured into the bay by power companies and at certain times they are not.

I think the state should take a hand to find a way to control the various companies and find out what type of chemical is used by the power companies. The water isn't a threat, but I think the chemicals that are in it are.

TIMOTHY HOFFMAN, fireman. I think they ought to start with the larger companies and industries instead of picking on the small person all the time.

They contribute more to it than the average person and I believe they should be the first ones to be stopped. I think the state should exert more control on the industries if it's possible. I don't know, somehow.

Won't be long, you won't be able to get a hard crab out of there, if this keeps up.

MARVIN MEYER, clothing store owner. Definitely. There probably are laws on the books and if they were enforced, I think that the biggest part of pollution would stop.

TONY RETTALIATA, student. Well, you can't go swimming anymore. I guess the only thing you can do is write the congressman and let him know—talk to him if you can.

I think the state should make the industries control the pollution and fine them if they don't. And they should have inspectors go around and check to make sure they're doing it.

Mrs. RICHARD WEIBEL, housewife. Why can't the industries solve the problem among themselves? I think the state should lend a hand, but as far as doing it entirely, no.

I think the men that own these industries have their rights but I do think something should be done.

WILLIAM H. JOLLY, telephone company employe. I certainly do. It's not even fit to swim in.

It seems like our crab population was down last year, whether this is a biological, cyclic condition or not, I don't know.

I've been fishing in the bay for about 20 years and see more dead fish every year. I think something should definitely be done.

I wish I knew what the industries have to do to combat the problem. I'm quite sure there are people who do.

DAVE LUBER, assistant bank manager. Yes; they should be enforced more and they should also make them stronger, as indicated in the series this week.

Anybody that has access to the bay—the city sewage plant, industries, power companies—should revise their methods.

They should start thinking before they do it, instead of thinking about the dollar all the time.

Mrs. DONNA ASQUITH, cosmetologist. Definitely. Because I think it's ruining our seafood industry.

Not only that, it's harming our beaches, for people who can't afford to go to private country clubs or pools.

OPPOSITION TO THE LOTTERY PROPOSAL

Mr. HATFIELD. Mr. President, it seems that President Nixon has misunderstood the threat to freedom and equity which conscription poses to America. The President has proposed to reform the draft through a lottery. I submit that such a proposal is not reform at all but only a random distribution of inequity. Substituting Lady Luck for General Hershey will not alter the fact that some young men are forced into service and denied their individual liberty while others escape any military duty. An attempt to reform the draft is somewhat like trying to reform slavery—one does not reform inequity, one abolishes it.

Patching up the draft will not necessarily move us toward an all-volunteer Army. The continuation of a peacetime conscription serves as a case in point. Though the draft had served its usefulness, the impetus of bureaucratic machinery and its effect upon the American public has continued to perpetuate an outmoded Selective Service System. Similarly stopgap lottery system will only postpone the necessary transition to an all-volunteer military. As long as the incentives for voluntary enlistment are not improved, the undemocratic principle of the military draft is further entrenched in our society.

This proposal will only prolong the alienation of our youth and prohibit us from achieving a greater realization of freedom for all. The dehumanizing forces in our society must be halted if we are to regain youth's confidence and participation in our democratic system. Delaying promised action to end conscription is certainly not the answer to such a pressing issue.

THE GRANT CONSOLIDATION ACT

Mr. PERCY. Mr. President, President Nixon recently submitted a message to the Congress, in which he proposed legislation which would give the President power to initiate the consolidation of closely related Federal assistance programs, and to place consolidated programs under the jurisdiction of a single agency. I believe that the President's proposal constitutes a sound and reasonable approach toward resolving the vexing problems created by the presently fragmented and uncoordinated Federal grant-in-aid system.

The major problem of the Federal grant-in-aid system revolves around the question of how the Federal Government should structure its services delivery system so that the benefits thereof effectively reach the target areas and individuals in as efficient and economical manner as possible. We are all too familiar with past history in this area; it is a history replete with examples of waste, inefficiency, and unfulfilled needs. It is a history which bears witness to the inadequacies inherent in a system whereby the Federal Government attempts to meet social and economic needs without fully taking into account the practical realities of the situation.

In his message to the Congress, President Nixon aptly summarized the present situation when he declared:

As grant-in-aid programs have proliferated, the problems of delivery have grown more acute. States, cities, and other recipients find themselves increasingly faced with a welter of overlapping programs, often involving multiple agencies and diverse criteria. This results in confusion at the local level, in the waste of time, energy and resources, and often in frustration of the intent of Congress.

The accurateness of the President's description can be truly appreciated by considering the problems and frustrations facing a mayor of a fair-sized city, who has dedicated his administration to bettering the lot of his community. During the course of his administration, the mayor would invariably turn to the Federal Government for financial and technical assistance. Much to his chagrin, he would be greeted with a plethora of Government grant-in-aid programs, and both he and his programs would be buried in administrative detail and bureaucratic redtape.

As my colleagues in the Senate know, the scenario I have just described is unfortunately not a figment, but a reality. The more than 600-page catalog of Federal assistance programs published by the Office of Economic Opportunity is mute testament to the deplorable state of affairs we all know exists.

President Nixon's proposed Grant Consolidation Act would resolve, in large measure, the present problems associated with the delivery of Federal assistance programs. The President is seeking to mold the many programs, the diverse criteria, and the multiple agencies into a rational, productive, and efficient system within which promises and performances can be matched to the benefit of our people and our Nation. I welcome his initiative and applaud his efforts.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, informed the Senate that, pursuant to the provisions of section 301, the Speaker had appointed Mr. MCCLURE of Idaho, as a member of the Joint Commission on the Coinage, to fill the existing vacancy thereon.

The message announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 2718. A act to extend for an additional temporary period the existing suspension of duties on certain classifications of yarn of silk;

H.R. 4229. An act to continue for a temporary period the existing suspension of duty on heptanoic acid;

H.R. 4239. An act to amend the Tariff Schedules of the United States so as to prevent the payment of multiple customs duties in the case of horses temporarily exported for the purpose of racing;

H.R. 8644. An act to make permanent the existing temporary suspension of duty on crude chicory roots;

H.R. 8654. An act to provide that, for purposes of the Internal Revenue Code of 1954, individuals who were illegally detained during 1968 by the Democratic People's Republic of Korea shall be treated as serving in a combat zone;

H.R. 10015. An act to extend through December 31, 1970, the suspension of duty on electrodes for use in producing aluminum;

H.R. 10016. An act to continue until the close of June 30, 1971, the existing suspension of duties for metal scrap; and

H.R. 10107. An act to continue for a temporary period the existing suspension of duty on certain istle.

HOUSE BILLS REFERRED

The following bills were severally read twice by their titles and referred to the Committee on Finance:

H.R. 2718. An act to extend for an additional temporary period the existing suspension of duties on certain classifications of yarn of silk;

H.R. 4229. An act to continue for a temporary period the existing suspension of duty on heptanoic acid;

H.R. 4239. An act to amend the Tariff Schedules of the United States so as to prevent the payment of multiple customs duties in the case of horses temporarily exported for the purpose of racing;

H.R. 8644. An act to make permanent the existing temporary suspension of duty on crude chicory roots;

H.R. 8654. An act to provide that, for purposes of the Internal Revenue Code of 1954, individuals who were illegally detained during 1968 by the Democratic People's Republic of Korea shall be treated as serving in a combat zone;

H.R. 10015. An act to extend through December 31, 1970, the suspension of duty on electrodes for use in producing aluminum;

H.R. 10016. An act to continue until the close of June 30, 1971, the existing suspension of duties for metal scrap; and

H.R. 10107. An act to continue for a temporary period the existing suspension of duty on certain istle.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

INCREASED PARTICIPATION BY THE UNITED STATES IN THE INTERNATIONAL DEVELOPMENT ASSOCIATION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the unfinished business be laid before the Senate.

The PRESIDING OFFICER. The bill will be stated by title.

The BILL CLERK. A bill (H.R. 33) to provide for increased participation by the United States in the International Development Association, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the bill. The Senator from Montana is recognized.

Mr. MANSFIELD. Mr. President, without surrendering my right to the floor, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, pending before the Senate is a bill—H.R. 33—to provide for U.S. participation in the amount of $480 million over 3 years in the second replenishment of funds of the International Development Association. It is a bill which in one form or another has been before the Congress since April of 1968. In other words, for a variety of reasons—some good and some not—we have in effect been avoiding our international obligations in the area of peaceful, as distinct from warlike, cooperation.

The proposal before us today incorporated in H.R. 33 derived in part from an initiative of the U.S. Government—not to mention the fact that the entire institution of the IDA owed its origin in large measure not merely to the U.S. Government but to the U.S. Senate. Our executive branch representatives as long ago as 1966 took a lead in beginning long and difficult negotiations among 18 developed member countries of the IDA for a second replenishment of the Association's resources. Perhaps those concerned—although many of them rather tough-minded bankers—were a trifle naive when they originally contemplated a total contribution of almost $1 billion from the United States over a three-year period. Or perhaps they were being more sanguine than events permitted about the chances of ending the war in Vietnam and bringing U.S. military expenditures under some form of control. In any event, the original request has been scaled down to just about half the original amount. Even so, the United States has been the main reason for a situation in which no less than three tentative deadlines for action have been missed since June of last year.

Fortunately, however, the other industrialized countries—notably our European friends from whom we are so used to castigating for parsimonious attitudes toward defense expenditures—have taken a forthcoming and responsible attitude toward the need for the developed countries to help the less developed nations of the world. As an instance, the Netherlands acted last evening to make its first installment available to the IDA, even though the replenishment agreement has not become operative.

Indeed, 12 of the 18 scheduled contributing countries to the IDA have already completed action and are all in various stages of making contributions available to the IDA, even though the United States by failing to act has prevented any formal ratification of the second replenishment plan. In this connection, particular praise should be given to the Canadians, who have pledged and made available for use their entire 3-year contribution of $75 million. Almost all the other 11 countries have given final approval to use of their first year's allotment. In addition, the Association has been able to use the $75 million transferred by the World Bank last fall from its fiscal year 1968 net income. The IDA in fiscal year 1969 thus has had available over $200 million in resources, when in fact it looked for a time as if the Association virtually would have to close its loan window for at least an interim period while waiting for the U.S. Congress to make up its mind.

Mr. President, I see no need to go into a description of what the IDA is, what it does, and what it means to the underdeveloped countries and to the future of the international community of nations. This kind of material is available in both the committee hearings and the committee report on the bill. Moreover, this will have been the third time—or, rather, the fourth time, counting the Monroney resolution of 1958—that the Senate has considered the role and the merits of the International Development Association.

Today I prefer, and indeed consider it imperative, to emphasize a more general question; namely, the sense of values maintained not only in this body but in the country at large. It is being noted repeatedly in this Chamber that the U.S. Government is primarily responsible for the domestic welfare of our people and that we really cannot afford to spend money abroad. Personally I have very great sympathy for the proposition that we have become overextended internationally and that we have been paying too little attention to urgent domestic needs. But this kind of argumentation does not mean that we must be stampeded into some kind of headlong retreat from our obligations abroad, and especially from the idea of creating a peaceful community of nations in the world. The very odd thing about this argument is that it always seems to be trotted out when we are considering relatively modest sums for peaceful purposes, but seldom gets much attention when we are dealing with enormous expenditures devoted to warlike purposes.

The chairman of the Foreign Relations Committee had occasion during the most recent hearing on this bill with the new Secretary of the Treasury, David M. Kennedy, to ask whether the total sum of $480 million requested over a 3-year period from the United States for the IDA would do more than keep the war going in Vietnam for something short of a week. The answer is that this total sum is actually less than we spend on the average in one week of fighting in Southeast Asia.

I do not know how people can argue that we can afford an annual $80 billion defense budget but not the sum of $160 billion a year for IDA lending in each of the next 3 years. What in the world do people think we are spending armaments money for if it is not for international, as opposed to purely domestic, purposes? The greater portion of these defense expenditures admittedly are made within the United States. At the same time, we must not overlook the fact that approximately half of our past contributions to the IDA have also been spent in the United States, even without any tied-loan provisions being involved.

This brings me to another subject which needs to be emphasized in terms of this pending proposal. For once, the United States has demanded and received special treatment from its allies among the developed countries who are joining with us in this effort to help the poorest countries of the world. There is contained in the second replenishment agreement a complicated formula which assures that there will be no balance-of-payments impact on the U.S. position at least until the middle of 1971, and a rather modest effect annually thereafter.

Frankly, it gives me considerable pleasure to see a document which has a subtitle which refers to "Special Arrangements for the United States." I wish

to share this pleasure with Senators and accordingly ask unanimous consent to insert in the RECORD at this point a document entitled "Appendix to Resolution (Annex A)." This is a part of the replenishment agreement drawn up by the Executive Directors of the IDA and, of course, the World Bank—since World Bank personnel, including executives, under a sort of "second-hat" arrangement comprise the entire working force of the IDA.

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

APPENDIX TO RESOLUTION (ANNEX A)

PROCEDURAL MEMORANDUM REGARDING USE OF CONTRIBUTIONS UNDER SECOND REPLENISHMENT

I. Introduction

Pursuant to paragraph (f) of the Resolution adopted by the Board of Governors of the Association (herein called the Second Replenishment Resolution) providing for the second replenishment of the resources of the Association, this memorandum sets forth the procedure which the Association will follow in using the contributions of the contributing members to the second replenishment (including Supplementary Contributions as referred to in the second Whereas clause in the Second Replenishment Resolution) to meet its disbursement requirements on Second Replenishment Credits and to maintain an appropriate working balance.

The term "Second Replenishment Credits" shall mean all credits entered into after the date when the replenishment authorized by the Second Replenishment Resolution shall have become effective (the Effective Date) and any credits entered into prior to the Effective Date and deemed by the Association to be made from resources provided to the Association under the Swiss Confederation loan referred to in the Preamble to the Second Replenishment Resolution and from resources provided by any transfer by the Bank to the Association authorized after June 30, 1968.

II. Initial drawing rules

Whenever the Association decides to make a periodical drawing on contributions (the Drawing), it shall draw:

(a) upon the contribution of each contributing member which shall have notified the Association by the date when the Executive Directors of the Association shall have adopted their report submitting the Second Replenishment Resolution to the Board of Governors that it desires its contribution to be used only on a *pro rata* basis, for its *pro rata* share of the Drawing;

(b) upon the contribution of the United States, for the lesser of (i) its *pro rata* share of the Drawing and (ii) such amount as shall represent identifiable procurement in the United States under Second Replenishment Credits (as reasonably determined by the Association, taking account from time to time of such procurement on a cumulative basis within a year prior to the date of the Drawing), any excess of (i) over (ii) accruing before June 30, 1971, or thereafter if and to the extent that amounts are available under paragraph (c) below to cover the balance of the Drawing, becoming a "Deferred Amount;"

(c) upon the contributions of other members, *pro rata* among such members, up to the balance remaining of the Drawing;

(d) thereafter, if needed, upon the contribution of the United States excluding Deferred Amounts, up to the balance remaining of the Drawing;[1] provided, however, that no drawings under this paragraph (d) shall be made prior to July 1, 1971; and

(e) finally, upon the Deferred Amounts of the contribution of the United States for any balance remaining of the Drawing; [1] provided, however, that no drawings may be made on any Deferred Amount prior to the expiration of three years after such amount was deferred.

Notwithstanding the foregoing, any portion of a contribution of a contributing member paid in currency (either of the contributing member or of another member) for which notes or similar obligations shall not have been substituted in accordance with Article II, Section 2(e) of the Articles of Agreement of the Association will be used by the Association more rapidly than provided above if such contributing member so requests.

III. Drawing rules after termination of special arrangements for the United States

If the United States notifies the Association that it waives the special arrangements set forth in II above, the Association, whenever it decides to make a Drawing, will thereafter draw *pro rata* on the undrawn portions of the contributions of contributing members.

IV. Carry-over

Immediately prior to the Effective Date the Association will have, *inter alia*, resources available to it derived from the 10% portions of subscriptions, from profits and from transfers to the Association authorized by the Bank prior to July 1, 1968, but not yet utilized. (The amount of such resources is herein called the Carry-Over.) If it proves necessary at any time to meet disbursements on Second Replenishment Credits, the Association may, in anticipation of the receipt of contributions under the Second Replenishment, use these resources for that purpose. To the extent that the Carry-Over is so used, the Association shall, whenever such contributions become available for the purpose (a) draw on such contributions so that the position of each contributing member shall, to the extent practicable, be adjusted to that which it would have been if the contributions had been initially available when needed to meet the disbursements and (b) restore the accounts from which amounts were used to meet such disbursements.

V. Determination by the Association

Apportionments, adjustments and other calculations provided herein may be based when necessary upon approximate amounts and estimates of the Association.

Mr. MANSFIELD. Mr. President, taken in conjunction with the fact that the other developed countries will put up $3 for every $2 contributed by the United States, it seems to me that the IDA is one of the rarest and most valuable instruments of true international cooperation for peaceful developmental purposes. In addition to the formal agreements of the past, certain of the developed countries—most notably Sweden—have contributed something like $65 million to the IDA over the years completely of their own volition, because of their belief in the merits of the joint endeavor. They have done so with full understanding that the terms of IDA credits are the most liberal or "softest" available to the underdeveloped world.

In this last connection I have some understanding and sympathy with those who complain about the highly concessional terms given by the IDA. On the other hand, there is little question that the debt repayment burden of the poorest countries has become so great that they cannot really handle anything but highly flexible terms. It is conceivable, at least to me, that in talking about future replenishments full consideration will have to be given to the mutability of such factors. But at this advanced stage in the process of approval of the pending agreement, no useful purpose is served by pulling this particular plant out to examine its roots.

Mr. President, I do not believe in long presentations of legislative proposals. Surely the great majority of my colleagues already have determined their positions on the pending bill. Therefore, I will close with one simple proposition: If we believe in the cause of peaceful economic development in the poorest nations of the world, and in doing so with the fullest possible cooperation from our friends and allies in the developed world, then I believe the IDA deserves our vote of confidence. It really is just about as simple as that. And I would remind my colleagues that all the hundred and more countries associated with us in the IDA are waiting for us to act and to make the second replenishment a reality.

Mr. JAVITS. Mr. President, I shall have a further statement to make on the International Development Association, as the debate develops.

I am a member of the Foreign Relations Committee, and we had quite a discussion in the committee about IDA. If any amendment is offered, I shall wish to be heard again.

For the present, may I just support very strongly that which the majority leader has already said, and the support which I am sure our chairman—as the whole committee did—will give to this idea.

In dealing with it, for the purpose of this preliminary debate, I should like to emphasize three points.

First, that IDA developed right here. It is the product of the initiative of former Senator Monroney, of Oklahoma, and I supported it at the time it was first developed. I consider it a most enlightened idea, because, although it is a soft loan window, it is still a loan rather than a grant. The loan becomes infinitely more significant, because, although it takes a long time—it is a 50-year credit—nonetheless it must be repaid. In the life of nations, even 50 years is not an inordinately long time, and I would much prefer it to a grant.

I am sure that if the same program were administered under our foreign aid program, it would be unthinkable that it be anything but a grant; but, because it has international auspices, the recipient countries cannot blame the United States, for example, that it is exacting loan terms which complicate their balance sheets and their budgets and their opportunity for other credits. This is a multilateral international fund, administered through an international agency. Therefore it is acceptable to the recipient developing countries, even though it is in loan form. I consider this extremely desirable.

Second, two questions always rise in American minds. One, are we better off doing this ourselves, and thereby getting the credit for the United States? Two, is it a fair allocation of the responsi-

[1] This drawing would be in addition to drawing on the United States subscription under (b).

bilities of the world? Are we carrying less or more than we ought to carry in respect?

In my judgment, Mr. President, one thing we are learning is that we gain far more than we lose by making such loans under international auspices. In a sense this makes us somewhat anonymous, though, as the principal financial power on earth, anything that is done by the United Nations or any similar agency is always credited to us in terms of good will. We do not have to carry the responsibility for being the creditors insisting on conditions with respect to the operations of a particular country or its economy. It is in that situation where there is resentment, which becomes counterproductive in terms of international relations. An international agency such as the IDA, working under the auspices of the World Bank—which has the most outstanding reputation in this regard—stands very much better able to do the things we would do ourselves.

The third point in this matter, which I think is extremely important, is that in this way we have found the most effective means for sharing the burden with other nations. We have 55 percent of the gross annual product of all the members of the contributing group to IDA. Yet, in this replenishment we participate only to the extent of 40 percent, so that for every $2 we put up, others put up $3. I think that is a critically important matter.

Incidentally, the contributions from others, and successive replenishments, have grown very materially, especially as there is built into our contribution a balance-of-payments protection, for we essentially provide for the loans to be tied to purchases in this country.

For all those reasons, I believe this represents a constructive and intelligent commitment by the United States to the developing countries of the world.

Also, one always hears the argument, "Why should we put up $160 million a year for this purpose when we have so many problems in our own country?"

The answer is that the greatest problem in our own country still remains the peace of the world and that this is a tremendous contribution to the maintenance of peace. After all, although we are at war in Vietnam and we have grave tensions in many parts of the world, including the Middle East, it could be much worse than it is if developing nations with enormous populations, occupying tremendously strategic parts of the globe, felt that there was no hope for them and that they were facing an advanced industrial world which was not concerned about them.

This is something the American people have to remember. We do not hesitate to spend $80 billion a year for national security. In my judgment, the kind of expenditure contemplated here is, dollar for dollar, an infinitely better investment than so much of the sterile money, necessary as it is, which we spend for the hardware and the compensations of national defense. That is the classic argument with respect to foreign aid. That does not make it invalid. It remains as valid today as it was in 1948, when it was first proposed in the Greek-Turkish aid program by President Truman.

So, Mr. President, because it is intelligent, because it works, because it makes it possible to share the burden, and because it gets us the greatest credit with the least discredit, I deeply believe that it is very statesmanlike to proceed in this way. I like it particularly because it is loan money, which is dignified and encourages self-respect; yet, it is precisely the kind of money which, if we were giving it, would be given on a grant basis, for which there would be no hope of repayment.

I hope very much, Mr. President, that this authorization will be approved.

Mr. DOMINICK. Mr. President, I believe there are grave defects in the pending bill and I would like to try to bring some of them out. A great many of them were brought out in the supplementary views of the Senator from Missouri (Mr. SYMINGTON).

Is my understanding correct, if I may ask the Senator from Alabama, that the distinguished Senator from Missouri (Mr. SYMINGTON), in fact, voted against the bill in committee?

Mr. SPARKMAN. That is correct.

Mr. DOMINICK. Were there other votes against it in committee?

Mr. SPARKMAN. One more. The Senator from Tennessee (Mr. GORE) joined in that vote.

Mr. DOMINICK. Senator GORE.

I bring that out for this reason. Some years ago, when I had the privilege of serving with the Senator from Alabama on the Committee on Banking and Currency, we had a subcommittee called International Financing. I assume we still have it. If my recollection is correct, at that point the Secretary of the Treasury asked for some $6 billion—or $2 billion, I guess it was—in increased American participation in the capital of that bank. It was passed through the committee against my objections. We went to conference with the House under the former distinguished Senator from Pennsylvania, Mr. Clark, who was then the chairman of that conference; and time after time after time I kept telling him that, if my opinion was correct, the bank had more than enough capital and more than enough subscriptions to provide the capital. Perhaps I am talking about a different bank.

Mr. SPARKMAN. I believe that the Senator may be making reference to a request made by the World Bank. This is the International Development Association we are discussing.

Mr. DOMINICK. I know. It is an offshoot of the World Bank, though, is it not?

Mr. SPARKMAN. That is correct; but its funds are not a part of the funds of the World Bank.

Mr. DOMINICK. Fine. I thank the Senator from Alabama. I was pretty sure I was right and that is why I wondered, how come this had gone to the Foreign Relations Committee and not to the Committee on Banking and Currency. I can see that the Senator is talking about the International Development Association and not the World Bank, even though, as a matter of fact, both are run by the same board of directors.

As a matter of fact, if my understanding is correct, former Secretary of Defense, Mr. McNamara, is now the President of the World Bank, is he not?

Mr. SPARKMAN. Yes, he is President of the World Bank—that is right.

Mr. DOMINICK. Is he not also head of the International Development Association?

Mr. SPARKMAN. He is also president of the IDA.

Mr. DOMINICK. That is what I thought.

Mr. SPARKMAN. That is true.

Mr. DOMINICK. That makes me even more troubled over this particular bill, if I may say so; and I do not mind saying so, to be perfectly frank, because Mr. McNamara and I—and he is a constituent of mine and I should be careful about what I say—have disagreed on a great number of items in connection with the defense of this country.

I certainly disagree with what I understand is his new policy in the World Bank which is to start making soft loans. He is doing it through the IDA. As I understand it, there is nothing within the charter of the World Bank, or of IDA, which requires that this be on a soft-loan basis, which is not, in fact, a loan at all. My understanding is that during the first 10 years there is no repayment of any kind, that all they have is a three-quarters of 1 percent interest as a service charge. I do not even know whether we have this service-charge payments, have we?

Mr. SPARKMAN. Yes.

Mr. DOMINICK. Good.

Mr. SPARKMAN. The Senator has correctly stated the situation regarding the interest question and the grace period.

Mr. DOMINICK. Have we had any service charge repayments?

Mr. SPARKMAN. Repayments?

Mr. DOMINICK. Yes.

Mr. SPARKMAN. Yes.

Mr. DOMINICK. They have been making those payments?

Mr. SPARKMAN. They are up to date.

Mr. DOMINICK. We are not in default on any of those payments to the best of the Senator's knowledge?

Mr. SPARKMAN. No.

Mr. DOMINICK. I realize that we put up over 40 percent of the total fund of the World Bank, and that we have 26 percent of the voting power. I also realize that as one of the leading countries in the international field, we should be of assistance where we can; but we are also in some trouble with our own problems right here in our own country with Federal spending, and we are being asked to pledge at least another $160 million a year for 3 years to the International Development Association which will make soft loans. This is the very thing, under the foreign aid bill, that we have been trying to get rid of for at least the past 8 years since I came to Congress.

I remember being the author of the first raise in interest rates we had on

the economic development loan situation under the Foreign Aid Act, in which I declared at the very least that we should ask other countries, if we are going to give them money for loan purposes, to pay at least the lowest amount of interest that any American citizen is required to pay, which would be, under an REA loan, 2 percent. We got up to 2 percent through the Senate, but we got it knocked down again in conference. When the distinguished Senator from Virginia (Mr. BYRD) came into this, he was very helpful, as was his predecessor on this same type of subject.

Here we go all over again, only this time we are not doing it through the front door but we are doing it through the back door. We are not doing it through foreign aid but through IDA.

The Senator from Missouri (Mr. SYMINGTON), if I understand it correctly, and I should like to have the comments of the Senator from Alabama on this, did add an amendment to the bill which was put into effect last year which stated that, to the extent there were net earnings in the World Bank in excess of $170 million, they should try to use them to match the amount of money to which we were subscribing. Is that approximately correct?

Mr. SPARKMAN. An amendment calling for matching sums by the Bank was offered in the committee bill. We voted it out, but it never did come to the Senate floor. That amendment was approved. There are objections to such a proposal because we cannot dictate distribution of the income of the World Bank.

There is a Board of Governors. The Senator mentioned the President of the Bank, former Secretary McNamara. Secretary McNamara can propose, but he cannot dispose. The Board of Governors has to approve everything.

Mr. DOMINICK. That gives me some encouragement.

Mr. SPARKMAN. He has a favored spot, there is no question about that, but there is a Board of Governors and all actions taken must be taken through them.

May I say to the Senator from Colorado that it was the Senator from Missouri (Mr. SYMINGTON) who proposed this amendment last year. This year he did not propose the same amendment. He did make a proposal that was an entirely different version, that looked, more or less, to the future; but the limitation that was contained in the proposed amendment last year was not offered this year, and the Senator from Missouri (Mr. SYMINGTON) did not insist upon the amendment that he discussed in the committee, and withdrew it without a vote.

Mr. DOMINICK. I thank the Senator from Alabama for clearing up that point. I do think it is worthwhile to point out at this time that the World Bank has total reserves at the present time of $1.16 billion—and I am reading from the views of the Senator from Missouri (Mr. SYMINGTON)—

The Bank's financial backing—in the highly unlikely event of major defaults—also includes the uncalled capital subscriptions of member countries, totaling $20,647,710,000; the U.S. portion of that total is around $5.7 billion.

Some years ago, I started saying, when we got into this matter in the Banking and Currency Committee, we went into conference. I kept saying that I did not believe that the World Bank was in as tight financial straits as it indicated for future loans, and that if we ever got the actual facts, we would find that with the repayment of loans on the low cash basis, it had more than enough to continue its operations without further subscriptions by the United States.

The then Senator from Pennsylvania, Mr. Clark, took the opposite view. After about four conferences on the matter, he finally got to the head of the World Bank. He made a compilation of the amount of money that was to be repaid over the period during which subscriptions were going to become due, the amount of money in default that was going to be called in if the countries could pay, and found that the Bank had in excess of $6 million that had not been reported to Congress. And here we were being asked for $2 million of capital subscriptions, which was not necessary.

As a result of that, we compromised our attitude, went along with the House, the Senate position was withdrawn, and we saved the taxpayers about $2 million by getting the facts with respect to the World Bank.

I bring that up because the International Development Association is certainly a direct offshoot of the World Bank.

It is my understanding that the World Bank takes all its questionable loans—if they can be called loans at all—and puts them in the International Development Association. So the Bank loans are pretty solid, since I gather it has profited to the extent of around $170 million a year. That is a pretty good, profitable organization. It has been doing pretty well with its banking methods.

If the World Bank has uncalled subscriptions of some $20.6 billion, of which $5.7 billion are ours—perhaps the Senator could clarify this—and there are still many of these obligations, how much are other countries putting into the International Development Association as we put up what is asked for in the bill?

Mr. SPARKMAN. If the Senator will refer to page 5 of the report, I believe he can get the information he is asking for country by country.

Let me say, however, that actually the United States puts up 40 percent. I believe the Senator mentioned that fact a few minutes ago. The other countries of the world put up 60 percent.

May I say, with respect to the callable capital the Senator mentioned with reference to the World Bank, under the original subscription each nation participating subscribed to a certain part of the capital stock, only a portion of which had to be paid in.

Mr. DOMINICK. I understand that.

Mr. SPARKMAN. The rest of it is callable capital. In other words, it is not capital due to have been paid and not paid.

By the way, I wonder if the Senator, in discussing the difficult time we had in the Banking and Currency Committee a few years ago, was not talking about the Export-Import Bank. That committee handled the matter, and the facts that the Senator from Colorado has given are almost the exact facts that applied to the Export-Import Bank matter.

I think the Senator from Maine (Mr. MUSKIE) remembers when we had a long, drawn-out conference on the Export-Import Bank, involving much of that very question. I wondered if the Senator meant that matter, instead of the World Bank.

Mr. DOMINICK. It is entirely possible. I do not remember clearly.

Mr. SPARKMAN. It sounds like the Export-Import Bank, because I heard what the Senator just said. We made further inquiry and found that the bank had resources which we decided were sufficient to carry it on.

Mr. DOMINICK. The point I was trying to make was that we did make further inquiries, but we did it only after we got into conference and had a deadlock with the House.

Mr. SPARKMAN. Yes. May I say one word while we are talking about the World Bank? It is true there is a $1.2 billion reserve, but of that, over $900 million is devoted to hard loans to countries that are applying or will be applying.

Mr. DOMINICK. But those countries have returned their loans at a net earning rate of $170 million a year to the World Bank for good, hard loans.

Mr. SPARKMAN. That is true, but there is a constant movement, a constant coming in, of loan applications; and much of this money is already earmarked for that.

I think this point is important, too: Every year the World Bank gives a part of its net income, or earnings, to the International Development Association. During the time that IDA has been in operation, the World Bank has given $285 million to the association.

Mr. DOMINICK. A total of $280 million since 1964?

Mr. SPARKMAN. $285 million.

Mr. DOMINICK. $285 million since 1964?

Mr. SPARKMAN. That is correct.

Mr. DOMINICK. So, within a period of 5 years, it has put up $285 million?

Mr. SPARKMAN. Yes.

Mr. DOMINICK. Here we are being asked to put up, in 3 years, $480 million all by ourselves.

Mr. SPARKMAN. The reason why I brought the matter up was that the Senator said something about using the World Bank's profits. I pointed out that the agency has had gifts from the World Bank of $285 million in 5 years time.

Mr. DOMINICK. I am happy to hear that they are doing something.

Mr. SPARKMAN. It is true we are asked to put up $160 million a year over a period of 3 years, but, again, that is 40 percent, and that is the percentage that we have agreed to.

This is a multilateral program. It is based on an agreement among a number of nations which have gone in together. This way, at least, the aid that normally we would be expected to provide is, I think we can say, safely cut down by reason of other countries sharing the burden with us.

Mr. DOMINICK. Let me assure the Senator from Alabama that I am in favor of this multilateral approach. I wish we had regional agricultural banks around the world on a multinational basis, and I have tried to get some interest, in previous administrations, in this type of approach. I have been unsuccessful. I think we are going to need it to prevent starvation in many countries in the future, by giving them technical agricultural know-how.

I think we need those things. Let me also assure the Senator from Alabama that if this were a bill, whereby the United States undertook to supply $480 million to an International Development Association without any multilateral support, I would emphatically insist upon a rollcall vote, and I might anyway, in order to vote against it; because I think, at a time when our country is in the red and is going to continue to be in the red, unless we can make some appropriate cuts that we are going to try to make in spending, and insist upon matching our revenues and our expenditures—at a time like that, to go into something of this sort, which puts another $480 million worth of money into a contingent liability fund, at the very least, which can be drawn on year by year, and thereby increase the problems that we have would be acting in a manner as though we still think we can be Santa Claus to everybody in the world, when we know we cannot be. That is why I am happy that there is a multinational approach to this problem.

There is another problem with this, as I understand it. Most of the IDA loans, as I gather, have been going to India and Pakistan. I happen to have been there, as a member of a committee appointed by former Vice President Humphrey. We were there in December of 1965. At that time, I made inquiry about how much in United States funds was held in India in soft currencies, which was not being repaid, and which could not be under Public Law 480 or the other agreements we had with them.

At that point, in December 1965, the amount was over $800 million. India was not making constructive use of that money. It had not been put into programs. We had not arrived at an agreement by which the funds could be used. We have not yet arrived at such an agreement; and here we are, pouring more money on a 10-year-no-payment basis into India, with a three-quarters of 1 percent surcharge over the next 10 years, and no interest or principal repayments asked for at all. Certainly we have gone pretty far down the road in trying to help India.

In Pakistan, where we have had the same type of situation, although less money is involved because it is a small country, they had reached an agreement with the United States, and they were putting the soft currency money into development of their hamlets, bridges and culverts, wells, sanitation, and other programs throughout their country. So that money was at least being used, which was the purpose for which we put it there to begin with. But the money in India is not being used, and now we are putting more money in.

I presume that they will use the money for whatever they need, on this particular loan, but the question is. Should we just go ahead this way, with the leadership ability we have in the free world, or should we start insisting upon some type of business-like arrangement, where funds that can be used for development are actually going to be used for development, and not just create some kind of inflationary cloud over their currency and put us more in the hole day by day, from the point of view of the United States?

I invite the Senator's comments on those points.

Mr. SPARKMAN. I find nothing in the Senator's statement I wish to quarrel with. I feel quite sympathetic with his point of view. I feel that those local or foreign currencies that have been generated by our aid, ought to be used by those countries for their development, but I realize there are a lot of technicalities involved.

I hope we can work out a program. If I understand correctly, that is what the Senator is aiming at.

Mr. DOMINICK. I am glad the Senator mentioned that. The reason I am saying this, and the reason I point it out, whether it was the World Bank or the Export-Import Bank, the question before was whether we have gone into this in enough detail to really know what they intend to do with the money, to really know whether or not we are going to be using these funds as a pressure instrument, so that we can get some agreement which will be of assistance both to us and the other country, or whether we are just simply throwing more money down the rathole.

I do not know. We do not have any hearing record before us except just this little, short hearing record of 1 day; is that correct?

Mr. SPARKMAN. We had only 1 day of hearings this year. Last year we had rather extensive hearings. Everyone on the committee was familiar, at least all of the returning Senators were quite familiar with the programs, and we did not feel that extensive further hearings were necessary.

Mr. DOMINICK. I really do not have the faintest idea whether anyone else in the Senate feels the way I do about this particular situation. I am frank to say that, with the other work we have had on committees, I have not been able to follow this in as much detail as I would have liked.

But I have had some experience in the field. We had the pleasure, on that particular trip to India, of having traveling with us Dr. Marcy, who is the chief of the foreign aid staff, and who does an excellent job, I might say.

I just happen to feel that we are being asked to do something here that most Senators really have not had a chance to dig into, and that, it may be, ought to be given some more time, or maybe we ought to put on it an amendment to say, "All right, we will do it for 1 year, but let us look at it again next year."

Do we need the whole $480 million committed now?

Mr. SPARKMAN. Mr. President, may I say this word?

The Senator realizes, of course, that this grows out of an international agreement, and it calls for these percentages that have been agreed upon over a period of 3 years. We cannot change that without going back and asking the other countries to negotiate the whole agreement.

The President, the Secretary of the Treasury, and all of those concerned in the last administration, back in previous administrations, and in this administration have recommended and strongly urged the adoption of this legislation. One of the first things that Secretary of the Treasury Kennedy and President Nixon did this year was to ask for the early enactment of this legislation, and our committee responded; we held hearings and held an executive session on the bill. We have tried to expedite it as much as we possibly could, to comply with the request of the President and the Secretary of the Treasury. It has been gone into thoroughly by our committee, not just once but several times.

I believe that if the Senator will read the report carefully and remember that this is a multilateral program that grew out of an agreement among all of those countries named, his questions will be answered. And I hope that his doubts will be resolved.

Mr. DOMINICK. Mr. President, I have been approaching it very carefully because I have read the report. I do know that it is based on a treaty. And if it had not been for that fact, I would have alerted the Senate long since that we would have a full-scale debate to see if we could defeat the measure.

I think we are going at it wrong. There are some 19 countries, as I understand it, on page 5 of the report who are members of the International Development Association. And 11 out of those 19 have already put in their funds to participate in this particular program to replenish their resources. Is that correct?

Mr. SPARKMAN. There are 18 developed countries listed on page 5. And there are 84 underdeveloped countries. That makes a total of 102 countries that participate in the IDA.

Mr. DOMINICK. I count 19 in that table. The Senator counts 18. It does not make any difference.

Mr. SPARKMAN. The question arises with reference to Switzerland. Switzerland is lending money but is not a member of IDA. It did not sign the agreement.

Mr. DOMINICK. It is lending money at an interest rate to the association?

Mr. SPARKMAN. No interest. They are virtually a contributor without having signed the agreement.

Mr. DOMINICK. The Senator knows well that the Swiss are in such shape at the present time that if one wants to deposit money there, he has got to pay them. They do not pay him.

Mr. SPARKMAN. They are a participating member in this.

Mr. DOMINICK. I am happy to hear that 11 out of the total of 18, not counting Switzerland, have gone ahead and actually participated.

Mr. SPARKMAN. There are 12 countries now.

Mr. DOMINICK. Twelve, counting the United States? On page 7, toward the

bottom of the page, it says that 11 of the necesary 12 countries have already completed action on the agreement.

Mr. SPARKMAN. The Netherlands has come in since then.

Mr. DOMINICK. There are still some six that are displaying the same kind of cold feet I have.

If we are giving loans from the International Development Association for a 10-year period with no repayment and no interest, we are contributing to the new resources here for a 3-year period. That means that 3 years from now we may have to do it again.

Mr. SPARKMAN. Probably so.

Mr. DOMINICK. I presume that it will be three-fourths of 1 percent per year as a service charge.

Mr. SPARKMAN. The Senator probably is correct.

Mr. DOMINICK. We are not really talking about $480 million. We are really talking about $960 million.

Mr. SPARKMAN. This is the third time that we have acted on this matter. First we acted when we set it up, and we have replenished it once since then, and now there is a second replenishment.

When they use up these funds, of course, we will be asked to put in such an amount as may be agreed to at that time among the many nations. The United States will have full control of its future position.

Mr. DOMINICK. Has any one of the countries that has already received these grants, as I call them—and soft loans, as the Senator calls them in the committee report—indicated that it is going to repay or can repay?

Mr. SPARKMAN. When they sign the papers for the loan, of course, they promise to pay. None of them has come due yet. In other words, the program has not yet been operating 10 years. Therefore, none of the debts has matured.

Mr. DOMINICK. We have not had a soft loan policy in IDA until fairly recently, have we?

Mr. SPARKMAN. It was set up as a soft loan agency.

Mr. DOMINICK. Was much money loaned out to begin with? It has been going on now since 1964.

Mr. SPARKMAN. No. I would not say that much money was loaned out to begin with. It developed rather slowly. The disbursements in fiscal year 1962 were $12 million. In 1963, they were $56 million. In 1964, they were $124 million. In 1965, they were $222 million. In 1966, they were $267 million. In 1967, they were $342 million. In 1968, they were $319 million. It has been building up over the years.

Mr. DOMINICK. Do they have any anticipated figure for 1969 and 1970?

Mr. SPARKMAN. It is the hope of the Governors of the Bank that they may get to the point of about $400 million a year in loan commitments.

Mr. DOMINICK. I thank the Senator from Alabama. He has been most helpful in answering the questions.

Mr. BYRD of Virginia. Mr. President, will the Senator yield?

Mr. SPARKMAN. Mr. President, I yield to the Senator from Virginia.

Mr. BYRD of Virginia. Mr. President, the distinguished junior Senator from Colorado has made a real contribution to the Senate and to our Nation today in the colloquy that he has had with the distinguished senior Senator from Alabama.

It seems to me that this is a very important matter that the Senate is considering this afternoon. It involves approximately one-half billion dollars. I do not believe anyone can say this is a really high priority item, considering all of the money demands for public moneys that have been made on Congress and on the President.

I would hope that the distinguished senior Senator from Alabama would give consideration to not seeking a vote on this matter today. It seems to me that this is a matter that should be considered at some greater detail by the Senate.

I know that three distinguished members of the Committee on Foreign Relations have grave reservations about the proposal. I refer to the distinguished senior Senator from Tennessee (Mr. GORE), the distinguished senior Senator from Missouri (Mr. SYMINGTON), and the distinguished senior Senator from Delaware (Mr. WILLIAMS).

The Senate is not unduly rushed these days. We do not have much on the calendar. I would hope that the distinguished senior Senator from Alabama would permit this measure to go over until tomorrow for additional debate because there are certainly some items that I want to obtain additional information on.

This is tied up with the World Bank. I think that this is a good time to give some consideration to some of the affairs of the World Bank.

Would the Senator from Alabama entertain a unanimous consent agreement for a time certain tomorrow for a vote, whether it be a voice vote or a rollcall vote, so that we may have an opportunity tonight and early tomorrow morning to give full consideration to what I think is an extremely important measure. It involves a great deal of the taxpayers' money. We are talking about continuing the 10-percent surtax. This is a half billion dollars over a 3-year period.

I do believe that instead of rushing it through, we should debate it today, debate it again tomorrow, and then, if Senators desire, have a vote on it.

Would the distinguished senior Senator from Alabama entertain a unanimous consent agreement along that line?

Mr. SPARKMAN. Let me say this to the Senator from Virginia, first. The Senator from Virginia said something about rushing it through. That may be appropriate so far as action on the floor of the Senate is concerned, but we have had this matter before us in the Committee on Foreign Relations for over a year.

Mr. BYRD of Virginia. But the other Senators have not had the benefit of it.

Mr. SPARKMAN. The various Secretaries of the Treasury and the two Presidents we have had during that time all have urged action on it. This grows out of an agreement with 102 nations involved.

Mr. BYRD of Virginia. Will the Senator yield?

Mr. SPARKMAN. They have urged expeditious action.

Mr. BYRD of Virginia. If we have waited for 2 years, another day will not make much difference.

Mr. SPARKMAN. The question of when the vote shall come is not a matter for me to decide but for the leadership to decide.

Mr. BYRD of Virginia. Will the Senator yield at that point?

Mr. SPARKMAN. I yield.

Mr. BYRD of Virginia. I ask unanimous consent——

Mr. SPARKMAN. Will the Senator withhold that for just a moment?

It makes no difference to me personally, but I do know that Secretary of the Treasury Kennedy and President Nixon are urging quick action on this matter.

Mr. DOMINICK. Mr. President, will the Senator yield to me while the other Senators are discussing the matter?

Mr. SPARKMAN. I yield.

Mr. DOMINICK. It is my understanding that a little more than $200 million has been put in now—$12 million of which is from Switzerland as a sort of contribution—and that out of that total amount $143 million already has been committed to Pakistan and India—two countries alone. I happen to like both Pakistan and India; I have nothing against them; but this seems pretty incredible.

Mr. SPARKMAN. That matter is discussed on page 3 of the report, which the Senator may have seen. It is true that during this year loans to India and Pakistan will be made in keeping with previous arrangements and long-term project developments.

Mr. DOMINICK. Am I correct in stating that approximately $125 million has been committed to India and $18 million to Pakistan?

Mr. SPARKMAN. That is approximately correct, yes.

Mr. DOMINICK. I do not want to be any more difficult than I usually am—which is pretty difficult, I guess, at times, to many people—but let me ask the Senator this. Suppose we do not go ahead with this. Suppose we just do not. Suppose we had a vote on this and the United States' participation did not go in. We are already supporting the World Bank, the Export-Import Bank, the Asian Bank, and a bucketful of other banks. Is there any reason why they cannot get the money from the World Bank to take care of participation, if the United States says it is not going in this time?

Mr. SPARKMAN. The bank can do what it has been doing in the past—give a certain part of its earnings as a grant. But the World Bank itself cannot make the type of loans that are covered here.

Mr. DOMINICK. The total amount is approximately $300 million that the Senator says is proposed to be loaned for 1969—leveling it out at about that level.

Mr. SPARKMAN. Level off at about $400 million.

Mr. DOMINICK. There is already over $200 million in from other countries, and the Bank has $170 million in net earnings.

Mr. SPARKMAN. Yes.

Mr. DOMINICK. So that if the United States did not put up a nickel, they have more than enough money to take care of what their proposals are, which could be cut back.

Mr. SPARKMAN. Twelve countries have agreed on depositing their notification of commitment. Naturally, they do that on the assumption that the United States will come along and do its part.

Mr. DOMINICK. Is it not about time that we found out whether they are just going to assume we are Santa Claus, whether we are going to assume that the executive department runs everything in the appropriation of funds and all the rest, or whether Congress itself is going to take the lead in finding out, both in foreign affairs and in expenditure of funds overseas, that Congress is the one that is the responsible agency?

Mr. SPARKMAN. I think they understand that. But this is a long-term arrangement. It has been running for practically 10 years. We went into it originally. We joined in replenishing the fund once before, and now we are asked to do it a second time.

Mr. DOMINICK. I voted against it the first time.

Mr. SPARKMAN. I think the assumption is reasonable that we will go ahead with it.

Mr. DOMINICK. I thank the Senator for yielding. I would like to get the floor later in my own right.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. MONDALE in the chair). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the vote on the pending measure take place at 15 minutes to 3 o'clock this afternoon.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. DOMINICK. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Will the Senator yield?

Mr. MANSFIELD. Mr. President, I ask unanimous consent that rule XII be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BYRD of Virginia. Mr. President, I rise to oppose the proposal to take $480 million of U.S. tax funds to increase the U.S. participation in the International Development Association.

I had hoped that we might consider this matter for several days; but since many prefer that the vote be taken today, I will make my remarks briefer than I had anticipated.

Mr. President, this is clearly a giveaway program of $480 million of American tax funds in a year and at a time when there is supposed to be a tight squeeze on money to do many necessary jobs in the United States.

This certainly is not a high priority item.

Somewhere along the line in all this Federal spending Congress must decide what it considers to be the most important items and finance those items and let some of the less important ones go to another day.

I submit that this $480 million, which will go to increase the position of the United States in the International Development Agency, is a low priority item.

If the American taxpayers have plenty of money then I think it is fine to go into programs like this one and to increase our participation in these programs. We already are participating heavily in these programs. This is an additional participation.

There is provided $160 million a year for 3 years under this proposal. Therefore, Mr. President, I believe that a vote in favor of the "second replenishment," and that is the way the bill reads, of this fund totaling $480 million is unjustified at the present time.

As has been established on the floor of the Senate today, this International Development Association is a direct offshoot of the World Bank. The profits of the World Bank are roughly $170 million a year.

If the World Bank wants to increase the amount of funds which go to the International Development Association, a direct offshoot of the World Bank, it is making a profit of $170 million and it can use all of that profit to help finance the International Development Association.

Mr. President, I do not see any real need for the taxpayers to be called upon for this additional money. It is a grant. The funds are for 50-year loans. No interest is paid.

Therefore, I do not believe that it is a very wise program for our Government to continue to increase its subscriptions at this particular time.

I have some concern about certain aspects of the World Bank which I wanted to go into, but I shall not do that now because of the lateness of the hour.

In any case, it seems to me that this item of $480 million in additional funds for the International Development Association, coming at a time of high inflation in this Nation, coming at a time when Congress is committed to reducing Government expenditures, coming at a time when the President is committed to reducing Government expenditures, and coming at a time when there is an effort to keep on the statute books the 10-percent surtax which has hit so hard all the American taxpayers, this $480 million is one of many items that Congress can eliminate.

Mr. COTTON. Mr. President, will the Senator yield briefly?

Mr. BYRD of Virginia. I yield to the distinguished Senator from New Hampshire.

Mr. COTTON. Mr. President, I do not wish to trespass on the Senator's time. However, in order to save time I wish to commend him for his position and for his able presentation of it. I wish to associate myself with everything the distinguished Senator from Virginia has said.

Mr. BYRD of Virginia. Mr. President, I am very grateful to the distinguished senior Senator from New Hampshire for his kind remarks.

Mr. President, I wish to mention again that if the Senate feels our Government has plenty of funds, if the Senate feels it is not necessary to bring about some reduction in certain expenditures, if the Senate feels this item going to the International Development Association is of such high priority that these funds must be voted at this time, then, of course, those who feel that way will vote in the affirmative.

But so far as the Senator from Virginia is concerned, I expect to vote in the negative.

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

Mr. BYRD of Virginia. I am delighted to yield to the distinguised Senator from Tennessee.

Mr. GORE. Mr. President, in the past I have many times supported, and I am prepared to continue to support, the programs which lend money for development in underdeveloped countries on a reasonable sound repayable basis with a reasonable rate of interest.

I am unable at this time to support the pending proposal because it does not meet any of those standards. It carries no interest rate at all. Indeed, it is not even anticipated that the money will ever be repaid to the United States.

Let us face it. This is a giveaway. A giveaway is sometimes justified. We have for years had a foreign aid program. In that program we face up to the fact that we are appropriating public funds for aid to particular causes, for particular programs, and some Senators vote for those bills and some Senators choose to oppose them. I have voted for them. I have tried to know, however, for what purpose I was voting taxpayer funds.

Here is another standard that the pending bill does not meet. I challenge any Senator to say for what specific purpose program, or undertaking this $480 million will be used.

Oh, they say, it is multilateral. The funds will be loaned—soft loan lending. Well, what is magic about soft loans? There is something magic about a bank. Some people rush to the conclusion that if the World Bank is going to make soft loans that, somehow, it is a bankable proposition. They will be funds loaned at a rate of interest which will be repaid. That is not the case here. This is the soft loan window. It is never anticipated that one single dollar will be repaid. I challenge any Senator to say for what purpose the money will be spent. We do not know. Yet this is tantamount to an appropriation. Make no mistake about it. This is a commitment of $480 million. For what? Someone tell me.

Mr. DOMINICK. Mr. President, will the Senator from Virginia yield?

Mr. CHURCH. Mr. President, will the Senator from Virginia yield?

Mr. BYRD of Virginia. I yield to the Senator from Idaho.

Mr. CHURCH. I thank the distinguished Senator from Virginia.

The PRESIDING OFFICER. The Chair has recognized the Senator from Virginia. To whom does the Senator from Virginia yield?

Mr. BYRD of Virginia. Mr. President, I yield to the Senator from Idaho.

VISIT TO THE SENATE BY MEMBERS OF THE PARLIAMENT OF COLOMBIA

Mr. CHURCH. Mr. President, I ask unanimous consent that we may have 3 minutes, not to be charged against either side, in order that we might introduce some distinguished guests, now in the Chamber, who are Members of the Parliament of Colombia.

For that purpose, I should like to have the distinguished Senator from North Carolina (Mr. JORDAN), who recently visited Colombia, recognized at this time so that he may proceed with the introduction of our guests.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JORDAN of North Carolina. Mr. President, last fall, a delegation from the Inter-Parliamentary Union, on its way to Lima, Peru, had the great pleasure and honor to stop off in Bogotá, Colombia, to meet with Members of the Colombian Parliament.

We had a most delightful visit, a most entertaining visit, and a most enlightening visit. We visited their Parliament and had an exchange of views for quite some time. We thoroughly enjoyed our short stay, and I know that we profited from it a great deal.

It is my great pleasure now to introduce three Members of the Parliament of Colombia who are visiting the United States as guests of the Senate and Congress.

First, let me introduce Mr. Luis Guillermo Arango, representative from the Department of Antioquia, capital Medellin, Member of Conservative Party.

Cra 42, No. 59–72, Medellin. Bachelor degree 1955 from Colegio San Jose in Medellin; civil engineering degree from National University in 1962; past positions—state representative Antioquia, president of Independent Conservative Directorate Antioquia, president of Young Conservatives in Antioquia; travels in Europe and from 1962 to 1966 in the United States; good English; member of Society of Engineers, Antioquia.

Mr. Roberto Cerlein Echeverria, representative from the Department of Atlantico, capital Barranquilla. Member of Conservative Party.

Cra 52, No. 72–75, Barranquilla: Bachelor degree in 1954 from Colegio Biffi, Law degree in 1963 from Javeriana University, and attended Duke University in 1966; born in Barranquilla November 18, 1938; past positions—municipal judge 1961, city councilman 1963–67, and secretary of the treasury department of Atlantico 1967–68; visited the United States as a student and speaks fluent English.

Mr. Guillermo Plazas Alcid, representative from the Department of Huila, capital Neiva. Member of Liberal Party.

Calle 44, No. 20–48, Bogotá: Born Huila April 26, 1936; bachelor 1955 Colegio Santa Librada and law degree from the University of Cauca in 1961; past positions—municipal judge and mayor of Neiva; travels in Germany and Ecuador. [Applause, Senators rising.]

Mr. GOLDWATER. Mr. President, will the Senator from North Carolina yield?

Mr. JORDAN of North Carolina. Mr. President, before I yield to the Senator from Arizona, I ask all Senators present to come by and meet these gentlemen, shake hands with them, and welcome them to the Senate.

Mr. GOLDWATER. Mr. President, speaking as acting minority leader, I know that I speak the sentiments of both sides of the aisle when I say, "bienvenido, amigos."

RECESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate stand in recess for 3 minutes so that Senators may greet our distinguished guests.

The PRESIDING OFFICER. Without objection, it is so ordered.

Thereupon, at 2 o'clock and 24 minutes p.m., the Senate took a recess until 2 o'clock and 27 minutes p.m.

During the recess, the distinguished guests were greeted by Members of the Senate.

On expiration of the recess, the Senate reassembled and was called to order by the Presiding Officer (Mr. MONDALE in the chair).

INCREASED PARTICIPATION BY THE UNITED STATES IN THE INTERNATIONAL DEVELOPMENT ASSOCIATION

The Senate resumed the consideration of the bill (H.R. 33) to provide for increased participation by the United States in the International Development Association, and for other purposes.

The PRESIDING OFFICER. The Chair recognizes the Senator from Virginia.

Mr. BYRD of Virginia. Mr. President, I just want to say that I think the distinguished Senator from Tennessee (Mr. GORE) made a most eloquent summation of the pending legislation. I associate myself with the remarks that he made, particularly with the point that this goes beyond any reasonable type of loan.

Mr. WILLIAMS of Delaware. Mr. President, will the Senator from Virginia yield?

Mr. BYRD of Virginia. I am happy to yield to the Senator from Delaware.

Mr. WILLIAMS of Delaware. Mr. President, I join the Senator from Virginia and the Senator from Tennessee in stating most emphatically that this is not a loan program but an aid program. There is nothing in the proposal which relates to good, sound, banking prinriples. For example, while they call them loans, the so-called loans are made for a 50-year period. For 10 years there is to be no repayment of interest whatsoever, either required or expected. For the full 50-year period the interest rate will be three-quarters of 1 percent at a time when the Federal Government is having to pay 6½ percent and 7 percent to borrow money. We have to borrow this $480 million and pay 6½ percent or 7 percent interest.

For what purpose? The plan is to loan it out in these other countries at three-quarters percent interest for 50 years with no payment on the principal for the first 10 years and then only 1 percent per annual payment on the principal. In addition, it will be used to finance projects in those areas similar to projects we are having to curtail in our own country. We do not have the money to finance a full-scale war and carry on our domestic programs at the same time.

I cannot conceive of expanding the foreign aid program in any such manner.

If we are going to make a grant let us increase foreign aid and say it is a giveaway and tell the American people that it is a gift. Certainly there is no semblance to a loan here. That is the reason the World Bank is asking for this $480 million to be put through IDA, because they do not consider these loans to be good banking loans. I think we should clear up any feeling by any Senator that when we appropriate this money it is ever going to be repaid: I think it will prove to be a 100 percent giveaway.

Mr. BYRD of Virginia. The Senator from Delaware has made an excellent point.

Mr. DOMINICK. Mr. President, will the Senator from Virginia yield?

Mr. BYRD of Virginia. I yield to the Senator from Colorado.

Mr. DOMINICK. I agree with the Senator from Delaware, who is both on the Committee on Foreign Relations and on the Committee on Finance, so he certainly knows what he is talking about in this field.

I started this discussion because I was not happy with what I thought was lack of full information on this particular program. I have the hearings from last year, which occurred in May of 1968. On page 28 of those hearings, in answer to a question from the Senator from Missouri (Mr. SYMINGTON), as to why the World Bank does not finance the IDA, former Secretary Fowler said:

> Yes; there was a good deal of discussion about it. It was a level of assistance through payments out of earnings of the World Bank to IDA. The management of the bank felt, that given the tight condition in the money market and some question as to the availability to the World Bank of access to the money markets, it should protect its position at that time.

That is what the World Bank said. If the World Bank can say that with $20 billion of unsubscribed funds from other countries and $5.7 billion from us, what are we to say when we are in a devastating financial position now, where we have to borrow money, money is tighter than it has ever been, and interest rates are the highest in world history as far as this country is concerned?

It seems to me that not only are we going the wrong way at the wrong time, but, adding to what the Senator from Tennessee said, we are not really committing ourselves to $480 million now; we are committing ourselves to $960 million because we cannot possibly get any principal repayment for 10 years, and at the end of the 3-year term we will be asking for replenishment of the resources, before we get around to the position where we get any repayment. So we

are going to have to do it again. That is all I am saying.

Mr. GORE. Mr. President, will the Senator from Virginia yield?

Mr. BYRD of Virginia. I yield.

Mr. GORE. Mr. President, at a time when there are hundreds of applications for community loans, from communities throughout the United States, which cannot be funded now, we are asked to authorize the U.S. Governor to commit the country to $480 million. After we pass this bill, the appropriation procedure is pro forma. The Appropriations Committee asks no questions. The Governor, representing the United States, has been directed and authorized to commit the United States to this. He has done so. Therefore, how do we ask any questions?

So, while hundreds of applications for community facilities, waterworks, sewage disposal plants, playgrounds, and schools are going unfunded and unmet, we commit ourselves to $480 million, for perhaps similar projects in other countries. We do not know. I have asked any Senator to rise and identify and specify for what purpose this money will be loaned on soft terms.

Speaking of terms, the legislature of my State just raised the interest rate ceiling to 10 percent. Towns and counties are trying to raise money and they are having to pay 5½ and 6 percent on tax-exempt bonds to build schools.

Then we pass this measure, for soft loans, with no interest at all, not even any repayment of principal for the first 10 years, and the principal does not come back to the United States then. This is fantastic. Is this what the people voted for last November?

Mr. ALLEN. Mr. President, will the Senator from Virginia yield?

Mr. BYRD of Virginia. I yield.

Mr. ALLEN. Mr. President, I find myself once again in hearty agreement with the senior Senator from Virginia. I oppose H.R. 33. I think it is certainly ill-timed and ill-advised for the Senate and this Congress to appropriate or to authorize the expenditure of $480 million—$480 million of American taxpayers' dollars—for this purpose, the International Development Association.

It is certainly putting the wrong priority on this bill at this time. What of our battle against crime? What of the needs of our schools? What of our health needs? What of our public works needs? We are putting this ahead of the real needs of this country.

Some of my colleagues are worried for fear that no interest will be collected on this money. I think they need not worry about that. No matter what interest rate is proposed, no interest will be paid; nor will the principal. This schedule of no payments for the first 10 years, 1 percent for the next 10 years, and then 3 percent for the next 30 years, stretches it out for 50 years.

We have dumped over $130 billion overseas in foreign assistance since World War II. This bill may not be foreign aid, but, if it is not, I would like to know what it is. It is dumping almost half a billion dollars overseas.

I came to the U.S. Senate only in January. During my campaign for the Senate, I promised the people of Alabama that I would be in favor of slashing, and in many cases eliminating altogether, our foreign aid programs. I think this is one place where I can certainly start.

This half billion dollars is sufficient to provide a block grant for schools of $10 million for each State in the Union. It would help us to develop our human resources.

The junior Senator from Alabama is strongly opposed to H.R. 33. I hope the Senate will see fit to vote it down. I think it is outrageous for us to throw away at this time, with the needs we have in this country, a half billion dollars which will not be repaid. It will not be appreciated. It will create enemies for this country, instead of friends. We cannot buy friendships abroad, just as we cannot buy friendships among our fellow man in everyday life. We cannot do that.

We should defeat H.R. 33.

I thank the Senator from Virginia for yielding.

Mr. COOPER. Mr. President, will the Senator from Virginia yield?

Mr. BYRD of Virginia. I yield.

Mr. COOPER. Mr. President, I have not heard all the debate. I note the statements made that $480 million would be spent in the next 3 years. I, too, would not want to mislead anyone. If this measure is enacted, it does pledge us to $480 million over a 3-year period, but, so far as actual expenditures for the next 3 years are concerned, they are limited.

During the hearings I asked Secretary of the Treasury Kennedy to provide for the record the amounts which he estimated would be applicable and charged against the budget over the 3-year period. His reply appears on page 32 of the hearings. For fiscal 1969, he estimates expenditures of $30 million; for fiscal 1970, $40 million; and for fiscal 1971, $50 million, or a total of $120 million.

I am not denying, and I want to make it absolutely clear, that we are authorizing a total of $480 million. However, I did not want the impression to go out that we are actually spending $160 million a year over a 3-year period.

Mr. DOMINICK. Mr. President, will the Senator from Virginia yield to me?

Mr. BYRD of Virginia. I yield.

Mr. DOMINICK. I had a discussion on this matter with the Senator from Alabama, who stated that they were trying to level this amount out at $400 million a year in loans. They have $200 million. So that means $200 million a year is going to be used, no matter how one looks at it.

Mr. COOPER. I am citing the statement of the Secretary of the Treasury as it relates to budget expenditures. I believe that he will make every effort to see to it that our expenditures through fiscal 1971 are in line with his estimates.

Mr. JAVITS. Mr. President——

The PRESIDING OFFICER. The Senator from Virginia has the floor.

Mr. BYRD of Virginia. Mr. President, I believe that the American people are expecting Congress to show some determination to reduce appropriations and expenditures. This is one item, and today is a time, where the Senate can begin to show its determination to reduce some of the swollen expenditures of our Government.

I yield to the Senator from Arkansas.

Mr. FULBRIGHT. Mr. President, I yield to the Senator from New York.

Mr. JAVITS. Mr. President, I simply wish to say that we have had this argument before. I gather this flurry arose about the essentiality of this expenditure in terms of the priorities of our Nation. Those of us who are for it take the position that it ranks with defense expenditures, and, indeed, that it is more a measure of conservation than expenditures for sterile hardware, in terms of the effort to keep peace in the world. It takes no great genius to fight; the question is how we are going to obtain a world in which we do not have to fight.

Mr. FULBRIGHT. Mr. President, I think the Senator from New York has expressed that point very well.

The total amount authorized here, $480 million, would not run the war in Vietnam but for about a week. While that in itself is not decisive, it is significant as to the relative amount involved. I think, over the long term, the security implications of this investment are perhaps greater than those inovlved in the war in Vietnam, for a week or any other length of time, for that matter.

By way of summary, $285 million has been granted to the IDA out of the earnings of the International Bank, over the years. Last year, I think it was in September, the International Bank did approve transfer of $75 million out of its earnings into this fund.

Twelve countries have ratified the agreement we are considering here. Those countries have agreed to contribute $538,440,000. Ten countries have made contributions, amounting to $241.9 million, in advance of our ratification. Of course, I am quite sure all of them assume that we are going to ratify. Not that that is determinative here; I mention it simply as a matter of pointing out that many of the smaller countries, 10 of them, have already put up their money, and 12 have ratified.

I ask unanimous consent to insert the appropriate tables in the RECORD at this point.

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

Status of ratification action by part I countries—(As of May 14, 1969)

[In millions of dollars]

Countries that have deposited notification of commitment:	
Japan	66.48
Australia	24.00
Austria	8.16
Canada	75.00
Denmark	13.20
Finland	4.08
Germany	117.00
Kuwait	5.40
Netherlands	29.28
Norway	10.68
Sweden	29.64
United Kingdom	155.52
Total	538.44

Status of ratification action by part I countries (as of May 14, 1969)—Continued

[In millions of dollars]

Countries that have not deposited notification of commitment:	
Belgium	20.40
France	97.20
Italy	48.36
Luxembourg	.60
South Africa	3.00
United States	480.00
Total	649.56
Total committed	538.44
Total not committed	649.56
Swiss credit	12.00
Total	1,200.00

IDA

Advance second replenishment contributions

[In millions of dollars]

Firm commitments:	
Netherlands	9.8
Japan	22.2
Canada	75.0
Denmark	4.4
Finland	1.4
Germany	39.0
Norway	4.4
Sweden	9.9
United Kingdom	51.8
Australia	24.0
Total	241.9
Parliamentary approval obtained but formalities of commitment to IDA not yet completed: Austria	2.7
Awaiting Parliamentary approval:	
Belgium	6.8
Italy	16.1
Special supplementary contributions made since the replenishment agreement:	
Sweden	21.4
Denmark	15.0

Mr. FULBRIGHT. Mr. President, I think the position of the Senator from Alabama and the Senator from Virginia is a very logical one. If you take the position that this country, with all its abilities and capacities, does not need to contribute anything at all in the field of aiding foreign countries, then it is a logical position to say you are against this measure.

My own position is that I think we should do something, and if I had to choose between this operation and what we call aid, the bilateral aid—which will be before us soon, though it has not yet been sent up to us by the administration—it seems to me this is a more efficient and a better proposition for the country.

In the first place, we pay only 40 percent of this fund, and the other countries pay 60 percent. In the second place, it is administered by an established organization, with a great reputation. The International Bank has been operating now for some 15 or 16 years. It has made profits of more than $1 billion, from which, of course, these contributions I have mentioned have been made. It has never had a default.

I do not wish to exaggerate that point, because its hard loans are all of a commercial type guaranteed by the governments of the countries to which the loans are made, so it is a little different matter. I do not wish to argue, from that fact, that that necessarily means these soft loans are of the same category, even though Government-guaranteed. All it means is, I think, that this operation has been reasonably efficient, and has had good judgment and administration, and good technical advice from its engineers, the people who evaluate the opportunities for the loans in the respective countries.

Third, and perhaps most important from my point of view, is that in doing this, in the operation of giving aid to these countries, we do not, as a country, ourselves become involved in the internal politics of the receiving country. In other words, we do not run the risk of creating further Vietnams, in which we become allied with a domestic faction. In other countries, where there is not any war, we do not become allied with a government which may or may not have its enemies, and which can cause a great deal of trouble for us.

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

Mr. FULBRIGHT. I yield.

Mr. MANSFIELD. I agree with the distinguished Senator. This is one way in which we can proceed on a multilateral basis without becoming involved in domestic issues. I believe our efforts should be directed toward measures of this kind.

Mr. PERCY. Mr. President, there is an increasing need to provide long-term development loans to less developed countries. Sufficient external capital cannot be obtained solely from private investment or from international lending institutions making loans on hard commercial terms.

Fundamentally, IDA provides poor countries with loans on very favorable terms for high-priority development projects. Thus, low-income countries which cannot afford conventional foreign-exchange loans may finance development programs and maintain some momentum for progress.

The importance of IDA to U.S. foreign aid policy should not be underestimated. IDA represents international cooperation to assist in the development of low-income countries. IDA represents the effort to channel more aid resources into multilateral channels in order to minimize the political and military entanglements of unilateral aid while maximizing the constructive impact of the aid. IDA represents the willingness of 17 other developed nations to share with the United States the responsibility to help less fortunate nations. IDA represents the commitment of other developed nations to contribute, as a group, 60 percent of the funds required.

The pending proposal for a second replenishment of IDA resources would provide IDA with $1.2 billion over fiscal years 1969–71. Of this amount the U.S. share would total $480 million or $160 million annually over the next 3 years. That this amount is vitally needed can be seen by the fact that on June 30, 1968, the IDA only had $41 million available for lending. In fiscal 1968, the IDA was only able to make $107 million in new loan commitments.

The IDA authorization would not aggravate the U.S. balance of payments. The second replenishment resolution has procedures to safeguard the U.S. balance of payments. Drawings by the IDA on U.S. contributions will not exceed identifiable procurement in the United States from IDA operations. There will be a zero balance of payments effect until at least July 1, 1971, and hopefully thereafter. Thus for 3 years U.S. contributions to the IDA will have no adverse effect on the balance of payments.

It should be remembered that for every $2 the United States contributes to IDA, other nations will contribute three. This principle of matching funds was an important departure when IDA was established. It is still important and deserves the continuing support of the U.S. Congress.

I urge Senators to approve the authorization for the second replenishment of IDA resources today on the Senate floor. The value seems obvious and I urge the Senate to continue international cooperation to assist in the development of low-income countries.

Mr. KENNEDY. Mr. President, I strongly support the bill recommended by the Committee on Foreign Relations approving the U.S. contribution of $480 million to the International Development Association. The IDA, which has been appropriately called the "soft loan window" of the World Bank, performs an extremely valuable function in the crucial area of international economic development. By providing loans bearing no interest and allowing 50 years to repay, the IDA is making an especially important contribution in granting much-needed financial assistance to the underdeveloped nations of the world. As the Foreign Relations Committee has properly concluded, the IDA approach of granting multilateral foreign assistance is the most appropriate method for aiding less-developed nations, and I urge the Senate to give its full approval to the pending bill.

For far too long, the developed nations of the Western world have failed to recognize that the stability of the world community depends on the stability of all nations. The basic and successful principles of our own domestic economic programs can and should be applied to encourage world development. I believe that the new IDA bill, when enacted, will be a significant step forward in the growing commitment of the United States to a sound program of joint economic assistance to nations in need. It is my understanding that the world bank has agreed to distribute IDA loan funds on a new and broader basis to developing nations, and that the extraordinarily large shares previously granted to India and Pakistan will be reduced in the interest of a more equitable overall distribution. I also understand that the Secretary of the Treasury has made clear that the World Bank will contribute a reasonable share of its own funds to IDA.

Even though the availability of funds in our domestic budget is extremely tight, few priorities are more important to the best interests of the United States than a strong and effective program of economic assistance to developing nations. I, therefore, urge the Congress to accept the bill recommended by the Foreign Relations Committee without delay, and I look forward to the early implementation of IDA's expanded and far-reaching programs.

Mr. COOPER. Mr. President, I support H.R. 33, the pending business of the Senate. This bill would amend the International Development Association Act of 1960 to authorize a second replenishment by the association's membership of $1.2 billion over a 3-year period and would authorize the U.S. contribution of $480 million over that period as the U.S. share.

I shall note briefly our prior contributions to IDA.

IDA was first established in 1960 with a capitalization of $1 billion of which some 75 percent was to be provided by the economically advanced countries. At this time, the original U.S. contribution was $320 million and represented approximately 43 percent of the hard currencies initially received by the association.

By 1964 the original contributions to IDA had been disbursed in loans. The economically advanced member countries undertook to provide the first replenishment of IDA funds in the amount of $750 million to be paid over a 3-year period. The U.S. contribution to this first replenishment was $312 million or approximately 41 percent of the total.

Today, we are asked to authorize a second replenishment of IDA funds of $1.2 billion over a 3-year period, with the U.S. contribution amounting to $480 million or 40 percent of the total of this second replenishment.

Last year the Foreign Relations Committee held hearings on a similar request, S. 3378, and the Committee reported the bill to the Senate with an amendment that would have limited the U.S. contribution to IDA to that amount contributed by the World Bank to IDA during any given period. No action was taken by the Senate on this bill in the last session. I opposed this amendment at that time in committee and when it was again offered in committee this year.

The Foreign Relations Committee held hearings on H.R. 33 on April 16 of this year. During these hearings, I was pleased to note that the administration witnesses offered the committee certain assurances as to the method the administration would employ to deal with several problems connected with the bill which were a source of comment and criticism by members of the committee last year.

First, with other members of the committee I have felt that a too large proportion of the loans made by IDA were concentrated in too few countries. As of June 30, 1968, out of a total of $1.8 billion loans made by IDA, some $1.3 billion has been disbursed to four countries and two countries alone—India and Pakistan—have received over 50 percent of this amount.

In the course of the hearing, the Secretary of the Treasury Kennedy and Mr. Covey Oliver, the U.S. executive director of the World Bank, assured the committee that there would be a wider distribution of IDA's funds to a greater number of countries. In fact, the committee was informed that IDA anticipated that a substantial amount of these funds would be made available to Latin American countries. This testimony is found on page 10 of the hearing record.

A second problem that concerned the committee both last year and this year is the relationship of the U.S. contribution to our balance-of-payments position. The second replenishment resolution approved by IDA's executive directors provides that during the 3 years ending June 30, 1971, and as long thereafter as permitted by the state of its resources, IDA would call upon the U.S. contribution to meet disbursements on its loans only for the amount needed to finance procurement in the United States. Thus, during this period payments under the second replenishment would have no adverse effect on the U.S. balance of payments. To assist in this procedure a number of other participating countries have agreed to permit an acceleration of IDA's drawings upon their contributions in order to meet IDA's disbursement required for its loan program.

During the hearings, I requested Secretary Kennedy to estimate the anticipated U.S. budgetary expenditures for IDA for fiscal years 1969–71 so that the committee might gage their effect on the U.S. balance of payments. His estimate is found at page 32 of the hearing record. He indicates that although the appropriation for each of the fiscal years 1969, 1970, and 1971 calls for $160 million annually, the expenditures are estimated to be $30 million in fiscal 1969, $40 million in fiscal 1970, and $50 million in fiscal 1971.

Another question that concerned the committee was the belief that the World Bank should undertake to make annual contributions out of its earnings to IDA, which is in effect the Bank's soft-loan window. I share this view. But I am opposed to proposals that would condition the U.S. contribution to IDA on a fixed or variable amount of the Bank's contribution from its annual earnings. I have opposed these proposals for I think it is wrong for a country such as the United States or any other country for that matter to condition its contribution—and thus to seek to impose its policies—on the actions of a multilateral organization such as the World Bank. We must keep in mind that a multilateral organization such as the World Bank has its own obligations and duties to all its members. For individual countries to seek to impose differing conditions on the operations of a multilateral organization would probably result in our not having a World Bank—an institution which has made a remarkable record financially in serving the international community.

In this connection, I wrote Secretary of the Treasury Kennedy on April 23 and requested his views concerning the contributions to IDA by the World Bank. I ask unanimous consent to have placed in the RECORD at this point my letter to Secretary Kennedy and his response.

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

APRIL 23, 1969.

The Honorable DAVID M. KENNEDY,
Secretary of the Treasury,
Washington, D.C.

DEAR MR. SECRETARY: In connection with the hearings conducted by the Senate Committee on Foreign Relations on H.R. 33, the International Development Authorization bill, several questions were raised concerning the policy of the World Bank to make annual contributions out of current earnings to IDA and the legal authority of the World Bank, under its Articles of Agreement, to increase substantially these contributions.

I wish to say that I support the bill. It would be helpful to my consideration of these matters if you would provide me with your comments concerning these specific questions raised at the Hearing and any other information that you believe appropriate.

With kind regards, I am,

Yours sincerely,

JOHN SHERMAN COOPER.

APRIL 24, 1969.

Hon. JOHN SHERMAN COOPER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR COOPER: Thank you for your letter of April 23, 1969, expressing your support for the Second Replenishment of the International Development Association. I am pleased to comment on the World Bank's annual contributions to IDA, as requested in your letter.

Since IDA was instituted as a "soft-loan" window of the World Bank, the Bank has transferred $285 million from net earnings to IDA's resources. These transfers average 40 percent of the Bank's earnings since 1964. I feel that the World Bank has significantly supported IDA. I was pleased by the Bank's decision to transfer $75 million out of Fiscal Year 1968 net earnings. I wish to emphasize that I do not foresee a decline in such transfers. Rather, as conditions permit, I will actively support transfers from net earnings over the 1968 level. The President of the World Bank has assured me that he will support this objective before his governing boards.

While I am in favor of strong Bank support for IDA, I am firmly opposed to adding a provision to H.R. 33 limiting the yearly United States contribution to an amount equal to World Bank transfers to IDA. Establishment of such a linkage would be almost impossible to negotiate and any attempt to renegotiate would be a serious blow to multilateral cooperation not only in IDA but also in other fields. Moreover, it would be financially unwise for the Bank to undertake an unalterable advance commitment to transfer a fixed amount of its future earnings to IDA.

In response to Senator Symington's request at the hearing on April 16, I have submitted for the record additional comments on this point. I am enclosing a copy of these comments for your information.

Sincerely yours,

DAVID M. KENNEDY.

COMMENT ON IBRD RESERVES AND TRANSFERS OF NET EARNINGS TO IDA

As of February 28, 1969, IBRD reserves were $1.25 billion. They consist of two components: (1) the Special Reserve ($291 million), and (2) the Supplemental Reserve ($963 million). The Special Reserve represents commissions which are required by the IBRD Charter to be set aside and held in liquid form to be used only for the purpose of meeting liabilities of the Bank on its borrowings and guarantees. The Supplemental Reserve represents retained earnings that have been fully committed along with the World Bank's paid-in capital and borrowings to the Bank's own lending operations under contracts with borrowers.

This earned surplus represents an increase in the Bank's equity, and thus it improves both the Bank's equity-debt ratio, and the ratio between the Bank earnings and the interest charges it must pay on its funded debt. These relationships—the equity-debt ratio and the interest-earnings cover—are of great importance to the judgment of the market about the Bank's financial position, and hence to the Bank's credit rating.

It is a fact of financial life that buyers of World Bank bonds want to be assured that the reserve position of the Bank will be reasonably maintained. Notwithstanding that government guarantees in the form of callable capital also stand behind Bank issues, purchasers of these bonds require assurance of the integrity of the Bank's balance sheet itself. The Bank's callable capital is intended only as a protection or last resort, and if the Bank were ever required to draw upon it in order to meet debt obligations, its ability to tap capital markets for further lending operations would, no doubt, be adversely affected. Nor is a prudent reserve policy rendered unnecessary by the fact that World Bank loans, which are made almost exclusivly to developing countries, are made to or guaranteed by governments and backed up by a lien on the investment financed.

Maintenance of the Bank's present "Triple A" rating would not be possible if the equity-debt ratio and interest-earnings cover of the Bank were to be materially impaired. The market for Bank bonds has come to expect that a portion of the Bank's annual earnings will be allocated to the supplemental reserves. Moreover, both the Bank and IDA would suffer from a policy that did not consider the adequacy of reserves, since the Bank's volume of lending and its earnings would decline with a consequent impairment of its ability, over the long run, to make transfers to IDA.

Bank policy very wisely calls for transfers to be determined annually by the Governors on the basis of actual earnings for the previous year. All circumstances relevant to the determination—such as the Bank's cash needs and borrowing prospects for the following year—are also taken into account. This practice should be continued.

As I said in my opening statement, the Bank transferred $75 million out of fiscal 1968 net earnings, compared with only $10 million the previous year. I am very pleased that the Bank has increased its contribution to IDA. I do not foresee a decline in such transfers. On the contrary, should conditions permit, transfers from net earnings over the 1968 level would be in order. I am assured by the President of the World Bank that he will support this objective before his governing board.

Again, as I said in answer to questions, a proviso which would limit the yearly U.S. contribution to the same amount as the World Bank transferred to IDA from its reserves or net earnings should not be adopted, since the material change this would require in the IDA Resolutions would negate any favorable Congressional action on H.R. 33, and would undoubtedly frustrate the replenishment agreement from coming into effect.

Mr. COOPER. Mr. President, I am pleased to note that the World Bank has agreed to transfer $75 million of its fiscal 1968 net earnings to IDA. In addition, Secretary Kennedy has assured me that he will actively support transfers from the Bank's net earnings over the 1968 level. Furthermore, Mr. Robert McNamara, president of the World Bank has promised his support to this objective before the Bank's governing board.

In order for the Second Replenishment Agreement to take effect, 12 countries whose contributions would total $950 million must agree to provide their shares On May 6, Mr. Robert McNamara, president of the World Bank, announced that the Government of Japan had notified IDA of its ratification of the second replenishment. Including Japan's pledge of $66,480,000, notifications have been received from 12 countries contributing $538,440,000.

In conclusion, Mr. President, it has been my view for some time now—and I know that an increasing number of Members of Congress share the view—that it is by far preferable that the United States devote a larger part of its resources in foreign aid through multilateral organizations and international banks so as to avoid the political liabilities and our involvement in the internal affairs of foreign countries which have resulted from some of our bilateral foreign aid programs.

We do need to husband our resources and to provide for the needs of our people but our country cannot fail to meet reasonably the need to join other advanced countries in a cooperative effort to help people of countries struggling for health, food, and life itself.

The PRESIDING OFFICER. The hour of 2:45 p.m. having arrived, under the unanimous-consent agreement, the Senate will now proceed to vote.

The question is on the third reading of the bill.

The bill (H.R. 33) was ordered to a third reading, and was read the third time.

Mr. FULBRIGHT. Mr. President, before proceeding to vote on the bill, may we have a quorum call?

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, the time for the quorum call to be outside of the time on the bill, and not to exceed 2 minutes in length.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent, now that the 2 minutes have expired, that the order for the quorum be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill having been read the third time, the question is, Shall it pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. KENNEDY. I announce that the Senator from Nevada (Mr. BIBLE) is absent on official business.

I also announce that the Senator from Indiana (Mr. BAYH), the Senator from Alaska (Mr. GRAVEL), the Senator from Michigan (Mr. HART), the Senator from Indiana (Mr. HARTKE), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Utah (Mr. Moss), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

I further announce that, if present and voting, the Senator from Indiana (Mr. BAYH), the Senator from Alaska (Mr. GRAVEL), the Senator from Michigan (Mr. HART), the Senator from Iowa (Mr. HUGHES), the Senator from Utah (Mr. Moss), and the Senator from Connecticut (Mr. RIBICOFF) would each vote "yea."

Mr. SCOTT. I announce that the Senator from Vermont (Mr. AIKEN), the Senator from Massachusetts (Mr. BROOKE), and the Senator from Maryland (Mr. MATHIAS) are necessarily absent.

The Senator from Hawaii (Mr. FONG), the Senator from Kentucky (Mr. COOK), and the Senator from New York (Mr. GOODELL) are absent on official business.

The Senator from Nebraska (Mr. CURTIS) and the Senator from Ohio (Mr. SAXBE) are detained on official business.

If present and voting, the Senator from Massachusetts (Mr. BROOKE), and the Senator from New York (Mr. GOODELL) would each vote "yea."

On this vote, the Senator from Hawaii (Mr. FONG) is paired with the Senator from Nebraska (Mr. CURTIS). If present and voting, the Senator from Hawaii would vote "yea" and the Senator from Nebraska would vote "nay."

The result was announced—yeas 49, nays 34, as follows:

[No. 34 Leg.]

YEAS—49

Anderson	Hollings	Pearson
Baker	Inouye	Pell
Bellmon	Jackson	Percy
Bennett	Javits	Prouty
Boggs	Kennedy	Proxmire
Case	Magnuson	Schweiker
Church	Mansfield	Scott
Cooper	McGee	Smith
Cranston	McGovern	Sparkman
Dirksen	McIntyre	Stevens
Dodd	Metcalf	Tower
Eagleton	Miller	Tydings
Fulbright	Mondale	Williams, N.J.
Griffin	Muskie	Yarborough
Harris	Nelson	Young, Ohio
Hatfield	Packwood	
Holland	Pastore	

NAYS—34

Allen	Fannin	Murphy
Allott	Goldwater	Randolph
Burdick	Gore	Russell
Byrd, Va.	Gurney	Spong
Byrd, W. Va.	Hansen	Stennis
Cannon	Hruska	Symington
Cotton	Jordan, N.C.	Talmadge
Dole	Jordan, Idaho	Thurmond
Dominick	Long	Williams, Del.
Eastland	McClellan	Young, N. Dak.
Ellender	Montoya	
Ervin	Mundt	

NOT VOTING—17

Aiken	Fong	Mathias
Bayh	Goodell	McCarthy
Bible	Gravel	Moss
Brooke	Hart	Ribicoff
Cook	Hartke	Saxbe
Curtis	Hughes	

So the bill (H.R. 33) was passed.

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. DIRKSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PROGRAM

Mr. DIRKSEN. Mr. President, I would like to ask the distinguished majority leader about the schedule for the remainder of the week.

Mr. MANSFIELD. Mr. President, before responding to the question of the distinguished minority leader I wish to make the following request.

The PRESIDING OFFICER. The Senator from Montana is recognized.

ORDER FOR ADJOURNMENT TO FRIDAY, MAY 16, 1969

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 o'clock noon on Friday next.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR ADJOURNMENT FROM FRIDAY TO TUESDAY, MAY 20, 1969

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business on Friday it stand in adjournment until 12 o'clock noon on Tuesday next.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, to respond specifically to the distinguished minority leader, the business will be determined by the calendar.

ORDER FOR RECOGNITION OF SENATOR PERCY ON FRIDAY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, at the conclusion of transaction of routine business on Friday, the distinguished Senator from Illinois (Mr. PERCY) be recognized for not to exceed 40 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GOLDWATER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AUTHORIZATION FOR SECRETARY OF THE SENATE TO RECEIVE MESSAGES DURING ADJOURNMENT

Mr. FULBRIGHT. Mr. President, I ask unanimous consent that during the adjournment of the Senate on Thursday and on Monday next, the Secretary of the Senate be authorized to receive messages from the President of the United States and the House of Representatives, and that they may be appropriately referred.

The PRESIDING OFFICER. Without objection, it is so ordered.

AUTHORIZATION FOR COMMITTEES TO FILE REPORTS DURING ADJOURNMENT

Mr. FULBRIGHT. Mr. President, I ask unanimous consent that during these periods of adjournment all committees may file reports, together with individual, minority, or supplemental views.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT UNTIL FRIDAY, MAY 16, 1969

Mr. KENNEDY. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in adjournment until 12 o'clock noon on Friday next.

The motion was agreed to; and (at 3 o'clock and 20 minutes p.m.) the Senate adjourned until Friday, May 16, 1969, at 12 o'clock noon.

NOMINATIONS

Executive nominations received by the Senate May 14, 1969:

ASSOCIATE JUDGE

Donald E. Lane, of the District of Columbia, to be associate judge, U.S. Court of Customs and Patent Appeals, vice Arthur M. Smith, deceased.

U.S. ATTORNEYS

Keith S. Snyder, of North Carolina, to be U.S. attorney for the western district of North Carolina for the term of 4 years, vice William C. Medford, deceased.

Seagal V. Wheatley, of Texas, to be U.S. attorney for the western district of Texas for the term of 4 years, vice Ernest Morgan, resigned.

John O. Olson, of Wisconsin, to be U.S. attorney for the western district of Wisconsin for the term of 4 years, vice Edmund A. Nix.

CONFIRMATIONS

Executive nominations confirmed by the Senate May 14, 1969:

U.S. ARMY

The following-named officers, under the provisions of title 10, United States Code, section 3066, to be assigned to positions of importance and responsibility designated by the President under subsection (a) of section 3066, in grades as follows:

To be general

Lt. Gen. William Bradford Rosson, XXXXXX Army of the United States (brigadier general, U.S. Army).

To be lieutenant general

Maj. Gen. Julian Johnson Ewell, XXXXXX, U.S. Army.

Lt. Gen. Marshall Sylvester Carter, XXXXXX, Army of the United States (major general, U.S. Army), to be placed on the retired list in the grade of lieutenant general, under the provisions of title 10, United States Code, section 3962.

The following-named Medical Corps officers for temporary appointment in the Army of the United States, to the grades indicated, under the provisions of title 10, United States Code, sections 3442 and 3447:

To be major general, Medical Corps

Brig. Gen. Oscar Elliott Ursin, XXXXXX, Medical Corps, U.S. Army.

Brig. Gen. Frederic John Hughes, Jr., XXXXXX, Army of the United States (colonel, Medical Corps, U.S. Army).

Brig. Gen. Kenneth Dew Orr, XXXXXX Medical Corps, U.S. Army.

Brig. Gen. James Arista Wier, XXXXXX Army of the United States (colonel, Medical Corps, U.S. Army).

Brig. Gen. Hal Bruce Jennings, Jr., XXXXXX Army of the United States (colonel, Medical Corps, U.S. Army).

To be brigadier general, Medical Corps

Col. John Boyd Coates, Jr., XXXXXX Medical Corps, U.S. Army.

Col. David Edward Thomas, XXXXXX Medical Corps, U.S. Army.

Col. Carl Wilson Hughes, XXXXXX Medical Corps, U.S. Army.

Col. Louis Joseph Hackett, Jr., XXXXXX Army of the United States (lieutenant colonel, Medical Corps, U.S. Army).

Col. Richard Ray Taylor, XXXXXX Army of the United States (lieutenant colonel, Medical Corps, U.S. Army).

The following-named officers for appointment in the Regular Army of the United States, to the grade indicated, under the provisions of title 10, United States Code, sections 3284 and 3306:

To be brigadier general, Medical Corps

Col. David Edward Thomas, XXXXXX Medical Corps, U.S. Army.

Brig. Gen. Frederic John Hughes, Jr., XXXXXX Army of the United States (colonel, Medical Corps, U.S. Army).

Brig. Gen. Hal Bruce Jennings, Jr., XXXXXX Army of the United States (colonel, Medical Corps, U.S. Army).

Lt. Gen. John Joseph Davis, XXXXXX Army of the United States (major general, U.S. Army), to be placed on the retired list in the grade of lieutenant general, under the provisions of title 10, United States Code, section 3962.

U.S. NAVY

Vice Adm. Ray C. Needham for appointment to the grade of vice admiral on the retired list, in accordance with the provisions of title 10, United States Code, section 5233.

U.S. MARINE CORPS

Maj. Gen. Louis B. Robertshaw, U.S. Marine Corps, having been designated, in accordance with the provisions of title 10, United States Code, section 5232, for commands and other duties determined by the President to be within the contemplation of said section, for appointment to the grade of lieutenant general while so serving.

DEPARTMENT OF JUSTICE

Victor Cardosi, of New Hampshire, to be U.S. marshal for the district of New Hampshire for the term of 4 years.

IN THE AIR FORCE

The nominations beginning Joseph Rohrich, Jr., to be colonel, and ending David E. Wenzel, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on April 10, 1969; and

The nominations beginning James R. Abbott, to be second lieutenant, and ending James E. Walkenbach, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on April 23, 1969.

IN THE ARMY

The nominations beginning Joseph P. Madden, to be major, and ending Noe Palacios, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on March 24, 1969; and

The nominations beginning O. Glenn Goodhand, to be colonel, and ending John W. Zunka, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on April 25, 1969.

IN THE NAVY

The nominations beginning Lynn "W" Adams, to be captain, and ending Margaret M. Burrell, to be lieutenant commander, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on April 18, 1969.

IN THE MARINE CORPS

The nominations beginning Albert A. Acri, to be second lieutenant, and ending Juan C. Nogueira, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on April 14, 1969; and

The nominations beginning Jeffrey W. Oster, to be captain, and ending Thomas M. Timberlake, Jr., to be first lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on April 10, 1969.