By Mr. RUPPE:

H.R. 10823. A bill to amend the Tariff Schedules of the United States with respect to the rate of duty on iron ore; to the Committee on Ways and Means.

By Mr. SCHEUER:

H.R. 10824. A bill to amend part C of title II of the Economic Opportunity Act of 1964, as amended; to the Committee on Education and Labor.

By Mr. SISK:

H.R. 10825. A bill to amend the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890; to the Committee on the Judiciary.

By Mr. STEELE:

H.R. 10826. A bill to extend commissary and exchange privileges to certain disabled veterans and the widows of certain deceased veterans; to the Committee on Armed Services.

By Mr. STUBBLEFIELD:

H.R. 10827. A bill to authorize the merger of two or more professional basketball leagues, and for other purposes; to the Committee on the Judiciary.

By Mr. VEYSEY:

H.R. 10828. A bill to designate the fourth Friday in September of every year as American Indian Day; to the Committee on the Judiciary.

By Mr. PICKLE:

H.J. Res. 883. Joint resolution to designate the period beginning June 18, 1972, and ending June 24, 1972, as "National Engineering Technicians Week"; to the Committee on the Judiciary.

By Mr. WIDNALL:

H.J. Res. 884. Joint resolution to authorize appropriations for expenses of the Council on International Economic Policy, and for other purposes; to the Committee on Banking and Currency.

By Mr. STEED:

H. Res. 610. Resolution providing for the consideration of House Joint Resolution 620, proposing an amendment to the Constitution of the United States; to the Committee on Rules.

PRIVATE BILLS AND RESOLUTIONS

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

By Mrs. HECKLER of Massachusetts:

H.R. 10829. A bill for the relief of Joseph Schafer; to the Committee on the Judiciary.

By Mr. NIX:

H.R. 10830. A bill for the relief of Edwardo Catu Suarez; to the Committee on the Judiciary.

H.R. 10831. A bill for the relief of Edwin S. Perry, Jr.; to the Committee on the Judiciary.

By Mr. RHODES:

H.R. 10832. A bill to provide that a gold medal be presented to the widow of the late Louis Armstrong; to the Committee on Banking and Currency.

PETITIONS, ETC.

Under clause 1 of rule XXII,

136. The SPEAKER presented a petition of the Military Order of the World Wars, Washington, D.C., relative to military preparedness, which was referred to the Committee on Armed Services.

SENATE—*Wednesday, September 22, 1971*

The Senate met at 11 a.m., and was called to order by the President pro tempore (Mr. ELLENDER).

PRAYER

The Reverend A. A. Banks, Jr., D.D., Second Baptist Church of Detroit, Mich., offered the following prayer:

Almighty God, maker of men and nations, creator and sustainer of the universe, we thank Thee for blessings which providence has bestowed upon us, which history has revealed, and which we presently enjoy.

We thank Thee for the fertility of our soil, for the productivity of our industry, for our Government, for our freedom, for our security, and our hope.

We come now especially to pray for those who make the laws for free people, for those who execute and judge the law, that they may have the mind and spirit, the love and the will of God in them, to the end that the law may be of common benefit to all—that every citizen may have the protection and the assistance necessary to develop his full potentiality for the benefit of all.

May we, in our togetherness, be an example and an inspiration for others.

May the words of our mouths and the meditations of our hearts be acceptable in Thy sight, O Lord, our strength and our Redeemer.

In Jesus' name, we pray. Amen.

THE JOURNAL

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, September 21, 1971, be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION

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

The PRESIDENT pro tempore. Without objection, it is so ordered.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States submitting a nomination was communicated to the Senate by Mr. Leonard, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session, the President pro tempore laid before the Senate a message from the President of the United States submitting the nomination of William D. Eberle, of Connecticut, to be Special Representative for Trade Negotiations, with the rank of Ambassador Extraordinary and Plenipotentiary.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had passed, without amendment, the following bills of the Senate:

S. 415. An act for the relief of Mr. and Mrs. Arvel Glinz; and

S. 504. An act for the relief of John Borbridge, Jr.

The message also announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 2118. An act for the relief of Amos E. Norby;

H.R. 2408. An act for the relief of Louis A. Gerbert; and

H.R. 7829. An act for the relief of Stephen H. Clarkson.

HOUSE BILLS REFERRED

The following bills were severally read twice by their titles and referred to the Committee on the Judiciary:

H.R. 2118. An act for the relief of Amos E. Norby;

H.R. 2408. An act for the relief of Louis A. Gerbert; and

H.R. 7829. An act for the relief of Stephen H. Clarkson.

DR. A. A. BANKS, JR., GUEST CHAPLAIN OF THE SENATE

Mr. GRIFFIN. Mr. President, it was, indeed, a privilege and a pleasure for this Senator to be in the Chamber while the convening prayer was being offered by the Reverend A. A. Banks, Jr., a most distinguished clergyman from the State of Michigan.

Dr. Banks is pastor of the Second Baptist Church in Detroit.

Next year, his congregation will observe a silver anniversary—because he will then have completed 25 years of service as pastor of the Second Baptist Church.

Mr. President, not only is Dr. Banks a distinguished and very respected pastor of his own church, but in addition he has earned and he enjoys a reputation as one of Michigan's most outstanding citizens. He is a moral and spiritual leader whose wise counsel has been sought by, and has always been available to mayors, Congressmen, Senators, and Governors in our State—as well as many others beyond the membership ranks of his church.

He serves now as a member of the Michigan Civil Rights Commission. Indeed, he was one of the original members of that commission when it was established in 1964.

He and his wonderful wife, Victoria, are the proud parents of a son and a daughter. Their son, Allan, is a cadet at West Point and their daughter, Tita Victoria, is a student at Wellesley College.

Dr. Banks was ordained in 1942, after receiving his bachelor of divinity degree from the School of Religion at Howard University in Washington, D.C. In addition, he has a master's degree from the Graduate School of Religion at Howard.

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He also has a bachelor of arts degree from Bishop College in Dallas, Tex.

Prior to joining the Second Baptist Church in Detroit, he served in Washington, D.C., at the Shiloh Baptist Church.

Mr. President, it is in such men as Dr. Banks that America finds her true strength.

I am very proud to know him. I am also very proud that he is a citizen of my State.

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period, not to exceed 15 minutes, for the transaction of routine morning business, with each Senator being limited to 3 minutes.

Is there any morning business?

KEN BELIEU

Mr. BYRD of West Virginia. Mr. President, one of the great and enduring strengths of our Republic is the contribution of individual Americans who consider that the highest calling a man can have is a life of service to his country. To call these men faithful public servants is to underestimate the scope of their contribution, for without them our country would be much the lesser.

One such man is Kenneth E. BeLieu. A man who is personally known by all of our colleagues, a man who enjoys the greatest respect in this Chamber, and a man to whom many of us owe a debt of gratitude. He is leaving his position as Deputy Assistant to the President of the United States and assuming the position of Under Secretary of the Army.

On this occasion of his leaving I would like to pay tribute to this man by reviewing his 30 years of service to his country.

Ken BeLieu began his career of service in 1940 when he volunteered for active duty as a second lieutenant of infantry. For those of us who remember that war, and particularly the speculations about the average lifespan of a second lieutenant in the infantry, it cannot have been an easy choice. And yet it was typical of Ken that he always headed for the toughest challenge.

By 1945, Ken had seen action in the Normandy landing and campaigned in France, the Battle of the Bulge, Germany, and Czechoslovakia. He was awarded the Silver Star, the Legion of Merit, the Bronze Star, Purple Heart, and Croix de Guerre.

At the end of the war Ken BeLieu served in the War Department and on the Army General Staff. He was called to the front again during the Korean conflict, and it was during this war that Ken lost his left leg in combat. Upon his discharge from the hospital, Ken served as executive officer to two Secretaries of the Army before retiring as a colonel in 1955.

During the next 5 years, from 1955 to 1960, Ken was a professional staff member of the Senate Armed Services Committee, the first staff director of the Senate Aeronautical and Space Sciences Committee, and at the same time was staff director of the Preparedness Investigating Subcommittee of the Senate Armed Services Committee.

In 1961, Ken BeLieu was appointed Assistant Secretary of the Navy for Installations and Logistics. In 1965 he was appointed Under Secretary of the Navy. For his outstanding work, Ken was awarded the Navy's Distinguished Public Service Award.

On the first official day of the new Nixon administration, January 21, 1969, Ken BeLieu became a Deputy Assistant to the President for Congressional Relations. His principal responsibility was working with the U.S. Senate. It was a wise choice because he quickly won and retained the respect of all our colleagues. I think the reason for this can be put in one word: Integrity. Ken BeLieu's word was always good; a promise made was a promise kept. He always met the tough issues head on, and, above all, he never flagged in his loyalty to one man—the President of the United States. Those of us in this Chamber who differed with Ken BeLieu on one issue or another always respected his position, as he did ours. Mutual respect is the hard currency of the Senate. Ken BeLieu gained our confidence and he never lost it.

Now this man is accepting what will probably be the toughest challenge of his career. He is rejoining the Army in a command position during the Army's time of crisis. The foundations of that institution are being rocked as they rarely have been before. Whether the Army emerges from this trial a better institution will depend in large measure on Ken BeLieu. The President has again made a wise choice in assigning Ken to this job; for he personifies the one quality that is the highest calling in the military—devotion to his country.

We will miss Ken BeLieu in the Senate, and I know the President will miss him. And yet, I know how Ken feels. The Army has been his whole life; and now Ken BeLieu is going home. I wish him well.

The PRESIDENT pro tempore. Is there further morning business?

Mr. SCOTT. Mr. President, I share the same very high respect my friend the Senator from West Virginia has for Ken BeLieu.

I was privileged to be at his swearing in this morning.

He is a man of great ability and persuasiveness. He is of the calm and gentle persuasion type, a man who has served gallantly in two wars, lost a leg in combat, and has served under the Secretary of the Navy and the Secretary of the Army.

He was also a member of the staff of the Senate Armed Services Committee.

I am delighted that his many merits and qualities have been recognized by this new appointment.

Mr. BYRD of West Virginia. Mr. President, I thank the very distinguished minority leader.

MILITARY PROCUREMENT AUTHORIZATIONS, 1972 — UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the conclusion of the morning business on today, the pending question, the amendment submitted by the Senator from Wyoming (Mr. McGEE), be temporarily set aside and that at the close of business today, at the time of the adjournment of the Senate, the amendment by the Senator from Wyoming (Mr. McGEE) again be made the pending question.

The PRESIDENT pro tempore. Is there any objection?

Mr. STENNIS. Mr. President, reserving the right to object, I came into the Chamber a little late. I understand that an agreement has been now reached between the Senator from Wyoming (Mr. McGEE) and the Senator from Virginia (Mr. BYRD).

Mr. BYRD of West Virginia. The Senator is correct. Mr. President, by way of explanation, on yesterday several recesses were had in an effort to find a Senator who would be willing to call up an amendment today prior to 1 o'clock.

It was finally agreed upon between staff members of the Senator from Wyoming (Mr. McGEE) and the other Senators present on the floor at the time that his amendment No. 423 would be the pending question when the Senate adjourned last night and would be the first amendment to be considered when the Chair laid before the Senate the unfinished business today. However, following the adjournment of the Senate last night, the Senator from Wyoming (Mr. McGEE) contacted me to say it would not be possible for him to call up his amendment today.

That is the reason for vacating this unanimous-consent request.

I discussed the matter with the distinguished Senator from Virginia (Mr. BYRD), and it was agreed upon by him and by the Senator from Wyoming (Mr. McGEE) that the McGee amendment could be made the pending business at the close of business today.

Also, in the meantime, the Senator from South Dakota (Mr. McGOVERN) has agreed to bring up his amendment with respect to the B–1 this morning at about 11:15 or 11:30 and, presumably, that matter can be disposed of fairly early. After the disposition of that amendment, and hopefully at about 1 o'clock, the Senator from Wisconsin (Mr. NELSON) will call up his amendment No. 426.

Mr. STENNIS. Mr. President, reserving the right to object, and I shall not object, I thank the Senator from West Virginia for his work in arranging these matters. I also thank Senators for their willingness to call up their amendments for consideration and disposition. The Senator from Wyoming (Mr. McGEE) is adjusting his affairs and will be ready in the morning. The Senator from South Dakota (Mr. McGOVERN) is willing to call up his amendment on the B–1.

This is very fine cooperation. I think we are justified in insisting on getting amendments called up, and if we have to, we should always reserve the right to call up amendments, if necessary, to keep consideration of the bill moving forward.

The PRESIDING OFFICER. The Chair informs the Senate that clarification is needed. Under the existing unanimous-consent agreement, after the

McGee amendment is voted on, the Nelson amendment is to follow.

Mr. BYRD of West Virginia. Mr. President, the Chair is correct. I, therefore, ask unanimous consent that the previous unanimous-consent agreement be vacated and that the amendment by the Senator from Wyoming (Mr. McGEE), which was to have been the pending business at the conclusion of morning business today, be made the pending question at the time of the adjournment of the Senate today, and that in the meantime the amendment by the Senator from South Dakota (Mr. McGOVERN) be offered, considered, and disposed of, following which the amendment No. 426 of the Senator from Wisconsin (Mr. NELSON), on which a 2-hour unanimous-consent agreement has been reached, be then considered and disposed of.

I have discussed this matter with the distinguished majority leader.

The PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. SCOTT. Mr. President, if I may, I would like to make a modest suggestion, although I do not suppose that it will go anywhere.

I do suggest, if possible, that we might discuss the possibility of the various presidential candidates getting together and submitting their amendments to the bill en bloc, and then we might make progress.

Mr. President, I yield back the remainder of my time.

The PRESIDENT pro tempore. Is there further morning business?

ADDITIONAL PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that there now be an additional period of time for the transaction of routine morning business for not to exceed 10 minutes, with statements limited therein to 2 minutes.

The PRESIDENT pro tempore. Without objection, it is so ordered.

SOME OBSERVATIONS ON ATTICA

Mr. SAXBE. Mr. President, we all share, I am sure, the same sense of tragedy caused by the insurrection at Attica Prison which occurred 2 weeks ago in New York. I particularly feel a profound sorrow for the families and friends of those prison guards who were slain during the period of time that the authorities were attempting to regain control of the institution. Certainly, no expression of grief will ever be able to compensate and comfort their loved ones in this their hour of sorrow.

I have observed that in the interim between the date when authority and control were reestablished and now, controversy has flourished and accusations have been made over the judgment exercised by the responsible officials of the State of New York in this matter.

Many of those who were in Attica either as observers or third-party intermediaries have harshly criticized both Governor Rockefeller and Commissioner Oswald for failing to continue indefinitely negotiations with representatives of the inmates. This view is pure nonsense.

I, for one, believe that efforts to reestablish authority over the institution should have been instigated immediately on Thursday, September 9, the day the violence and anarchy commenced. In the alternative an ultimatum should have been issued to release the hostages prior to any negotiations.

As was pointed out by Mr. Nicholas von Hoffman in his article entitled "Prisons, Prison Reform—Death" which appeared in the September 15 edition of the Washington Post, the first rule in the administration of a penal institution is that you never negotiate with inmates holding hostages. The reason for this rule, as Mr. von Hoffman points out, is elemental. When prison guards work among hostages they must be unarmed in order to eliminate the possibility of an inmate disarming them. The guard's sole protection is the knowledge of the prisoner that disarming the guard and taking him hostage will do the prisoner no good.

Second, we must be aware of the fact that the composition of our prison population is changing. With the current leniency in our courts those who are in our prisons are in for serious, even heinous crimes. No longer is the petty criminal—the old time con—a significant and incidentally, a stabilizing segment of our prisons. Added to this changing composition is the increasing militancy of the inmates of our prisons.

Former Gov. Winthrop Rockefeller was quoted in a recent Wall Street Journal article to the effect that the prisoners of today are less inclined to weigh the potential risks prior to taking impetuous actions. I agree with this view. They are less rational and more militant and aggressive. Consequently, they are less likely to accede to any reasonable proposals that prison officials might make during the course of negotiations and more likely to adhere to a set of unrealistic demands. A case in point being the situation at Attica, where the inmates issued an ultimatum that they be granted complete amnesty for their part in the insurrection and be granted guaranteed passage to a "nonimperialistic" country. Quite obviously, neither Governor Rockefeller nor Commissioner Oswald was in a position to grant or even entertain either demand.

The proposition that our prison population is growing ever more militant is verified by the fact that even though the pace of rehabilitation efforts has increased dramatically, we are faced with an even faster rate of prison revolts which have occurred in the last several years. As a matter of fact, there have been seven major prison riots in the last 3 years.

Throughout the country; in California, Mississippi, Maryland, Massachusetts, and my own State of Ohio, the concept that a prison should be a place for rehabilitation and not just for detention enjoys unparalleled acceptance. At Attica on the day the revolt first occurred, six inmates of this maximum security prison were working outside the confines of the prison as carpenters. They enjoyed the same wages as other workers on the project and had assurances of a job when they were released.

Certainly we all share the hope that some day there will be no need for places like Attica and the desire that until that day we our most utmost to rehabilitate those who must pay for their misdeeds by incarceration.

Toward this end, earlier, this year Senators BROOKE, EAGLETON, MONDALE, and myself introduced a Model Criminal Justice Reform Act which was directly aimed at overhauling our criminal justice system. We hope that this measure will someday be enacted into law so that this Nation can be the world leader in the area of the administration of criminal justice. Until that day arrives, however, clearly our resolve in dealing with insurrections like the one at Attica must not be questioned. It should be firm, forthright, and unflinchingly strong, for it is only in this manner that we can insure the safety of our correctional institutions.

EXPANDING U.S. MILITARY PRESENCE IN CAMBODIA

Mr. CHURCH. Mr. President, recent news accounts from Phnom Penh and Washington report the expanding presence of our military in Cambodia.

A 50-man military equipment delivery team headed by Brig. Gen. Theodore C. Mataxis is now to be added to our operations headquartered in Phnom Penh. The general and his staff used to work out of Saigon. In addition to the team, there are 25 servicemen in the office of American military attaché, Col. Harry O. Amos. This military buildup is one more step in the deepening U.S. involvement in the mire of Cambodia a la Vietnam. An American official in Phnom Penh is quoted as saying:

> The next thing they'll want is M.P.'s, then a PX, then a moviehouse, and next thing you know there will be a thousand men here.

There are other items discussed in stories related to U.S.-Cambodian relations worth the attention of the Senate.

Murrey Marder of the Washington Post reported last month, during the visit here of Acting Prime Minister Sirik Matak:

> Cambodia is planning a winter offensive with "American air cover" and South Vietnamese ground support against Vietnamese Communist forces.

Matak had been "worried" that the United States might "withdraw all troops from South Vietnam. One of his associates quickly interjected, 'in the near future.'" However, according to Mr. Marder, 'after seeing President Nixon on Thursday, Sirik Matak said through an interpreter, this 'worry is over.'"

Mr. Marder also reports that Secretary of Defense Laird's "position is that although the American air commitment in Southeast Asia is not 'open-ended,'" Laird would recommend under the Nixon doctrine providing U.S. air support for local forces.

Heavy input of U.S. military equipment, expanding deployment of American military personnel on the ground, and massive U.S. air support operations appear to form the intended future role

of our military forces in Cambodia. We may be winding down our ground combat commitment, but we are not ending in toto U.S. military operations in Indochina. That is why Congress must establish a national policy of total withdrawal—land, sea, and air—from this entire area. Otherwise, we could remain involved in hostilities in Indochina indefinitely.

I ask unanimous consent that three newspaper articles on the expanding American military presence in Cambodia be printed at this point in the RECORD.

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

[From the New York Times, Sept. 20, 1971]

MILITARY GAINS GROUND IN U.S. EMBASSY IN CAMBODIA

(By Craig R. Whitney)

PHNOM PENH, CAMBODIA, September 17.—United States Embassy officials who wanted to keep the supporting American military presence here down to a bare handful have lost some ground that they considered important.

These Americans, led by Jonathan F. Ladd, the embassy political-military counselor and former commander of United States Army Special Forces in Vietnam, have been outmaneuvered, and now, according to diplomatic sources, have less influence in the embassy than the 50-man Military Equipment Delivery Team headed by Brig. Gen. Theodore C. Mataxis.

General Mataxis, who used to spend a couple of days a week in Pnompenh and the rest in Saigon, has now moved to Phompenh with his staff and has more than doubled the size of the Pnompenh contingent of the team. When it moved to Cambodia in January he had 16 men. In May it was expanded to 23.

There are also 63 other men attached to the team but based in South Vietnam, where most Cambodian soldiers get their basic training from the South Vietnamese and are issued equipment—field radios, M–16 rifles, and uniforms—by the Americans. The total of 113 men in Pnompenh and Saigon has been the same since May.

Helped by the equipment, the Cambodian Army has been winning back some territory lost to the enemy.

American military advisers were prohibited in Cambodia by Congress last year. According to a United States official in Pnompenh, the members of military equipment delivery team are not advisers, and are not engaged in training Cambodian troops. "They perform a certain logistic advisory function, seeing that the right equipment gets to the right units and is used "properly," the official said.

FACT SHEET ISSUED

A Department of Defense fact sheet issued in Saigon today and in Washington yesterday emphasized that the team is "operating with the Congressionally approved military assistance to Cambodia" and said that it was deliberately organized with a lower number of personnel than would eventually be needed."

In addition to the team's members there are 25 servicemen in the office of the American military attache, Col. Harry O. Amos.

So far that is all, but one disgruntled advocate of a smaller American establishment here said the other day, "the next thing they will want is M.P.'s, then a PX, then a moviehouse, and next thing you know there will be a thousand men here."

Authoritative American sources here say that is not likely, but the pressure is on the embassy for still more staff members. The team, while operating under the supervision of Ambassador Emory C. Swank, comes under the commander in chief of the Pacific in Hawaii.

The American military aid program last year consisted of $180-million, which included both the expenses of training and equipping Cambodian troops in South Vietnam and delivering other equipment to Cambodia.

This year's request by the Administration is for $200-million, 60 per cent of which goes toward ammunition.

"The guidance from Washington is to help them maintain a light infantry force, modestly supported by artillery and air," one aide said. "In other words, not to make them a goddam conquering army."

The Cambodians have been given six helicopters and six T-28 propeller-driven bombers. They also get air support from American jets based in Vietnam and Thailand. The money for those air strikes is not accountable to the military assistance program here.

According to official sources, the team members make field trips in unmarked American helicopters that come from Vietnam but only to inspect the military equipment and how it is used. Before each trip Ambassador Swank is informed, the sources say.

The four officers on Colonel Amos's staff also make field trips to gather information, the sources said. Colonel Amos does not wear a uniform in Phnom Penh but in his second floor office last week several majors in combat green uniforms came in to make reports.

"Those guys have to grit their teeth when they can't advise," one civilian observer said. "Now they've got a flag officer here, next they will want a major general, then a lieutenant general, and it'll end up being MACC," or Military Assistance Command Cambodia.

So far, however, the Cambodians have not asked for that, and Ambassador Swank, an advocate of the low profile for the American presence here, is likely to hold the day—at least for now.

[From the Washington Post, Aug. 12, 1971]

CAMBODIA PLANS U.S.-AIDED DRIVE

(By Murrey Marder)

Cambodia is planning a winter offensive with "American air cover" and South Vietnamese ground support against Vietnamese Communist forces, Acting Prime Minister Sisowath Sirik Matak said here yesterday.

The Cambodian general told a press conference that he was "worried" before he left his capital of Phnom Penh that the United States might "withdraw all troops from South Vietnam." One of his associates quickly interjected, "in the near future."

"But after seeing President Nixon" on Tuesday, Sirik Matak said through an interpreter, this "worry is over."

Sirik Matak said that Cambodia is now discussing plans with the United States for the intended "dry season" offensive whose objective will be to recapture four provinces in the north and northeast now controlled by North Vietnamese and Vietcong forces.

This operation "will require American air cover" plus reinforcing South Vietnamese troops, he said. The dry season in Cambodia begins in the November-December period.

U.S. officials neither denied nor disputed what Sirik Matak told newsmen in a morning meeting. The Cambodian leader, who also serves as his nation's defense minister, conferred over lunch yesterday with Defense Secretary Melvin R. Laird and other U.S. military planners.

Defense Department spokesmen said afterward that the meeting with Sirik Matak was "private." But they noted that Laird's position is that although the American air commitment in Southeast Asia is not "open-ended," Laird would recommend that the United States provide air support to countries "willing to help themselves under the Nixon Doctrine."

Pentagon spokesman Jerry W. Friedheim confirmed to newsmen earlier that the number of U.S. personnel in the Military Equipment Delivery Team in Cambodia has now been doubled, from 23 to 50.

The total number of these personnel in Saigon or Phnom Penh remains at 113, said Friedheim, but only 63 of them will now be stationed at the supply point in South Vietnam.

The spokesman said the main reason for increasing American personnel in Cambodia is that the Cambodian forces, who were poorly equipped when the United States began providing substantial military aid last year, can now absorb larger quantities of American equipment mostly small arms.

It is known that to comply with congressional sensitivities, the number of U.S. personnel formally "assigned" to Phnom Penh was kept deliberately low, with the bulk of the men based in Saigon and often temporarily assigned to Phnom Penh.

This year, the aid program is expanding with the Nixon administration asking Congress for $200 million worth of military assistance for Cambodia, and $110 million in new economic aid, plus another $11 million worth of "excess" military hardware.

There was great controversy in Congress last year about whether U.S. air operations in Cambodia transgressed President Nixon's pledge that they would be limited to "air interdiction" of enemy forces endangering U.S. troop withdrawals from bordering South Vietnam.

Fears were also expressed that use of American "advisers" might grow into "another Vietnam." This resulted in legislation banning the use of American ground combat troops or advisers in Cambodia.

U.S. personnel in Cambodia are operating neither as advisers or as military trainers, Friedheim said yesterday. But he said the "teams do travel in the countryside from time to time to check on the end use of the equipment." Friedheim said the military personnel "normally" wear uniforms when they travel—a question raised by the suspicions aired last year.

Sirik Matak, in talking with newsmen, referred to Cambodia's armed forces as numbering 220,000. But this is a goal; many units are far under strength or exist only in plans.

Cambodian government forces, he said, now control "two-thirds of the population and the country" and hope to control the remainder as a result of the planned offensive. U.S. officials avoid any such optimistic forecast.

Sirik Matak attempted no prediction about when Cambodia's forces could withstand a major Communist onslaught on their own. Instead, Cambodia's hope, repeated, is that a settlement of the war in Vietnam will result in withdrawal of Communist troops from Cambodia as well. He emphasized his belief that the United States "should not withdraw all forces from Asia."

[From the Washington Evening Star, Aug. 11, 1971]

PENTAGON WILL DOUBLE ITS TEAMS IN CAMBODIA

(By George Sherman)

The Nixon administration is set to double the size of the Pentagon team in Cambodia directing American military deliveries there.

According to informed sources, acting Prime Minister of Cambodia Sisowath Sirik Matak—now on a five-day visit here—was to work out final details in a meeting today with Secretary of Defense Melvin R. Laird.

The plan, according to these sources, is to increase the relatively small "Military Equipment Delivery Team" in Cambodia from 23 to 46, and perhaps 50, officers. In addition, 17 other officers performing standard duties in the embassy remain in the office of the military attache.

The Military Equipment Delivery Team (MEDT, for short) is responsible for channeling military aid—mostly ammunition, rifles, small artillery, communication and amphibious equipment—to the Cambodian armed forces.

LAIRD UNHAPPY

For some time Laird has been unhappy about the inefficiency of having such a small

team account for huge amounts of aid. The Nixon administration rushed $185 million military aid to Cambodia in the fiscal year that ended June 30.

It has requested an additional $200 million military aid for this fiscal year in the overall foreign aid package now tied up in the Senate Foreign Relations Committee.

Officials admit that they are under conflicting pressures from Congress about the size of the American military presence in Cambodia. Sen. J. William Fulbright and his Foreign Relations Committee have insisted that the huge military aid program is only the first step to a large American involvement in Cambodia.

To placate them last year, Laird agreed that the U.S. would establish no military training or advisory mission for the 200,000-man Cambodian armed forces. The MEDT has the limited task of supervising delivery of equipment, not its use.

In addition the administration has stuck by the President's pledge that no American ground forces will be reintroduced—as in the invasion with the South Vietnamese in April-May last year.

SCANDAL FEARED

But the chief fear in the Pentagon is that millions of dollars of military equipment will be lost through improper American supervision of its distribution to the Cambodians. The nightmare is that one day the General Accounting Office, watchdog of Congress over the Executive Branch, will uncover a "scandal" the Cambodian aid program produced by this meager American presence.

Even with the increase, officials point out, the U.S. military presence in Cambodia will remain tiny and limited in function, compared to the huge advisory establishments in neighboring Thailand and South Vietnam.

Nevertheless, American officialdom in Cambodia has multiplied enormously since Prince Norodom Sihanouk was ousted in March 1970 and all-out war with North Vietnam and the Viet Cong began. The embassy has grown from five—diplomatic relations had just been re-established in March 1970—to 100 today, including all the military personnel.

Acting Prime Minister Sirik Matak in his public remarks here yesterday, stressed the "evident stabilization" of the military situation, thanks to American aid and Cambodian determination. The Communist siege of the capital of Phnom Penh has been broken and enemy initiative lost, he told a luncheon at the National Press Club.

But Sirik Matak, fresh from an hour with Nixon discussing how to find peace in Asia, coupled his military optimism with concern over the inflationary economic situation. He made it clear that Cambodia needs more and faster economic aid if it is to support the continuing war.

ECONOMIC AID SLOW

U.S. officials admit that economic aid has been funneled there far more slowly than military. Of the $70 million committed last fiscal year, only $20 million has actually found its way to Cambodia. For the present fiscal year, the administration is asking an additional $130 million economic aid—including up to $20 million in PL480 food shipments.

On the diplomatic front, Sirik Matak repeated strong praise of his government for Nixon's visit to Communist China. "We warmly support the recent and dynamic initiatives of President Nixon leading to the establishment of a constructive dialogue with Peking," he said at the Press Club.

The 57-year-old acting prime minister—here in place of the ailing Premier Lon Nol—said Cambodia is ready to participate in a new Geneva conference confirming the neutrality of Indochina first set up in 1954. But he stipulated that deposed Prince Sihanouk and the "few traitors" now residing in Peking not be permitted to attend.

In contrast to Sihanouk, Sirik Matak told questioners yesterday that he expected "a kind of peace" to be restored in Cambodia and Asia by Nixon's talks in Peking. Sihanouk, echoing the line taken by Hanoi, has warned that no "outside powers" can impose a settlement in Indochina.

After the luncheon Sirik Matak conferred with Secretary of State William P. Rogers, and was guest of honor at a dinner given by Rogers and his wife last night. The Cambodian leader leaves Washington for New York Saturday.

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

Mr. CHURCH. I am happy to yield to the distinguished Senator from Missouri.

Mr. SYMINGTON. Mr. President, I commend the able senior Senator from Idaho, a valued senior member of the Committee on Foreign Relations, for his thoughtful comments this morning. He knows, as do us all, that much of what is going on in Cambodia and most of what is going on in Laos, is done secretly, without the knowledge of Congress, let alone the people.

The PRESIDING OFFICER (Mr. CHILES). The time of the Senator from Idaho has expired.

Mr. SYMINGTON. Mr. President, I ask to be recognized on my time.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. SYMINGTON. The question I would ask my able colleague: Would he not include Thailand in this consideration of getting our heavy military out of the Far East, an operation that has cost us so many billions of dollars and so many thousands of lives? We talk about Indochina. Does not the Senator believe we should also eliminate our gigantic military venture in Thailand?

Mr. CHURCH. Yes, indeed. I think we should liquidate this military misadventure in Southeast Asia; and it would be entirely in our national interest to withdraw our military forces from all of Southeast Asia. By that I mean not only South Vietnam, Cambodia, and Laos, but Thailand, as well.

Mr. SYMINGTON. I thank the Senator. We hear repeatedly about what we should do in Indochina. I am very glad to hear the Senator include Southeast Asia. The facts are that we have a considerably greater investment in Thailand, militarily speaking, than in either Cambodia or Laos, and from the standpoint of improved military real estate, an investment that is comparable to ours in South Vietnam.

Mr. CHURCH. I agree with the Senator's comments. I thank the Senator from Missouri.

ORDER FOR ADJOURNMENT TO 10 A.M.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, when the Senate completes its business today, it stand in adjournment until 10 o'clock tomorrow morning.

The PRESIDING OFFICER (Mr. CHILES). Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR AIKEN TOMORROW—PERIOD FOR EULOGIES FOR FORMER SENATOR PROUTY

Mr. BYRD of West Virginia. Mr. President, I have been asked by the majority leader to ask unanimous consent that tomorrow, immediately following the recognition of the two leaders under the standing order, the distinguished senior Senator from Vermont (Mr. AIKEN) be recognized for not to exceed 1 hour.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, this time will be under the control of Senator AIKEN and is set aside for the purpose of eulogies for our late, departed colleague, Senator Winston L. Prouty, of Vermont.

ORDER FOR PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the conclusion of the 1 hour tomorrow, which has already been set aside for eulogies, there be a period for the transaction of routine morning business for not to exceed 15 minutes, with statements limited therein to 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER TO RESUME UNFINISHED BUSINESS TOMORROW AND FOR AMENDMENT 423 TO BE THE PENDING QUESTION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the conclusion of routine morning business tomorrow the Senate resume consideration of the unfinished business, and that at that time the pending question be the amendment of the distinguished Senator from Wyoming (Mr. MCGEE), amendment No. 423, and that the time thereon under the agreement then begin running.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT ON OVEROBLIGATION OF AN APPROPRIATION

A letter from the Deputy Director, Office of Management and Budget, Executive Office of the President, reporting, pursuant to law, that the appropriation to the Department of the Interior for "Management of lands and resources," Bureau of Land Management, for the fiscal year 1972 had been apportioned on a basis which indicates a need for a supplemental estimate of appropriation; to the Committee on Appropriations.

STATISTICAL SUPPLEMENT, STOCKPILE REPORT

A letter from the Director, Office of Emergency Preparedness, Executive Office of the President, transmitting, pursuant to law, the Statistical Supplement, Stockpile Report, for the period ended June 30, 1971 (with an accompanying report); to the Committee on Armed Services.

REPORT ON NEGOTIATIONS BETWEEN THE RAILROADS AND THEIR EMPLOYEES

A letter from the Secretary of Labor, transmitting, pursuant to law, a report on negotiations between most of the Nation's railroads and certain of their employees (with an accompanying report); to the Committee on Labor and Public Welfare.

REQUEST FOR CANCELLATION OF CERTAIN CONSTRUCTION AND ALTERATION PROJECTS

A letter from the Administrator, General Services Administration, requesting that the approval of certain construction and alteration projects be rescinded; to the Committee on Public Works.

MEMORIALS

Memorials were laid before the Senate, and referred as indicated:

By the PRESIDENT pro tempore:

Sundry memorials remonstrating against U.S. policy toward Greece; to the Committee on Foreign Relations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JORDAN, of North Carolina, from the Committee on Rules and Administration, without amendment:

S. Res. 159. Resolution authorizing additional expenditures by the Special Committee on Aging (Rept. No. 92–368);

S. Res. 161. Resolution authorizing the printing as a Senate document of a compilation of statements by Presidents of the United States on international cooperation in space (Rept. No. 92–367);

S. Res. 164. Resolution authorizing the printing of the report entitled "Development of Systems To Attain Established Motor Vehicle and Engine Emission Standards" as a Senate document (Rept. No. 92–366);

S. Res. 168. Resolution authorizing the printing for the use of the Committee on Government Operations of additional copies of part 3 of its hearings entitled "Organized Crime" (Rept. No. 92–365);

H. Con. Res. 319. Concurrent resolution to provide for the printing of two thousand additional copies of the hearings before the Select Subcommittee on Education of the Committee on Education and Labor entitled "Comprehensive Preschool Education and Child Day Care Act of 1969" (Rept. No. 92–370);

H. Con. Res. 320. Concurrent resolution to provide for the printing of 600 additional copies of the hearings before the Select Subcommittee on Education of the Committee on Education and Labor entitled "Environmental Quality Education Act of 1970" (Rept. No. 92–371);

H. Con. Res. 337. Concurrent resolution to provide for the printing of 500 copies each of parts 1 and 2 of the hearings before the Select Subcommittee on Education of the Committee on Education and Labor entitled "Drug Abuse Education Act of 1969" (Rept. No. 92–372); and

H. Con. Res. 359. Concurrent resolution to provide for the reprinting of the prayers offered by the Chaplain (Rept. No. 92–373).

By Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, with an amendment:

H. Con. Res. 365. Concurrent resolution to print as a House document the Constitution of the United States (Rept. No. 92–374); and

H. Con. Res. 367. Concurrent resolution authorizing the printing of the pocket-size edition of "The Constitution of the United States of America" as a House document, and for other purposes (Rept. No. 92–375).

By Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, with amendments:

S. Res. 155. Resolution to investigate matters pertaining to constitutional rights (Rept. No. 92–369).

EXECUTIVE REPORTS OF COMMITTEES

As in executive session, the following favorable reports of nominations were submitted:

By Mr. SPARKMAN, from the Committee on Banking, Housing and Urban Affairs:

Philip A. Loomis, Jr., of California, to be a member of the Securities and Exchange Commission.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. CHILES:

S. 2557. A bill to amend the Fair Labor Standards Act of 1938 to provide for a waiver in the increases in the minimum wage provision of such act to protect the continued operation of certain small businesses. Referred to the Committee on Labor and Public Welfare.

By Mr. PROXMIRE:

S. 2558. A bill for the relief of Jean George (Ioannis) Taglis. Referred to the Committee on the Judiciary.

By Mr. EASTLAND (for himself, Mr. STENNIS, Mr. ALLEN, Mr. DOLE, Mr. BELLMON, Mr. LONG, and Mr. TOWER):

S. 2559. A bill to amend the Consolidated Farmers Home Administration Act of 1961 to authorize insured emergency loans. Referred to the Committee on Agriculture and Forestry.

By Mr. EASTLAND (by request):

S. 2560. A bill to establish the Official Residence of the Chief Justice of the United States by private gift to the United States. Referred to the Committee on the Judiciary.

By Mr. INOUYE:

S. 2561. A bill to amend the Intercoastal Shipping Act, 1933, to authorize common carriers by water to provide in their tariffs to or from the State of Hawaii for pickup or delivery of property incidental to ocean carriage, and for other purposes. Referred to the Committee on Commerce.

By Mr. BENTSEN:

S. 2562. A bill for the relief of Guido Bellanca. Referred to the Committee on the Judiciary.

By Mr. TOWER:

S. 2563. A bill to permit individuals who have attained age 65 and are still working to elect to forgo any social security benefits attributable to such work and to receive a refund, or income tax credit, for social security taxes paid by them on account of such work. Referred to the Committee on Finance.

By Mr. MONDALE (for himself and Mr. HUMPHREY):

S. 2564. A bill to exclude certain lands from the boundaries of the Voyageurs National Park. Referred to the Committee on Interior and Insular Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. EASTLAND (for himself, Mr. STENNIS, Mr. ALLEN, Mr. DOLE, Mr. BELLMON, Mr. LONG, and Mr. TOWER):

S. 2559. A bill to amend the Consolidated Farmers Home Administration Act of 1961 to authorize insured emergency loans. Referred to the Committee on Agriculture and Forestry.

Mr. EASTLAND. Mr. President, on behalf of Senators STENNIS, ALLEN, DOLE, BELLMON, LONG, TOWER and myself, I introduce for proper referral a bill to amend Public Law 87–128 which will assure that farmers suffering natural disaster situations will have access to timely and adequate financing to save their homes and pursue their livelihoods.

Senators will recall that a tornado in Mississippi in February and an extended drought in Texas and Oklahoma in the spring and early summer brought about natural disaster declarations. Appropriated funds were inadequate to fund the eligible farmers and rural residents whose loan applications had been approved.

The House had passed the supplemental appropriations bill in June and on the morning the Senate Appropriations Committee was marking up the bill it received a request for $65 million additional to provide relief in these areas.

I commend my colleagues for their response and the crisis was averted. But, suppose the request had come up a day later, or that the Congress was in recess and relief had been delayed. Many farmers would have lost their homes and their life earnings in land and equipment.

The bill we offer today will not change our present appropriations process for emergency loans, but it will relieve the pressure on the emergency credit revolving fund. It will enable the Farmers Home Administration to reconstitute farmers obligations over a period that will enable them to overcome their disaster where conditions require it.

I hope that the Senate can give early and favorable consideration to this bill.

By Mr. INOUYE:

S. 2561. A bill to amend the Intercoastal Shipping Act, 1933, to authorize common carriers by water to provide in their tariffs to or from the State of Hawaii for pickup or delivery of property incidental to ocean carriage, and for other purposes. Referred to the Committee on Commerce.

Mr. INOUYE. Mr. President, I wish to introduce today for appropriate reference a bill to amend the Intercoastal Shipping Act of 1933 to be known as the Hawaii Transportation Act of 1971.

It is difficult to overemphasize the importance of good water transportation between the mainland and our island State of Hawaii. We are reminded of this importance daily and particularly during the west coast shipping strike which has now been going on for some 12 weeks. It is, therefore, critically important to us that we improve that system to more effectively serve the needs of our people through regular and least expensive transportation services.

The measure I introduce today is an effort to do just that.

My bill provides for the following:

Regulatory jurisdiction over through service to and from port terminal area points.

The most important recent development in cargo transportation is the so-called container revolution. Containerization makes possible the transportation of goods from an inland point to dockside, by ship to another dockside and then to another inland point, all without the delays and costs of unpacking and repacking at each step in the process. The economies and time savings made possible by this process have been dramatic in transportation involving ocean carriers, especially in the case of Hawaii given its dependence on ocean transportation. Although Hawaii has enjoyed many benefits from this new technology in the form of container system service, an anomalous system of regulation of the rates assessed for such service has evolved which this proposed legislation will correct.

In its decision in docket No. 912, the Federal Maritime Commission concluded that tariffs naming single-factor ocean rates, that is those which include incidental motor carrier pickup or delivery service from or to port terminal area points along with line-haul ocean transportation are lawful and not contrary to the provisions of section w of the Intercoastal Shipping Act, 1933. This decision recognized that the concept of containerization made it possible for an ocean carrier to provide service from or to off-dock shipper premises as opposed to its historical role of originating or terminating its service at a waters-edge dock or terminal.

An ocean carrier providing container service at single-factor rates authorized by this decision employs ICC certificated motor carriers to conduct the terminal area pickup or delivery service with such underlying service performed on behalf of the ocean carriers at rates and charges published and filed with the Interstate Commerce Comission by the underlying motor carrier. Under this type of arrangement, the motor carrier remains subject to the sole jurisdiction of the ICC in his role as the servant of the ocean carrier while the ocean carrier's service and single-factor rates are regulated solely by the Federal Maritime Commission. This arrangement, under which the ocean carrier has sole responsibility to the shipper for performance of the through service, has been advantageous to shippers while at the same time retaining a scheme of economic regulation wherein each carrier remains subject to the jurisdiction of that agency having optimum expertise in the respective fields of ocean and motor carrier transportation.

Under Public Law 87–595, section 216 (c) of the Interstate Commerce Act was amended in a manner that authorized the Interstate Commerce Commission to exercise economic regulation over joint motor-water rates applying between points in Hawaii and points in the other States of the Union. Under this provision an ICC certificated motor carrier and a common carrier by water, the latter otherwise subject to the shipping acts, may offer through service from or to port terminal area points on the basis of the participating carriers being jointly and severally responsible for the performance of such service.

In contrast to single-factor rates filed with the FMC by common carriers by water employing underlying motor carriers for terminal area drayage service as the servant of the ocean carrier, common carriers by motor and water participate in section 216(c) joint rates as connecting carriers offering joint service with the carriers agreeing privately on their respective share of the joint rate. In *Alaska S.S. Co.* v. *FMC*, 399 F. 2d 623 (9th Cir. 1968) and *Sea-Land Service, Inc.* v. *FMC*, 404 F. 2d 824 (D.C. Cir. 1968), it was affirmed that Public Law 87–595 embraced through service at joint motor-water rates from or to port terminal area points, even though the motor carrier portion of the total service involved only an incidental pickup or delivery service.

As a consequence of the enactment of Public Law 87–595 and its interpretation by the courts, the totality of containerized ocean transportation provided in the Hawaiian trade is subject to dual economic regulation by Federal agencies. Carriers providing container service from or to port terminal area points can select at will the agency—FMC or ICC—under which they prefer to be regulated. The result of this selection process is that the major carrier in the trade is primarily regulated by the FMC while others are primarily regulated by the ICC. This has brought about considerable confusion and uncertainty on the part of the shipping public as well as the competing carriers in the trade. Orderly and effective regulation of the trade requires that the bulk of the containerized cargo moving in the Hawaiian trade be subject to one regulatory jurisdiction.

RATES ON GOVERNMENT IMPELLED CARGO

Under the provisions of section 6, Intercoastal Shipping Act, 1933, common carriers by water are permitted to transport Government impelled cargo at rates reduced without limitation from those applying to commercial cargo. As a result of the amendment to section 216(c) enacted by Public Law 87–595, ocean carriers may also transport such cargo under reduced joint rates pursuant to section 22 of the Interstate Commerce Act. The same previously described selection as to regulatory jurisdiction is available to the container carriers of Government cargo in the trades. Although both the Federal Maritime Commission and the Interstate Commerce Commission can and do require the filing of such reduced rates, the result of sections 6 and 22 is to strip them of any authority to exercise economic regulation over such rates.

Large aggregations of cargo such as Government impelled cargo are particularly prone to special rate or preferential service arrangements with the cost of such preferential treatment potentially borne by commercial shippers in the form of either higher rates or less efficient service. The consuming public served by these commercial shippers should not have to subsidize military shipments.

PURPOSES AND RESULTS OF THE BILL

The transportation of cargo, both commercial and Government impelled, between points in Hawaii and off-dock points in continental U.S. port terminal areas is to be performed only at single-factor ocean rates subject exclusively to the jurisdiction of the Federal Maritime Commission provided that:

First, underlying motor carriers employed by ocean carriers for performance of incidental terminal area services shall remain in all respects under the exclusive jurisdiction of the Interstate Commerce Commission, and

Second, the Interstate Commerce Commission shall retain existing jurisdiction as to economic regulation over joint motor-water rates applying to the transportation of cargo—both commercial and military—between points in Hawaii and points situated beyond the confines of continental U.S. port terminal areas, pursuant to section 216(c) of the Interstate Commerce Act.

In this manner, the majority of the ocean-borne traffic in the Hawaiian trade will become subject to the jurisdiction of the Federal Maritime Commission with benefits to shippers and carriers alike in terms of simplifying and clarifying the regulatory system applying to that trade.

Government cargoes in the Hawaiian trade received or delivered at port terminal area points, like the cargoes of all other shippers, would be subject to economic regulation by the Federal Maritime Commission. As a result of such regulation the Government would receive full protection against unfair conditions of carriage and excessive charges; as it would still be able to secure reduced rates for high volume shipments, in the same manner as any other shipper, subject however to the customary tests of reasonableness and undue preference or discrimination. Section 6 now permits reduced rates and special conditions of carriage without limitation of any kind.

Hopefully, this measure will receive early and favorable consideration. I think it can have an important impact on shipping between the mainland and Hawaii and be an important factor in providing less expensive and more regular service.

By Mr. TOWER:

S. 2563. A bill to permit individuals who have attained age 65 and are still working to elect to forgo any social security benefits attributable to such work and to receive a refund, or income tax credit, for social security taxes paid by them on account of such work. Referred to the Committee on Finance.

Mr. TOWER. Mr. President, over the past few months a number of constituents of mine have called my attention to the fact that retired people who work and receive social security benefits pay social security taxes on their small earnings. Because this situation is so obviously unfair, I am offering a bill which would provide a refund of social security taxes paid by people age 65 and over.

The bill I propose has been carefully constructed to take care of the situation in which a person pays taxes and gets no benefits while at the same time preserving the rights of people who do get higher benefits because of the social security taxes they pay after age 65.

The question of paying social security taxes after age 65 was considered by the 1971 Advisory Council on Social Securi-

ty. The Council, however, did not recommend any change in the law because the solutions they considered were offered as a compulsory matter and not as a free choice. Because of this, the Council said that if social security taxes were not paid by people age 65 and over, the law would be deliberalized if credit for work after age 65 is not given, or if credit were given, some people who had never worked in covered employment could become eligible for social security benefits without paying any social security taxes by working after age 65—for a person 65 this year it would take 5 years of work to qualify for benefits.

The Council's objectives seem to present no real problem. Under my bill, a person who worked in the year he reaches 65, or after, would have social security taxes deducted from his pay just as is done now. When the time comes for him to file his income tax return, he would have the choice of getting a refund of his social security taxes and not getting social security credit for that year's work. Or he could do nothing and he would get credit for the year's work. The refund system would work just like the provision in present law that applies when a person has more than one employer and pays social security taxes on more earnings than he can be given credit for. And, if a person should make a mistake, the income tax laws give him up to 3 years in which to file an amended return to correct the mistake.

Mr. President, the injustice of the present law is obvious and the objections to the proposal made by the Advisory Council lack substance. The action that the Senate should take is clear. According to the Social Security Administration's actuaries, about 4 million people over age 65 will pay about $900 million in social security taxes for 1972. The bulk of these people will not get any benefits from the additional taxes and I hope that the Senate will see it as I do and relieve the elderly American citizen of an unnecessary and unjust tax burden.

Mr. President, it has been said quite frequently that President Nixon's economic program will not result in a substantial amount of relief to the American workingman. I personally do not hold that view. I believe that the policies he has enunciated will result in substantial relief for all Americans. However, I do feel that the Congress should place a strong emphasis on relieving the economic burdens of our elderly citizens. Because of the crushing effect which inflation has had on older Americans, many of these people have either remained or reenlisted in the labor force in order to supplement their social security benefits.

These people should not be penalized because they engage in productive activity which benefits not only themselves but society as a whole. There are two proposals which Congress should enact in order to provide more equity for our elderly citizens. The proposal I have just described and am now introducing is one of them. In addition, Congress should enact legislation similar to my bill, S. 639, which increases the so-called earnings ceiling for social security beneficiaries. Under current law a social security beneficiary may earn only $1,680 of outside income before deductions are made from his social security payment. S. 639 would increase the earnings ceiling to $3,000 and would furthermore change the way that benefits are reduced when a person earns more than the exempt amount. Under current law, benefits are reduced by $1 for each $2 of the first $1,200 of earnings above the exempt amount and by $1 for each $1 of earnings above that amount—above $2,800 under present law. S. 639 would change that procedure so that the $1 reduction in benefit for each $2 of earnings would apply to all earnings above the exempt amount of $3,000.

Mr. President, these two proposals, if enacted, would result in immediate and substantial relief to a large portion of our elderly population. I believe they should be considered as a means to achieve the necessary relief from the pressures of inflation which has jeopardized the living standards of our elderly citizens. I hope that the Congress will give both of these proposals careful consideration in the near future.

I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

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

S. 2563

A bill to permit individuals who have attained age 65 and are still working to elect to forgo any social security benefits attributable to such work and to receive a refund, or income tax credit, for social security taxes paid by them on account of such work

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by renumbering section 40 as 41, and by inserting after section 39 the following new section:

"SEC. 40. OPTIONAL CREDIT FOR SOCIAL SECURITY TAXES PAID BY INDIVIDUALS WHO HAVE ATTAINED AGE 65

"(a) GENERAL RULE.—In the case of an individual who has attained the age of 65 before the close of the taxable year, there shall be allowed as a credit against the tax imposed by this chapter, at the election of the taxpayer, the amount of taxes withheld from his wages under section 3102 during the taxable year and the amount of the taxes imposed under section 1401 on his self-employment income for the taxable year.

"(b) COORDINATION WITH SECTION 31(b).—The credit otherwise allowable under subsection (a) for any taxable year shall be reduced by the amount of any credit allowable under section 31(b) for such year.

"(c) ELECTION.—An election under subsection (a) shall be made in such manner as the Secretary or his delegate prescribes by regulations. An election for any taxable year may be made at any time before the expiration of the period for filing claim for credit or refund of overpayment of the tax imposed by this chapter for such year.

"(d) TREATMENT OF EXCESS CREDIT.—

"For treatment of excess credit as overpayment of tax, see section 6401(b)."

(b) The table of sections for such subpart A is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 40. Optional credit for social security taxes paid by individuals who have attained age 65.

"Sec. 41. Overpayments of tax."

Sec. 2. (a) Section 6401 (b) of the Internal Revenue Code of 1954 (relating to excessive credits) is amended—

(1) by inserting ", 40 (relating to optional credit for social security taxes paid by individuals who have attained age 65)," after "lubricating oil)", and

(2) by striking out "31 and 39" and inserting in lieu thereof "31, 39, and 40".

(b) Section 72(n)(3) of such Code (relating to determination of taxable income for certain purposes is amended by striking out "31 and 39" and inserting in lieu thereof "31, 39, and 40".

(c) Section 6201(a)(4) of such Code (relating to assessment authority) is amended—

(1) by striking out "Section 39" in the heading and inserting in lieu thereof "Sections 39 and 40", and

(2) by inserting after "lubricating oil)" in the text "or section 40 (relating to optional credit for social security taxes paid by individuals who have attained age 65)".

SEC. 3. The amendments made by the first section and section 2 of this Act shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 4. (a) The Secretary of the Treasury shall, as soon as possible after the close of each taxable year, notify the Secretary of Health, Education, and Welfare of each individual who has elected for such year the credit provided by section 40 of the Internal Revenue Code of 1954.

(b) For purposes of computing benefits under title II of the Social Security Act (other than reductions on account of earnings), an individual who elects the credit provided by section 40 of the Internal Revenue Code of 1954 for a taxable year shall be treated as if—

(1) he did not receive any wages subject to the tax imposed by section 3101 of such Code during such year, and

(2) he did not have any self-employment income subject to the tax imposed by section 1401 of such Code for such year.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 346

At the request of Mr. PEARSON, the Senator from Tennessee (Mr. BROCK) was added as a cosponsor of S. 346, the Rural Job Development Act.

S. 1457

At the request of Mr. SPARKMAN, the Senator from Maine (Mr. MUSKIE) was added as a cosponsor of S. 1457, a bill to amend the Clayton Act by adding a new section to prohibit sales below cost for the purpose of destroying competition or eliminating a competitor.

S. 2232

At the request of Mr. MCGOVERN, the Senator from Alaska (Mr. GRAVEL) was added as a cosponsor of S. 2232, the Police Education Assistance Act of 1971.

S. 2332

At the request of Mr. TOWER, the Senator from South Carolina (Mr. THURMOND) and the Senator from Maryland (Mr. MATHIAS) were added as cosponsors of S. 2332, to permit a member of the U.S. Armed Forces to send mail matter without payment of postage if the member is performing duties at an overseas isolated or hardship area.

S. 2512

At the request of Mr. GURNEY, the Senator from Kansas (Mr. PEARSON) was added as a cosponsor of S. 2512, to amend the Social Security Act to provide increases in benefits, to improve computa-

tion methods, and to raise the earnings base under the old-age, survivors, and disability insurance system, to make improvements in the medicare, medicaid, and material and child health programs with emphasis upon improvements in the operating effectiveness of such programs, and for other purposes.

SENATE JOINT RESOLUTION 135

At the request of Mr. TOWER, the Senator from New Jersey (Mr. WILLIAMS) was added as a cosponsor of S.J. Res. 135, to authorize and request the President to issue annually a proclamation designating one day of each year as "National Law Officers Appreciation Day."

SENATE RESOLUTION 171—ORIGINAL RESOLUTION RELATIVE TO FLOOR PRIVILEGE FOR THE CHAPLAIN OF THE HOUSE OF REPRESENTATIVES

(Placed on the calendar.)

Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, reported an original resolution, and submitted a report (No. 92-364) thereon, which report was ordered to be printed.

The resolution is as follows:

S. RES. 171

Resolved, That, Rule XXXIII of the Senate be amended to insert a new line following "The Architect of the Capitol", as follows: "The Chaplain of the House of Representatives."

SENATE RESOLUTION 172—ORIGINAL RESOLUTICN REPORTED RELATING TO A GRATUITY

(Placed on the calendar.)

Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, reported the following original resolution:

S. RES. 172

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Mary V. Marshall, widow of Theron W. Marshall, an employee of the Senate at the time of his death, a sum equal to one year's compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

SENATE RESOLUTION 173—ORIGINAL RESOLUTION REPORTED RELATING TO A GRATUITY

(Placed on the calendar.)

Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, reported the following original resolution:

S. RES. 173

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Maybelle I. Jenkins, widow of William E. Jenkins, an employee of the Architect of the Capitol assigned to duty in the Senate Office Buildings at the time of his death, a sum equal to six months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

SOCIAL SECURITY AMENDMENTS OF 1971—AMENDMENT

AMENDMENT NO. 428

(Ordered to be printed, and referred to the Committee on Finance.)

Mr. PACKWOOD submitted an amendment, intended to be proposed by him, to the bill (H.R. 1) to amend the Social Security Act to increase benefits and improve eligibility and computation methods under the OASDI program, to make improvements in the medicare, medicaid, and maternal and child health programs with emphasis on improvements in their operating effectiveness, to replace the existing Federal-State public assistance programs with a Federal program of adult assistance and a Federal program of benefits to low-income families with children with incentives and requirements for employment and training to improve the capacity for employment of members of such families, and for other purposes.

MILITARY PROCUREMENT AUTHORIZATIONS, 1972—AMENDMENTS

AMENDMENT NO. 429

(Ordered to be printed and to lie on the table.)

Mr. McGOVERN submitted an amendment, intended to be proposed by him, to the bill (H.R. 8687) to authorize appropriations during the fiscal year 1972 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

AMENDMENT NO. 430

(Ordered to be printed and to lie on the table.)

ALLOTT MILITARY PAY INCREASE

Mr. ALLOTT. Mr. President, I am sending to the desk an amendment to the military procurement bill (H.R. 8687). This amendment concerns military pay.

I am assured that this amendment has the full support of the President of the United States. It reflects his concern for equity in military pay, and his deep desire to move as quickly as possible toward an all-volunteer armed force.

The purpose of the amendment is to bring spending for military pay increases back up to the level voted by the Senate 51 to 27 on June 8. It will restore to the men in the lower rank the increases that were eliminated by the draft bill conference committee. It will bring military pay into line with the pay schedules I outlined under the category "suggested compromise" in my Senate remarks on September 13. These new rates will go into effect November 16.

It is my earnest hope that we can act on this measure promptly. I do not need to call to the attention of the Senate the alarming and discouraging reports of declining morale in the Armed Forces. The recent uncertainty about desperately needed pay raises has only aggravated this condition.

I do not need to remind the Senate that the unfortunate delay of the draft bill, with its flawed but necessary pay increases, handicapped the Armed Forces during the peak summer recruiting season. Prompt enactment of my amendment will do much to strengthen the Armed Forces' recruiting efforts.

One hundred and six days ago the Senate voted resoundingly for spending for military pay increases at a level of $2.768 billion on an annualized basis. My amendment will bring new spending for pay increases to $2.747 billion on an annualized basis.

One hundred and six days ago some Senators voted against substantial pay raises because they and the President had doubts as to whether we could afford this. For the rest of fiscal 1972, costs of pay increases, including those contained in my amendment, will be $1.717 billion—a billion dollars less than the Senate originally voted to spend.

The President has given his unqualified support to my amendment. It is my hope that every Senator will support it. Then I am sure the amendment will receive the prompt and favorable attention of the House, and we all will have made a mighty contribution to ending the draft.

Mr. President, I request that the following Senators be listed as cosponsors of this amendment: the Senators from Tennessee (Mr. BAKER and Mr. BROCK), the Senator from Maryland (Mr. BEALL), the Senator from New York (Mr. BUCKLEY), the Senator from New Jersey (Mr. CASE), the Senator from California (Mr. CRANSTON), the Senator from Oregon (Mr. HATFIELD), the Senator from Iowa (Mr. HUGHES), the Senator from Washington (Mr. JACKSON), the Senator from Wisconsin (Mr. PROXMIRE), the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Ohio (Mr. TAFT), the Senator from South Carolina (Mr. THURMOND), and the Senator from Michigan (Mr. HART).

AMENDMENT NO. 432

(Ordered to be printed and to lie on the table.)

Mr. HUMPHREY submitted an amendment, intended to be proposed by him to House bill 8687, supra.

AMENDMENT OF FEDERAL MEAT INSPECTION ACT—AMENDMENT

AMENDMENT NO. 431

(Ordered to be printed and referred to the Committee on Agriculture and Forestry.)

Mr. PEARSON. Mr. President, I submit today for appropriate reference an amendment in the nature of a substitute to the bill S. 571, which I introduced on February 3, 1971. This legislation is offered to amend the Federal Meat Inspection Act relating to the importation of meat and meat products into the United States.

My original bill was introduced to insure that consumers of imported meat are protected adequately from harmful residues of economic poisons. The bill requires the Secretary of Agriculture to prohibit the importation of meat or meat products when the Secretary determines

that the country from which the article is imported has in effect safeguards or procedures insufficient to protect the health, safety, and welfare of American consumers.

The amendment which I offer today in the nature of a substitute will broaden the scope of S. 571, to include protection against drugs used in the raising, slaughtering, or processing of animals. Thus under the terms of this amendment American consumers will be protected both against unreasonable risk of injury from harmful residues of pesticides and herbicides, and from unreasonable risk of harm resulting from residues of drugs used by producers or processors.

The United States within the coming years will implement laws and regulations to insure that residues of economic poisons and drugs do not appear in excessive amounts in domestic production. Because the American consuming public buys more than 1.7 billion pounds of foreign meat each year, the Federal Meat Inspection Act must be amended to insure that the overseas product meets our residue tolerance standards.

I am pleased the Senate Agriculture Committee will begin hearings on S. 571 on September 28, 1971. I believe the amendment which I offer today perfects this legislation, and is appropriate for Senate consideration and passage in this Congress.

ADDITIONAL STATEMENTS

ENDING THE DRAFT NOW

Mr. GRIFFIN. Mr. President, the Senator from Arizona (Mr. GOLDWATER), who is necessarily absent from the Senate today, has requested that I submit on his behalf certain remarks prepared by him on the draft conference report. Accordingly, I ask unanimous consent that his remarks be printed in the RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

ENDING THE DRAFT NOW

Mr. GOLDWATER. Mr. President, in view of the suddenness of the vote taken yesterday on the Conference Report extending the draft, I was unable to discuss my position against that report. Had time permitted, I had intended to give the following remarks, which I shall now place in the RECORD in order to explain my vote on this important issue.

Mr. President, it is my intention today to vote against this bill because I believe that it is long past the time when we should have ended the military draft.

While I understand and sympathize with the problem the current situation places before the Department of Defense, it is my definite opinion that a way can be found to terminate the military conscription program without endangering the national security. It is time for the Pentagon to stop living in the past and start looking ahead.

Mr. President, I should like to point out that under the Goldwater-Hatfield measure of 2 years ago, which would have facilitated replacement of the selective service system by providing inducements for a volunteer army, this situation would not have occurred. However, I wish to recall that the Defense Department saw fit to oppose that bill when it came up for a vote last year and thus deprived the Department of inducements which would have brought thousands of additional enlistments in the Armed Services and avoided the shortfalls of which the Pentagon is now complaining.

In a word, because of a situation it openly invited, the Department of Defense now says it must keep the draft or endanger the national security.

The Defense Department data is admittedly alarming, but it is based on current pay rates. It does not take account of the fact that both Houses of Congress have voted to boost entrance pay by nearly $2,000 a year.

For the E–1 raw recruit, annual compensation would be increased from $3,165 to $4,872. For an E–2, the pay would rise to $5,311 instead of the current rate of $3,345. The average recruit, who now reaches E–3 in only nine or ten months, would get a pay boost from $3,931 up to $5,663. An E–4 would go all the way up to $6,189, a rank within the reach of almost all enlisted recruits in two years at the most. By comparison, the average civilian pay of high school graduates under age 20 is but $4,289 per year, far less than an E–3 private will be making before his first year is up.

In addition, I have not even mentioned the impact of the compensation provisions of the Conference Report on career personnel. The bill contains substantial increases in the housing allowance for the corporals, sergeants, lieutenants, and captains who make up such an important and basic part of our military system.

In view of this, Mr. President, I should like to ask why it would not be possible to pass the pay raise, or an improved version of it, as a separate item and expect the Department of Defense to work as hard as it can to use the new rates as an inducement for increased enlistments. If this does not work after a few months, Congress then could renew the draft or enact additional changes aimed at attracting more enlistees.

In the meantime, to help overcome the current shortfall, I might suggest that the Defense Department could take the following actions:

1. Civilianize some 117,000 enlisted positions, as suggested by the Gates Commission study on a volunteer Army. These positions would include the 95,000 spots which General George Forsythe, Special Assistant to the Secretary of the Army, recently identified as being filled by soldiers who do little more than KP, "cutting grass and performing other household chores."

2. Lift the ban against reenlistments which now prevents some 15,000 men from reenlisting simply because they have not qualified for higher ranks.

3. Stop the early release program under which some 30,000 men leave the service before their full term is up.

Mr. President, if these steps would be implemented at the same time Congress should enact the pay raise features I have described, I am confident we would see an immediate and significant jump in true voluntary enlistments accompanied by a sharp reduction in the military's actual manpower needs. In this manner, Congress could protect the national security interests of our Nation at the same time it secures the all-important right of each American citizen to choose what he is going to do with his life free of Government compulsion.

AMTRAK AND THE UPGRADING OF MISSOURI RAIL SERVICE

Mr. SYMINGTON. Mr. President, Missouri rail passengers are expected to benefit soon from upgraded services on four routes which pass through our State.

The Railroad Passenger Corporation—Amtrak—is purchasing 1,200 of the best available passenger cars at a cost of $16.8 million.

Of the 340 cities and towns served by the rail network, 13 Missouri cities will be among those benefited by the passenger-car additions. On the route between Washington and Kansas City, Amtrak has been replacing all equipment on the "Spirit of St. Louis" with 26 newly purchased passenger cars from four major western railroads. Missouri communities on this route include St. Louis, Kirkwood, Jefferson City, Sedalia, Warrensburg, and Kansas City.

Amtrak also announced plans to introduce a new, low-cost overnight travel service for the Chicago-Los Angeles route, which runs through Kansas City, and increased choices of passenger accommodations on the Chicago-Houston route, which passes through La Plata, Marceline, Carrollton, and Kansas City. Additional new passenger cars are scheduled to be assigned to the Chicago-St. Louis route.

Mr. President, our Nation is linked together by a balanced system of intercity and intracity transportation networks, of which our passenger train system is a very important part. Although we wish that more cities in our State could benefit from this important form of transportation, it is still encouraging to observe the present efforts to upgrade the existing system, particularly as they benefit the citizens of our State.

OBSERVATIONS ON RAPPROCHEMENT IN EUROPE

Mr. JORDAN of Idaho. Mr. President, at the Interparliamentary Union meeting in Paris on September 3, 1971, the distinguished minority leader (Mr. SCOTT) made some interesting observations on rapprochement in Europe. This is a subject of which he has been deeply involved over a period of years and, as he said, has a great and special meaning to the United States. Our colleague is the vice president of the U.S. Group of IPU and along with the distinguished majority leader participated actively during these meetings. I ask unanimous consent that the statement by the minority leader be printed in the RECORD.

There being no objection, the statement was ordered printed in the RECORD, as follows:

STATEMENT OF SENATOR HUGH SCOTT, VICE PRESIDENT OF THE U.S. GROUP, IN THE INTERPARLIAMENTARY UNION GENERAL DEBATE, SEPTEMBER 3, 1971

Mr. President, Fellow Parliamentarians: May I at the outset join the Chairman of our delegation and others here who have expressed their deep appreciation to our French hosts for this opportunity to meet once again in this great capital. Those of us who have been the recipients on many previous occasions of splendid and gracious French hospitality are nevertheless impressed with the outstanding program that has been arranged for us here.

Mr. President, it seems especially appropriate that our conference in this major European capital should have as part of its General Debate agenda the topic of Rapprochement in Europe. I would like to devote my remarks to this subject which is of great and special meaning to the United States, and one in which I have personally long held an interest and played some role.

For Americans, Europe has historically been regarded as being a cornerstone of any structure of world peace. And remembering the recent history of two world wars, there is no more important task than to remove the

scars left there by past conflicts and to lay the foundations for the future. We are thankful, in this regard, that the unnatural division of Europe is no longer accepted as inevitable.

Because we have waited so long for today's opportunities for rappochement in Europe, it is all the more important that we neither allow these opportunities to pass untried to the fullest, nor allow them to be dissipated in the form of pious statements whose only real effect might be to lull our peoples into a false, and possibly even dangerous, sense of security.

In this spirit, we welcome the language in the draft resolution calling on all European states "to develop relations among them based on the principles of national independence, equal rights and non-interference in internal affairs." We in the United States believe that every nation in Europe has the sovereign right to conduct independent policies and to be our friend, without being anyone else's enemy or being treated as such.

In the same spirit, we welcome the East-West dialogue that is developing in a variety of fields, some touching very directly on the basic issues of European security. I was pleased to see that the foreign ministers of the North Atlantic Treaty Organization, at their meeting in Lisbon on June 3 and 4, examined again in detail the progress in the current East-West negotiations—negotiations begun at the initiative of members of the Atlantic Alliance, the purpose of which—in the words of the Lisbon communique—is "to seek just solutions to the fundamental problems of European security and thus to achieve a *genuine* improvement of East-West relations."

Various things have occurred since the meeting in Caracas last April which might cause us to review that portion of the language in the draft resolution which states that developments in this field "have recently been lagging behind possibilities."

On May 20, the Soviet and United States Governments issued a joint statement of tremendous importance for peace and security, a statement giving new impetus to the ongoing talks on strategic arms limitations (SALT). Not long thereafter, the same two governments tabled in Geneva a draft treaty that would prohibit the production of bacteriological weapons. I hope this treaty will soon enter into force. The Four-Power talks on Berlin, which began in March 1970 at Western initiative are leading to an agreement by the four governments, paving the way for inner-German talks on Berlin, which one must hope will be equally successful and will help relax tensions concerning Berlin and improve the lives of the Berliners.

The recent more positive Soviet expressions of interest in NATO proposals for mutual balanced force reductions in Central Europe are equally welcome. In return, the NATO Foreign Ministers agreed at their June meeting on practical steps to pursue this subject with interested governments and to have their deputies meet early in the fall to reassess the opportunities for progress in this important field.

Also appropriate to any listing of recent positive signs in this broad field of rapprochement in Europe are such items as the conclusion of the treaty banning emplacement of weapons of mass destruction on the seabed and the ocean floor; the continuing efforts by my Government and others to promote peace on Europe's margin in the Middle East; the ever-increasing successes in the environmental field of the NATO Committee on the Challenges of Modern Society—successes which present a variety of opportunities for closer East-West cooperation; recent efforts by various governments including my own to promote East-West trade; and the continuing bilateral East-West discussions on an eventual Conference on European Security, looking forward to an early start to multilateral exploratory talks once the Berlin negotiations have reached a successful conclusion.

As important to rapprochement in Europe as any development in East-West relations is the growing unity and hoped-for expansion of the European Communities, which also were given major new impetus this spring. These developments have been welcomed heartily by the United States.

For all these reasons, Mr. President, I would not agree that "developments have been lagging behind possibilities." The real problems of European security—the inheritance of a divided Germany, the desire for a viable Berlin, the need to reduce the terrible burden of armaments—such problems of long-standing cannot be erased overnight. We must ask ourselves what contribution would be made to detente by a Conference on European Security that was not carefully prepared and produced only pro-forma statements calling for renunciation of force and for the promotion of trade and technological exchange—without at the same time seeking concrete progress on basic issues of European security or attempting to build better understanding through freer movement of our peoples, of ideas, and of publications.

There is rightly a parliamentary interest in all of our countries in these issues and I welcome our consultations on these matters, while recognizing that the convocation of a Conference on European Security is, in the final analysis, an issue that must be decided among governments.

Having twice in this century been drawn into major wars on the continent of Europe and utterly convinced of the importance of removing the seeds of potential future conflicts, we in the United States will not shrink from playing our role, together with our allies, in a continuing effort to mitigate or remove the underlying causes of tension and confrontation.

We look forward to close cooperation with an ever more united, more prosperous and outgoing European community—a community aware of its responsibilities and obligations in a larger world community—convinced, as we are, that such a Europe is in the interest of us all And we continue to share with our Allies the hope that an end to Europe's divisions some day will bring even broader opportunities for productive relationships.

EXPANDING ECONOMY ESSENTIAL TO SUCCESSFUL DOLLAR DEVALUATION

Mr. PROXMIRE. Mr. President, foreign countries are likely to agree with the United States on a substantial realinement of exchange rates only if they are assured that international trade will continue to expand.

During the hearings the Joint Economic Committee has been conducting on the President's new economic program, renowned economists Edward M. Bernstein and Arthur Okun agreed that negotiations on exchange rate changes and the subsequent implementation of these shifts in currency values would be virtually impossible if the industrial countries follow deflationary or trade restrictionist policies.

Bernstein emphasized that a fall in the value of the dollar relative to other currencies would help stimulate employment in the United States. Exports would increase and imports would be replaced by domestically produced goods. But to the extent that employment increases here, a similar decrease in job opportunities will be imposed upon the trading partners of the United States. Therefore, it is extremely important that the United States concentrate on expanding exports rather than restricting imports as a means of strengthening our trade balance.

In the United States, we must be sure that the fiscal aspects of the new economic program include sufficient stimulus to reduce unemployment substantially. By the same token, other nations will be required to follow expansionary policies to aid workers who will be displaced by additional imports from the United States or lose their jobs as a consequence of decreased shipments to this country.

The shift in other countries, our witnesses emphasized, must be from the manufacture of internationally traded goods to items produced for the domestic market. Such a reallocation of productive resources can and should produce an increase in the standard of living for the citizens of all nations whose currencies will increase in value relative to the dollar. Even though our industrial trading partners enjoy the highest standards of living in the world, each suffers from unmet domestic needs. Japan especially could benefit substantially from additional housing, improvements in transportation and sanitation systems, and a serious effort to combat pollution. Similar opportunities to raise standards of living exist in Western Europe.

The U.S. contribution to successful exchange rate realignment should be early abolition of the import surcharge, a decision not to impose additional protectionist measures suggested by the administration in the form of DISC and a discriminatory investment tax credit, and an early renewal of efforts to achieve through negotiation the multilateral reduction of tariff and nontariff trade barriers.

I ask unanimous consent that excerpts from the testimony of Dr. Bernstein and my colloquy with him be printed in the RECORD.

There being no objection, the excerpts were ordered to be printed in the RECORD, as follows:

EXCERPTS

Senator PROXMIRE. What I wanted to say Dr. Bernstein, where I wanted to bring you was in the direct effect of getting back to a reasonable trade advantage, $7 or $8 billion, would be a $7 to $8 billion stimulus in the GNP which translates again into what, a half million jobs, close to it, maybe 200,000, 350,000 jobs, a substantial increase in the number of jobs which this whole package is supposed to provide. Is it realistic to think we can get back to that, is it really, when we recognize, as you said very well and I think it is so helpful that you said it, if we are going to do this, if we are going to get a $7 or $8 billion favorable balance of trade it means our trading partners are going to have to give up part of their promotion, lose jobs and they are not going to accept that, that will probably be true all over the world.

Dr. BERNSTEIN. Senator, that statement is absolutely correct and you cannot lose sight of it. You cannot get jobs for the US in a favorable trade balance without losing jobs, some people losing more as they find more people for the same number of jobs, but the point is a country like Japan which really has been keeping real income too low, I have been trying to explain this to the Japanese, they had a trade balance of $4 billion last year, and this $4 billion deprived the Japanese people. They didn't need the reserves for private and public investment. Their delegations when they come to see

me fail to see why they can't or couldn't appreciate the yen because they had all these undone things, the pressure for more income. As I said to them the only way to give the workers real income without inflation is by giving them the goods you are now exporting.

I am hoping that we will now get the right policies and the surplus countries to restore their position.

Incidentally in some countries you have inflation and they don't have to do a thing. They just have to be pleased with less inflation.

Senator PROXMIRE. But I think another element you added to your statement is most helpful which ties in with the position Dr. Okun has just taken is we are going to need a high level of demand worldwide in order to make this work.

Dr. BERNSTEIN. Absolutely.

Senator PROXMIRE. Therefore it is very important that we have the kind of economic stimulus, fiscal stimulus here so that we can work in an area of negotiations which it is possible for our trading partners to accept.

Dr. BERNSTEIN. Precisely.

Senator PROXMIRE. If we have a worldwide stagnation or stagflation or whatever you want to call it, continuing for a couple of years the negotiations are going to be almost impossible. It is only if we have a period of increased production, increased demand, increased prosperity that we can work this out, isn't that correct.

Dr. BERNSTEIN. You are entirely right in everything you said.

Senator PROXMIRE. Therefore a very important part of making the international situation work is to be sure that we take steps in this country, which are so important to the rest of the world, to stimulate our economy and have our economy prosperous.

Dr. BERNSTEIN. That is right, and let me add one more thing because it enters into it too, if the US must increase its trade surplus it is a mistake to do it by cutting all, doing it all by cutting imports, that is deflationary. It is much more helpful if we do less through cutting imports and more through cutting exports—

Senator PROXMIRE. More through expanding exports.

Dr. BERNSTEIN. Increasing exports, excuse me. I don't think we can have very great influence as to the ratios, there are other parameters that will determine what they will be but we ought not to stand in the way of getting the best increase in exports combined with the least increase in imports, and the import surcharge seems to me to be contrary to this philosophy.

Senator PROXMIRE. Gentlemen, I want to thank you very much. We come to the conclusion at a very appropriate time because Friday—we are not having a session tomorrow, but Friday—we are having hearings on the unemployment situation. We are having Geoffrey Moore, Harold Goldstein, and Robert Nathan who will comment on the President's economic program.

The committee will reconvene Friday, September 3rd, in this room at 10:00 o'clock.

(Whereupon, at 12:25 p.m., the committee was adjourned, to reconvene on Friday, September 3, 1971, at 10:00 a.m.)

ADDRESS BY EDWARD RUISCH AT LEWIS AND CLARK TRAIL HERITAGE FOUNDATION MEETING

Mr. MILLER. Mr. President, on August 20 the Lewis and Clark Trail Heritage Foundation held a meeting in Sioux City, Iowa. One of the highlights of this meeting was a commemorative ceremony at the Floyd Monument in Sioux City, where the principal address was given by Mr. Edward Ruisch, of Sioux City, the chairman of the Iowa State Lewis and Clark Trail Committee.

Mr. Ruisch's scholarly treatment of one of the most interesting and inspiring phases of American history merits the attention of the readers of the CONGRESSIONAL RECORD, and I ask unanimous consent that the address be printed in the RECORD.

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

ADDRESS BY EDWARD RUISCH

The Honorable Mayor Berger, Honorable Senator Miller, Officials and Legislators of our City and State, Dr. E. G. Chuinard, President of the Lewis and Clark Trail Heritage Foundation, Boy Scouts and other members of youth organizations, ladies and gentlemen:

Assembled here today, we honor one of many who gave their lives for the development and preservation of this great Nation. This man, Sergeant Charles Floyd, through his sacrifice, was the first American soldier to die in line of duty in that large area purchased from France, and particularly in what later became Iowa territory. Looking south from this vantage point, we can see the area which encompassed his last efforts not far from where the expedition camped for several days negotiating with the Indians. If we could go back 167 years from today, we could envision a scene to which Professor James D. Butler referred in his funeral oration. I quote him—"About noon a flotilla comes in sight, three boats, one of twenty-two oars, and two of six each. They come to land at the base of the bluff and bring ashore a man at the point of death." Reviving a little, Sergeant Floyd says, "I am going to leave you. I want you to write a letter." This letter was sent to his parents in Kentucky.

Some boards carried with the expedition for mending boats, formed a crude coffin, and a flag served as a winding sheet. Borne to the top of this bluff, the Sergeant was buried with military honors. A cedar post was set in place to mark the grave. That grave was about six hundred feet due west from where we now stand near the monument, a spot which is now in the air above the waters of the Missouri River.

It is doubtful that the cedar post remained as a marker for the grave during the next fifty years, however nature, in a rather violent manner brought the grave site back into view. A flood brought on by heavy snow melt in March 1857, caused extreme high water, covering much of the lowlands we see on the far side of the River in Nebraska. The undermining waters caused an avalanche, a large portion of this bluff sliding into the River, and taking with it part of the grave of Sergeant Floyd.

Hastily a group of interested citizens joined to recover some of the remains. A man, light of weight, was let down on a rope so that he could reach into the grave, which was then a hole in the side of the bluff, and collect that which was left. Similarly, more of the remains was recovered from the shore about one hundred feet below. The skull was found near the water's edge. Hoisting all to the top of the bluff, it was noted that the forearms and part of the midsection were missing. All that was left was placed in safekeeping, the skull being taken to a downtown office.

Two months later, May 28, 1857, the remains thus recovered were reburied with appropriate patriotic, and religious ceremonies. Judge N. Levering of the County Court, stated that a procession led by Captain James B. Todd, formed in front of the United States Land Office. Eight bearers, seven of whom were from as many different states, carried the coffin, draped with a flag, to the levees, and boarded the steam ferryboat "Louis Burns" for the voyage downstream to the bluff. Here the second burial site, was about 200 yards east, away from the River, probably near where we now stand. Wood markers were again set in place at the grave, but these soon became souvenirs as parts were whittled away by passers-by. Ten years later—in 1867—a portion of the bluff was graded down to make way for the railroad. Workmen were cautioned about digging into a grave, the exact location not being known. Cattle trampled this prairie area for many years, until in 1895 three men using trowels carefully scraped away the topsoil until they located the outline of a grave, there being a marked contrast between the filled-in yellowish soil and the solid black earth. The remains, when removed from the grave, were identified by the absence of the parts which were missing. A Mr. Marks wrote identifying marks on the skull with a fountain pen in the presence of witnesses—also inscribing his name.

Thus on August 20, 1895, the anniversary date of Floyd's death—76 years ago today—the remains were again reburied with proper ceremony. This time the remains were placed in large pottery urns, one of which was furnished by the Holman brothers who owned the brick yards in Sergeant Bluff, a town just south of here and named in honor of Sergeant Floyd. A large marble slab, properly engraved was placed over the grave. This slab, seven feet long, three feet wide, and about eight inches in thickness, was purchased and set in place for $40.00.

Following this reburial the Floyd Memorial Association was formed for the purpose of erecting a permanent monument. J. C. Hoskins was named as president and Mr. Marks as secretary. This group was certainly assisted and directed by the efforts of the Honorable George D. Perkins, a member of Congress from this district and whom many of us remember as the owner and publisher of the Sioux City Journal. Through his untiring efforts an appropriation of $5,000 was obtained from Congress. An additional $5,000 was approved by the State of Iowa. Local citizens promptly matched these funds by donations amounting to $10,000. As far as we know, these funds constitute the entire cost of the monument, with heavy support from private citizens.

It is a pleasure to add here that an important member of the staff of Mr. Perkin's Journal was the late J. N. (Ding) Darling. Two granddaughters of Mr. Perkins—Miss Elizabeth Sammons and Mrs. Louise Freese—today direct the management of the Journal.

Erection of the monument was started on May 29, 1900, when in one day the concrete foundation—some 278 tons—was completed by continuous pouring. No doubt much of this was done by hand labor.

The ceremony for the laying of the corner stone was again on the anniversary date of the Sergeant's death—August 20, 1900. A special train was run from Sioux City to the bluff site, giving Association members and their families free passage and a round-trip fare of fifteen cents for others. Four hundred people stepped off this train and climbed the bluff, while many others came by horse and buggy transportation. Again the remains of Sergeant Floyd were unearthed, and placed in the base of the monument—hopefully for the fourth and last burial.

The monument was completed and dedicated on May 30, 1901. Thus, ninety-six years after the death of Sergeant Floyd, then on an exploratory venture into the unknown, the citizenry here saw a lasting shaft, one hundred feet high, and similar in design to the Washington Monument. The River has finally been cheated of its prey.

The Lewis and Clark Historical Association was organized on April 30, 1956, for the purpose of obtaining National recognition of the monument. Prompt enthusiasm soon brought fruitful results. School children collected dimes to build the gateway structures. The Martha Washington Chapter of the D. A. R. erected the flagpole where the flag ceremony was held today. The Kiwanis Club

of Sioux City donated the floodlighting. We are most grateful to each of these groups.

In May 1960, this monument was properly designated "Registered National Historic Landmark," the first in the United States. The Honorable Fred A. Seaton, Secretary of Interior, officiated at the ceremony.

This monument in memory of the first American soldier who gave his life west of the Mississippi River, and as an important landmark along the entire Lewis and Clark Expedition route, stands as a constant reminder of the foresight and determination of those who strove to develop this Nation. The men who passed by here in 1804 on their way to the Pacific definitely established the West as a part of the United States. They verified the judgment of President Thomas Jefferson, who by purchase from France, bought vast mineral deposits in the mountains along with their recreation areas; likewise a large storage supply of fuel in the forms of coal, gas, and petroleum; also forests of timber for future homes, and probably most important of all—he bought a future breadbasket for the Nation, all for a few cents per acre.

The men of the expedition worked hard. Going upstream often required more pushing than rowing. They crossed uncharted mountains. They met some twenty tribes of Indians with practically no serious skirmishes. They were led by men of tact and understanding, selected by the President. The fact that only one man lost his life during the twenty-eight month journey, was certainly a tribute to caution and preparedness.

It is a pleasure—yes—a duty, to ever honor such men as Sergeant Charles Floyd. It was most appropriate that our forebears erected this monument in his memory. Today, a river and a valley carry his name. Many business firms use it. Schools, parks, streets, golf courses, and a cemetery carry the name Floyd—as does the Sergeant Floyd Area Council, Boy Scouts of America. Every Scout here today knows much of the Floyd story. We are grateful to them for their part in the opening ceremony. May we ask them to also assist in closing this commemorative ceremony as we face the flag to the north, and with them express our loyalty by repeating the "Pledge of Allegiance."

IMPORTATION OF CERTAIN STRATEGIC MATERIAL

Mr. McGEE. Mr. President, on Thursday, September 16, I submitted an amendment to the military procurement bill which would delete entirely section 503 of that bill, essentially dealing with the question of imports of chrome from Rhodesia.

In giving my reasons for this action, I deliberately eschewed a lengthy discussion of the whole question of U.N. actions on Rhodesia—for such a discussion would have to be lengthy indeed. Many of us in this Chamber have differing views about the necessity and the wisdom of developments that go back at least to 1965, and in fact have their roots in the much more distant past. All of us, however, are accustomed to dealing with the world as it is and not as we think it should be. Moreover, a full-scale debate on the entire background to this subject should necessarily begin with a profoundly searching inquiry into the total subject by the Committee on Foreign Relations and its counterpart in the House of Representatives. On this last score, suffice it to say that there has not been the kind of disagreement with the policies of the current administration and its immediate predecessor which could have invoked such a full-scale inquiry.

Therefore, I have on this occasion chosen to argue the question on the much narrower limits which the distinguished Senator from Virginia has himself set. I made two points in particular which I would like to reemphasize at this time. First, I have felt that it would be most unwise—to say the least—to take action which could disrupt the prospect of any successful negotiations between Great Britain and the Ian Smith regime. Second, I have tried to point out the situation with respect to chrome is not unusual when considered in the context of our experience with the imports and prices of various strategic commodities.

Mr. President, I ask unanimous consent to place in the RECORD at this point two items bearing on the above-mentioned points. First, I should like to submit an editorial from the London Daily Telegraph of September 7 entitled "Edging Forward on Rhodesia." The second item gives statistical information about the comparative price trends for various strategic commodities during the last decade. I think these two insertions will help to make the case which I first advanced last Thursday.

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

SELECTED RAW MATERIALS PRICE TRENDS AS COMPARED WITH VARIOUS GRADES OF FOREIGN CHROMITE, AVERAGE ANNUAL PRICES 1960–70

[In constant 1967 dollars]

	Presanctions period			Postsanctions period			
	1960	1966	Percent change 1966/60	1967	1970	Percent change 1970/67	Percent change 1970/60
Caromite:							
Southern Rhodesia (48 percent CR_2O_3)	$40.70–41.26	$31.99–36.12	−16.9	$31.00–35.00	(1)		
Turkey (48 percent CR_2O_3)	40.98–43.26	30.44–32.51	−25.3	32.50–33.50	$41.41–42.28	+26.8	−0
South Africa (44 percent CR_2O_3)	22.48–23.34	20.64–22.19	−6.5	18.00–21.50	22.67	+14.8	−1
U.S.S.R. (55 percent CR_2O_3)	(1)	31.48–34.06		36.50–40.00	48.04–51.96	+30.7	
Antimony [2]	.344	.454	+32.0	.44	1.19	+170.4	+245
Fluospar [3]	32.93	37.49	+13.8	38.21	41.39	+10.8	+25
Manganese [4]	.99–1.02	.753–.764	−24.5	.60–.64	.436–.506	−17.6	−53
Nickel [5]	1.05	.98	−6.7	1.02	1.00	−2.0	−4
Tungsten [6]	21.97	38.39	+74.7	43.85	61.39	+40.0	+179
Vanadium [7]	3.47	2.51	−27.7	2.14	[8] 3.23	[8] +50.9	−6

[1] Non pub.
[2] Metal cents per pound. RMM brand, f.o.b., Laredo, Tex.
[3] Metallurgical grade ore (not over 97 percent CaF_2), average values per short ton of U.S. domestic production.
[4] 46 to 48 percent ore, cents per long ton unit. Manganese has experienced a steady fall in price in the period 1960–71 largely due to increased supply in the world.
[5] U.S. cents per pound (99.9 percent nickel content).
[6] Tungsten equivalent in dollars per short ton unit (20 lbs.).
[7] Prices quoted per pound on contained-vanadium basis.
[8] Estimated.

Source: U.S. Bureau of Mines.

[From the London Daily Telegraph, Sept. 7, 1971]

EDGING FORWARD ON RHODESIA

Satisfaction that Lord Goodman will be making another visit to Rhodesia on Sept. 17 will be mixed with some uneasiness at the rather slow speed at which these negotiations are proceeding. It is, no doubt, difficult to force the pace. To be acceptable to public opinion in this country, any agreement must provide for Africans the prospect that they will enjoy full political rights if they reach the standards of merit for the electoral roll, and that on this basis "common roll" non-racial seats in the legislature could override the narrower concept of racial parity. The detail of voting qualifications and the number and nature of "common roll" seats must be an important part of what Lord Goodman will be discussing. No agreement, admittedly, can firmly guarantee Rhodesia's political future, but Britain has a legitimate interest in seeing that any agreement gets it off to a fair start.

There still seems reasonable hope of success, if only because both countries are realising more clearly and with more sense of urgency the benefits that can accrue from an agreement and the dangers that will result from failure. When so little now divides Mr. Smith from Westminster, failure ought to be almost unthinkable, and Lord Goodman has shown himself already an able, understanding and vigorous negotiator. Mr. Smith and his colleagues are clearly becoming more acutely aware of the economic as well as the political difficulties which the present position is creating, despite the widespread breaking of sanctions by so many countries other than the United Kingdom.

The uncertain obstacle in the path is, as ever, Mr. Smith's difficulty with the hard-liners in his own Rhodesian Front party. After the experience of several past occasions when Mr. Smith has appeared to draw back on last-minute fears of a hard-liners' revolt, nothing will be taken for granted. Such fears are bound to have been aggravated by the by-election a month ago in which a hard-line independent candidate polled 456 votes against the official Rhodesian Front candidate's 524. There were, it is true, local and technical factors which could have favoured the independent. Nevertheless, it was a symptom of the progress which the hard-liners have been making with the Rhodesian electorate since the fresh negotiations between London and Salisbury began.

This suggests that time is not on the side of success. The odds are that, once agreement is reached, the vast majority of white Rhodesians will realise the great advantages they will derive from it on balance and will rally behind Mr. Smith. The longer the

negotiations continue in secret and leave room for the hard-liners to work on fears of what they call a "sell-out," the more difficult is Mr. Smith's internal position likely to become.

GENOCIDE: HOPE SUPPRESSED

Mr. PROXMIRE. Mr. President, the crime of genocide is based upon the suppression of hope. An element of hope is essential to any kind of effective action. Without hope of success, change for the better, a man believes that there is no use for him to do anything. Despair feeds upon itself. A man feels that a situation is hopeless, and subsequently the situation does become hopeless.

A man accepts the situation as hopeless, and does not resist the tide of horrible events washing up against his helplessness.

Consider this description of the situation confronting prisoners in a concentration camp. The novelist, Elie Wiesel, describes a group of Jews who had just arrived the previous day at a concentration camp, but had already witnessed and heard about the unbelievable acts of atrocity which took place there.

What is meant by the word "unbelievable"? If an act seems unbelievable, then one is forced to choose between believing it or closing one's eyes to reality. Wiesel describes the choice facing the prisoners:

> Those absent no longer touched even the surface of our memories. We still spoke of them—"Who knows what may have become of them?"—but we had little concern for their fate. We were incapable of thinking of anything at all. Our senses were blunted; everything was blurred as in a fog. It was no longer possible to grasp anything. The instincts of self-preservation, of self-defense, of pride, had all deserted us. In one ultimate moment of lucidity it seemed to me that we were damned souls wandering in the half-world, souls condemned to wander through space till the generations of man came to an end, seeking their redemption, seeking oblivion—without hope of finding it.

Mr. President, I urge the Senate to ratify the Genocide Convention soon. This act would give hope to the people of this Nation and the world that the United States will rise to stand with the 75 other nations which have vowed to protect man's dignity against the crime of genocide. If the United States rises up against this crime, no future historian shall charge us with expedient evasion of the issue. Future generations will point at U.S. ratification and say that we still spoke of the past victims of genocide—"Who knows what may have become of them?"—and that we showed our concern for future victims by ratifying the Genocide Convention.

A LETTER FROM A KANSAS CITIZEN

Mr. PEARSON. Mr. President, rarely, I imagine, do Senators read a letter from someone which, by the surprise of its simple and personal honesty, brings a pause in the rush of business and a renewed appreciation for the commonsense of people everywhere.

Such a letter from Mr. Devney M. Mack, Sr., of Fort Scott, Kans., arrived on my desk yesterday.

Without seeking to embellish his remarks, I ask rather—with his approval—that they be printed in the RECORD. I sincerely believe the thoughts in this single letter to be a valuable contribution to the legislative history of the U.S. Senate.

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

FORT SCOTT, KANS.,
September 19, 1971.

Senator JAMES B. PEARSON,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR PEARSON: This is a letter I have been a long time in writing because somehow I don't know how to put into words how I feel about the world around me. However since the President has asked all Americans to kind of slow up and take stock of our economic condition for a 90 day period I have called what little courage I have to the front to express my feelings and though I might say it badly, here goes.

Enclosed you will find an 'Income Tax Refund' check that is over 2 years old which we are returning to the United States Treasury by way of your office and thereby hangs a tale.

First of all I am a Negro or black American, whatever terminology is fashionable at the moment, and I have had my share of frustrations at the hands of white America, but I have also reached most of the goals that I set for myself in this same area of subtle white American discrimination.

For example: When I was a boy of 12 years of age I saw a Negro U.S. Railway Mail Clerk standing in the doorway of a U.S. Mail car as the train passed through Fort Scott and then and there I decided that that was the job I wanted and 19 years later I became a U.S. Railway Mail clerk. I also planned to marry a girl from Kansas City and build a white house on a green hill a mile north of Fort Scott on the east side of town and now that I am 59 years old I have been married to the girl from Kansas City for 31 years, I was a U.S. Railway Mail clerk for 24 years, we built the house on a green hill a mile north of Fort Scott just 2 miles west of where I planned as a boy and it is painted gray instead of white. I ended my career as a U.S. Mail Clerk in a severe railroad accident in 1964 that left me minus my left leg and a fractured skull plus other injuries. However the U.S. Post Office Department has spared nothing in trying to make me a useful person again, and today my son and I are contractors to the Post Office Department hauling mail between some Kansas towns plus running a small package delivery service here in Fort Scott.

In retrospect I feel that my government has been good to me and my family, and I was ashamed of my former coworkers in the Post Office Department when they went on strike sometime back. Because I always felt that ours was the best job in the world and that we were handsomely paid for the work we did and for the knowledge that the job required.

Somehow I feel that too many Americans have become too greedy and have lost the will to work and sacrifice and build their security gradually. I feel that everyone in America is aware that we, as a nation, will have to stop somewhere along the line and in the terminology of the day "cool it".

I feel that it is time for most Americans to realize that to earn more they must produce more or more to the point give an honest day's work for a good paycheck.

I feel that it is time for our manufacturers to make good and honest products.

I feel that it is time for the money lenders to quit exploiting the general public, both black and white.

I feel that it is time to tell our young people with their shaggy hair and unkempt clothes that they are just what they look like, a bunch of silly damned fools.

But why go on? Who's going to listen to a Negro, black or Afro-American anyway?

In closing let it be recorded that I feel that I live in a wonderful country, with all the injustices that I as a black man have endured, and I want to do my part to keep it a great country. So as a favor to me please hand the enclosed check over to the proper people.

Yours very kindly,
DEVNEY M. MACK, Sr.

A NEW YEAR WITHOUT HAPPINESS

Mr. HUMPHREY. Mr. President, I noticed in the press of September 21 that more than 900 Jews representing their families have signed an open letter to Soviet officials and the United Nations demanding permission to emigrate to Israel. These families, it is reported, have been told by Albet Ivanov, chief of the administrative section of the Central Committee of the Communist Party that an "unlimited" emigration of Soviet Jews would cause a "brain drain" from the Soviet Union.

So we are forced to assume from these reports that the applicants for emigration will be turned down or, even worse, turned in.

The timing of this news is filled with irony, since Monday and Tuesday of this week were two of the most festive days in the Jewish religious calendar. Jews throughout the world are celebrating the New Year, and in the midst of what would otherwise be a festive occasion comes the reminder of the plight of Soviet Jewry.

This sorrowful reminder can be quickly eradicated if Soviet leaders recognize the basic human rights embodied in the United Nations Declaration of Human Rights, and allow their citizenry to emigrate if they so desire. The right to emigrate is an inherent right of fundamental human liberty.

We in this country recognize that right and there is no reason that we cannot expect the same from the Soviet Union. This issue is not a manifestation of the game of competition between social systems or between superpowers. It is an issue of humanity, something which transcends national boundaries.

I am a cosponsor of Senate Concurrent Resolution 33, which attempts to gather world support on behalf of Soviet Jews and in behalf of halting human injustices now given official sanction in the Soviet Union.

This new year for Jews will pass more solemnly than festively, but it will pass. Then there is next year. But is there a next year for the Soviet Jews? Hope can die with the passage of time, so I call upon all of us here and leaders throughout the world to work for the ultimate goal of securing basic human freedoms in the Soviet Union, as much as in their own countries.

I ask unanimous consent that an article on this subject be printed in the RECORD.

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

A NEW YEAR WITHOUT HAPPINESS

Moscow.—More than 900 Soviet Jews, who say they represent 3,000 members of their families, have signed an open letter to Soviet leaders and the United Nations demanding permission to emigrate to Israel.

The petition, circulated yesterday to foreign journalists, was believed to be the largest-scale undertaking of its kind in the struggle of Russian Jews to leave the Soviet Union.

The appeal, addressed to Communist Party leader Leonid Brezhnev, Premier Alexei Kosygin and President Nikolai Podgorny, said all Soviet Jews who wanted to should be guaranteed the right to emigrate.

It criticized the lack of Jewish religious and cultural life in the Soviet Union and said the petitioners "want to live under the Star of David and will do so."

Soviet Jewish sources said a delegation of 70 Jews pressing to imigrate met with Albet Ivanov, chief of the administrative section of party central committee, who told them unlimited emigration of Soviet Jews would cause a "brain drain."

SENATOR GRAVEL'S READING OF PENTAGON PAPERS

Mr. FULBRIGHT. Mr. President, I regret that I was unable to be in the Chamber on Monday morning when the distinguished Senator from North Carolina (Mr. ERVIN) spoke to the Senate about the efforts of the Justice Department to inquire into the activities of Senator GRAVEL in reading the Pentagon Papers before his subcommittee. I have however, read a copy of the Senator's remarks, and I wish to commend him for his keen insight and perceptive analysis of the administration's action in this case.

Mr. President, it is important for all of us to recognize, as Senator ERVIN points out, that "we cannot and should not remain silent and leave to the courts the protection of the Senate's prerogatives," in cases such as this. The senior Senator from North Carolina is to be congratulated for bringing the far-reaching constitutional implications of these recent developments to the attention of the Members of this body.

RESIGNATION OF JUSTICE HUGO BLACK

Mr. MATHIAS. Mr. President, I noted with regret the resignation from the U.S. Supreme Court of Justice Hugo Black. He leaves behind him a long record of very distinguished and dedicated service to our country. We all hope that his problems of health are not as serious as he anticipates, and that he can look forward to many more years of service and enjoyment.

The problem of filling his seat on the Supreme Court is one in which every American has an interest, and one in which the President and the Senate have a very grave joint responsibility. No issues during the period of time I have served in the Senate have been more vexing than those which involved the necessity for the Senate to disagree publicly with the President in arriving at a joint decision which the Constitution thrusts upon us. It would seem to me that a clear way to avoid the difficulties of the past is to achieve the highest degree of consultation possible prior to a nomination.

As a member of the Committee on the Judiciary, I have my own decisions to make regarding any nominee. My decisions cannot help but be made easier, however, by consultation by the President with the Senate through the elected leadership of our party in the Senate.

The minority leader (Mr. SCOTT) is a man in whom all Republicans in this Chamber have shown their faith and respect. He has served the citizens of his State for over 20 years and has served our party in the past as national chairman. I believe he is a man uniquely qualified to offer very sound advice to the President in the selection of a new Justice, and I trust that he will have the opportunity to do so.

PROPOSAL FOR A DEPARTMENT OF HEALTH

Mr. PELL. Mr. President, In the past 10 years the Federal role in health care has increased by leaps and bounds.

The expansion of the Federal Government's role in the delivery of health care services and in health research has resulted in the growth of many new Federal health programs, some of which seem at times to be somewhat uncoordinated, somewhat overlapping, and somewhat lacking in administrative direction.

Representative PAUL ROGERS, the distinguished chairman of the Health Subcommittee in the House of Representatives, recently described this problem in a speech to the American Hospital Association.

Representative ROGERS recommended the creation of a Department of Health as a solution for the lack of coordinated leadership in the management of Federal health programs.

I believe this recommendation of Representative ROGERS deserves our attention and consideration. I ask unanimous consent that his statement be printed in the RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

REMARKS OF CONGRESSMAN PAUL ROGERS, AUGUST 25, 1971

Mr. President, ladies and gentlemen of the American Hospital Association: I am honored and privileged to meet with you today at this 73d annual convention of the American Hospital Association. Your organization is an effective and articulate voice for health professionals concerned about the quality and delivery of health care in this Nation. You have chosen your leadership wisely and I cannot pass on without commending not only your president and officers—but your executive president, Ed Crosby—and his fine staff—particularly those in Washington who tell your story effectively to the Congress as well as Government agencies—and to the American public.

The health industry is the third largest in the Nation—and predictions project a rapid change to 2d and then 1st. What is more important to any human being than his health? Of all life's blessings good health—is primary—to the enjoyment of all others. In the Declaration of Independence—this priority was set forth: "Life—liberty and the pursuit of happiness"—life—good health—first.

When illness strikes, a person wants the best doctor—the best nurse—the *best facilities* (the best hospital) that is available—and at the best price prossible!

To respond is not an easy task—but it is one which is increasing in demand—with each passing hour.

And we find it difficult to respond to America's health needs. With manpower shortages—and you know the figures:

50,000 doctors short.

20,000 dentists short.

150,000–200,000 nurses.

250,000 paramedical personnel short.

And you know the need of facilities (hospitals, clinics, nursing homes, etc.)—many that need modernization, expansion—relocation and distributions—and expensive new and modern equipment.

And a constant and increasing inflation of costs for health.

All of these factors and others were summed up by the President of the United States when he proclaimed a "health crises"—in the Nation.

The Secretary of HEW—has also acknowledged a health crises—again only yesterday the newest Assistant Secretary of Health and Scientific Affairs, Doctor Du Val—spoke of the "health care crises".

So many times have there been cries of "health crises"—that health has become the "wolf's lament".

But a waiting profession—an impatient Congress and a wanting public—have found too little response by the Department of Health, Education and Welfare to attack the "health crises".

In fact, concern for health programs is running a poor third in a three headed department—and the Department of Health, Education and Welfare has instead become the Department of WEH—Welfare—Education and Health.

The stepchild status to which this Nation's health needs have been relegated affects the well being and purse strings of every American.

Americans suffer when there is no need to suffer. Although we possess the finest medical knowledge in the world today—the United States ranks 14th in infant mortality—(nearly twice the rate for Sweden). The reason is not lack of knowledge—it is lack of access to care. Between 33 and 55 per cent of all women who deliver in public hospitals have no prenatal care.

After infancy—a child faces all too familiar childhood diseases—measles—smallpox—scarlet fever—mumps—in some cases polio and diphtheria. Thankfully the medical genius discovered the miracles that not only cure—but prevent these diseases.

The sad irony is that all Americans cannot share the benefits of this genius. To this Nation's embarrassment, more than half a million children will be struck by a preventable epidemic of measles.

Yet HEW and the Office of Management and Budget tried to eliminate the communicable disease program which would insure total innoculation against such diseases. Of the $75 million authorized by Congress—$2 million was budgeted.

The crises does not end with children—medicare and medicaid—the colossus of our health programs touch between them, 35 million Americans—we have given millions the financial means to obtain health services without considering the availability and deliverability of such services.

The financial resources in the Federal health area have been cut—HEW repeatedly speaks of health crises—then HEW and OMB slashed research budgets in the National Institutes of Health.

While HEW officials joined the call for a cure for cancer through accelerated research, to their embarrassment and the Congress' dismay, on the same day the President asked us for an additional $100 million for cancer research—OMB—the Office of Management and Budget was withholding $20 million which had already been appropriated for the identical purpose.

The American Hospital Association knows all too well that if last year's HEW pro-

posals had been adopted by the Congress, one of the most important and most successful health programs ever implemented in this country—the Hill-Burton program—would be past history today.

And you can take great pride in the fine work you and your organization did—to see that the veto of Hill-Burton was over-ridden by the Congress. A victory for better health care.

There is ample evidence to support my belief that the health budget has not reflected health concern as much as it has the dictates of OMB. In the absence of strong health leadership in HEW, accountants in OMB have set the priorities for health to the exclusion of the medical men who are responsible in the Department of HEW.

In most health programs, local and State planning is required but we find the Federal Government itself has no such planning. Rather HEW has been dealing on a piecemeal basis with a year to year vision.

Any health professional would agree that a key to improved health care is adequate manpower. Yet this year HEW officials came to the hill without being aware or planning that the very legislation they were advocating would solve the manpower shortage. It was admitted in testimony that no one had bothered to determine how many more graduates of health professions schools would be produced by HEW's proposed legislation.

The President, in his message to the Congress in February set out many of our problems in a very clear fashion and I would like to quote from that message:

For some Americans—especially those who live in remote rural areas or in the inner city—care is simply not available . . . primary care physicians and outpatient facilities are in short supply in many areas and most of our people have trouble obtaining medical attention on short notice."

But HEW's actions by advocating the closing of PHS hospitals and clinics and the elimination of the Public Health Corps, run contrary to the President's public concern for this country's health needs.

By closing the hospitals and clinics and halting the corps, we would only contribute to the health care crisis. The President has proclaimed a drug abuse epidemic—HEW responds by proposing to close one of the two Federal clinical drug research centers. We must add to, not subtract from, our assets.

I do not say that inattention to our health crisis is peculiar to this administration.

In great part, this situation is due to an overtaxed department, whose responsibilities are too great and too diverse and whose leadership must spread itself too thinly. Some years ago, I served as chairman of an ad hoc committee charged with investigating HEW's structure. We sought the advice of every segment of the medical community. After detailed study, we recommended the establishment of a separate department charged solely with finding solutions to this country's health problems.

I reassert this belief this morning. I feel it is imperative that a separate department of health, with Cabinet status, be created and shall shortly submit legislation to accomplish this end.

This country can no longer afford makeshift health programs conceived in crisis and designed for political impact rather than going to the solutions to our problems.

Secretary Richardson read part of the laundry list of HEW's problems yesterday when he told you:

"We have a jumble of regional medical programs, State and areawide planning agencies, Hill-Burton planning agencies, community mental health center planners, and a host of others. . ."

And so I take the Secretary's statement as additional evidence of the need for a man to devote all of his time, efforts and thinking to gather in the loose ends and co-ordinate them, to give them priorities. And this man evidently can do this job effectively only as a full Secretary with Cabinet level authority—with access to the President.

We need a Secretary of Health who can lead us in the area of cancer research—not some White House assistant.

We need a secretary of health who can take charge of the drug epidemic and put priority on treatment and rehabilitation programs—not some white house assistant.

The fact that the President has had to take theinitiative in these two areas—drug abuse and cancer research—clearly indicates his lack of confidence in the ability of HEW to do the job.

And we can not expect the President to bring into the White House every pressing health program that our nation faces.

The President is entitled to have a full-time secretary of health who can directly advise and be heard over OMB when needed, a man whose only duty is to evolve better health care for 200 million Americans and those Americans yet unborn.

The people of this nation are entitled to a man who is identified to all Americans as the man responsible for health, not someone buried under a phone book listing of bureaucrats.

The establishment of a separate department of health will help assure that the American genius will again direct itself to the problems of health.

To have a secretary of health would be the strongest step to support our free enterprise system and pluralistic approach to health care—because—to drift aimlessly bring crisis solutions with unthought of consequences.

I have great confidence in the health professions of our nation and that the "health crises" can be met with reasoned planning and actions in establishing proper priorities in the health field.

We should, and we will, reorganize our priorities, I am confident of that. And I am just as confident that those of us in the Congress who will push for this end can count on the American hospital association in helping to meet this challenge—to provide unmatched health care to the people of this nation.

THE LIMITS OF SOCIAL POLICY

Mr. HUMPHREY. Mr. President, in the September issue of the very fine magazine commentary, published by the American Jewish Committee, contains a most perceptive and provocative article entitled "The Limits of Social Policy," written by the eminent educator, sociologist, and social critic, Prof. Nathan Glazer, of Harvard. Declaring that "there is a general sense that we face a crisis in social policy," Dr. Glazer challenges us to review all of our basic premises regarding social policy and to seek some new—and perhaps some old—approaches to the principal problems facing us as a Nation.

It is sobering to be reminded, as Dr. Glazer does, that many a social program we have inaugurated—including some initiated in Congress—has made some progress in alleviating a given distress, only to be the unintended cause for new and sometimes greater problems. It is useful to be made aware of the frustrations as well as the promise that come from rapidly rising levels of expectations on the part of our socially deprived and neglected groups of Americans.

I do not subscribe to everything that Dr. Glazer writes in his thoughtful essay, but I believe that all of us must take seriously his suggestion that "the breakdown of traditional modes of behavior is the chief cause of our social problems" and his conviction that "some important part of the solution to our social problems lies in traditional practices and traditional restraints."

There is danger, of course, that Professor Glazer's statement might be interpreted as opposition to vitally needed social programs like welfare reform and health security and child development programs. But a careful reading of the article will avoid that conclusion. What it says to me is that in the development of social policies we must be more conscious than we have perhaps been in the past of the implications in those policies for the retention and the strengthening of traditional social values.

I ask unanimous consent that the article be printed in the RECORD.

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

THE LIMITS OF SOCIAL POLICY

(By Nathan Glazer)

There is a general sense that we face a crisis in social policy, and in almost all its branches. Whether this crisis derives from the backwardness of the United States in social policy generally, the revolt of the blacks, the fiscal plight of the cities, the failure of national leadership, the inherent complexity of the problems, or the weakening of the national fiber, and what weight we may ascribe to these and other causes, are no easy questions to settle. I believe there is much at fault with the way we generally think of these matters, and I wish to suggest another approach.

The term "social policy" is very elastic. I use it to describe all those public policies which have developed in the past hundred years to protect families and individuals from the accidents of industrial and urban life, and which try to maintain a decent minimum of living conditions for all.[1] The heart of social policy is the relief of the condition of the poor, and it is in that sense I use the term here.

There are, I beleve, two prevailing and antagonistic views of social policy.

One—I will call it the "liberal" view—operates with a model of the social world in which that world is seen as having undergone progressive improvement for, roughly, the past hundred years. The unimproved world, in this view, was the world of early and high industrialism. Market forces prevailed unobstructed, or nearly so. The enormous inequalities they created in wealth, power, and status were added to the still largely unreduced inequalities of the pre-industrial world. This situaton, which meant that most men lived in squalor while a few, profiting from the labor of the many, lived in great luxury, was seen by a developing social conscience as both evil and dangerous. It was evil because of the huge inequalities that characterized it and because of its failure to insure a decent minimum at the bottom levels; and it was dangerous because it encouraged the destitute to rebellion against industry and the state. Consequently, in Bismarck's Germany, and somewhat later on in England, conservative states

[1] This definition excludes measures aimed at influencing the entire economic or physical environment, even though such measures certainly have some claim to be considered as falling within the realm of social policy and may well be evaluated in terms of their effect on those vulnerable elements of the population who are the special target of social policy. Education, too, falls increasingly into the sphere of social policy, particularly when it is seen as a means of protecting people from poverty and destitution. The same is true of the control of crime, particularly if we see it as a response to poverty and destitution. I shall, however, exclude both these areas from my discussion.

grew worried about rebellion and workingmen began to be protected against complete penury in old age or in times of unemployment through industrial accident and illness; small beginnings were also made in helping them cover some of the costs of medical care. Gradually, such measures of protection were extended to cover other areas like housing, and were made available to broader and broader classes of people.

In the liberal view, then, we have a sea of misery, scarcely diminished at all by voluntary charitable efforts. Government then starts moving in, setting up dikes, pushing back the sea and reclaiming the land, so to speak. In this view, while new issues may be presented for public policy, they are never really new—rather they are only newly *recognized* as issues demanding public intervention. Thus the liberal point of view is paradoxically calculated to make us feel both guiltier and more arrogant. We feel guilty for not having recognized and acted on injustices and deprivations earlier, but we also feel complacently superior in comparison to our forebears, who did not recognize or act on them at all.

I have given a rather sharp and perhaps caricatured picture of the liberal view. Liberals are of course aware that new needs—and not simply new recognitions of old needs—arise. Nevertheless, the typical stance of the liberal in dealing with issues of social policy is blame—not of the unfortunates, those suffering from the ills that the social policy is meant to remove, but of society, of the political system and its leaders. The liberal stance is: for every problem there is a policy, and even if the problem is relatively new, the social system and the political system must be indicated for failing to tackle it earlier.

There is another element in the liberal view. It sees vested interests as the chief obstacle to the institution of new social policies. One such interest consists simply of those who are better off—those not in need of the social policy in question, who resist it because of the increase in taxes. But other kinds of obstructive interests are also there: real-estate people and landlords in the field of housing, employers subject to payroll taxes in the field of social security, doctors in the field of medical care, and so on.

Despite the assumption here of a conflict pitting liberals aganst conservatives, I would suggest that the main premises behind this general picture of social policy are today hardly less firmly held by conservatives than they are by liberals. In the American context, conservatives will differ from liberals because they want to move more slowly, give more consideration to established interests, keep taxes from going up too high. They will on occasion express a stronger concern for traditional values—work, the family, sexual restraint. But on the whole the line dividing liberals from conservatives grows steadily fainter. The Family Assistance Program, the major new reform of the welfare system proposed by the Nixon administration, will illustrate my point. Anyone who reads through the Congressional hearings on this proposal will be hard put to distinguish liberals from conservatives in terms of any naive division between those who favor the expansion of social policy and those who oppose it.

It is not only in America that one sees the merging of liberal and conservative views on social policy, and not only today. Bismarck after all stands at the beginning of the history of modern social policy. In the countries of northwest Europe, the differences over social policy between liberals and conservatives are even narrower than they are in this country. In England, very often the issue seems to turn on such questions as what kind of charges should be imposed by the National Health Service for eyeglasses or prescriptions. It was this kind of reduction in the conflicts over basic values in advanced industrial societies that in the 1950's led Raymond Aron and Daniel Bell to formulate their ideas about "the end of ideology." And while in the 1960's all the old ideologies returned to these countries in force, it remains true that ideological battles between major political parties have been startlingly reduced in intensity since World War II.

Having incorporated the conservative point of view on social policy into the liberal, I will go on to the only other major perspective that means much today, the radical. The radical perspective on social policy comes in many variants, but they can all be summed up quite simply: If the liberal, and increasingly the conservative, believes that for every problem there must be a specific solution, the radical believes that there can be no particular solutions to particular problems but only a general solution, which is a transformation in the nature of society itself.

This point of view has consequences, just as the liberal point of view does. If, for example, the conservative proposes a guaranteed annual income of $1,600 for a family of four, and the liberal proposes that the figure be doubled or tripled, the radical will feel quite free to demand an even higher minimum. He knows that his figure is unlikely to be adopted, but he also knows that he can cite this failure as proof of his contention that the system cannot accommodate decent social demands. If, on the other hand, his policy or something like it is taken seriously, he can hope for a greater degree of class conflict as demands that are very difficult to implement are publicized and considered. And even if his policy is implemented, the radical remains firm in his faith that nothing has changed: the new policy is after all only a palliative; it does not get to the heart of the matter; or if it does get to the heart of the matter, it gets there only to prevent the people from getting to the heart of the largest matters of all. Indeed, one of the important tenets of radicalism is that nothing ever changes short of the final apocalyptic revolutionary moment when everything changes.

As against these two perspectives—the one that believes in a solution to every problem, and the other that believes in no solution to any problem save revolutionary change—I want to present a somewhat different view of social policy. This view is based on two propositions:

1) Social policy is an effort to deal with the breakdown of traditional ways of handling distress. These traditional mechanisms are located primarily in the family, but also in the ethnic group, the neighborhood, and in such organizations as the church and the *landsmanschaft*.

2) In its effort to deal with the breakdown of these traditional structures, however, social policy tends to encourage their further weakening. There is, then, no sea of misery against which we are making steady headway. Our efforts to deal with distress themselves increase distress.

I do not mean to suggest any automatic law. I do suggest processes.

One is the well-known revolution of rising expectations. This revolution is itself fed by social policies. Their promise, inadequately realized, leaves behind a higher level of expectation, which a new round of social policy must attempt to meet, and with the same consequences. In any case, by the nature of democratic (and perhaps not only democratic) politics, again and again more must be promised than can be delivered. These promises are, I believe, the chief mechanisms in educating people to higher expectations. But they are, of course, reinforced by the enormous impact of mass literacy, the mass media, and expanding levels of education. Rising expectations continually enlarge the sea of felt and perceived misery, whatever may happen to it in actuality.

Paralleling the revolution of rising expectations, and adding similarly to the increasing difficulties of social policy, is the revolution of equality. This is the most powerful social force in the modern world. Perhaps only Tocqueville saw its awesome potency. For it not only expresses a demand for equality in political rights and in political power; it also represents a demand for equality in economic power, in social status, in authority in every sphere. And just as there is no point at which the sea of misery is finally drained, so, too, is there no point at which the equality revolution can come to an end, if only because as it proceeds we become ever more sensitive to smaller and smaller degrees of inequality. More important, different types and forms of equality inevitably emerge to contradict each other as we move away from a society of fixed social orders. "From each according to his abilities, to each according to his need"; so goes one of the greatest of the slogans invoked as a test of equality. But the very slogan itself already incorporates two terms—"abilities" and "needs"—that open the way for a justification of inequality. We live daily with the consequences of the fact that equal treatment of individuals does not necessarily lead to "equality" for groups. And we can point to a host of other contradictions as well which virtually guarantee, that the slogan of "equality" in any society at all will continue to arouse passions and lead to discontent.

But in addition to the revolution in rising expectations and the revolution of equality, social policy itself, in almost every field, creates new and, I would argue, unmanageable demands. It is illusory to see social policy only as making an inroad on a problem; there are dynamic aspects to any policy, such that it also expands the problem, changes the problem, generates further problems. And for a number of reasons, social policy finds it impossible to deal adequately with these new demands that follow the implementation of the original measures.

The first and most obvious of these reasons is the limitation of resources. We in this country suffer from the illusion that there is enough tied up in the arms budget to satisfy all our social needs. Yet if we look at a country like Sweden, which spends relatively little for arms—and which, owing to its small size, its low rate of population growth, and its ethnic homogeneity, presents a much more moderate range of social problems than does the United States—we will see how even the most enlightened, most scientific, least conflict-ridden effort to deal with social problems leads to a tax budget which takes more than 40 per cent of the Gross National Product. And new items are already emerging on Sweden's agenda of social demands that should raise that percentage even higher. For example, at present only a small proportion of Swedes go on to higher education. Housing is still in short supply and does not satisfy a good part of the population. And presumably Swedish radicals, growing in number, are capable of formulating additional demands, not so pressing, that would require further increases in taxation—if, that is, any society can go much beyond a taxation rate of 40 per cent of its Gross National Product.

In this country, of course, we still have a long way to go. By comparison with Sweden and with other developed nations (France, West Germany, and England) our taxes are still relatively low, and there is that huge 8 per cent of the GNP now devoted to arms and war that might be diverted, at least in part, to the claims of social policy. But social demands could easily keep up with the new resources. We now spend between 6 and 7 per cent of the GNP on education, and about as much on health. It would be no trick at all to double our expenditures on education, or on health, simply by taking account of proposals already made by leading experts in these fields. We could with no difficulty find enormous expenditures to make in the field of housing. And quite serious proposals (I believe they are serious) are now put for-

ward for a guaranteed minimum income of $6,500 for a family of four, with no restrictions.

My point is not that we either could not or should not raise taxes and use the arms budget for better things. It is that, when we look at projected needs, and at the experience of other countries, we know that even with a much smaller arms budget and much higher taxes, social demands will continue to press on public resources. And we may suspect that needs will be felt then as urgently as they are now.

A second limitation on the effectiveness of social policy is presented by the inevitable professionalization of services. Professionalization means that a certain point of view is developed about the nature of needs and how they are to be met. It tends to handle a problem by increasing the number of people trained to deal with that problem. First, we run out of people who are defined as "qualified" (social workers, counselors, teachers, etc.). Second, this naturally creates dissatisfaction over the fact that many services are being handled by the "unqualified." Third, questions arise from outside the profession about the ability of the "qualified" themselves to perform a particular service properly. We no longer—and often with good reason—trust social workers to handle welfare, teachers and principals to handle education, doctors and hospital administrators to handle health care, managers to handle housing projects, and so on. And yet there is no one else into whose hands we can entrust these services. Experience tells us that if we set up new agencies it will be only a very few years before a new professionalism emerges which will be found limited and untrustworthy in its own turn. So, in the poverty program, we encouraged the rise of community-action agencies as a way of overcoming the bad effects of professionalism, and we already find that the community organizers have become another professional group, another interest group, with claims of their own which have no necessary relation to the needs of the clients they serve.

The third limitation on the effectiveness of social policy is simply lack of knowledge. We are in the surprising position of knowing much more than we did at earlier stages in the development of social policy—more about income distribution, employment patterns, family structure, health and medical care, housing and its impact, etc.—and simultaneously becoming more uncertain about what measures will be most effective, if effective at all, in ameliorating pressing problems in each of these areas. In the past, there was a clear field for action. The situation demanded that something be done; whatever was done was clear gain; little as yet was expected; little was known, and administrators approached their tasks with anticipation and self-confidence. Good administrators could be chosen, because the task was new and exciting. At later stages, however, we began dealing with problems which were in some absolute sense less serious, but which were nevertheless irksome and productive of conflict. We had already become committed to old lines of policy; agencies with their special interests had been created; and new courses of action had to be taken in a situation in which there was already more conflict at the start, less assurance of success, and less attention from the leaders and the best minds of the country.

Thus, if we look at the history of housing policy, for example, we will see that in the earlier stages—the 20's and 30's—there was a good deal of enthusiasm for this subject, with the housing issue attracting some of the best and most vigorous minds in the country. Since little or nothing had been done, there was a wide choice of alternatives and a supply of good men to act as administrators. In time, as housing programs expanded, the issue tended to fade from the agenda of top government. (Indeed, it has been difficult to get much White House attention for housing for two decades.) Earlier programs precluded the possibilities for new departures, and as we learned more about housing and its effects on people, we grew more uncertain as to what policies—even theoretically—would be best. Housing, like so many other areas of social policy, became, after an initial surge of interest, a field for experts, with the incursions of general public opinion becoming less and less informed, and less and less useful. This process is almost inevitable—there is always so much to know.

Perhaps my explanation of the paradox of knowledge leading to less confident action is defective. Perhaps, as the liberal perspective would have it, more knowledge will permit us to take more confident and effective action. Certainly we do need more knowledge about social policy. But it also appears that whatever great actions we undertake today involve such an increase in complexity that we act generally with less knowledge than we would like to have, even if with more than we once had. This is true for example of the great reform in welfare policy—which I shall discuss below—that is now making its way through Congress.

But aside from these problems of cost, of professionalization, and of knowledge, there is the simple reality that every piece of social policy substitutes for some traditional arrangement, whether good or bad, a new arrangement in which public authorities take over, at least in part, the role of the family, of the ethnic and neighborhood group, or of the voluntary association. In doing so, social policy weakens the position of these traditional agents, and further encourages needy people to depend on the government, rather than on the traditional structures, for help. Perhaps this is the basic force behind the ever growing demand for social policy, and its frequent failure to satisfy the demand.

To sum up: Whereas the liberal believes that to every problem there is a solution, and the radical believes that to any problem there is only the general answer of wholesale social transformation, I believe that we can have only partial and less than wholly satisfying answers to the social problems in question. Whereas the liberal believes that social policies make steady progress in nibbling away at the agenda of problems set by the forces of industrialization and urbanization, and whereas the radical believes that social policy has made only insignificant inroads into these problems, I believe that social policy has ameliorated the problems we have inherited but that it has also given rise to other problems no less grave in their effect on human happiness than those which have been successfully modified.

The liberal has a solution, and the radical has a solution. Do I have a solution? I began this discussion by saying that the breakdown of traditional modes of behavior is the chief cause of our social problems. That, of course, is another way of saying industrialism and urbanization, but I put it in the terms I did because I am increasingly convinced that some important part of the solution to our social problems lies in traditional practices and traditional restraints. Since the past is not recoverable, what guidance could this possibly give? It gives two forms of guidance: first, it counsels hesitation in the development of social policies that sanction the abandonment of traditional practices, and second, and perhaps more helpful, it suggests that the creation and building of new traditions must be taken more seriously as a requirement of social policy itself.

II

A nation's welfare system provides perhaps the clearest and severest test of the adequacy of its system of social policy in general. Welfare, which exists in all advanced nations, is the attempt to deal with the distress that is left over after all the more specific forms of social policy have done their work. After we have instituted what in America is called social security (and what may generally be called old-age pensions); after we have expanded it to cover widows, dependent children, and the disabled; after we have instituted a system to handle the costs of medical care, and to maintain income in times of illness; after we have set up a system of unemployment insurance; after we have enabled people to manage the exceptional costs of housing—after all this there will remain, in any industrial system, people who still require special supports, either temporarily or for longer periods of time.

In thus describing the place of welfare, or "public assistance," in a system of social policy, I am of course describing its place in an *ideal* system of social policy. I do not suggest for a moment that our program of social security, health insurance, unemployment insurance, housing, are as yet fully adequate (though as I understand these matters, even if they were better, they would still not be seen as fully adequate). The strange thing, however, is that even if we go to countries whose systems of social insurance could well serve as models of comprehensiveness and adequacy, we find that the need for welfare or public assistance still remains, and on a scale roughly comparable to our own. In Sweden, the number of persons receiving public assistance was 4.4 per cent of the population in 1959, and it was in the same year less than 4 per cent in America. In England, despite the broad range of social policy there, the number of those on Supplementary Benefits—the English welfare, formerly known as National Assistance—is of the same order of magnitude. In Sweden and England, too, we find concern, though much less than here, over the stigma of welfare, over the effects of a degrading means test, over the problem of second- and third-generation welfare families.

Why, then, do we have, or consider that we have, a greater problem than they do? One reason is that, whereas in Sweden the proportion of those on welfare declines as other forms of social insurance broaden their coverage and become more effective, quite the opposite has happened here. In this country, there has been a rise in the number of people on welfare during the past decade. The rise is not phenomenal—from 4 to 6 per cent of the population. Nor, interestingly enough, despite the increased cost of welfare, does it form a really heavy burden on the budget. The cost of welfare, though rising, still accounts for only a bit more than one per cent of the Gross National Product, and 6 per cent of the federal budget. However, it forms a greater share of state and local revenues, and in some larger cities up to 15 per cent of the population is on welfare. That is one reason it has become a serious problem.

But there are more important reasons. In Sweden and England a high proportion of those requesting public assistance are the aged; in America the aged constitute a smaller proportion of the welfare population, and families a much larger share. Indeed, our increase over the past ten years has been almost entirely concentrated in the family population, those assisted under the federal program called Aid to Families with Dependent Children (ADC). Here the situation is quite startling. In 1955, 30 out of every thousand American children received welfare; by 1969 this had doubled to more than 60 out of every thousand. In New York City, where eligibility has always been broad, and where the city and the state provide welfare to families not covered by the federal statute, the increase has been even more dramatic. In 1960, there were 328,000 persons on welfare in New York City, of whom 250,000 were in the family categories (children and their parents). In 1969, there were 1,012,000—about 12 or 13 per cent of the population—of whom 792,000, or four-fifths, were in the family categories. Yet during the same period, there seems to have been a drop in the

number of families in poverty—from 13 to 10 per cent of all families—and the rate of unemployment was halved, from 6 per cent to 3 per cent.

A second reason why welfare is a more serious matter in America than in Sweden or England is that in those countries it is a problem of the backward areas, whereas here it is a problem of the most advanced. A third and final reason is that welfare has come to be seen in America as a *regular* means of *family support*. In England and Sweden welfare is thought of as emergency aid, provided in response to a special crisis, and meant to put a destitute family back on its feet. In America the situation of the destitute family is increasingly considered a more or less permanent condition for which provision over a very long period of time must be made.

Why should all this be so? One of the most popular explanations to be advanced is that no jobs are available for the men—mainly unskilled—who would ordinarily support these families. In fact, however, unskilled jobs were widely available in the latter part of the 60's, just when the number of families on welfare increased so impressively. It is true that these jobs did not generally pay enough to support a family, but it is also true that large numbers of the urban unemployed were young and unmarried men and women who were not as yet required to support families on their own, though they might well have been capable of contributing to the support of the parental household in which they presumably lived. (The majority of American families, as it happens, are supported by two earners, or more.)

There is a modified form of the argument that no jobs are available, which is that since the actually available jobs do not pay enough to support a family, and since there is no way for working husbands to get supplementary assistance, they are encouraged to defect in order to make their families eligible for help. But let us consider the advanced jurisdictions, like New York State, where complete families *are* eligible for support and have been for a long time, and where a working husband *can* have his income supplemented to bring it up to some necessary minimum for the support of his family. It is just in these jurisdictions that we have had the most remarkable increase in the number of families broken up by abandonment. In 1961 there were about 12,000 deserted families on welfare in New York City. In 1968, there were 80,000, a more than sixfold increase during a period when the population of the city, in overall numbers, remained stable. During the same period, there was a more moderate increase in the number of welfare families that consisted of mothers and illegitimate children, from 20,000 to 46,000. In other words, the family welfare population shifted to one overwhelmingly consisting of abandoned women and their children.

Another effort to account for the situation argues that high welfare payments in New York and other Northern cities encouraged migration from the South and from the rural areas. This probably played some role. But there is no evidence that abandoned families in these areas moved to New York in larger numbers in the 60's than in the 50's. And if the abandonment took place in New York, in a brisk job market, we would want to know why it took place, and migration would not be the explanation.

Then there is the view which holds that in the 1960's—with the spread of concern about poverty, with the development of community organizations, and with the rise of such groups as the National Welfare Rights Organization—more and more of the poor discovered their entitlement to welfare, more and more became willing to apply for it, and higher and higher proportions of those applying were accepted. According to this explanation then, it was not the poor who increased in numbers, but only the poor on welfare. This is undoubtedly part of the story. But think once again of that huge increase in the number of abandoned families on welfare. If there were just as many, or almost as many, before, what did they do to stay alive?

Still another interpretation emphasizes the fact that the levels of welfare aid in New York became higher during the 60's. This would certainly mean that more and more workers could apply for income supplements. But why would it mean a six-and-a-half times increase in the number of abandoned families?

One must take developments in New York seriously because in many respects they can be considered a test run of the Family Assistance Program, the reform in the welfare system proposed by the Nixon administration and still working its way, after various revisions, through Congress. Without going into detail, and leaving aside the fact that welfare would acquire a national floor and a national administration, there are, I believe, four major features that distinguish the Family Assistance Program from the system we have at present.

The most important is that the working poor would be included in the same system as the nonworking poor. The reasoning behind this feature is as follows. Welfare levels cannot be raised if people on welfare get as much as, or more than, people who are working. This would first of all lead to political resistance and resentment on the part of the working poor. Further, they would try to redefine themselves as incapable of work in order to get the higher benefits of the nonworking poor. If, however, the working poor are also included, their resistance to higher levels of welfare will decline, and they will have less incentive to become non-working.

A second major difference is that a substantial incentive to work is built into the program. Thus, working leads not to the loss of welfare benefits but to an overall increase in the family income. Family Assistance payments are reduced when there is more earned income, but only as a proportion of the increased earnings.

Third, the grant would in part be divorced from services and from the stigma of investigation. It cannot be fully divorced from investigation—it is after all a grant based on need—but the hope is that in its administration it will become more of an impersonal income-maintenance program and less involved in the provision of help through services rather than through money.

A fourth feature of the new law is that, in addition to building in an incentive to work, it contains a *requirement* that everyone capable of work register for job training or for employment. If there is a father, he must register, if there is no father, the mother must register unless she has children still below school age. (This feature has been the target of much criticism, because of the element of compulsion.)

What are we to conclude about the prospects of the new system? Since all four of its features are in large measure already in existence in New York State, whose condition is not exactly of the happiest, we can be sure that Family Assistance will not succeed in "solving" the problems of welfare. What it will do is redistribute more income, and put more money into the pockets of the poor. It will raise the abysmally low welfare payments in large areas of the South. It may, by moving some part of the way toward national standards, reduce immigration to the big cities of the North. It will provide some relief—but relatively little—to the states and local jurisdictions that now are heavily burdened with welfare costs. All this is to the good. But what the new system will not do, I believe, is strengthen the family or substantially increase the number of those on welfare willing to enter the labor force. If it does, the accomplishment will be a mystery because similar arrangements have not done so in New York, nor in any of the other states in which families with unemployed males are eligible for welfare, or where a work requirement exists. The forces leading to the breakdown of male responsibility for the family among some of the poor seem greater than those the new program calls into play to counteract them.

This brings us back to my original point, and to a possible answer to the question I posed earlier as to how we can account for the dramatic increase in recent years of abandoned families on welfare. The constraints that traditionally kept families together have weakened. In some groups they may not have been strong to begin with. Our efforts to soften the harsh consequences of family breakup speak well of our compassion and concern, but these efforts also make it easier for fathers to abandon their families or mothers to disengage from their husbands. Our welfare legislation has often been harsh, and its administration harsher. But the steps we take in the direction of diminished harshness must also enhance the attractions of either abandonment or disengagement and encourage the recourse to welfare.

And yet, what alternatives do we have? This Family Assistance Program is after all the most enlightened and thoughtful legislation to have been introduced in the field of welfare in some decades.

My own tendency, following from the basic considerations I have suggested, would be to ask how we might prevent further erosion of the traditional constraints that still play the largest role in maintaining a civil society. What keeps society going, after all, is that most people still feel they should work—however well they might do without working—and most feel that they should take care of their families—however attractive it might on occasion appear to be to desert them. Consequently we might try to strengthen the incentive to work. The work-incentive provision is the best thing about Family Assistance, but we need to make it even stronger. Our dilemma is that we can never make this incentive as strong as it was when the alternative to work was starvation, or the uncertain charity of private organization. Nor is it politically feasible to increase the incentive by reducing the levels at which we maintain the poor—if anything, the whole tendency of our thinking and feeling is to raise them, as indeed FAP does. The only alternative, then, is to increase the incentive to work by increasing the attractiveness of work. I do not suggest that this is at all simple (we know the ambiguous results, for example, of raising the minimum wage). Could we, however, begin to attach to low-income jobs the same kind of fringe benefits—health insurance, social security, vacations with pay—that now make higher-paying jobs attractive, and that paradoxically in some form are also available to those on welfare?

The dilemma of income maintenance is that, on the one hand, it permits the poor to live better, but on the other, it reduces their incentive to set up and maintain those close units of self-support—family in the first case, but also larger units—that have always, both in the past and still in large measure today, formed the fabric of society. The administration proposal is a heroic effort to improve the condition of the poor without further damage to those social motivations and structures which are the essential basis for individual security everywhere. But does not the history of our efforts to expand policies of income support suggest that inevitably improvement and damage go together?

In other critical areas of social policy, too, the breakdown of traditional measures, traditional restraints, traditional organization, represents, if not the major factor in the crisis, a significant contribution to it. Even in an area apparently so far removed from tradition as health and medical care, the

weakening of traditional forms of organization can be found upon examination to be playing a substantial role, as when we discover that drug addiction is now the chief cause of death—and who knows what other frightful consequences—among young men in New York.

Ultimately, we are not kept healthy, I believe, by new scientific knowledge or more effective cures or even better-organized medical-care services. We are kept healthy by certain patterns of life. These, it is true, are modified for the better by increased scientific knowledge, but this knowledge is itself communicated through such functioning traditional organizations as the school, the voluntary organization, the family. We are kept healthy by having access to traditional means of support in distress and illness, through the family, the neighborhood, the informal social organization. We are kept healthy by decent care in institutions where certain traditionally-oriented occupations (like nursing and the maintenance of cleanliness) still manage to perform their functions. I will not argue the case for the significance of traditional patterns in maintaining health at length here; but I believe it is a persuasive one.

One major objection, among many, that can be raised against the emphasis I have placed on tradition has to do with the greater success of social policy in a country like Sweden which shows a greater departure from traditionalism than America does. And it is indeed true that social services in Sweden, and England as well, can be organized without as much interference from tradition-minded interest groups of various kinds (including the churches) as we have to contend with in this country. Certainly this is an important consideration. But I would insist that behind the modern organization of the social services in the advanced European countries are at least two elements that can legitimately and without distortion be called traditional.

One is authority. Authority exists when social workers can direct clients, when doctors can direct nurses, when headmasters can direct teachers, when teachers can discipline students and can expect acquiescence from parents. Admittedly this feature of traditionalism itself serves the movement *away* from tradition in other social respects. The authority will be used, as in Sweden, to institute sex education in the schools, to insure that unmarried girls have access to contraceptives, to secure a position of equality for illegitimate children.

But then another feature that can legitimately be called traditional—ethnic and religious homogeneity—sets limits in these countries on how far the movement away from the traditional—toward indeed a new tradition—may be carried. In America, by contrast, it is the very diversity of traditions—ethnic, religious, and social—that makes it so hard to establish new forms of behavior that are universally accepted and approved, and that also makes it impossible to give the social worker, the teacher, the policeman, the judge, the nurse, even the doctor, the same authority they possess in more homogeneous countries.

But there is a more basic sense in which tradition is stronger in the countries of Western Europe than here. Whatever the situation with sex education and with the laws governing illegitimacy, divorce is less frequent in Sweden and England, responsibility for the rearing of children is still consistently placed within the family, and the acceptance of work as a normal pattern of life is more widespread and less challenged. In England and Sweden it is still taken for granted that the aim of welfare is to restore a man to a position in which he can work, earn his living, support his family. And indeed the psychological damage that renders a man unfit for work, and the ideology arguing against the desirability of work, are so little known in England and Sweden that the restoration of family independence is a fair and reasonable objective of welfare. But this is no longer a reasonable view of welfare for substantial parts of the American population. It is in this core sense that America has gone further in the destruction of tradition than other countries. In doing so, America comes face to face, more sharply than any other country yet has, with the limits of social policy.

ESTABLISHMENT OF CENTER FOR AGRICULTURAL AND RURAL DEVELOPMENT AT IOWA STATE UNIVERSITY

Mr. MILLER. Mr. President, in the long and brilliant history of American agriculture, one of the components of success which stands out as singularly effective is the teamwork which exists between the scientist and the farmer.

Nurtured by America's great system of land grant universities and the cooperative extension service, this teamwork hastened and enhanced the effect of the valuable work of the laboratories and experimental fields on the food supply of our land, lifting our Nation into sustained world leadership in agriculture.

Similarly, if a high quality of life is to be maintained in rural America, researchers must examine the facts of cause and effect in rural life and help bring those facts to bear on the problems.

A hopeful step toward this goal was the recent establishment of a new center for agricultural and rural development at Iowa State University in Ames.

The purposes and objectives of the new center are set forth in an article published in the Cedar Rapids Gazette of August 16 and in an excellent editorial published in the Des Moines Register of August 23. I ask unanimous consent that they be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

NEW IOWA STATE CENTER TO STUDY PROBLEMS OF RURAL COMMUNITIES

AMES.—Revitalization of rural towns and communities will be studied through two new research centers at the Iowa Agriculture and Home Economics Experiment station at Iowa State university.

The newly established Center for Agricultural and Rural Development (CARD) and the North Central Regional Center for Rural Development will focus biological, physical, social and economic research on solving problems that face rural communities.

Problems to be studied will include the increasing migration of families from farms and small towns to the already-congested cities, the decline in quality of life in many small towns, and the low income levels of many rural areas.

JOINT FUNDING

CARD was established with state and federal funds and will concentrate primarily on Iowa's rural problems. CARD replaces the Center for Agricultural and Economic Development, which has pioneered research in this area at the state and national levels since 1958, with assistance from the Kellogg Foundation.

Director of CARD will be Earl O. Heady, distinguished professor of economics, with Leo V. Mayer, associate professor of economics, serving as associate director.

Concurrent with the establishment of CARD, Iowa State became the location of the North Central Regional Center for Rural Development. This rural development "parent organization" is sponsored cooperatively through the U.S. department of agriculture and 13 states: Iowa, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Ohio, Wisconsin and Alaska.

COMMUNITY EMPHASIS

"Research and development programs have sought to alleviate farm problems for several decades," Dr. Heady said. "Other programs have been initiated to help solve the immense problems that now plague our giant metropolitan areas. Now, increased attention will be directed to helping the rural communities as a whole. This includes not only farmers, but also the non-farm, non-metropolitan population—the people who live and make their living in our small towns and communities."

Conditions for this vital rural population have been steadily declining for years in Iowa and the entire country, Dr. Mayer explained. Increased mechanization and greater agricultural productivity per unit forces thousands of farmers and farm workers off the farms. In Iowa alone, the number of agricultural units decreased by about 24 percent—from 247,000 to 190,000—over the last 10 years. Population decreased in three-fourths of Iowa's counties during that time.

TOWNS SUFFER

Because agriculture is the lifeblood of most small Midwestern towns, fewer customers from the farms and the lack of alternative sources of revenue can close the doors of many small-town merchants and business men.

As towns and countryside empty, community services—schools, roads, recreation facilities—may deteriorate or vanish because the tax base is no longer large enough to support them. Services that remain cost more in taxes because the costs are shared by fewer people. Farmers and others in the rural community find they must go further for medical care, to shop, to attend a movie or to eat in a good restaurant.

The cities suffer from this trend, too, for migration to the metropolitan areas only adds to noise, pollution, crime and unemployment, Dr. Mayer said. With 70 percent of the population living on one percent of the land, overcrowding becomes a problem.

Employment and income generation in the rural community are important objectives. An equally important goal is to find ways that rural people—farm and non-farm—can work together cooperatively for better living conditions.

INDUSTRIALIZATION

"Some communities may want to solve their problems through industrialization," Dr. Mayer said. "But, first, the community must be able to inventory its resources to determine if this is feasible. Once identified, the community that desires to industrialize should be encouraged to do so through research, leadership, capital investments and, perhaps, altered public institutions."

Other communities will remain tied completely to the farm sector. Citizens of farm-dependent communities may be able to obtain higher living conditions by joining with similar communities, sharing facilities and services as well as the costs of maintaining them, Dr. Mayer said.

OTHER AREAS

Medical service is a pressing problem in most rural communities. Alternate means by which a community can provide medical care may be examined and evaluated through the rural development research centers. For example, some communities now maintain an ambulance service and registered nurse to provide emergency treatment.

Further areas to which research may be directed include:

Evaluation of farm policies, not only for

their effects on farmers, but on the entire rural community;

Revenue-sharing, and its potential to contribute to a better life in the rural community;

Feasibility studies to evaluate the potential of new farming endeavors that might generate income and employment to the entire rural community;

Rural community planning and beautification programs to improve the quality of life in small towns;

Preservation of the maximum feasible number of family farms;

Public recreation development in rural areas, and its effects on employment, income, and quality of life in the rural community.

Some of the research will be carried out in other states through cooperative arrangements, but Iowa State will remain the headquarters and the major contributor to the studies.

STUDYING RURAL DEVELOPMENT

The establishment of a new Center for Agricultural and Rural Development at Iowa State University in Ames could be an effective stimulant of prosperity and well-being for the people of Iowa. It could be more fruitful than simple promotion of new industry, by exploring fundamental factors in development of a balanced economy and the "good life".

The new center will be operated in connection with a new North Central Regional Center for Rural Development, also located at ISU. The North Central center is sponsored co-operatively by the U.S. Department of Agriculture and the states of Iowa, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Ohio, Wisconsin and Alaska. Why Alaska? That's north, all right, but hardly central.

Several bills in Congress have proposed a *national* research center for rural development. It appears to us that the two research centers at Ames could well serve the purpose of a national research institution for rural development. And Alaska is certainly a place that needs knowledge about rural development.

Iowa State University, like other Land Grant universities, has for many years conducted elaborate research and educational programs for the benefit of commercial agriculture. Problems of rural small towns and people left unemployed or under-employed by the advance of labor-saving devices in agriculture have been given little attention by these institutions. It is heartening, therefore, to see Iowa State University moving into this neglected area more vigorously than before.

One of the principal objectives of the revenue sharing proposals of President Nixon is to provide a better distribution of funds for community development between rural and urban areas. Agriculture Secretary Clifford Hardin stated recently in hearings before the Rural Development Subcommittee of the Senate Committee on Agriculture:

"Because rural communities now lag the urban areas in effort and resources for development, the balance provided by the revenue sharing proposals will contribute to the rural development objective of a more uniform geographic distribution of population, jobs and economic opportunities."

The Rural Development Research Center at Ames could provide needed guidance in the use for rural community improvement of federal funds obtained by the states through revenue sharing.

PRESENT IMBALANCES OF WORLD TRADE

Mr. McGEE. Mr. President, this country's recent efforts to correct its rapidly deteriorating foreign trade position has forced it to set forth economic policies relatively alien to our world trade posture of the past.

Having enjoyed a healthy balance-of-payments record since the turn of the century, this Nation, therefore, is something of a novice in attempting to deal with the present dilemma confronting it.

This morning's Washington Post contains an excellent column written by former Under Secretary of State George Ball. The article, entitled "The Danger of a Wave of Competitive Protectionism," points out the pitfalls of expecting too much from the recent economic moves designed to correct present imbalances of world trade.

Mr. Ball is very poignant in stressing that in order for our international economic policies to be successful this country has to cut its ties with illusions of the past. This article is a very thoughtful piece conveying very significant danger signals arising from overexpectation on the part of the United States in dealing with this very complex set of problems.

I ask unanimous consent that Mr. Ball's article be printed in the RECORD.

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

IMPORT SURCHARGE AS A BARGAINING DEVICE—THE DANGER OF A WAVE OF COMPETITIVE PROTECTIONISM

(By George W. Ball)

(NOTE.—*The writer, former Under Secretary of State, was a member of the Cabinet Committee on Balance of Payments from 1961 to 1966. This article was adapted from his testimony before the Joint Economic Committee of Congress.*)

Let us assume that we do find a long-run solution to the excessive inflation of the past few years. How shall we go about achieving the correction of those imbalances that now mark our present unhappy position in the world economy?

The first priority, it seems to me, is for us to get rid of some of the illusions that have clouded the public discussion of the problem during these past few yeasty days.

The first illusion is that the determination of new parities can be left to market forces. There is no evidence whatever to suggest that any of the major nations whose currencies are out of line with real values have the slightest intention of letting those currencies float freely. Not only is it against the religion of a central banker to refrain from intervention when he sees his national currency moving in a direction of substantial disadvantage but the operation of the import surcharge and the vast supply of available short-term money give present market forces an inevitable bias. If, then, we adopt a passive posture while waiting for the market to define what adjustments are needed, we will cruelly deceive ourselves.

A second illusion equally dangerous, is that, once having stopped the engine of the Bretton Woods system by halting gold convertibility and seriously undercutting the General Agreement on Tariffs and Trade (GATT) by unilaterally blocking access to the United States market, we can expect the other major trading nations on their own to develop new solutions. For a long while we have been preaching the doctrine that one nation's surplus is another nation's deficit and that surplus countries have as much of a responsibility as deficit countries for maintaining equilibrium within reasonable limits. Now we seem to be saying that, so far as the United States' deficit is concerned, we are passing the whole burden to the surplus countries to devise a solution through an upward valuation of their currencies, regardless of the deflationary consequences for their own domestic economies.

Such a position, it seems to me, ignores all the lessons of past experience. During the entire post-war period the United States has led in every constructive monetary and trade move (other than regional initiatives) that were directed at the improvement of the world's financial and trading systems. We have done so not merely out of the goodness of our heart—although our record, on the whole, is highly creditable—but because we commanded economic power equivalent to the combined power of four or five smaller nations—and, as a single nation, we were capable of incisive action.

In this regard our country is unique—and we dare not forget it. Though within the past few years Europe has made gratifying progress toward economic integration, the nations of the European Community are still far from having achieved anything resembling unity of decision and action. Thus, even now we are once more witnessing the familiar spectacle of the community internally divided because of French insistence on its own doctrinal prejudices.

Under these circumstances there is clearly no single entity other than the United States that can command the authority to design and successfully promote a constructive initiative to realign currency parities. Yet, unhappily, that does not rule out the possibility that, if we fail to pursue an active diplomacy but permit the present stalemate to continue for a matter of months, one or more nations may be tempted to set in train a chain reaction of competitive protectionism, not necessarily as explicit retaliation for our actions but still using the American import surcharge as an excuse.

Not only does the situation require active American diplomacy, but that diplomacy must be directed with a sense of urgency. What we must seek to bring about is an adequate program of currency readjustments within not more than a month or six weeks from now. For the third illusion that we must rigorously put aside is the assumption that time is somehow on our side and that if we only maintain our protectionist measures and wait long enough, our bargaining leverage will be enhanced.

Nothing is further from the truth. Rather than increasing in potency, our protectionist measures are a wasting asset. Already there are reports that Japanese industry—cooperating, as it invariably does, with the government—is making plans to adjust its operations to the 10 per cent surcharge. That surcharge, it is argued, may not, after all, prove a bad thing. It may provide the necessary impetus to long overdue rationalization. It could well lead to the concentration of investment in higher technology sectors, leaving labor-intensive production to lower-cost Asian countries. Meanwhile, the government is reported to be planning massive public works investments in a much needed improvement in the infrastructure while, at the same time, maintaining the momentum of industrial activity.

Once these internal adjustments are achieved, Japanese industry is likely to emerge more competitive than ever. To be sure, Japanese protectionist elements will almost certainly use the American surcharge to justify further delay in liberalizing trade and investment, while American companies trying to do business in Japan may well encounter even more formidable obstacles. But, as a bargaining counter, the surcharge will have lost much of its potency.

Nor is that all, for the longer the surcharge and the "buy American" features of the investment tax credit remain in effect, the more American industry will come to depend on them. Thus, vested interests will be built up in the maintenance of these two protectionist devices, a healthy process of rationalization will be slowed down, and increased productivity will become less essen-

tial for meeting competition. The result: new distortions and new rigidities on both sides.

Before we commit ourselves to any line of strategy, it is essential that we carefully appraise the strength of the weapons in our hands. Here again, in the euphoria of the past few days, we have shown a dangerous tendency to exaggerate the bargaining value of the import surcharge.

Though our 10 per cent import surcharge will adversely affect certain sectors of Japanese trade (roughly 30 per cent of Japan's total merchandise exports), the resultant disadvantage would still be far less than a ten per cent revaluation of the yen, since the surcharge would affect only visible trade with the United States, while an upward revision of the yen's parity would make both Japanese goods and services less competitive in every market of the world.

Yet what we are seeking is not a 10 per cent revaluation but something substantially more than that. Most recent speculation has ranged around 15 per cent, and I do not think that an impossible objective, provided we pursue a skillful diplomacy, as I shall suggest in a moment. But there has also been a good deal of loose talk about demanding trade concessions at the same time, not only from Japan but from other countries.

The same considerations apply to West Germany, where our surcharge affects only 9 per cent of the Federal Republic's exports; yet what we are apparently seeking is something approaching a 14 per cent revaluation of the Deutsch mark that would affect all West German trade throughout the non-Communist world.

This brings me to the fourth and final illusion which we should quickly discard—the illusion that we can successfully employ our protectionist bargaining counters to buy a whole shopping list of concessions from our trading partners not only in the form of currency readjustments but also in the area of commercial policy and even defense. Such an illusion is dangerous because it can lead to over-trading, bogging down negotiations in an endless and angry wrangle and ultimately causing irreparable damage to the whole system of international cooperation which we have so painfully built up since the war.

For not only is the import surcharge a limited instrument; it is a blunt instrument. Though we must necessarily regard the principal target in the forthcoming negotiations as Japan and its undervalued currency, the surcharge actually affects a far larger percentage of the total foreign trade of such innocent third nations as Mexico or Korea—whose currencies are not undervalued—than it does of Japan.

Since we dare not make exceptions to the general application of the surcharge without doing violence to the fundamental principle of non-discrimination that underpins our whole system of commercial policy, we must recognize the inadvertent damage we will cause if we leave the surcharge in effect too long in an effort to extract trade concessions from a mere handful of countries we regard as pursuing unfair trade practices.

Nor, because it is unfocused, is the surcharge likely to be effective outside the narrow area of currency readjustments. To be sure, we have a continung argument with the Federal Republic of Germany as to the balance of payments effects (probably about $900 million net) of the cost of maintaining our troops in Europe. But it would be wholly impracticable to try to maintain a surcharge against the whole world's commerce simply to bludgeon the Germans into more favorable offset arrangements.

I strongly feel, therefore, that any attempt to settle too many loose ends and to bargain for concessions outside the area of parity realignments is likely to lead to total frustration. Though we should use every means at our command to correct the present payments imbalances, it would be the height of folly to try to achieve too much within the four walls of the present negotiation.

We will do well if we obtain a significant revaluation of the yen and some lesser readjustments of other major currencies. But to deal effectively with the Japanese will require a drastic revision of the tactics we have so far been pursuing.

DISPOSAL OF WASTE MATERIALS

Mr. ALLOTT. Mr. President, on Tuesday I introduced a bill designed to provide a large-scale test of the exciting results obtained at a Bureau of Mines pilot plant in recycling solid wastes from urban refuse.

The day before, the Wall Street Journal published an interesting and informative article about a number of companies which are discovering ways to burn industrial refuse, thus saving large sums on both waste disposal and steam production.

It is obvious that we as a nation must continue to find more ways to recycle urban, industrial, and all other types of waste if we are to protect both our environment and our precious resources.

I ask unanimous consent that the article be printed in the RECORD.

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

[From the Wall Street Journal, Sept. 20, 1971]

MORE COMPANIES BURN WASTE PRODUCTS, SAVE ON FUEL, GARBAGE BILLS—EVEN COFFEE GROUNDS, SHELLS OF PEANUTS FIRE FACTORIES, SOMETIMES REDUCE POLLUTION

(By Ellen Graham)

Anyone who has ever scrubbed out a coffee percolator can sympathize with George Burgers. As manager of the Maxwell House coffee plant in Hoboken, N.J., he has the staggering task of disposing of 150,000 pounds of soggy coffee grounds each day.

The plant brews about 30 million cups of coffee a day to make instant coffee. Until recently, the leftover coffee grounds piled up almost faster than they could be hauled away.

But luckily, Mr. Burger has help. Using a special boiler system developed by Babcock & Wilcox Inc., Maxwell House, a division of General Foods Corp., burns the coffee grounds as fuel to power its Hoboken plant. Whereas it used to take 40 trucks a day to cart away the waste grounds, landfill disposal has been reduced to a single truckload a week. And the boiler fired by grounds generates about a third of the steam needed to power the plant.

A number of U.S. manufacturers are discovering that their waste products, previously dumped as landfill or discharged into the nearest stream, can be turned into healthy profits by pouring them into furnaces and burning them instead of more expensive fuels. Nearly any combustible material can qualify—and, as a result, scores of factories are chugging along on such fuels as coffee grounds, sawdust or bark.

BURNING "BLACK LIQUOR"

Many paper companies are reclaiming valuable chemicals, reducing water pollution and cutting fuel costs by burning odiferous "black liquor," a by-product of paper processing.

In the tropics, sugar companies have found that bagasse, the material that's left behind after sugar is pressed out of the cane, makes excellent fuel. Some factors are even powered with coconut shells or sunflower seed hulls.

"The public tends to think of coal and oil as our only fuels," says a Babcock & Wilcox engineer. "But we forget that coal and oil are becoming scarcer all the time, and that they present very difficult pollution problems."

In contrast, the specialty fuels are abundant—and many are remarkably pollution-free. Coffee grounds, for example, make an ideal fuel because they're virtually smoke-free when burned.

Pollution is the last problem you'd expect a casket maker to have. Yet workers who saw, sand and carve the elaborate caskets rolling off the assembly line at Boyerton (Pa.) Burial Casket Co. create a 90-million pound mountain of sawdust each year.

The company first tried trucking the sawdust to the local dump, and when that became too cumbersome they began burning it in plant furnaces. But the black smoke emanating from the factory's stacks drew angry complaints from Boyertown residents, since the plant sits squarely in the center of town.

LIGHTING UP WITH GARBAGE

"Next month we'll finish installing a new boiler to burn the sawdust as fuel," says plant engineer Eli Isenhardt. "The new system will be smokeless and will generate half the steam we need to operate the plant," he says. Used along with a small quantity of natural gas or fuel oil, the sawdust will help generate process steam, electricity and heat.

Even ordinary garbage holds promise as a potential fuel. In St. Louis, a demonstration project that turns trash into electricity is scheduled for completion early next year. Sharing the cost of the $3 million project are the U.S. Environmental Protection Agency, the city of St. Louis and Union Electric Co., a St. Louis utility.

The plan calls for burning part of St. Louis' refuse as a supplementary fuel at a Union Electric power plant. If it works, the system could help solve two of the most pressing problems facing most U.S. cities: how to dispose of the endless mounds of garbage overrunning available dumping space and how to generate scarce electric power without fouling the air.

Each day, Union Electric will burn about a quarter of the refuse collected from St. Louis homes in a 140-megawatt boiler at its Meramec, Mo., plant. The 300 tons of trash burned daily will replace about 10% of the fuel ordinarily used to create steam to turn generator turbines. "The basic efficiency of the boiler should be precisely the same using trash as a partial fuel," says David L. Klumb, a Union Electric engineer. "And this method will produce less air, water and aesthetic pollution than disposing of waste by incineration or landfill."

If the plan is successful, Mr. Klumb says, the refuse-burning capacity of the boiler, designed by Combustion Engineering Inc., could be expanded to burn up to 1,200 tons of trash a day. With new plant capacity coming on strong by 1980, Mr. Klumb estimates "we could feasibly burn twice the amount of garbage the St. Louis metropolitan area, with a population of 2.5 million, produces each day."

Horner and Shifrin Inc., consulting engineers for the project, estimate that by 1973 the cost of refuse disposal by incineration will be $5.17 a ton, compared with between $2.29 and $4.26 at the power plant.

"The nation's fuel shortage, the increasing cost of fuels, and the environmental movement have given the specialty fuels market a boost," according to Jack Pollock, a sales manager for Babcock & Wilcox. He says the municipal refuse market is an area his company is marking for especially big growth.

Although hardly a growth area, "peanut power" has neatly solved a big disposal problem at the Tom's Food Ltd. plant in Columbus, Ga. A subsidiary of General Mills Inc., Tom's Foods makes nut and confectionary items and, in the process, shucks off about 2,000 tons of peanut shells a year. Getting rid of them was a perennial headache until the

company hit upon the money-saving idea of burning them as fuel.

Today, the factory uses the shells for roughly half its fuel requirements and saves up to $1,000 a month on fuel costs, according to a company official.

TRIBUTE TO CLIFTON BROWN ANDERSON

Mr. THURMOND. Mr. President, there can be many definitions for "solid citizen." These definitions can range all the way from "law abiding" to "backbone of the Nation."

Usually the role and contribution of the typical solid citizen is not felt until his participation in community affairs comes to an end. Then he is sorely missed, for he has left a vacuum that cannot be easily filled.

Such a solid citizen was my good friend, the late Clifton Brown Anderson, of Aiken, S.C. His death, at the age of 81, marks the conclusion of a great record in service to his community and his State.

Men such as Clifton Anderson form the fiber of our national strength. They perform a needed function through their vocation—Mr. Anderson was a construction contractor who left his mark in the physical size and prominence of Aiken; they contribute significantly to the civic needs of their community—Mr. Anderson played a leading role in such organizations as the Rotary Club, Business Men's Club, the American Legion, the Masons, and others; and they usually are pillars of their church, recognizing the true source of strength and direction—Mr. Anderson served his church for many years as a member of its board of deacons.

Mr. President, the city of Aiken will miss Clifton Brown Anderson. I shall miss him. He will not be quickly nor easily replaced.

An editorial entitled "Clifton Brown Anderson" was published in the Aiken, S.C., Standard of September 10. This editorial paid a well-deserved tribute to my late friend. 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:

CLIFTON BROWN ANDERSON

Death has removed one of Aiken's elder statesmen.

Clifton Brown Anderson, better known to a wide circle of good friends as C. B. or Andy, died unexpectedly at the age of 81, at his beloved summer retreat at Cedar Mountain, N.C.

Although he had retired from the day-by-day business routine, he had continued to take an interest in the business he had turned over to his son, Clifton Jr., and maintained activity in the Aiken Rotary Club and the Business Men's Club, of which he was a charter member and past president, and also a number of other organizations including the American Legion and the Masons.

Born near Louisville, Ga., Mr. Anderson came to Aiken when he was 24, just in time to enter service in World War I. Following the war, he built a thriving construction and building supply business. His firm contracted for a number of Aiken landmarks, including the former Henderson Hotel, now the Palmetto Federal Savings and Loan Association building.

He had been for many years a member of the First Presbyterian Church of Aiken and had served on its Board of Deacons.

He was an avid and skilled hunter and fisherman and at one time was interested in farming at his large property south of Aiken.

He maintained a keen interest in Aiken civic and business affairs, and his advice was often sought on numerous and varied topics.

Although retiring by nature, he had many firm friends who now will be the poorer for his departure. To his family we extend our sympathies for their great loss. His death is also a distinct loss to the Aiken community as a whole.

SENATOR WINSTON L. PROUTY

Mr. ALLOTT. Mr. President, Senator Winston L. Prouty, whose death we all mourn, typified the great State he so ably represented.

His virtues were distinctly Vermont virtues. From Vermont has come the kind of steady patriotism that made the American Revolution a success. From Vermont comes the tradition of quiet, competent public service.

The people of Vermont had many reasons for reposing their trust in Senator Prouty. One reason was his complete personification of the temperament of that great people. When Americans praise the Yankee virtues of New England, they are praising the virtues that made Senator Prouty loved in the Senate and in his State, and will cause him to be greatly missed.

DELAWARE WATER GAP NATIONAL RECREATION AREA

Mr. CASE. Mr. President, earlier this week the Philadelphia Inquirer published an article stating that the Delaware Water Gap National Recreation Area will be a viable facility even if a big reservoir, scheduled to be tied in to the recreation area, is not built.

The Inquirer story is based upon a study—"A Natural System Plan for Delaware Water Gap Recreation Area"—which was made by the staff of the National Park Service at the request of the President's Council on Environmental Quality, CEQ.

CEQ presently is looking into the environmental impact of three projects planned for the Tocks Island region which embraces portions of New Jersey, Pennsylvania, and New York bordering the Delaware River.

One of the three projects is the National Recreation Area, authorized by Congress in 1965. The others are the Tocks Island Dam and Reservoir, a congressionally authorized facility which will be almost completely surrounded by the recreation area, and a pumped storage hydroelectric project which is to be built by private utilities in conjunction with the dam and reservoir.

The projects, particularly the dam and reservoir and the pumped storage facility, have stirred considerable opposition because of concern about their affect on the environment of the Delaware Valley.

As a result, plans to begin the construction of the dam and reservoir have been delayed while the environmental effects of the various projects are carefully assessed. CEQ has taken the lead in this most necessary effort.

As a part of its evaluation, CEQ asked the Department of the Interior to explore the viability of a national recreation area without the Tocks Island Dam.

In its study, the National Park Service posed the following question:

Without a big reservoir, would a national recreation area still be feasible, useful, appropriate?

The Park Service answer:

Definitely, yes. * * *

The Park Service study then goes on to describe the types of recreation that would be available in such a facility. For example, there would be emphasis on canoeing and rowing, which the study describes as "more subdued forms of boating." Fishing would be on streams and ponds as opposed to the lake-type fishing that would be provided by a reservoir. There would be plenty of capacity for swimming, the study says.

The Park Service study is most interesting and informative. I am certain it will receive careful attention from CEQ as that agency carries out its evaluation of the Tocks Island projects.

Previously, other documents pertaining to the evaluation of these projects have been placed in the CONGRESSIONAL RECORD. I believe it essential that the public record of this matter be as complete as possible; therefore, I ask unanimous consent that the text of the Park Service's study be printed in the RECORD.

I also ask unanimous consent to have printed in the RECORD the Philadelphia Inquirer article; the text of the Interior Department's comment in releasing the Park Service study; and the text of a CEQ letter to me explaining the environmental evaluation process that has been agreed to by the agencies involved in the Tocks Island projects.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

A NATURAL SYSTEM PLAN FOR . . . DELAWARE WATER GAP NATIONAL RECREATION AREA

The Delaware Water Gap National Recreation Area, authorized by Congress in 1965, presumed a large reservoir previously authorized for the Delaware River. The recreation area was to surround it and support an array of recreational activities principally focused upon the impoundment. New environmental awareness has fostered a growing concern for preserving natural systems whenever possible, and the validity of the dam construction project authorized for the Delaware is being questioned. A corollary question, therefore, involves the validity of the recreation area concept. Without a big reservoir, would a national recreation area still be feasible, useful, appropriate? This brief study report on the question finds the answer to be definitely yes, and outlines a revised plan.

THE REASONS

A Delaware Water Gap National Recreation Area need not embrace a large reservoir to benefit enormously the 30 million Americans living nearby in the urban East. The beautiful Delaware River itself, the streams spilling into it, the hills and woods and fields surrounding it, provide much-needed recreational opportunities in rich variety.

And without concentration upon large-scale broadwater activities, the millions of urbanites who would enjoy this valley of outdoor pleasure may well discover a far wider range of recreational pursuits—pastimes which foster awareness and understanding of the natural world and which

provide satisfactions of high quality. Carefully yet imaginatively managed, the recreation area could offer in generous measure a broad spectrum of outdoor interests. Although not of a character to accommodate the concentrated use loads anticipated for the reservoir-based project, the area without impoundment would have more than 10,000 "extra" acres of scenic riverside lands fraught with historic associations and ideal for outdoor activities. As land this acreage can be just as recreational as if inundated. Moreover, a "natural systems" NRA is justifiably important when it offers various outdoor experiences which can be educational as well as pleasurable; build skills and hone perceptions, and which offer a refreshing change of pace from ordinary activity patterns.

THE RESOURCES

From above Milford, Pennsylvania, to the famed water gap itself, the national recreation area embraces one of the most beautiful river valleys in the Middle Atlantic region. To the east, in New Jersey, looms the forested ridge of Kittatinny Mountain, 1,800 feet high and along which runs the Appalachian Trail. On the west, in Pennsylvania, swift streams and waterfalls splash over the rim of the Pocono upland and cut steep gorges filled with dark hemlock trees and rhododenron. Farm fields and woodlands quilt the valley itself along broad river bottoms and, behind, across rolling lands veined by brooks and spangled here and there with ponds. Central to all is the majestic silver ribbon of the Delaware. Riffling or serenely pooled, this central reach of the river's overall Z-shaped course flows straight to Wallpack Bend, writhes back upon itself in a great double curve and then heads onward, smoothing its stones, to a dramatic thrust through the gap near Stroudsburg, Pennsylvania.

This is historic country, with even earlier memories of Indian times. Dutchmen settled here before William Penn founded his colony, and built what is possibly the first long road in America. Wars came, and the valley linked George Washington's Revolutionary forces in upper New York and near Philadelphia. Today, the valley still retains the peaceful, rural charm nostalgically remembered from 19th Century years. And it is just "over the mountain" from megalopolis, this remnant of arcadian America. Much of this bucolic landscape with its historic sites and setting, would be flooded out by the reservoir project.

The national recreation area as now authorized comprises 70,000 acres of forest and field (including 12,000 in the reservoir project itself). It embraces 40 miles of free-flowing river, averaging 250 feet wide and having a total surface of 1,200 acres. It also includes a dozen islands, 10 miles of notable trout stream, two spectacular waterfalls, 50 ponds, a 21-miles mountain ridge, and of the course the renowned water gap itself, one of the East's great scenic spectacles.

THE PLAN

Although the existing authorized boundary would serve well enough, encompassing these features as it does, adjustments could add still other significant resources giving further dimension to the recreational opportunities realizable hereabouts and could join the area with the proposed national scenic river above it.

The revised plan for the recreation area gives less emphasis to water-oriented facilities, of course, than did the reservoir-centered plan. This does not mean that water recreation would be seriously lacking, however, and by utilizing the ponds, the streams, the river itself, water recreation facilities would be more dispersed, less concentrated in mass-use areas than in the reservoir plan. Although there would be less room for mechanized water sports—motorboating, water skiing and the like—there would be plenty of swimming and emphasis on the more subdued forms of boating, such as canoeing and rowing, and on stream and pond fishing instead of lake fishing. Having many, separated water recreation units will provide variety, letting family and organizational groups have their own good times together with more privacy, freedom and seclusion than might be possible in large complexes where differing recreational pursuits can become competitive.

To increase the usefulness of the Delaware River for water sports without unduly sacrificing its naturalness, three low-level weirs are proposed on existing slackwater reaches to increase water depth within the existing river banks yet not preclude the use of the riverway for long-distance boating or disturb the fine riffles to which fishermen and canoeists are attracted. In contrast with the large beaches and marinas designed for the reservoir, the riverside would offer facilities more modest in scale and conducive to enjoying the peaceful rural charm of the Delaware Valley.

Elsewhere in the national recreation area, visitor activities, facilities and services would remain as generally proposed in previous planning. However, there would be more emphasis on trails, on winter sports, and on centers for environmental education. Hunting in accordance with State regulations would be permitted in all sections of the area where feasible.

Completing and developing the Delaware Water Gap National Recreation Area is the first and major step necessary to protect the river and riverscape most central and vital to this megalopolitan center of the Middle Atlantic Seaboard. The area is less than two hours' drive from Manhattan, and from Philadelphia is even more quickly reached. Complementing the project would be the proposed Delaware National Scenic River along the upper reaches of what is probably the East's most widely enjoyed canoeing stream. Below the Water Gap, the historic green valley and capacious waterway becomes ever more precious as scenic open space, for urban influences are reaching across New Jersey and Pennsylvania. How these other Delaware Valley resources are protected and enjoyed will depend on patterns and examples set, skills learned, and happiness experienced in the Delaware Water Gap National Recreation Area.

THE IMPACT

In evaluating the environmental impact of the Delaware Water Gap National Recreation Area (without reservoir), it is necessary to consider not only the present but also what the future environment would be with and without such a reservation.

Farming is declining in this region and probably will continue to do so unless specially protected and encouraged in national recreation area administration and by other Federal, State and local government programs. Also, with or without a national recreation area, the region will be subject to increasing real estate developments such as vacation homes, summer and winter resorts, and the general spread of urban influence. This trend will accelerate and intensify around a unit of the National Park System as it attracts people to the region. A third trend, which may now be ending with the rise in land values, has been the acquisition of large tracts by hunting and fishing clubs. While this generally has protected the natural or traditional character of the lands involved, it has limited public access.

Establishment of the Delaware Water Gap National Recreation Area will vest control over more than 100 square miles of countryside in one accountable public land management agency—the National Park Service—rather than in more than 8,000 different landowners in various local jurisdictions. The NRA project has already galvanized the region into intensive planning efforts where none existed before, and is being used as a point of reference by local and regional planners in setting standards of environmental quality. High standards and good examples for resource protection, management and use and for facilities design in the national recreation area can influence and encourage wise stewardship and development of other parts of the Delaware Valley and adjoining mountain regions. In summary, though the NRA will trigger increased tourism and development in the region, its influence should reduce the incidence of haphazard, unplanned developments.

The environmental impact of development and public use at the national recreation area will be controlled by the basic policy that the resources must be used without resultant damage. Thus rare or fragile features will be reserved for study. Use of other resources, even though less fragile, will be regulated within their capacity to sustain it and to provide privacy, solitude and quiet as well as gregarious outdoor pastimes. The design, location and quantity of facilities will be governed by their ability to provide for maximum use without damage to resources or loss of recreational quality.

Management objectives for the area also include preserving unusual plant communities, geological formations and scenic features; supporting an abundant and varied native fauna; segregating potentially conflicting visitor uses; providing adequate protection of visitors and resources and maintenance of facilities; perpetuating agricultural scenes and activities; and identifying, preserving and interpreting archeological and historical sites and features.

The presence of large numbers of people and their vehicles within the national recreation area will have an adverse environmental effect that cannot be avoided. This will be minimized through careful planning and management, however. Continuing research will investigate how public transportation systems can reduce the need for automobiles and an extensive road system, and how new types and design of facilities can harmonize human use and environmental integrity.

Establishment of a Delaware Water Gap National Recreation Area does not constitute an irreversible commitment of resources. Although much effort and money is involved in the total project and many facilities are envisioned, nothing in it will forever change the basic natural fabric of the Delaware Valley.

[From the Philadelphia Inquirer, Sept. 21, 1971]

TOCKS ISLAND DAM ISN'T NECESSARY, U.S. STUDY

(By Mike Clark)

A National Parks Service study has concluded that a national recreation area would be "feasible, useful and appropriate" without the controversial Tocks Island dam.

The study, originally slated for release later in the fall, was released Monday by the Sierra Club and the Save the Delaware Coalition, a group of conservation clubs fighting construction of the Tocks Island dam in northeastern Pennsylvania.

Entitled "A Natural System Plan for the Delaware Water Gap National Recreation Area, the government study says the recreation area "need not embrace a large reservoir to benefit enormously the 30 million Americans living nearby in the urban East."

The plan points out that without a dam and the resulting lake, "the area without impoundment would have more than 10,000 'extra' acres of scenic riverside lands . . . ideal for outdoor activities."

Present U.S. Army Corps of Engineers plans call for construction of a large dam above the Delaware Water Gap near Stroudsburg, Pa. The resulting lake would stretch northwards for 36 miles to Hancock, N.Y. It would, under current plans, be surrounded by a

72,000-acre recreation area run by the Park Service.

The $250 million proposal was authorized by Congress in 1962. Completion is scheduled for the early 1980s.

The revised plan gives less emphasis to water-oriented facilities than did the dam plan.

"However," it says, "by utilizing the ponds, the streams, the river itself, water recreation facilities would be more dispersed, less concentrated in mass-use areas than in the reservoir plan."

Although there would be less room for mechanized water sports such as motor boating and water skiing, "there would be plenty and emphasis on the more subdued forms of boating such as canoeing and rowing," it says.

In addition, instead of the emphasis on lake fishing, the major fishing would take place on the river itself and in the many ponds in the area.

To increase the river's usefulness for water sports, the Park Service report recommends construction of three low-level weirs or impoundments, in as-yet undetermined locations. This would increase the water depth within the existing river banks with a minimum of disturbance.

"In contrast with the large beaches and marinas designed for the reservoir, the riverside would offer facilities more modest in scale and conducive to enjoying the peaceful rural charm of the Delaware Valley."

The report notes that other facilities would remain as presently planned, but "there would be more emphasis on trails, on winter sports and on centers for environmental education."

It was also noted that hunting would be allowed where feasible and in accordance with state regulations.

The study concludes that by establishing the Delaware Water Gap National Recreation Area without a dam, there is no "irreversible commitment of resources."

NATIONAL PARK SERVICE: NATIONAL RECREATION AREA FEASIBLE WITH OR WITHOUT A DAM AT DELAWARE WATER GAP, PARK SERVICE REPORTS

Secretary of the Interior Rogers C. B. Morton released today copies of a staff report by the National Park Service on the Delaware Water Gap National Recreation Area. The report concludes that a viable recreation area would be possible with or without the Tocks Island Dam.

George Hartzog, Director of the National Park Service in commenting on the report said, however, "that without the dam, the recreation area would be of an entirely different character and would accommodate a lesser number of people than would a large body of water associated with the construction of the dam."

The study was made at the request of the Council on Environmental Quality in response to the question from the OEQ "as to whether a viable recreation area would be possible without the Tocks Island Dam."

COUNCIL ON ENVIRONMENTAL QUALITY,
Washington, D.C., July 15, 1971.

Hon. CLIFFORD P. CASE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CASE: The Council on Environmental Quality has come to agreement with the U.S. Army Corps of Engineers, the Delaware River Basin Commission, the Department of the Interior, and the Federal Power Commission on an environmental analysis procedure for the Tocks Island projects.

The environmental analysis will be broken down into three stages. The first stage consists of the filing of individual environmental impact statements in the normal manner with the Council on Environmental Quality by the U.S. Army Corps of Engineers for the Tocks Island Dam and Reservoir project, the Delaware River Basin Commission and the Federal Power Commission for the pumped-storage hydro-electric generation proposal and the Department of the Interior for the Delaware Water Gap National Recreation Area.

The U.S. Army Corps of Engineers has agreed to be the lead agency for the preparation of the second stage which involves the preparation and filing of an overview environmental impact statement. This overview statement, prepared by the Corps in conjunction with the Delaware River Basin Commission, the Department of the Interior and the Federal Power Commission, will be a multidisciplinary environmental impact statement which will look at the interrelationships of all of the projects, including their primary and secondary effects, upon the region's environment.

The third stage may or may not be necessary. If the Council on Environmental Quality finds that any major points need further study after their evaluation, the Army Corps of Engineers has agreed to such studies by whatever entity is most appropriate.

The Army Corps of Engineers has agreed that construction will not begin upon the Tocks Island Dam and Reservoir project until all environmental impact statements and necessary further studies which go to the viability of the dam and reservoir project are completed and evaluated.

Copies of the Army Corps of Engineers letters to the Council on Environmental Quality dated May 25 and July 2 are enclosed. Also enclosed is our letter to the Army Corps of Engineers dated June 18.

Your interest and support in obtaining a thorough environmental analysis of the Tocks Island projects is greatly appreciated by the Council on Environmental Quality.

Sincerely,

RUSSELL E. TRAIN, *Chairman.*

ARTHUR E. MORGAN ON THE BASIS OF EFFECTIVE ACTION

Mr. HUMPHREY. Mr. President, recently I was privileged to receive a remarkable statement of personal philosophy, a social program for the strengthening of human institutions that ennoble the spirit of man and effectively meet his real needs. The author of this statement, entitled "The Basis of Effective Action," is Arthur E. Morgan.

This is a man whose lifetime of service to others embodies its own creed—a profound commitment to a better world. The recognition of Arthur Morgan's abilities to translate this commitment into firm purpose and effective action is evident in his appointment as president of Antioch College in 1920, a position to which he added distinction over 13 years, and his subsequent appointment as first cochairman of the Tennessee Valley Authority, where for 5 years he helped guide the evolution of this world-renowned regional development project.

Truly, these are times in the affairs of men that call for Arthur Morgan's message of a "clear comprehension of aims" and of "a consuming desire to contribute" to the destinies of mankind. As he so rightly points out:

Great political leadership may stimulate a nation to a better program, but before our civilization can become stable on a higher level . . . a foundation must be provided by the general occurrence through the population of character, design and commitment, and by mutual support in giving them expression.

Mr. President, I ask unanimous consent that Mr. Morgan's statement be printed in the RECORD.

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

THE BASIS OF EFFECTIVE ACTION

(By Arthur E. Morgan)

I have become greatly impressed with the importance of the "technique of effectiveness" in making one's efforts count towards his ends. The effectiveness of one's life depends on the clarity and thoroughness with which his ends are conceived, the suitability of his means, and lastly to the vital energy he puts into their realization. A right proportioning of these elements is of controlling importance.

Of the three elements of effectiveness I have mentioned, that of clear comprehension of aims is most important. An aim clearly and sanely conceived and expressed, if it has elements of vital truths, has power of reproduction somewhat like that of a living organism. A few years ago in sailing along the coast of Greece, I saw where the side of a mountain had broken off and fallen into the ocean. The splash must have been terrific, and the ripples must have traveled to the most distant shore. Yet, today, there is probably little difference in world affairs because of that splash. Perhaps it was at about the same time a tiny dandelion seed dropped from a freight package from Europe onto the soil of America. The event was unnoticeable, but the seed had in itself the power of reproduction, and its progeny has spread across the continent. Napoleon made a great splash, but there was relatively little clarity of purpose in what he did. Spinoza in his attic was as inconspicuous as a dandelion seed, but his influence on human thought and life in the end may be greater than that of Napoleon.

Human affairs are largely in chaos. All the raw materials exist, including human nature and capacity for intelligence, to produce a culture which would project the race far along its way. Vast energies are being spent without design and therefore largely wasted. Vast capacity for design is being consumed in abstractions of theory, undisciplined by adequate contact with reality. Great ability is unused because of the lack of a compelling sense of unity and identity with the destinies of mankind, and of a consuming desire to contribute to that destiny. In government, fairly simple-minded men equipped with valid drives, and trained in the science and art of leadership, could make great contributions. In business, the purifying and selective action of these motives would be revolutionary. In philosophy a game like chess would give place to a genuine and passionate search for light. In youth there would be jealous guarding of energies and powers to commit them to the great quest. The work of the world would be refined by the determination to live and thrive only by contributing to the real needs of men.

I see two kinds of contributions as necessary in human affairs. One is participation in the current conduct of business, government, education and society in general. The other contribution consists in achieving clear purpose and design, in the discipline of personal life and character, and in the creation and extension of a sort of brotherhood of men who will commit themselves wholeheartedly to laying the foundations for a new order. Most men should be engaged in both kinds of endeavor, but some men can serve best by committing themselves almost wholly to the latter.

I have pictured to myself a program for furthering this second purpose. It must include a clarification of personal and social aims and purposes. It must include the de-

velopment and the possession by individuals of a scientific, discriminating and inclusive ethics and wholehearted commitment to that ethics in the day-by-day conduct of life. It should, I think, include the gradual development of a society or brotherhood of men and women who will wholeheartedly and unreservedly commit themselves to such a quest, and who will discover each other, support and encourage each other, and gradually establish the conduct of life according to the design which has emerged in the common quest. There must be such continuing and growing association of men and women of like purpose to transmit aims and spirit by the contagion of personal contact, for otherwise the dilution and attrition of common life may tend to eliminate all vestiges of high aims and burning purpose. Great political leadership may stimulate a nation to a better program, but before our civilization can become stable on a higher level, such a foundation must be provided by the general occurrence through the population of character, design and commitment, and by mutual support in giving them expression.

Most of the mountains of the earth exist today because of grass and trees. But for these protective coverings the elements would have worn them away at least twenty times as fast. So most desirable human institutions exist because in the common texture of life there is the decency and loyalty to mankind to protect and sustain them. Such a program as I have outlined does not rest solely on leadership. It depends also on the effect of similar motives widely distributed, giving vitality and refinement to the common course of life.

HON. BOURKE B. HICKENLOOPER

Mr. MILLER. Mr. President, the State of Iowa and the Nation lost a great public servant with the sudden and untimely death of our former colleague, Hon. Bourke B. Hickenlooper.

The Cedar Rapids, Iowa, Gazette said of Senator Hickenlooper:

His was an enviable record that will serve as an inspiration to all Iowans with political aspirations.

The Des Moines Register asserted that—

The ancient Romans had a word for the career of Bourke Blakemore Hickenlooper of Iowa: cursus honorum—a course of ascending honors in service to the republic.

The Mason City Globe-Gazette said:

He did credit to his native state, which showed its confidence in him in life and honors him in death.

Indeed this record of public service inspired confidence, and his reputation in the Senate as a legislator completely dedicated to high principles and integrity in public office will live and stand as a fitting memorial.

I knew "Hick" before I came to the Senate in 1961, and I was proud to have been associated with him for 8 years until his retirement from the Senate in January of 1969.

It is tragic that a well-earned retirement has been ended so soon, and all of us, I know, mourn his passing.

I ask unanimous consent that editorials on Senator Hickenlooper from the Cedar Rapids Gazette, the Des Moines Register, and the Mason City Globe Gazette be printed in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Cedar Rapids Gazette, Sept. 6, 1971]

BOURKE B. HICKENLOOPER

Bourke Blakemore Hickenlooper, who died Saturday, was one of the most popular public officials in Iowa history. Certainly he was the "winningest" Republican the state has ever had.

He devoted 34 of his 75 years to serving his fellow man—34 years without a break, ranging from four years as a state representative beginning in 1935, to 24 as a U.S. senator ending when he retired undefeated champ in 1969. In between, he sandwiched four years as lieutenant governor, two as governor. He is the only Iowa governor and senator to come from Cedar Rapids, where he started practicing law in 1922.

His name was before the voters 19 times. Like most successful politicians, he tasted the dregs of defeat—twice. But these temporary setbacks actually steeled him for the long days ahead, during which he established a reputation as a conservative with a keen sense of humor, a staunch defender of the private enterprise system, an advocate of a farm economy unfettered by government controls and an opponent of excessive spending both at home and abroad.

He was defeated in his first bid for public office, losing his party's nomination for Linn county attorney in 1932. Two years later he won the first of two terms as state representative then lost again, in his first try for the nomination for lieutenant governor in 1938. When the man who beat him, Harry B. Thompson of Muscatine, a stranger to politics, withdrew from the race, the G.O.P. state convention lost no time nominating Mr. Hickenlooper to fill the vacancy left on the ticket. He never lost another election.

His early campaigns were arduous and time-consuming. Television wasn't here yet and a candidate had to visit every nook and cranny to acquaint voters with his name—especially when he had a name that was difficult either to believe or to pronounce, like Hickenlooper. That was the lesson he learned from his 1938 defeat—that an unknown with a common name like Thompson could beat an experienced politician with the unlikely name of Hickenlooper.

So he went door-to-door, telling stories involving his name and encouraging people to just call him "Hick," which they learned to do with affection. His favorite story was about when he was a small boy in Taylor County and his mother sent him to a drug store in Bedford, the county seat.

"I asked for a nickel's worth of assafetida and told the druggist to charge it," he related. "He asked my name. I told him it was Bourke Blakemore Hickenlooper. He asked me to repeat it. I did. He said 'here, sonny, take it. It isn't worth a nickel to write both assafetida and Hickenlooper on a charge ticket'."

"Hick" was a devoted public servant. He was No. 1 Republican on the senate foreign relations committee when he retired. He served as chairman of the joint atomic energy committee and was chosen by President Eisenhower as a U.S. representative to the U.N. General Assembly in 1958. President Johnson sent him on a congressional team in 1966 to keep watch on the South Vietnam election.

Only the late Senator William Allison had a longer service record, among Iowans, in the U.S. senate—35 years. But Allison's record was before senators had to stand public election (they were chosen by the legislature), so Hick's was harder to come by.

Indeed, his was an enviable record that will serve as an inspiration to all Iowans with political aspirations.

[From the Des Moines Register, Sept. 8, 1971]

LONG CAREER IN IOWA'S SERVICE

The ancient Romans had a word for the career of Bourke Blakemore Hickenlooper of Iowa: cursus honorum—a course of ascending honors in service to the republic.

As a young man, he interrupted his college education to serve in the armed forces in World War I, as a second lieutenant in a field artillery outfit in France. He went back to Iowa State University to get his bachelor's degree and to the University of Iowa to get a law degree. For more than a decade he practiced law in Cedar Rapids.

Then in 1934 he ran for public office and won. For the next 34 years he served in elective office with successively larger responsibilities: two terms as state representative, two terms as lieutenant governor, one term as governor, and finally four six-year terms as United States senator with mounting seniority and committee posts.

This newspaper did not always agree editorially with the Hickenlooper policies, but he was always courteous, always willing to explain his point of view, and his explanations were always thoughtful, based on first-hand study.

For years, he was alternately chairman or ranking minority member of the Joint Congressional Committee on Atomic Energy. He was a principal author of the Atomic Energy Act of 1954, which encouraged private industrial development of nuclear power.

Hickenlooper served long also on the Senate Foreign Relations Committee and became ranking Republican member. He spoke out against Vice-President Richard Nixon's suggestion in 1954 that the United States ought to send troops to Indochina if the French could not hold it.

The Hickenlooper Amendment to a foreign aid law of the early 1960s is still on the books. It calls for a cut-off in American aid to countries which expropriate the property of United States citizens and fail to provide compensation within six months. The amendment permits the President to make exceptions when he thinks the national interest requires it.

The senator was 73 when he retired, 75 when he died. Nearly half his life was spent in public service.

[From the Mason City (Iowa) Globe-Gazette, Sept. 8, 1971]

HICKENLOOPER LEFT IMPRINT

Bourke B. Hickenlooper, who died early Saturday at age 75, once despaired of getting far in politics because of his name.

The abbreviation used by friends (Hick) was even worse. But Hickenlooper found the secret in kidding about his last name in public, making more jokes about it than his political foes.

With that, his political climb was steady in Iowa's Republican party. He served four years in the Iowa Legislature, was elected lieutenant governor in 1938 and 1940, then became governor in 1942. He won a seat in the U.S. Senate in 1944 and served there 24 years before retiring from active politics in 1968.

The Cedar Rapids lawyer, a moderate conservative, won the most national attention as co-sponsor of the Atomic Energy Act of 1954, which initiated the private development of atomic energy for peaceful uses. He was chairman of the Joint Congressional Committee on Atomic Energy at the time.

Hickenlooper also made his mark in the field of foreign relations, as senior Republican member of the Senate Foreign Relations Committee.

The Iowan wrote the controversial amendment to the foreign aid bill in 1962 that automatically denies aid to any foreign country that expropriates property or equity of an American unless adequate compensation is awarded within six months.

That amendment has been invoked only once, against Ceylon in 1963, but it has been credited with being an effective deterrent.

Hickenlooper continued to be a force in

Iowa politics through frequent trips home to "keep in touch."

Few Iowans have won so many elective offices and left such an important imprint on the legislative face of this nation. He did credit to his native state, which showed its confidence in him in life and honors him in death.

HILL-BURTON'S 25TH ANNIVERSARY

Mr. PERCY. Mr. President, I wish to draw the attention of Senators to an editorial published recently in the Washington Post commemorating the 25th anniversary of the Hill-Burton program of Federal assistance to hospitals and health care facilities.

We have heard over and over again of the severe health crisis which this country is facing, a crisis which I believe is based on the shortage and maldistribution of our health personnel. We should not overlook, however, the progress which has been made in the construction and expansion of hospitals and community health centers throughout the Nation. The Hill-Burton program, in its 25 years in existence, has made great strides in improving our health care facilities. It is hoped that its continued assistance will enable us to provide the quality health care which is the right of every American. I trust the American people will never forget the debt of gratitude we all owe our distinguished former colleague, Senator Lister Hill. I ask unanimous consent that the article be printed in the RECORD.

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

HILL-BURTON

The Hill-Burton program of federal assistance to hospitals and other health care facilities has just observed its 25th anniversary. And this we think is worth noting if only because, in one way or another, this program affects the lives of all Americans.

In partnership with state and local governments as well as voluntary health and hospital associations and various citizens' groups the Hill-Burton investment of $3.7 billion in federal grants has produced $12.7 billion worth of new or modernized hospitals and health centers in some 4,000 communities over the past quarter century. But this statistic does not tell the story of the dramatic changes that have occurred during this time in our concept and methods of health services—changes that have in part forced the program in new directions and that in part the program itself has brought about.

At the time Senators Lister Hill (D.-Ala.) and Harold H. Burton (R.-Ohio) introduced the Hospital Survey and Construction Act in 1945, the nation suffered a critical shortage of hospitals and health centers, particularly in rural areas. Nearly 800 hospitals had been closed during the depression for lack of operating funds and few new ones were built during World War II. Public health centers, as one veteran of the program recalled, "were usually found in the basement of the courthouse, provided, of course, the space wasn't needed for the dog pound." Hill-Burton helped build health care facilities of all kinds, from small one-story institutions to skyscraping hospital complexes. But it built most of them in the hinterland, partly because needs and the law demanded this, partly because of the influence of rural state legislators. Metropolitan hospitals, which were to be the core of regional hospital systems, were allowed to deteriorate. It was not until 1964 that an amendment to the act changed this emphasis. It allowed grants to modernize existing hospitals in the big cities and provided funds for regional health care planning and coordination.

More recently the predominant need, even in the big cities, is not so much for new hospital beds, of which there is a surplus in some areas, but for improved and enlarged outpatient facilities and services. The program was forced to change direction again and give greater emphasis and priority to comprehensive outpatient care particularly in poverty areas.

The changes the program has brought about are in the way hospitals around the country are planned, designed, equipped and operated. The Public Health Service architects and engineers working under the Hill-Burton program have been leaders in their field. They have issued more than 100 planning guides on such subjects as hospital lighting, noise control, infection control, air conditioning and interior arrangements. They have made the open ward obsolete and introduced the concept of "progressive patient care," whereby patients are assigned to special units according to their degree of illness. The idea of "intensive care units" for patients requiring around-the-clock attention and special life-saving equipment has been adopted by 2,000 hospitals in this country and a growing number abroad. For much of all this we have the Hill-Burton program to thank.

FORMER SENATOR BOURKE B. HICKENLOOPER, OF IOWA

Mr. ALLOTT. Mr. President, all Sentors lost a friend, the State of Iowa lost a great leader, and the United States of America lost a venerable public servant with the death of Senator Bourke B. Hickenlooper.

Senator Hickenlooper served his Nation selflessly. He was unfailingly attentive to the needs of his great State. And he served with distinction as chairman of the Senate Republican Policy Committee.

It has been an honor for me to serve as Senator Hickenlooper's successor as chairman. I know I speak for the staff of that committee when I say that his tenure there, like his entire public career, was a model of outstanding public service.

NICHOLAS VON HOFFMAN ON "GRUMBLING OFF"

Mr. FULBRIGHT. Mr. President, the commentary of Nicholas von Hoffman in the Washington Post of September 22 is worthy of the consideration of all Senators as well as the general public.

I 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:

GRUMBLING OFF FOR A WHILE

(By Nicholas von Hoffman)

Writing a newspaper column is an unnatural occupation. A columnist is paid for his opinions and if that is not unnatural its certainly a job that calls for the developing of faculties of mind and disposition which are a positive handicap in most other lines of work. Nobody wants an opinionated person around and yet we newspaper columnists are recompensed for cultivating this nasty trait.

Still it's unnatural to have an opinion about everything and everybody. It's probably a species of insanity. Forty or 50 well thought out studied opinions are all a sane and healthy person needs. Any more than that and he risks exhaustion and derangement. It's very tiring, summoning up an opinion about everything one sees and hears, and it's crazy, too, for if man is made to inquire, probe, search and question, he's not made to do so in regard to everything; sometimes he's better off accepting with a nod and grunt, just flowing with it, not removing himself to size it up and pass judgment.

Even people who're paid for their opinions should leave off sometime and spend a while nodding and grunting and accepting. It's either that or the nut house, so this column won't appear for the next month or so because the man who writes it is going to take off to take life as it is and not argue back.

While I'm gone I'm going to think on why this society should pay people to write newspaper columns. It's a very special and privileged position, a very satisfying one for column writers, but, a little entertainment aside, what can society hope to get in return?

Surely not just any old kind of opinion. There are plenty of them around without having to pay for more. The pages of every newspaper every morning are loaded with quotations from leaders of business, politics, religion, athletics, and every other field of endeavor letting go with what they think.

If column writing has any utility, then it must arise from the writers not being leaders, not being part of any definable group that puts special lenses on people's eyes so that they perceive according to some kind of collective *a priori*. The columnist has got to be a loner, a detached and unattached person, because he has nothing else to offer except an opinion which isn't the *ex parte* argument of one group or another. All he's got to sell are his own opinions; hopefully they will be informed and researched but above all they must be personal, and not the views of others for whom he's but the mouth.

That's never been easy to do, least of all in newspapering where the publishers and senior editors have a long tradition of compromising personal associations with businessmen and politicians. However that may be, it's become customary with them to urge their employees to stay neutral, to stay unencumbered, and, by and large, the better news people of this era have done that.

Now this is beginning to change. Some of the leading figures in American journalism are throwing off the old clothes of skepticism and are putting on uniforms and enlisting in a variety of causes. This is usually called the new journalism and it is usually justified by saying the times are so bad, the issues so crucial that the old norms are a luxury we can't afford. The new journalists are impervious to the counterargument that it is exactly in the worst of times, when partisanship is most irrational and unseeing, that we most need people speaking and writing who are free of its claims.

When a newspaper man joins up with the cause, he risks serving higher loyalties than his work and his own opinions; he is in danger of becoming a spokesman: that is a person who no longer conceives of his duty to tell all there is to tell, but to make his side look good, to emphasize what's alluring and skip over what's hard to explain.

The other day an editor of a New York publication remarked that she was disturbed to hear that one of her writers had conducted an interview with George Jackson, the gifted, black, writer/convict who was killed in what the authorities described as an escape attempt from San Quentin and his friends called a murder. What disturbed the editor was that the interview was never written up, and when she asked the writer why, he replied that Jackson had told him things that would hurt "The Movement" if they got out.

Once upon a time such incidents were common in American journalism. Publications were practicaly all the avowed spokesmen for various political groupings. Under the circumstances, a newspaper could be expected to suppress unfavorable information just as a newsletter from the Republican National Committee would. But for several generations now, general circulation publications have been trying to establish themselves as public trusts. They've been trying to persuade people that they operate under a different rubric and don't trifle with the information they collect to make it come out right for their side.

That is threatened as more people come into the business with political ulterior motives. This isn't said as an older man's lament about the younger generation. If the young people entering the news business feel this way, they're only taking some of the most distinguished older people as models.

Look at Tom Wicker, columnist and associate editor of The New York Times. He's probably the most widely admired man in American newspapering, and justly so. An intelligent, courageous, decent man, he has nevertheless given up on the idea that the journalist should stand apart. Not only is he giving speeches from political platforms, but he recently agreed to be one of the committee of politicians, ministers and social workers who attempted to mediate before the Attica bloodletting.

But even while recognizing the compelling and compassionate reasons for Wicker doing such things, an onlooker can still wonder if he can avoid becoming the voice of a political faction, if he can stand up to the pressure of writing what the faction wishes to read, if he can be both a public figure whom the rest of us must write about as we do about Gov. Rockefeller and still be Tom Wicker, his own man, writing his own opinions even when they hurt The Movement.

The political involvement of left-wing writers like Wicker is more remarked on both because of chaps like Agnew and because it is still such a short time ago that the admission of any opinions left of liberal was a confession of some sort of criminality. Right-wing newspapermen do the same thing. At the recent annual convention of the Young Americans for Freedom, three of the six major speakers were from the news business . . . H. Stanton Evens, Kevin Phillips and William Buckley.

People in the center do it, too. Clark Mollenhoff, the bureau chief of The Des Moines Register, took off to go to work in the White House for Nixon. Columnist Frank Mankiewicz, who was formerly on Robert Kennedy's staff, is now back in politics as a key advisor to Sen. George McGovern.

The people who flit back and forth between making the news and commenting on it display a weak allegiance to journalism as a calling. Indeed, they seem to regard it as a resting place for when you're tossed out of office, but because they *are* in politics, they must subject their ideas and opinions to the discipline of other people's approval. They must answer to somebody.

But the columnist who joins up in an informal way doesn't have that restraint. In most cases he himself isn't aware when he's enlisted in a faction, when he's stopped answering to himself and commenced to write what his group expects from him. Because, unlike the self-acknowledged politician, he can't be sure who his constituency is or what it may think, he's more liable to fall into gross exaggerations and fairy tale fancies. That's what comes of trying to write to an ill-defined, putative audience whose preferences can only be known by supposition.

Let's hope this hasn't happened to the columnists who've chosen the way of personal engagement, but once caught up in action, it's difficult to resist. And, when it happens, it's a shame. The society has created very few positions of great independence, relatively large immunity from pressure and access to a vast audience. When one of the few holding these positions joins up, even with the army of right, truth and progress, a special opportunity for providing people with views and opinions they can't possibly get from organized factions is lost.

The newspaper columnist, even more than the reporter, has an obligation to be a grouchy, suspicious, nasty, introspective monk, a horrid, raggedy thing no faction would care to capture. That being the case, this monk will grumble off to his anchorite cell for awhile.

ACCESS TO MATTERS INVOLVING GOVERNMENT PROGRAMS ABROAD

Mr. FULBRIGHT. Mr. President, at the request of the Committee on Foreign Relations the General Accounting Office has compiled a summary account of problems it has encountered recently in obtaining access to information on matters involving Government programs abroad. In view of the importance of this problem to the entire Congress, I ask unanimous consent to have the report and a statement by me concerning it printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

COMPTROLLER GENERAL
OF THE UNITED STATES,,
Washington, D.C., September 10, 1971.

Hon. J. WILLIAM FULBRIGHT,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: On February 25, 1971, you wrote to our Office concerning executive branch denial of access to records. You pointed out that in recent years the Committee has been denied access to many documents and other materials and that such denials preclude effective legislative oversight of executive branch performance.

The basis for the executive branch denial of information to the Congress is the constitutional doctrine of separation of powers which is interpreted by the executive branch as granting it a privilege to withhold information where such action is deemed necessary in the best interest of the country.

You ask that our Office analyze the matter and furnish a compilation of summaries of all significant instances in recent years when we have been denied access to executive branch records or materials. You also ask that we submit our legislative recommendations to insure that the Congress cannot be denied access to executive branch documents unless the President exercises executive privilege.

As evidenced by the enclosed compilation and by recent testimony of officials of our Office, insofar as GAO is concerned, absolute denial by the executive branch of access to records has in recent years been quite rare. For example in testifying on your bill S. 1125, 92d Congress, before the Subcommittee on Separation of Powers of the Senate Judiciary Committee, copy enclosed, the Deputy Comptroller General on July 28, 1971, characterized our current problems on access as being those of frustrations and delays in carrying out our statutory responsibilities rather than those attending outright refusal of access on claims of executive privilege.

With regard to legislative recommendations, the Deputy Comptroller General stated in that testimony that the enactment of S. 1125 should result in a freer flow of information to the Congress and its committees except in those cases where the President himself has decided that disclosure shall be precluded on the ground of executive privilege. Specifically, he stated that, under the procedures contemplated by the bill, if the privilege is to be exercised by the President there should be no delays in the hearing processes and if the privilege is not to be claimed there is no basis remaining that we can see which would justify failure to testify. We therefore feel that the enactment of S. 1125 should go a long way to reduce the problems of access to records by the Congress and its committees, and, aside from endorsement of S. 1125 we have no recommendations to make concerning this aspect of the problem.

With regard to the delays that hinder effective performance of the duties of our Office, we feel that your Amendment No. 343 to S. 1125 of July 29, 1971, would help avoid these delays and we are unable to fashion legislative recommendations which we feel would be more salutary than the language of your amendment.

This amendment would impose a sanction along the lines of that now providing for a cut off of foreign assistance funds under section 634(c) of the Foreign Assistance Act of 1961, 22 U.S.C. 2394(c). Specifically, the amendment would provide that upon a determination by the General Accounting Office that any information requested of the executive branch by a committee or subcommittee of the Congress or the General Accounting Office has not been made available within sixty days after the request has been received and if during such period the President has not signed a statement invoking executive privilege, no funds made available to the agency involved shall be obligated or expended commencing on the seventieth day after such request is received by such agency unless and until such information is made available or the President invokes executive privilege with respect to such information. In addition to helping to alleviate the problems that we have had in delays in obtaining access to information your amendment would also assist the Congress and its committees in day-by-day operations which require information, independent of the hearing processes.

It is hoped that this letter and its enclosure will assist the Committee in its consideration of this very important problem. We would of course be pleased to further assist the Committee in any way that we can.

Sincerely yours,

R. F. KELLER,
Acting Comptroller General of the United States.

COMPILATION OF GAO ACCESS TO RECORDS PROBLEMS ENCOUNTERED IN MAKING AUDITS OF FOREIGN OPERATIONS AND ASSISTANCE PROGRAMS

In response to the request of the Chairman, Senate Foreign Relations Committee of February 25, 1971, we have made an analysis of the access to records problems, including a compilation of specific instances where the General Accounting Office (GAO) has been denied access or delayed in obtaining access to Executive Branch records or materials during recent years.

We have cited examples of denials of information and delaying or hindering actions that have taken place during eight overseas reviews conducted by GAO's International Division during approximately the last two years. Five of the reviews were conducted at the request of your Committee and the remaining three were initiated by GAO.

We believe the Budget and Accounting Act of 1921, as reinforced by recent expressions of intent by congressional committees, leaves no doubt but that Congress and GAO are expected to have access to all records, documents, or papers necessary to effectively evaluate the various programs of the Executive Branch.

However, the Departments of State and Defense have in many instances taken the

position that certain information is not releasable to GAO and the Congress. Information has been denied our auditors both in the field and at the Washington level and in certain cases, information has been supplied only after time-consuming reviews by successive higher organizational levels within the Departments.

The time-consuming processes employed by the Departments in many cases have hampered our auditors in the discharge of their duties to the point that audit teams in the interest of our economical use of manpower resources had to be withdrawn from the audit site prior to a decision being made by the Departments as to whether our request to examine documents would be approved or denied. In other cases, information was provided on a piecemeal basis and certain documents were withheld which would have provided the continuity of Departmental actions necessary in our evaluation of the overall program under review.

In our opinion, the delays result in a de facto denial of records which should be made available in accordance with our legislative authority and the intent of Congress.

Following is a list of types of information that we believe are necessary in the conduct of an audit but have not been provided in a timely manner or refused outright:

1. future planning information and documents, both formal and informal;

2. internal working papers and staff recommendations relating to programs planned or in process;

3. negotiation documents, papers, memorandums, and working papers, before, during and after negotiations, regardless of whether or not the information is considered sensitive;

4. management reports including recommendations or conclusions reached, whether approved or unapproved by higher authority, field trip reports, observations, and records of conversations pertinent to the matters under review;

5. access to records, documents or papers originated or directly related to foreign governments but in the possession of United States agencies, when they relate to programs in which the United States has a direct interest; and

6. access to all United States supported bases and installations regardless of the geographical location.

Following is a discussion of GAO's authority under the Budget and Accounting Act of 1921, and the Foreign Assistance Act of 1961; Department of State and Department of Defense (DOD) and their various organizational elements, regulations, directives, or messages on GAO's right of access to information; and examples of denials and delays of information by the Departments of State and Defense.

GENERAL ACCOUNTING OFFICE AUTHORITY

The position of GAO is that full and complete access to all records pertaining to the subject matter of an audit or review is required. This is required in order that GAO can fully carry out its duties and responsibilities. The intent of the various laws assigning authority and responsiblity to the GAO is clear on this point. This policy does not admit the propriety of any restrictions on GAO's legal authority other than that specifically contained in law. The right of generally unrestricted access to needed records is not only based on laws enacted by the Congress but is inherent in the nature of the duties and responsibilities of the GAO.

The basic authority governing GAO's access to records of Government agencies is contained in section 313 of the Budget and Accounting Act, 1921 (31 U.S.C. 54) as follows:

"All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them; and the Comptroller General or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment * * *"

The more important factors underlying the laws and GAO's policy of insisting on generally unrestricted access to pertinent records of agencies and contractors in making GAO audits and reviews are summarized below:

1. The making of an adequate, independent, and objective examination contemplates obtaining a comprehensive understanding of all important factors underlying the decisions and actions of the agency or contractor management relating to the subject of GAO examinations.

2. Enlightened management direction and execution of a program must necessarily consider the opinions, conclusions, and recommendations of individuals directly engaged in programs that are an essential and integral part of operations; knowledge of this type is just as important in making an independent review as it is in making the basic management decisions.

3. Withholding information could permit concealment of adverse conditions by responsible officials. The denial of information developed in an internal review to higher authority, or any other official properly concerned hampers the external review and independent consideration of the effectiveness and efficiency of the activities, and necessitates a duplication of effort and increased costs.

4. Internal reviews on behalf of agency management are highly desirable. Such reviews represent one of the methods by which management can keep informed of how large and complex activities are being carried out. Management should take vigorous corrective action on any deficiencies disclosed. However, the effectiveness of a program of self-evaluation and management improvement is not dependent upon restricting the information developed to the individuals or departmental level responsible for the activity under examination. Such information is of great importance to higher administrative levels of review having a legitimate interest or concern in the subject. The effectiveness with which internal review activities are carried out and the effectiveness with which corrective action is implemented is clearly of interest and concern to the GAO in the performance of its statutory responsibilities and reporting to the Congress.

5. There is no basis in law or logic for a distinction between factual information and internal options, conclusions, and recommendations insofar as our authority and need for information is concerned. A sharp distinction between these categories is not only difficult to make but physical segregation of them is impractical.

6. The disclosure to the GAO of frankly stated internal opinions, conclusions, and recommendations is not contrary to the public interest. The system of management control which results in such internal communications should be properly conceived, administered, and dedicated to efficient and effective operations rather than oriented toward a defense of possible criticism. Under these circumstances, the requirement of disclosure should tend to improve the caliber of the internal opinions, conclusions, and recommendations rather than impair their usefulness to the management because of softened criticism, avoidance of doubtful matter, and general restraint.

7. All books, documents, papers, and other records relating to the costs borne by the United States are records relating directly to the financial interest of the United States. Such records are not limited to formal agreements or contracts and the supporting data, but include all underlying data concerning the need, utilization, and disposition, of funds which afford the basis for or are involved in any way with the incurrence of costs by the United States. Pertinent records may include but are not limited to records in support of (a) future plans and programs, (b) internal working papers, observations and trip reports of advisers and (c) evaluations, recommendations and conclusions of internal evaluation groups.

A remedy bearing on our access to records of Government agencies is contained in section 634c of the Foreign Assistance Act of 1961, as amended. Section 634c states that:

"None of the funds made available pursuant to the provisions of this Act shall be used to carry out any provision of this Act in any country or with respect to any project or activity, after the expiration of the thirty-five-day period which begins on the date the General Accounting Office or any committee of the Congress charged with considering legislation, appropriations or expenditures under this Act, has delivered to the office of the head of any agency carrying out such provision, a written request that it be furnished any document, paper, communication, audit, review, finding, recommendation, report, or other material in its custody or control relating to the administration of such provision in such country or with respect to such project or activity, unless and until there has been furnished to the General Accounting Office, or to such committee, as the case may be, (1) the document, paper, communication, audit, review, finding, recommendation, report, or other material so requested, or (2) a certification by the President that he has forbidden the furnishing thereof pursuant to request and his reason for so doing."

The above section applies only to funds appropriated under the Foreign Assistance Act; it is not applicable to the military service appropriations.

DEPARTMENT OF DEFENSE AND DEPARTMENT OF STATE RESTRICTIVE REGULATIONS

Both the Departments of Defense and State and their various organizational elements recognize GAO's rights to documents, records and papers as contained in the Budget and Accounting Act of 1921, but at the same time the Departments have directed that certain types of information not be furnished to GAO. Normally these regulations or directives and implementing messages do not state that GAO cannot be furnished the information, but rather that their personnel in the field can not furnish the information unless authorization is received from higher authority; this normally means officials of the Departments in Washington.

Following are pertinent excerpts from regulations, directives, and implementing messages of the Departments of State and Defense and their various organization elements restricting GAO's right to records.

DEPARTMENT OF DEFENSE

The Department of Defense's basic policy guidance on cooperation with GAO and access to records is contained in DOD Directive Number 7650.1, dated July 9, 1958. Although the directive was not agreed to by us, it sets forth the working arrangement under which we have operated. That directive contains three categories of information that DOD considers to be essentially nonreleasable to GAO—those are (1) budgets for future years' programs, (2) reports of non-Department of Defense agencies, and (3) reports of Inspector General and criminal investigation organizations.

However, in some cases implementing messages from DOD and regulations by the military services and major commands have placed additional restrictions on GAO's access to records. The restrictions vary somewhat

among the military services and commands. We believe the following two illustrations demonstrate the restrictions imposed by DOD on access to records necessary for GAO to make effective evaluation of DOD programs.

1. U.S. European Command Headquarters, Directive Number 50–5 dated June 18, 1971

The appendix to the above directive contains a listing of documents and categories of information which the chiefs of Military Assistance Advisory Groups and missions may not release to GAO without approval from higher authority. They are as follows:

a. Recommended changes to force objectives.

b. Host country replies to NATO questionnaires and related MAAG analyses.

c. Information relating essentially to military or international planning considerations and pertaining to matters of strategy, such as war plans or memorandums leading to the formulation of such plans.

d. The Military Assistance Five-Year Plan for a particular country except data included in the military assistance program which has been initially justified before the Congress.

e. The quantity and projected delivery of items and services included in a specific fiscal year military assistance program prior to the initial justification of the program before the Congress.

f. Operational status reports concerning tactical effectiveness of host country forces. (Factual data, such as personnel strengths and allowances and equipment inventories and allowances, may be extracted from these reports and furnished the GAO in response to a specific request for such data from the GAO.) Note: This restriction excludes combat capability ratings assigned by chiefs of Air Force sections of the MAAGs.

g. Reports of the Inspector General, Foreign Assistance, Department of State.

h. USEUCOM command Inspection reports (Factual data specifically related to the area of the GAO audit may be extracted from these reports and furnished in response to a specific request for such data from the GAO).

i. Documents related to intelligence collection and analysis.

j. Host country documents, reports, and data.

2. Joint State-Agency for International Development-Defense Message dated December 18, 1970

This message, which was drafted by DOD, was directed to the American Embassies in Bangkok, Manila, Saigon, and Seoul, and the Pacific Command in Hawaii. It stated, missions and commands should not, without specific Washington authority, allow GAO personnel to consult or otherwise have access to the following:

a. Documents relating to war plans, future military assistance service funded or U.S. military operations budgets and planning data.

b. Confidential correspondence exchanged between heads of State.

c. Presidential memoranda.

d. Reports of the Inspector General.

e. Performance Evaluation Reports.

f. Internal executive branch working papers and memoranda.

g. Telegrams, memoranda or other documents revealing sensitive information about the conduct of United States negotiations with participating countries or South Vietnam.

h. Other material which the Ambassador or major military component commanders consider may be sensitive and could, if revealed, have a serious adverse effect on the conduct of United States Government relations with the participating countries or with other countries or might otherwise prejudice the national interests of the United States.

The message also contained in a statement that GAO representatives will have no need to consult participating country or Government of Vietnam officials or agencies for purposes of present review since such contacts could have adverse consequences.

In reviewing the military service regulations it is interesting to note that the military service regulations were revised between July and September 1970 which allows GAO access to planning estimates for specific programs. This revision, however, has not been incorporated in DOD regulations and implementing instructions.

DEPARTMENT OF STATE

The Department of State's basic overall policy guidance for making documents available to GAO is contained in their Foreign Affairs Manual, (FAM), Volume 4, Section 934. The FAM quotes the pertinent part of section 313 of the Budget and Accounting Act, and states it is the State Department's policy to cooperate by making available to GAO representatives their documents.

However, the FAM further states that Department of State approval is to be obtained first when in the opinion of the ambassador or bureau head any document requested by GAO is of such significance that:

1. Its disclosure would seriously impair relations between the United States and other countries in the conduct of foreign affairs, or otherwise prejudice the best interests of the United States.

2. It is a document directed to the President, the National Security Council, or a similar White House board.

3. It is a document relating to formulation of sensitive substantive policy (as distinguished from a statement of or implementation of policy).

4. It is a document that is generally restricted, such as personnel security files, records, relating to citizenship of individuals, Foreign Service inspectors' reports, visa records, intelligence and investigative records, and classified material of other agencies except in accordance with the applicable regulations and consent of the originating agency.

In a November 17, 1970, message from the Department of State to all diplomatic and consular posts, the State Department restated their guidance on the release of information and documents to GAO. The message emphasized that while GAO has a statutory basis for requesting information and access to documents, the President at the same time, enjoys the historic privilege of withholding certain information the disclosure of which would be incompatible with the public interest.

The message enumerated the restrictions on GAO's access to records as contained in the FAM and also stated that sensitive information about the conduct of United States negotiations with foreign countries may come within the category of information restricted to GAO. The message also stated that should GAO representatives indicate an intention to approach the host government, they should be discouraged from doing so, unless contrary guidance is received from the State Department.

In a letter dated December 16, 1970, the Comptroller General requested the Secretary of State to rescind the additional restrictions placed on GAO's access to records as contained in the November 17, 1970, message from the Department of State. The Comptroller General noted in his letter that the new instructions would compound the problems that GAO has been experiencing in obtaining access to records pertinent to our reviews. A copy of the Comptroller General's letter was also forwarded to the Assistant to the President for National Security Affairs on December 19, 1970, in view of the fact that the Secretary of State's message was cleared by the White House prior to release.

On January 22, 1971, the State Department replied to the Comptroller General that it was not the intention of the State Department to issue more restrictive regulations regarding GAO's request in the field for access to documents, but rather to remind their overseas locations of the existing procedures as contained in the FAM on access to sensitive documents.

At the request of the Comptroller General, the State Department informed all diplomatic and consular posts on February 16, 1971, that it was not the intention of the November 17, 1970, message to impose additional restrictions on GAO's access to records.

The Assistant to the President for National Security Affairs replied on February 27, 1971, to the Comptroller's letter of December 19, 1970, and stated that the policy of the Administration remains one of the fullest cooperation with the Congress and with the GAO. The letter, however, noted that in regard to the requirement for United States missions in the field to refer sensitive decisions back to Washington, that this seems a reasonable administrative procedure, and that it remains incumbent upon the departments to assure that such referrals are handled with dispatch here in Washington.

Based upon the delays that occurred in GAO's gaining access to records during our reviews, we believe that the implementing restrictions of November 17, 1970, to the FAM did in effect result in additional restrictions on GAO's access to records. Examples are included in the following section.

EXAMPLES OF DELAYS AND DENIALS OF INFORMATION BY THE DEPARTMENTS OF DEFENSE AND STATE

The Departments by their regulations, directives, and implementing messages have established hierarchic systems which have seriously restricted their field organizations in responding to requests for certain types of information. In many instances, after long delays occasioned by the referral of GAO requests to Washington, the information requested was received. However, by that time our field auditors were no longer at the site and were not in a position to properly evaluate the information in conjunction with other material at the site and could not readily obtain the views of the personnel most familiar with the information.

In addition to these delaying tactics, which hindered an effective timely evaluation of United States programs overseas, we were also denied other pertinent and significant information needed to properly carry out our statutory responsibilities. In one instance we were denied the right to conduct a review, while in two other instances we were denied the right to visit United States supported military bases in Vietnam.

Shown below are a few examples of the denials and delaying tactics encountered by GAO during eight overseas reviews conducted during the last two years.

DEPARTMENTS OF DEFENSE AND STATE REFUSAL TO ALLOW GAO TO VISIT U.S. SUPPORTED BASES IN VIETNAM

The Departments of Defense and State have denied permission to GAO to visit the Thai and Korean camps in Vietnam. Our reasons for requesting the visits were to observe the large amount of United States equipment and supplies provided to the Thai and Korean troops and to talk with United States military liaison personnel stationed at the camps as to their duties and responsibilities. An additional reason for our requests to visit the camps was the fact that we had observed during a visit to the Thai Overseas Replacement Training Center in Thailand on September 18, 1970, what appeared to be large amounts of excess equipment.

On September 21, 1970, we verbally requested permission from the Commander, U.S. Military Assistance Command, Vietnam, to visit Camp Bearcat, location of the Thai contingent. We were informed by the Commander on September 23, 1970, that the visit would not be authorized without prior clearance from higher headquarters and that our request should be submitted in writing which we did on September 25, 1970. While our request stated that we did not intend to talk to any Thai personnel during the visit to the camp, nevertheless, United States military officials in Vietnam, with concurrence of United States Embassy officials in Bangkok and Saigon, denied us permission to visit the installation at that time without clearance from higher authority. The reason cited for denying our request was that GAO should have no need to consult host country officials or agencies and that such contracts could have adverse consequences.

The Department of State sent a message dated November 17, 1970, to all of its diplomatic and consular posts which provided guidance to the posts for handling GAO examinations. Among other things, the guidance stated that GAO representatives should be discouraged from consulting host country officials or agencies, unless contrary guidance was received from the Department. A joint State-Agency for International Development-Defense message, dated December 18, 1970, reaffirmed this guidance. (See page 10)

The Comptroller General, in a letter to the Secretary of State, dated December 16, 1970, pointed out that GAO has regularly made visits to host government installations to see how assistance financed by the United States is being used. He stated that such inspections are essential if GAO is to carry out its responsibilities for evaluating the effectiveness and improving the management of United States programs. He further stated that any contacts GAO might have with host country officials are arranged through United States country team channels, and that we know of no problem that has arisen as a result of this phase of our reviews.

On February 5, 1971, our office in Saigon requested permission from the Commander, U.S. Military Assistance Command, Vietnam, to visit the Korean Base Camp at Qui Nhon, Vietnam. As with the Thai base camp request, our office stated that we did not intend to contact Korean personnel or review Korean records, but that we wished to make some visual observations of the conditions and utilizations of United States provided facilities and equipment. However, on March 6, 1971, a message from the Secretary of Defense to Commander in Chief, Pacific (CINCPAC) stated that the requested GAO visit was disapproved, and that GAO should be satisfied to interview United States military liaison personnel at some U.S. facility, other than Qui Nhon.

Contrary to DOD's opinion, the proposal was not satisfactory for purposes of auditing. It would not enable us to make a first hand observation of the existence, condition, and utilization of United States property provided the Korean forces for their use. We believe that the disapprovals of our requests to visit the Thai and Korean base camps in Vietnam were not justified. Furthermore, the disapprovals effectively prevented GAO from exercising its statutory responsibilities.

REFUSAL OF THE STATE DEPARTMENT TO ALLOW GAO TO CONDUCT AN OVERSEAS REVIEW

In March 1971, 13 months after GAO informed the United States Embassy in Germany that we planned to conduct a review of United States occupation costs in Berlin, we were informed by the Department of State that we would not be permitted to do so.

Our proposed review was designed to assure ourselves and the Congress that the United States occupation costs in Berlin which are properly chargeable to the Federal Republic of Germany are in fact borne by them, and that U.S. Government financial interests are being properly protected. Accordingly, in February 1970, we informed the United States Embassy in Germany and U.S. Army officials of our plan to review the United States occupation costs in Berlin. At the time, U.S. Army officials interposed no objections to our examination of their records and processes. However, a United States Embassy official expressed a reservation that the basic audit agreement on Berlin did not permit an independent review by any of the powers' supreme audit organizations. In our discussion with Embassy and Department of State officials, we emphasized that our review would be limited solely to United States occupation costs and would be based on records available in the United States agencies.

In our attempt to resolve the issue, an official of our Office, in May 1970, formally requested that the Department of State authorize access to the pertinent records so that we could proceed with our review. In June 1970, we were advised by the Deputy Under Secretary for Administration and the Assistant Secretary for European Affairs, Department of State, that we could anticipate a reply to our request soon. After we had pressed for an answer over a period of nine months through letters, telephone calls, and meetings, we were officially advised in March 1971 that access was denied.

In denying us access, the response by the Department of State made no reference to invoking executive privilege; the Department of State does not have authority to deny us the right to examine the records or to conduct the review.

The General Accounting Office has the authority and responsibility to audit United States records relating to expenditures and receipts of the United States. Refusal on the part of the Department of State to permit our staff to review the necessary records concerning occupation costs in Berlin precludes us from carrying out our responsibility for audits as provided by the Congress under Section 305 of the Budget and Accounting Act, 1921. This section states that:

"All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office."

Thus, the right of the General Accounting Office to unrestricted access to pertinent records is not only based on laws enacted by the Congress but is also inherent in the nature of the duties and responsibilities assigned by the Congress to the General Accounting Office.

In the latter part of April 1971, we reported this matter to eight committees of the Congress as well as to the Secretary of State. Following issuance of the report, the Chairman, Senate Committee on Foreign Relations addressed a letter to the Secretary of State requesting an explanation of the matter. As of June 1971 GAO has not been advised of a Department of State response.

MANAGEMENT REPORTS, TRIP REPORTS, AND SO-CALLED INTERNAL WORKING PAPERS DENIED TO GAO

The GAO during its review and evaluation of United States programs, whenever possible, utilizes the various reports prepared by Executive Branch personnel to avoid duplication of effort, and to ascertain the degree of internal management control exercised by Executive Branch personnel over the various programs involving United States expenditures.

The denial of these reports to GAO, including the recommendations and conclusions reached by personnel preparing the reports, seriously hinders the GAO from being responsive to Congressional request in a timely manner, and results in duplication of effort and expenditure. Following are a few examples of this type of information denied to GAO.

Management reports

In connection with our review of the administration of the military assistance training program, we requested access to CINCPAC Personnel Evaluation Group reports for Korea, Thailand, and China. These Performance Evaluation Group reports are a product of a CINCPAC evaluation group responsible for evaluating the effectiveness of the Military Assistance Program and the various military assistance organizations in the Pacific Command. Therefore, in order for us to ascertain any program weaknesses and duplications of effort, the reports prepared by this internal management group were essential.

In March 1969 CINCPAC denied us access to the evaluation reports for Korea. We made a formal request to the Secretary of Defense for reports pertaining to Korea, Thailand, and China. Four months after our request, the Secretary of Defense, in a letter dated August 4, 1969, informed us that the reports were not releasable at that time. The Secretary of Defense gave approval on November 25, 1969, for CINCPAC to furnish briefings on the "salient training facts" in the evaluation reports. On December 16, 1969, our Far East Branch received a CINCPAC briefing covering the Military Assistance Program training data reportedly contained in the 1969 reports for Korea, China, and Thailand.

We advised the DOD personnel briefing us that the general information provided in the briefing was of little value to us in performing our review due to lack of detailed data. We were told that CINCPAC policies and instructions prevented the release of necessary portions of the evaluation reports involving opinions, evaluations, and future planning data.

Trip reports

In connection with our review of the use of Department of Defense excess defense articles in military assistance activities, we were denied access to official trip reports by DOD officials in Greece. The reason for our request was that trip reports, in addition to the factual matters contained in the reports, also contain opinions, observations, and recommendations submitted by subordinates making field inspections. Unless we receive access to the factual information and related interpretations we are inhibited in identifying problem areas.

Because of this need, our European Branch representatives requested copies of the Army advisors' trip reports on March 8, 1971. On March 11, 1971, the Joint United States Military Advisory Group, Greece, agreed to try and extract for our use, certain portions of the trip reports. Headquarters, U.S. European Command Directive 50–50 permits the release of trip reports after opinions, observations and recommendations, which do not represent final actions, have been removed. However, on March 19, 1971, on the basis of a cable received from the Department of Defense providing guidance on GAO access, the Joint United States Military Advisory Group, Greece, informed us that they would not provide any portion of the trip reports that we had requested.

Contents of the DOD cable which established this guidance for the Joint United States Military Advisory Group, Greece, was not made available to us.

Internal working papers

In connection with our review of United States assistance to Thailand in consideration of their deployment of forces to Vietnam, the Departments of Defense and State have refused us access to a document outlining the criteria for payments to the Thai Government. The document is referred to as the "Scope" document. It is our understand-

ing that this document sets forth the financial framework within which the United States and Thailand operate and the specific commitments and activities the United States engage in relative to support of Thai troops participating in the Free World Military Assistance Program in Vietnam.

The Department of Defense refused us access to the Scope document on the basis that it was an internal working agreement, and the Department of State on the basis that the document did not originate with them.

The Scope document according to information provided to us in Thailand, has been used by a United States Committee in Thailand to evaluate claims for reimbursement submitted by the Thai Government in connection with their forces serving in Vietnam. In our opinion we must know the criteria used by the Committee as established in the Scope document if we are to determine that the Committee is properly evaluating the Thai claims.

We first requested the Scope document from military officials in Thailand on July 21, 1970. On August 11, 1970, our on-site auditors were informed by the Military Assistance Command, Thailand, that decision on release of the Scope document has been referred to higher authority. We were also informed verbally that the United States Embassy in Bangkok was objecting to the release of the document. We contacted State Department officials on August 26, 1970, and they stated they had the document, but that since it was a DOD document they could not release it to us.

On September 1, 1970, we verbally requested that DOD furnish us a copy of the Scope document and on September 9, 1970, we made the request in writing. In reply to our request DOD on November 4, 1970, stated the following:

"The Scope document is a draft internal working agreement between the United States and the Royal Thai Government (RTG) concerning reimbursement rates and procedures, which is still under negotiation. Therefore, since it has no official status, the "Scope" document is not considered suitable for release to the GAO."

In our opinion the Scope document was clearly a working document needed in our review and should have been made available to us. It is interesting to point out that the DOD refusal as quoted above was classified when initially transmitted to us by DOD, and was not declassified until we specifically requested DOD to declassify the statement.

PERTINENT PLANNING DATA NOT PROVIDED TO GAO

GAO, in its reviews of overseas programs, very often needs to know the future planning information of the Departments of Defense and State to properly evaluate the effectiveness of current programs. This planning data often shows the justification or rationale for current programs, and the planned methods or programs to solve deficiencies or shortfalls.

For example, during our review of the use of DOD excess defense articles in Greece, which began in Greece on February 17, 1971, we requested data used by the Joint United States Military Advisory Group in programming excess material for Greece under the Military Assistance Program. Some of the data requested included Military Assistance Program force objectives, annual future year planning data, equipment authorization documents, and assets and delivery data to support requirements. The information requested was required in order to properly validate the basis upon which the requirements for excess materials were computed and to evaluate the utilization of the material by the recipient country.

GAO was subsequently denied the requested planning data although some consolidated requirements and asset data was provided. The accuracy of the limited data provided could not be verified because Military Assistance Program supported listings and equipment authorization documents were not made available.

Due to restricted access, the GAO field team suspended its review efforts in Greece on March 27, 1971, pending resolution of the access problems. At the time of its departure from Greece, 24 written requests for information which had been submitted by the staff to the Joint United States Military Advisory Group, Greece, were still unanswered.

The termination of the work in Greece was followed by a series of discussions and correspondence between the GAO field staff and the U.S. European Command in an attempt to reach an agreement on the access problem. The GAO staff in Washington also requested the assistance of the office of the Assistant Secretary of Defense for International Security Affairs. Throughout these discussions, the withholding of information from GAO was defended by DOD officials primarily because it was (1) closely related to Joint Chiefs of Staff objectives which were not releasable to GAO, (2) host country developed data which could be released only with country concurrence, or (3) North Atlantic Treaty Organization information not releasable by the Joint United States Military Advisory Group, Greece.

On May 5, 1971, an understanding was reached as to the additional information which would be made available to GAO in both Greece and Turkey. The extent of the additional information to be released was not acceptable to GAO, since it represented abstracted data which could not be verified against source documentation. Moreover, the release of much of the supporting data for requirements computations which was to be provided, remained subject to the approval of the host countries, and under the ground rules established by the U.S. European Command, virtually no evaluative data would be made available. However, in order to obtain as much information as possible on the use of excess material, the GAO field staff returned to Greece on May 24, 1971, to resume the review work which had been suspended almost two months earlier.

At the request of the Chairman, Senate Committee on Foreign Relations, GAO, in January 1969, undertook a major review of the Military Assistance Training Program in ten countries, including China and Thailand. In the initial phases of the review GAO had a number of problems in obtaining information necessary for the review. As a result, the Chairman, Senate Committee on Foreign Relations, in a letter to the Secretary of Defense, dated May 21, 1969, requested that the Secretary of Defense insure that GAO be given access to planning information and all other pertinent information.

On June 26, 1969, the Secretary of Defense replied to Chairman Fulbright's letter of May 21, 1969. The Secretary of Defense stated that the formal Five Year Plan for the Military Assistance Program had not, in the past, been made available to GAO or to the Chairman, House Committee on Foreign Affairs, because the Plan is regarded as a staff study, an entirely tentative planning document at the staff level, and is usually extensively adjusted when the size of the budget submission is decided on by the President. The Secretary of Defense also stated that he, in order to fully cooperate with the Committee, would have DOD officials give detailed briefings on the Plan, as it relates to training, to anyone designated by Senator Fulbright.

On August 4, 1969, the Secretary of Defense sent a message to the Unified Commands, stating that GAO could be briefed on the Military Assistance Program five-year training program, comprising for the most part five-year dollar projections. The message further stated that this guidance was based on the Secretary of Defense reply to Senator Fulbright's May 1969 inquiry as to the release of information to GAO.

In a message dated September 21, 1969, CINCPAC informed the Secretary of Defense that the GAO representatives in China and Thailand had requested access to the Military Assistance Program Planning Reference Books for those countries. The messages stated that CINCPAC, in accordance with DOD guidance, would advise CINCPAC representatives in those countries to provide narratives of the books, provided that extensive editing would not be required to eliminate future planning information. The message concluded by requesting that the Secretary of Defense formally refuse GAO's request for the books because only the Secretary of Defense could properly do so, in accordance with a DOD directive.

On September 26, 1969, the Secretary of Defense advised CINCPAC that the guidance furnished on August 4, 1969, still applied, and that if GAO representatives requested additional future planning information beyond that authorized, the request should be made to DOD through GAO in Washington, since only the Secretary of Defense can deny such a request.

A month later, October 27, 1969, the Military Assistance Command, Thailand, received approval from CINCPAC to release edited versions of the Military Assistance Program planning books.

In our opinion, receipt of information which has been edited and then provided GAO in briefings does not provide the substantive in-depth information required for our evaluation purposes. We believe that the unexpurgated versions of narrative sections of the plan should be made available to us so that we can review and analyze the reasoning and justification of actions taken or proposed with background data that DOD had reference to on making their judgments and decisions.

In our review of military assistance to the Republic of China in 1970, we were denied access by the DOD to a military air defense study for the island of Taiwan (as well as the Joint Strategic Objectives Plan for the Republic of China). We were told by DOD that the two documents contained contingency war plans as well as future year planning and were internal management working documents; therefore, they could not be released to us. This denial inhibited our evaluation of the integration, coordination, and contribution of DOD's planning to the achievement of overall United States objectives.

DELAYING TACTICS OF THE DEPARTMENTS OF DEFENSE AND STATE

The Departments of Defense and State have instructed their field personnel not to provide sensitive information to our field auditors, but to refer the request to Washington. The Departments in their guidance provided examples of some categories of information, such as negotiation documents, and agreements with foreign governments which are to be considered sensitive, but the decision on the classification of documents as sensitive in respect to non-releasability to GAO apparently rests with appropriate responsible officials in the field. As a result of this guidance, our auditors have been unable to obtain needed information when requested. Documents classified as sensitive have been subject to many levels of reviews, and often before a decision was reached in Washington many months elapsed and our field auditors had left the field site when a decision to release the information had finally been reached. For instance:

In early 1970, we undertook a review of the U.S. assistance to the Philippine Government in support of the Philippine Civic Action Group at the request of the Chairman, Subcommittee on U.S. Security Agreements and Commitments Abroad, Committee on Foreign Relations, U.S. Senate. The

Departments of State and Defense delayed our work on this assignment to the extent that we had to curtail the scope of our review and qualify our report to the Chairman.

Members of our staff were required to wait for periods of two weeks to two months to look at some documents they had requested and frequently the documents proved to be of little value for our purposes. We were also restricted by ground rules established unilaterally by the Departments that effectively limited our review in the field to the Departments' very narrow interpretation of what it judged to be the scope of our review. This was perhaps the most restrictive limitation placed on our work, and it completely frustrated our attempts to review assistance to the Philippines that was not funded in the military functions appropriations.

Our audit staff members in the field were advised that documents which they requested that were releasable to us under the restrictions of the so-called ground rules had to be dispatched to Washington for Departmental clearance. By early May 1970, only four of 12 documents which were requested by our staff members on January 28, 1970, had been released to them in Manila.

In our review involving United States assistance to Thailand, our Far East Branch requested on July 30, 1970, certain adjutant general documents and message logs from the Military Assistance Command, Thailand. The message logs were requested in order to identify documents, records, or messages pertinent to our review. The Military Assistance Command advised us in the latter part of August 1970, that it had been necessary to request guidance from higher authority as to releasability of the information and suggested that GAO, also, contact such authority at the Washington, D.C., level.

Following their suggestion, we addressed our request to the Department of Defense in Washington on September 9, 1970. We learned that following our request in August, the Military Assistance Command officials had referred our request to the Embassy in Bangkok, who in turn referred the request to the State Department on August 31, 1970. The Department had informed the Embassy in Bangkok that they had no basic objection to the release of the logs; however, since they had not seen the logs, the Embassy would have to decide as to whether to release the logs.

In a letter dated November 4, 1970 to GAO the Department of Defense stated that their decision was that access to the logs was authorized, provided the contents were releasable in accordance with existing guidance. However, by this point in time, the GAO audit staff had left the audit site where the logs were located. Thus, the purpose in examining the logs was as effectively defeated by the delays encountered as if an outright denial by the Departments had been made initially.

In connection with Thailand's involvement with free world forces in Vietnam, we requested information from the Department of the Army on October 6, 1970, concerning the computations by which they had arrived at certain amounts shown in quarterly reports to the Congress. This request was made in order that we might evaluate the validity and accuracy of the amounts shown in the quarterly reports submitted by the Department of Defense to the Congress. Although this information was prepared by October 23, 1970, it was not released until March 19, 1971. In a similar request for data made on October 12, 1970, the response was not furnished until March 25, 1971, even though we had made repeated attempts to elicit the information.

In connection with our current review of utilization of excess defense articles in MAP, we requested a country-to-country agreement between the United States and Australia on March 31, 1971. The agreement involves the overseas procurement transaction for the acquisition of trucks and trailers in Australia for delivery to Cambodia. The purpose for the request was to enable us to ascertain why the arrangement was made in lieu of alternatives available and whether, in fact, the agreement was a form of consideration to the Australian Government for their participation in the support of our efforts in Vietnam.

We first made our request for the agreement to the Department of State on March 31, 1971. On the same date the Department of State informed us that the agreement was dated March 4, 1971, and that they believed the document was unclassified but that our request should be channeled to the Department of Defense, rather than to them. Upon addressing our request to the Department of Defense on April 6, 1971, they referred us back to the State Department because State clearance was necessary for release of the agreement. The Department of State advised us on the same day that they were unable to release the document until they acquired clearance from the Australian Government through the Australian Embassy. On April 14, 1971, the State Department advised us that the Department of Defense had sought this clearance from the Embassy, however, on the same date, we received a denial from the Department of Defense of any such communication with the Australian Embassy. On April 15, 1971, the State Department informed us that the Department of Defense had received the Australian Government's clearance but that the Department of Defense must first present a written request for State Department clearance. On the same date, April 15, the Department of Defense told us the Australian clearance was still pending. Four days later, the Department of Defense told us that more internal coordination was necessary before a release was possible. In a follow-up concerning the status of our request, on April 28, 1971, the Department of Defense official whom we had contacted stated he had forgotten our request.

Finally, on May 5, 1971, DOD provided the agreement as requested. The agreement provided to GAO was classified although the agreement on file in the legal section of DOD was not so classified. In our opinion, the material included in the agreement does not appear to be of such a nature that the interests of the United States would be adversely affected if its contents were released to the public.

During our review of financial and material assistance provided to the Thai Government by the United States, our Far East Branch representatives requested, on July 21 and July 28, 1970, sixteen messages from the Military Assistance Command, Thailand, that were not received until January 27, 1971. The messages were originated by the Commanders, United States Military Assistance Commands, Thailand and Vietnam, the Secretary of Defense, the Department of the Army, and the Joint Chiefs of Staff during the latter part of 1967 and early 1968. Each of these messages was vital to our effective evaluation of United States assistance to the Thai government. Their contents dealt with pertinent areas of our review, such as a HAWK missile system which the United States agreed to provide to the Thais, training and equipping of Thai forces, U.S. support related to a Thai Army Division and its deployment to South Vietnam, and the possibilities of further Thai contributions to free world forces in Vietnam.

As of August 28, 1970, the messages had not been received or made available for our review. Military Assistance Command, Thailand officials advised us that they had requested guidance from higher authority as to the releasability of the messages, and suggested we contact such authority at the Washington, D.C., level.

On September 9, 1970, we readdressed our request for the messages to the Department of Defense. Nearly two months later, on November 4, 1970, DOD responded, advising us that only two of the subject messages had been located. DOD stated that the two messages had been authorized to be released to our Far East representatives.

Finally, on January 27, 1971, DOD provided copies of the 16 requested messages. We believe that the 6-month delay, before we finally obtained all of the messages, was inexcusably long and seriously impeded our review.

On December 11, 1970, our representatives in Korea requested from the Provisional Military Assistance Advisory Group, Korea, the Provisional Military Assistance Advisory Group, Korea Military Assistance Plan Fact Book for 1969 Defense Ministers Conference. Since our representatives in Korea did not receive the document, a similar request was addressed to the Department of Defense in Washington on January 26, 1971. On January 29, 1971, our representatives in Korea were formally informed that the subject requested had been referred to higher authority for determination as to releasability.

The document was provided to us in Washington on April 9, 1971, by the Department of Defense. Due to the delay of approximately four months involved in our acquisition of the document and the fact that our representatives had departed from the audit site by the time of receipt, we were denied the opportunity to analyze and discuss the material with appropriate host country officials.

STATEMENT BY SENATOR J. W. FULBRIGHT ON THE RELEASE OF A REPORT BY THE GENERAL ACCOUNTING OFFICE ON ITS PROBLEMS ON ACCESS TO INFORMATION

Early this year the Committee on Foreign Relations asked the General Accounting Office to compile a list of recent instances where it had been denied access to information on matters involving government programs abroad. Of the eight overseas reviews cited in the report, five were conducted at the request of the Committee and three were initiated by GAO.

As to the GAO's basic right to access to Executive Branch materials the report stated:

"We believe the Budget and Accounting Act of 1921, as reinforced by recent expressions of intent by congressional committees, leaves no doubt but that Congress and GAO are expected to have access to all records, documents, or papers necessary to effectively evaluate the various programs of the Executive Branch."

The report listed the following types of information which the GAO considered necessary to carry out its responsibilites to Congress which "have not been provided promptly or refused outright."

1. future planning information and documents, both formal and informal;

2. internal working papers and staff recommendations relating to programs planned or in process;

3. negotiation documents, papers, memorandums, and working papers, before, during and after negotiations, regardless of whether or not the information is considered sensitive;

4. management reports including recommendations or conclusions reached, whether approved or unapproved by higher authority, field trip reports, observations, and records of conversations pertinent to the matters under review;

5. acecss to records, documents or papers originated or directly related to foreign gov-

ernments but in the possession of United States agencies, when they relate to programs in which the United States has a direct interest; and

6. access to all United States supported bases and installations regardless of the geographical location.

The report emphasizes that outright denials of information are rare but that delays and referral of requests to "higher authority" which result in "de facto denial of records" is the standard tactic. "Normally the regulations and directives (regarding GAO access to information)," the report said, "do not state that GAO cannot be furnished the information, but rather that their personnel in the field cannot furnish the information unless authorization is received from higher authority; this normally means officials of the Departments in Washington."

As an example, the report cited a directive of the U.S. European Command Headquarters listing material which chiefs of military aid missions could not release to the GAO without "approval from higher authority." Prominent on the list was "The Military Assistance Five-Year Plan for a particular country. . .", the type of plan which the Department of Defense recently told the Committee did not exist.

The report contains the following example of the delaying tactics used by the Departments of State and Defense:

"In connection with our current review of utilization of excess defense articles in MAP, we requested a country-to-country agreement between the United States and Australia on March 31, 1971. The agreement involves the overseas procurement transaction for the acquisition of trucks and trailers in Australia for delivery to Cambodia. The purpose for the request was to enable us to ascertain why the arrangement was made in lieu of alternatives available and whether, in fact, the agreement was a form of consideration to the Australian Government for their participation in the support of our efforts in Vietnam.

"We first made our request for the agreement to the Department of State on March 31, 1971. On the same date the Department of State informed us that the agreement was dated March 4, 1971, and that they believed the document was unclassified but that our request should be channeled to the Department of Defense, rather than to them. Upon addressing our request to the Department of Defense on April 6, 1971, they referred us back to the State Department because State clearance was necessary for release of the agreement. The Department of State advised us on the same day that they were unable to release the document until they acquired clearance from the Australian Government through the Australian Embassy. On April 14, 1971, the State Department advised us that the Department of Defense had sought this clearance from the Embassy; however, on the same date, we received a denial from the Department of Defense of any such communication with the Australian Embassy. On April 15, 1971, the State Department informed us that the Department of Defense had received the Australian Government's clearance but that the Department of Defense must first present a written request for State Department clearance. On the same date, April 15, the Department of Defense told us the Australian clearance was still pending. Four days later, the Department of Defense told us that more internal coordination was necessary before a release was possible. In a follow-up concerning the status of our request, on April 28, 1971, the Department of Defense official whom we had contacted stated he had forgotten our request.

"Finally, on May 5, 1971, DOD provided the agreement as requested. The agreement provided to GAO was classified although the agreement on file in the legal section of DOD was not so classified. In our opinion, the material included in the agreement does not appear to be of such a nature that the interests of the United States would be adversely affected if its contents were released to the public."

I believe the GAO has rendered a significant service to Congress and the general public in bringing together these examples of how Executive Branch agencies have hampered its effectiveness in insuring that the public's tax monies are spent as Congress intended. The report shows that Congress' watchdog on the Treasury has been defanged in investigating programs involving the expenditure of hundreds of millions of dollars. The legislative process is a travesty as long as Congress votes in the dark on these vast foreign programs. Congress should not appropriate the public's money without having adequate information on which to base its decisions. Congress must act to end this arrogance by the Executive Branch. Passage of my bill, S. 1125, laying down guidelines for Congressional access to Executive Branch personnel and information, would be a good first step and I am pleased that the GAO has given it such a strong endorsement.

LEONARD WOODCOCK TESTIFIES TO JOINT ECONOMIC COMMITTEE

Mr. PROXMIRE. Mr. President, a great deal of thoughtful and extremely useful testimony has been presented at the hearings the Joint Economic Committee has been holding on the President's new economic policies. We will conclude these hearings tomorrow with testimony by Paul Samuelson and Milton Friedman, two of our country's best known and most distinguished economists, and two who will, I feel sure, give us different points of view on economic policy.

Much of the testimony at our hearings has already been placed in the CONGRESSIONAL RECORD and circulated to congressional offices. I did this because I thought there was such a great need to make this analysis quickly and readily available. This past Monday the committee heard another extraordinarily useful and interesting presentation, this time from Leonard Woodcock, president of the United Auto Workers. Mr. Woodcock's statement is crammed with new ideas, all of which have required a great deal of thought and research effort to prepare.

I am particularly impressed with Mr. Woodcock's fiscal policy proposals, which include suggestions for restructuring the investment tax credit to make it less costly and more effective; suggestions to encourage manpower training programs; and suggestions to encourage research and development. I would commend the study of these suggestions to all Members of Congress. I would also call attention to Mr. Woodcock's proposals for improving our trade balance and for developing a price and incomes policy. In order to make Mr. Woodcock's statement readily available, I ask unanimous consent that it be printed in the RECORD.

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

STATEMENT OF LEONARD WOODCOCK, PRESIDENT, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW, BEFORE JOINT ECONOMIC COMMITTEE WITH RESPECT TO ADMINISTRATION'S "NEW ECONOMIC POLICY," SEPT. 20, 1971

I appreciate this opportunity to comment on President Nixon's New Economic Policy (NEP) and to suggest practical, constructive and equitable alternatives to some of its features.

The NEP itself is a confession of the failure of the Administration's previous policy of deliberately engineering recession in the misguided belief that the way to combat inflation was to inflict unemployment upon millions of workers, to idle more than a fourth of the nation's industrial capacity and to suffer the loss of the many billions of dollars of wealth that the jobless workers and the unused capacity could have created.

In most of its main features, the new policy is equally misguided. It will have little, if any, effect in reducing the present intolerable level of unemployment. It is rife with inequities. And it reflects a perverse sense of national priorities.

The members of the UAW, and American workers generally, have a profound interest in NEP not only because the wage freeze and its aftermath will have a direct impact upon the welfare of their families but also because certain of its other features, if approved by Congress, will have far-reaching effects upon the distribution of income and the quality of life in America. I shall deal first with these latter features, next with those aspects of NEP bearing on imports and the balance of payments, and finally with price and wage stabilization.

TAXES AND UNEMPLOYMENT

The NEP, avowedly, addresses itself to three problems—unemployment, inflation and the balance of payments.

The seriousness of the unemployment problem cannot be exaggerated. At latest report, unemployment affected 6.1 percent of the labor force by the official measure—higher (except for two recent months when the rate reached 6.2 percent) than at any time since November 1961. The official figure, however, takes no account of perhaps a million "discouraged" workers who are not counted as unemployed because, seeing no hope of obtaining work, they have given up the search for jobs and of another 3 million who are involuntarily on reduced working hours for economic reasons.

As of July 1971, there were 54 major labor market areas with unemployment rates of 6 percent or more compared to 6 in January 1969, when the Nixon Administration took office.

As is usual, the main victims of unemployment are the most disadvantaged members of our society—the unskilled, the poor and the black and, particularly, the youngest members of those groups, whose hopes have been blighted immediately upon their entrance into the labor force. In addition, the Administration's failure to plan the transition from a wartime to a peacetime economy has inflicted disproportionately high unemployment upon veterans and abnormally, perhaps unprecedentedly, high unemployment upon scientists and engineers, as well as others, displaced from defense production.

The human tragedy and waste of unemployment has its sad reflections in other forms of waste—an industrial capacity that is limping along inefficiently at 73 percent utilization, a slowdown of productivity which, despite recent acceleration, is far below the trend level and a GNP that is $70 billion (in second quarter 1971 dollars) below the understated official measure of potential.

Clearly, ours is an economy that now needs the stimulus of sharp increases in demand—increases in consumer spending by the tens of millions of families whose incomes are below the level determined by BLS to be the minimum necessary for a "moderate" standard of living—increases in government spending to ease the financial plight of the cities, to cope with environmental pollution, to eliminate urban blight, to improve education, to bring adequate health care within the reach of all, to end poverty, to provide efficient and reliable mass transportation, to create a sound system of criminal justice and rehabilitation, to improve public recreational facilities and to deal with all the other deficiencies in the public sector.

By tax cuts for low- and middle-income consumers and by stepped-up public spending—financed in part by closing tax loopholes that favor corporations and the wealthy—the Administration could quickly provide work for the jobless, put idle productive capacity into operation, rapidly boost productivity and close the gap between actual and potential GNP while, at the same time, making sizable inroads on unmet and urgent public and private needs.

Instead, the Administration proposes to open up huge new tax loopholes for business—which will sharply diminish badly needed government revenues indefinitely into the future—while throwing low- and middle-income consumers the bone of a one-shot, one-year advancement of an already scheduled tax cut that is dwarfed by the tax handouts offered corporations.

Although attention has centered on the proposal to revive the investment tax credit, this is only one of several items in a multi-billion dollar giveaway of tax revenues to corporations under the guise of providing so-called "incentives" to do what they would largely do anyway for sound business reasons. The other elements are the change in depreciation rules made administratively a few months ago—the so-called Asset Depreciation Range (ADR) whose legality is presently being challenged in the courts by the UAW, among others, the proposed Domestic International Sales Corporation (DISC) legislation, and an "incentive" for research and development whose details are as yet unspecified but which can safely be assumed to be of the same essential character as the other measures. In addition, in recent days, there have been reports that the Administration will propose further "incentive" tax reductions to corporations allegedly for the purpose of stimulating them to train the so-called "hard core" unemployed.

Making a rough allowance for the cost of those measures which have not yet been spelled out in detail, it seems likely that they will add up to an on-going reduction of somewhere in the neighborhood of 20 to 25 percent of total corporate tax liabilities.

INVESTMENT CREDIT A WINDFALL

While described as "incentives," these tax cuts are in reality windfalls. The investment tax credit, for example, is available for investment that would have been made in any event as well as for any—inevitably relatively small—amount of additional investment that might be attributable to it. (In fact, the credit is available even to a firm that responds to the "incentive" by *reducing* the amounts of its investment below previous levels.) Thus, in the unlikely event that the credit stimulates an investment increase of as much as 10 percent, more than 90 percent (100 divided by 110) of the credit will represent tax revenues wasted in paying businesses for investments made for reasons that have absolutely nothing to do with the credit.

$297 MILLION FOR GM

Any doubts on that score should be laid to rest by the press reports quoting numerous corporation executives who state flatly that their investment plans will not be changed if the credit is enacted. For example, in a prepared statement issued on August 31, 1971, in which he hailed the NEP, James Roche, chairman of the General Motors Corporation, said:

". . . the investment tax credit is intended to stimulate spending, especially by some smaller companies and those in weak financial condition. It should be understood that most companies of any size determine their purchases of equipment by the needs of the business and not by any short-term tax advantages."

The sweeping nature of Mr. Roche's statement makes it clear that GM's investment plans were equally unaffected by the investment tax credit when it was previously in effect. That, however, did not prevent GM from claiming the credit. In fact, it obtained $297 million in investment tax credits in the period 1962–70. From the standpoint of what the "incentive" accomplished, that was $297 million of public revenues washed down the drain—a sheer waste of monies that could have been put to good use for urgent public purposes.

If the intention behind the investment credit is, in fact, as Mr. Roche believes, to stimulate spending "by some smaller companies and those in weak financial condition," the wastefulness of the credit is underlined. The overwhelming portion of the tax revenues lost as a result of the credit will go to benefit the largest and financially strongest corporations. What sense is there to subsidizing GM to the tune of hundreds of millions of dollars in order to provide a few thousands of dollars that could be helpful to some small and shaky firm?

There are better ways than the investment credit to help those small businesses that need and deserve help, and at far less cost to the public treasury.

One method that deserves the most serious consideration by Congress would be protection of small firms against monopsonistic abuses by the larger corporations to which they sell. A small manufacturer of original equipment automobile parts or components, for example, has no market other than the giant auto corporations and, as a result, he is at their mercy—which is far from tender. The mail recently brought to the UAW an unsigned note enclosing a copy of an internal Ford Motor Company memorandum dated August 24, 1971, and signed by W. D. Innes, the Company's Executive Vice President. The memo instructed the recipients as to the steps to be taken for "Profit Improvements." Point 5 reads as follows:

"Vendor Price Reductions—In addition to avoiding future increases, we should attempt to 'roll-back' vendor prices—renegotiate prices already established. Reports should be submitted by August 30 by Mr. Mills (covering all activities except AAD) and by Mr. Bergmoser (for AAD) on the approach to be taken on this and the total potential savings, followed by weekly reports on actual savings achieved."

Later in this statement, I will propose other measures to help small business.

In the statement previously quoted, Mr. Roche of GM made it clear both that ADR represents a waste of revenues similar to the investment credit and that the trickle-down theory on which the Administration's tax proposals are based is entirely without merit. He said:

". . . it must be noted that the tax credit and accelerated depreciation apply only after equipment is purchased and put to use. This, like the other elements of the program, means very little unless we can achieve the improved economy the President has called for."

In other words, according to Mr. Roche, the real stimulus to investment is a healthy economy in which consumer and public demand press on existing productive capacity. To that belief we wholeheartedly subscribe.

NEP TAX CHANGES AND UNEMPLOYMENT

With the Madison Avenue gimmickry that is characteristic of the present Administration the investment tax credit has been labeled a "job development" credit. It is obvious, however, that with the effect of the credit on the level of investment marginal, at best, its contribution to employment must also be marginal.

In fact, its effect on employment, to the extent that it has any effect at all, is more likely to be negative. With existing industrial capacity utilized only to the extent of 73 percent, there is little reason to invest in expansion. Such investment as will be made in the absence of major increases in demand will be for purposes of "modernization," i.e., to replace existing plant and equipment with more efficient facilities. In fact, the proponents of the credit argue that it will help to increase productivity. But unless markets expand, higher productivity means that fewer workers are required to satisfy demand for the products of industry. Thus, unless accompanied by measures designed to boost demand sharply, the investment tax credit, to the limited extent that it may tend to increase investment, will become a job destruction rather than a job development measure.

What industry lacks today is not machinery but customers and the investment credit could make the latter even scarcer.

Although the credit is unlikely to affect materially the volume of investment, the proposal to start it at 10 percent and then reduce it to 5 percent after August 1972 would undoubtedly affect the timing of investment. It would push forward already planned investment to the period before Election Day 1972. This proposed political manipulation of tax rates has serious economic dangers. According to the *New York Times* for September 15, 1971, the Chairman of the House Ways and Means Committee was joined by the ranking Republican member in expressing concern that the proposed drop in tax rates:

". . . would induce businesses to order so much equipment in the next 12 months that the equipment producers would suffer a depression afterwards . . ."

ADR WINDFALL

ADR, of course, is a similar windfall. It merely permits corporations to reduce their taxes by charging depreciation at higher rates than were previously permitted on investments that already have been made, before the Administration promulgated ADR, and that would be made in the future even if ADR did not exist. It represents a wasteful dissipation of tax revenues for the benefit of corporations and their stockholders—estimated variously at $37 to $39 billion over the next 10 years. If it has any effect at all on levels of investment, ADR, like the investment credit, will stimulate job-destroying modernization under present conditions rather than job-creating expansion. In addition, the power of the Administration to put ADR into effect is at least questionable on legal grounds and the uncertainty created by the pending court challenge assures that, for the time being at least, it will have no effect on business decisions.

DISC WINDFALL

The DISC proposal would exempt from taxes profits made by subsidiaries (so-called "Domestic International Sales Corporations" or "DISCs") set up by manufacturing corporations to handle export sales unless and until (with a few minor exceptions) those profits have been paid out as dividends to the parent corporation. The alleged purpose is to provide an "incentive" to stimulate exports.

This is not the place to review in detail all the loopholes for evasion of corporate profits taxes that would be opened up by enactment of DISC. Those were thoroughly explored and exposed in a "Confidential Com-

mittee Print" of a report dated July 13, 1970, which was prepared for the House Ways and Means Committee by the staff of the Joint Committee on Internal Revenue Taxation. One example, however, may be useful to indicate the general effect of the proposed legislation. The confidential report says that the rules for pricing products transferred to a DISC by its parent corporations:

". . . would, in effect, attribute to the DISC a significant proportion of the profits attributable to the parent's manufacturing activities."

* * * * *

"The special pricing rules which would apply to a DISC would have the effect of according tax exemption or deferral to profits that presently are considered to be manufacturing profits derived from U.S. sources. In other words, what is presently considered a U.S. source manufacturing profit could be channeled into the DISC and thereby exempted from U.S. tax when earned by the DISC and, in addition, treated as foreign source income when distributed by the DISC."

Aside from providing tax loopholes, the purely windfall character of DISC tax exemption is made evident in the following paragraph of the report:

"To obtain the benefits provided by the DISC proposal, a corporation is not required to increase its exports. A corporation presently engaged in exporting may channel its existing exports through a DISC subsidiary and thereby exempt or defer U.S. tax on the portion of its export profits which may be allocated to the DISC under the special pricing rules. In other words, the tax benefits granted under the DISC proposal are not conditioned on any increase in export sales."

In fact, it might be added that the tax exemption would be available even if exports were reduced. Thus, this alleged "incentive," like the investment tax credit, provides rich tax rewards for contributing less to the avowed purpose as well as for contributing more.

The report estimated that, if the entire tax saving were passed on in price reductions in order to obtain export sales (which is hardly likely to happen):

". . . the $600 million revenue loss estimated by the Treasury . . . would give rise to an increase in exports of about $300 million."

Others have estimated the annual revenue loss at nearer to $1 billion than to the Treasury's estimate of $600 million.

The Administration's main argument for the proposal boils down, in essence, to the need to create a new tax loophole in order to mitigate the damage being done by an already existing tax loophole. In a statement presented to the House Ways and Means Committee on September 8, 1971, Secretary of the Treasury Connally said that the DISC proposal:

". . . is designed to provide the same type of U.S. tax treatment for U.S. companies engaged in exporting as is presently available if they manufacture abroad through foreign subsidiaries. The DISC proposal is designed to create and preserve more jobs in the United States by causing a healthy expansion in U.S. exports, and by making it as attractive from a tax standpoint for U.S. companies to produce goods in the United States for export to world markets as it is for them to build their factories in foreign countries and produce abroad."

He was referring to the fact that profits made by such foreign subsidiaries are not presently taxed unless and until paid out as dividends to the U.S. parent corporation. This undoubtedly does create an incentive to manufacture abroad rather than in the U.S. It apparently has not occurred to the Administration, however—despite its expressed concern to increase exports and otherwise improve the balance of payments—that the way to deal with the problem is to *close the existing loophole* rather than to create another one. The UAW has repeatedly urged that profits of foreign subsidiaries of U.S. corporations be taxed currently, without waiting for their repatriation. To do so, however, would increase rather than reduce the taxes payable by the corporations involved—which perhaps explains why the Nixon Administration overlooked that means of discouraging the growth of overseas manufacture by U.S. firms. (In passing, it should be noted that there is an obvious inconsistency between the Nixon Administration's plea for DISC on grounds that it will keep U.S. jobs from going abroad and its vigorous, in fact militant, efforts to obtain removal of restrictions that hamper American corporations seeking to invest in productive facilities in Japan—facilities intended to serve not only the Japanese market but also the U.S. and "third" markets.)

It is also probably of some relevance, given the biases of the present Administration, that the lion's share of the Administration's proposed DISC tax windfall would go to the largest corporations. The confidential staff report says:

"The major impact of the revenue loss from DISC would, of course, be concentrated among the major exporting companies. The Commerce Department estimates that roughly 100 of the largest U.S. firms account for the majority of our exports, more than 50 percent, although this is a rough guess. They would presumably receive approximately their proportionate share of the tax reduction. If they account for 50 percent of our exports, they would, of course, receive about $300 million out of $600 million."

Apparently the DISC proposal was too much even for the stomachs of a large number of the corporation executives who made up the membership of the Commission on International Trade and Investment Policy (the "Williams Commission"). According to the *Wall Street Journal* for September 14, 1971:

"The members 'failed to reach a consensus' on Mr. Nixon's Domestic International Sales Corp. bill, one insider says, because about half of them worried that the cost of tax deferral on export profits would outweigh the benefit of encouraging exports."

R & D AND MANPOWER TRAINING "INCENTIVES"

The Administration has yet to spell out the details of its R & D "incentive," referred to in President Nixon's August 15 address and the manpower training "incentive" mentioned in the press in recent days. Judging by the track record, however, it can be predicted that these will be of the same general nature as the investment tax credit and DISC: that they will provide tax reductions for R & D and training expenses that would have been incurred in any event and that the tax handouts will be available to firms that decrease as well as to those that increase such expenditures.

TAX "INCENTIVES" IN GENERAL

To call such tax giveaways "incentives" is to bring to mind George Orwell's "Newsweek." To put it mildly, the revenues lost are grotesquely disproportionate to the results, if any, accomplished. The revenues involved would be far better used if devoted to public spending on the nation's priorities and to tax relief for those at the bottom of the income structure. To turn those revenues over to corporations in a slack economy is to drain them out of the stream of job-creating demand and to divert them into idle savings in corporate treasuries and the coffers of wealthy stockholding families. To use them, instead, for public purposes or to improve the after-tax buying power of low-income families would be to generate high-velocity purchasing power, lifting the economy toward full employment, which is by far the best and most effective stimulus to increased investment and intensified training of the so-called "hard core" unemployed financed voluntarily by business.

TAX CHANGES FOR INDIVIDUALS

The Administration proposes to advance by one year, from January 1, 1973, to January 1, 1972, the increase in personal income tax exemptions to $750 and the increase in standard deduction to 15 percent (maximum $2,000) already provided for by present law. As noted, this is a one-shot, once-and-for-all tax reduction. It means tax savings totaling $2.2 billion for calendar year 1972, according to Secretary Connally, including $0.9 billion in fiscal year 1972 with the remainder effective the following fiscal year. It will *not* reduce revenues available for public purposes in future years below what they would have been in the absence of the change proposed by the Administration.

The tax handouts proposed for business, in contrast, are intended as permanent measures, continuing year after year, indefinitely into the future and reducing federal revenues below presently anticipated levels forever. The investment tax credit, by the Secretary's estimate, would cost $2.7 billion in the current fiscal year and $4.1 billion in fiscal year 1973. According to the White House, the revenue cost will fall to $2.5 billion in fiscal 1974 as a result of reduction on the credit from 10 percent to 5 percent. (It should increase in subsequent years as the volume of investment rises with the growth of the economy.) ADR, as noted, is estimated to cost approximately $3.9 billion pear year, averaged over the next 10 years. The ongoing revenue cost of these two business windfalls is therefore $6.4 billion. To this should be added another $1 billion, approximately, unofficially estimated for DISC, plus—to make a guess that probably underestimates the Administration's generosity to its business supporters—something like $2 billion per year in R & D and manpower training "incentives."

The total thus becomes something on the order of $9 billion per year. Allowing for future growth, it is not unreasonable to say that the average will be $10 billion per year over a 10 year period. This is equal to *25 percent* of the profits taxes paid by corporations in 1968, the all-time record high year for corporate profits. (Taking into account the fact that part of the tax giveaways involved would go to unincorporated businesses, the aggregate tax savings to corporations would still amount to between one-fourth and one-fifth of their peak year taxes.) By the eleventh year, the continuing benefits to business would have equally 50 times the one-shot $2.2 billion tax savings to individuals.

It is little wonder the corporations have accepted so readily the 90-day freeze on their prices with such lavish benefits promised them in return.

A continuing giveaway to business on the order of $10 billion per year will not, of course, diminish the government's requirements for revenues to finance public sector needs that are growing apace. The revenues will have to be sought elsewhere and the targets, most likely, will be the low- and middle-income families to whom the Administration proposes to throw a one-shot tax reductin bone. Administration circles have for some time been making ominous references to a national value added tax—which is merely a variant of the regressive sales tax. If the corporate giveaways are enacted, low- and middle-income families will pay dearly for their tax bone in the not-too-distant future.

The bone, moreover, is a bare one at that. A $50 exemption increase for a family in the 14 percent tax bracket amounts to $7 per *year* per person in taxes saved. The same exemption increase is worth $35 per person to families in the 70 percent bracket.

The Nixon Administration is impelled to discriminate against low- and middle-income families even when such miserly amounts are involved. The ADR is already in effect (although under challenge in the courts) but the Administration can brook no delay in adding investment credit billions to ADR billions. The investment credit is proposed to be made effective August 15, 1971; but tax reduction for individuals is proposed to be delayed until January 1972. (The Administration has indicated that it would not object to making the investment credit retroactive to April 1, 1971—i.e., to giving corporations an "incentive" to do what they already have done.)

AUTO EXCISE TAX

We can and do support the proposal to eliminate the excise tax on passenger cars. This is an anachronistic and discriminatory tax. It is one of the few excise taxes increased to finance first World War II and then again the Korean War that still remains at the World War II level. It affects low-income families as well as the more prosperous because, given the sad state into which urban mass transportation has been permitted to fall, cars are no longer luxuries but necessities. Residents of urban ghettos are often unable to accept available jobs, which are increasingly in the suburbs, for lack both of public transportation and of cars to enable them to get to work. They and other low-income families unable to buy new cars will be aided, nevertheless, by elimination of the excise tax because prices of used cars are affected by prices of new cars. As the latter are reduced by removal of the excise, the former will decrease also.

The industry has promised that the full savings of excise tax elimination will be passed on to consumers. The auto corporations, in fact, are publicly committed to rebate the excise to consumers who buy cars at present frozen prices between August 15 and the date excise tax elimination is enacted, assuming retroactivity to that date.

Nevertheless, I share the misgivings others have expressed concerning the possibility of creeping recapture by the auto corporations in years to come of excise tax savings intended to benefit consumers. The automobile is a changing product from year to year and the annual model change provides a host of excuses to raise prices even if unit production costs are not increased.

The pricing methods of the auto corporations provide a means to assure, if Congress should be so inclined, that consumers will continue to reap the beriefits of excise tax elimination despite changes in the product. The industry follows a so-called "standard volume" pricing policy. This means that prices are fixed to yield a target rate of return on investment at a given level of output. Overhead costs per unit at that volume are added to labor, materials and other direct costs. The total of such unit costs is then increased by a mark-up which, when multiplied by the number of units comprising standard volume, will yield a dollar total of profits equal to the target percentage return on investment.

It would be a relatively simple matter to specify in legislation that the excise tax removal shall apply only to companies which annually, with the introduction of new models, and each time prices are changed, file certifications by genuinely independent auditors that their prices do not represent a greater mark-up over standard volume unit costs than did their prices on, say, their 1971 models. The auditors would have to certify, of course, that methods of determining standard volume and all other pertinent factors were the same as in 1971. In order to allow flexibility in the pricing of individual car models, it would be sufficient to require a single certification covering each company's entire range of cars. Such legislation would have the additional value of, in effect, setting a ceiling on the auto corporations' mark-ups over costs which are already much too high.

An exception should be made, however, for companies whose output in the preceding year accounted for less than 20 percent of the industry's total output. Such companies' prices are limited, in any event, by the prices fixed by their bigger competitors and their rates of return on investment tend to be lower than those of the larger firms. Excepting them from the certification requirement would enable them to retain the benefits of reductions in unit costs achieved through increasing their shares of the total market, if they were able to do so.

AUTO EXCISE AND EMPLOYMENT

Removal of the auto excise tax is the one element of NEP that seemed to offer genuine promise of significantly increasing employment. That promise has now been brought into question by the Presidents of the two major automobile corporations, Edward N. Cole of General Motors and Lee A. Iacocca of Ford. Both of them were quoted in the press as indicating that increases in production resulting from removal of the excise and imposition of the import surcharge would be achieved through overtime rather than through hiring new workers from the ranks of the unemployed.

Mr. Iacocca said that if demand hit an annual rate of 11 million vehicles in the last quarter "you would see a lot of overtime raising average weekly earnings." Mr. Cole's statement was to the same general effect and GM's position was made even clearer by John Z. DeLorean, GM vice president and head of the Chevrolet Division. The latter said:

"The first step to new jobs is overtime. If increased production is needed over a longer period of time, then we'll put people on."

As I said at the time in a statement released to the press:

"This makes a mockery of the stated intention of President Nixon's new 'game plan' as it relates to the auto industry. The elimination of the auto excise tax, the higher duty on foreign cars and the devaluation of the dollar—all designed to boost domestic car sales—were supposed to create thousands of new jobs. Instead, they will apparently create only overtime pay."

SPENDING CUTS

Whatever limited possibilities there might be of increased employment resulting from the tax cuts called for in NEP will be more than offset by the proposed reductions in government spending. According to the Administration's own figures, as released at the White House August 15, the net reductions in revenues under NEP would be $4.2 billion in fiscal 1972 while expenditure reductions would total $4.7 billion. Thus, the government would be taking out of the economy with one hand a half-billion dollars more of demand than it would be putting in with the other hand. Even setting aside the fact that the revenue reductions would go largely into corporate and stockholder savings, while the expenditure reductions are at the expense of persons who save little or nothing, the net effect would be to reduce rather than to increase employment. The Nobel-Prize-winning economist, Paul Samuelson, properly concluded:

". . . that won't create one extra job. It will create negative jobs . . . That would completely emasculate his whole program."

PERVERSE PRIORITIES

In effect, the revenue reductions and spending cuts in combination represent a transfer from the poor to the rich. It is this fact that has given rise to the phrase "Robin Hood in reverse."

The victims of the various spending cuts proposed are, in each case, the poor and middle income groups. Welfare reform, the one forward-looking program proposed by the Administration, is to be postponed for one year. The President apparently thinks he will no longer be able to afford it after bestowing his largesse upon the corporations. Also to be postponed is revenue sharing. We in the UAW have opposed this program because we consider it unsound. But the proposal to postpone it undoubtedly means that the Administration will resist timely action to relieve the desperate financial plight of the cities by other, more desirable means. Again, the poor are the victims because it is they who suffer most when the cities are unable to finance essential services. The 10 percent cut in economic aid is a blow to the poor and literally hungry of the economically underdeveloped countries. The recently announced exemption of Latin America from the cut in aid is all to the good—provided it does not mean that other continents, equally or more severely afflicted by poverty, will have to take cuts greater than 10 percent. It is difficult, in fact impossible, to understand why the President chose economic aid for this cut rather than military aid which goes largely to prop up dictatorships.

The remaining victims of the spending cuts are the government workers—most of whom are in the low- and lower middle-income groups—and those who depend upon them for services, who are likely to be in the same income strata. Promised pay increases to government employees are to be postponed and the number of government workers is to be reduced by 5 percent.

The fact that the reduction of government employment is to be accomplished through attrition does not alter the essential fact that the total number of job opportunities available in the economy will be significantly decreased. In fact, a 5 percent cut in government employment will wipe out as many jobs as would be created in the auto industry if excise tax elimination and the import surcharge were to bring about an increase of 500,000 units in production of domestic cars and if that increased production were fully reflected in increased employment rather than in overtime work. (Incidentally, it might be well to note for the benefit of the Committee that the ratio of 25,000 jobs for each 100,000 cars produced—a ratio often cited by the Administration in recent weeks—applies not to jobs in the auto industry as such but rather to all jobs involved from extraction of the raw materials to the dealers' showrooms. There is reason to question whether that ratio would apply on an incremental basis since many of the jobs involved represent overhead employment which does not vary in direct proportion to output.)

FAILURE ON EMPLOYMENT FRONT

The most puzzling aspect of NEP is its failure to come directly to grips with the most serious unemployment problem the nation has faced in a decade. Unless it is completely blinded by its trickle-down ideology, the Administration must know that its proposed tax handouts to business, at best, will make only a minimal contribution to employment and one that could well be offset by its expenditure cuts.

The rationale for government intervention into the price-wage field, which is NEP's biggest break with the Administration's past policy on the domestic economic front, is that, absent such intervention, measures to boost employment might aggravate inflation. Now the Administration has bitten the bullet with its (grossly inequitable) wage-price freeze and its commitment to continue with some form of stabilization following the end of the freeze. The cause of previous inhibitions having been thus removed, the Administration should now be moving full steam ahead to increase employment. Its political interests, if nothing else, would seem to so dictate.

Yet, although the Administration is attempting to sell NEP as a program, in the

President's words, for "creating new jobs and halting inflation," it includes no measures that can be counted upon to bring about a sharp reduction of the unemployment rate.

RECOMMENDATIONS REGARDING TAXES AND EMPLOYMENT

The analysis in the preceding pages foreshadows many of the recommendations I wish to place before the Committee for its consideration in connection with the tax and employment aspects of NEP. I have deliberately withheld those recommendations to this point, however, in order that they may be evaluated in their totality and in the light of the analysis as a whole.

TAXES

With regard to the tax proposals listed below, I would like to emphasize again that this country is in serious danger of eroding to the vanishing point—in the name of "incentives"—important sources of tax revenues desperately needed to meet urgent problems that seem to be crowding in upon us at an accelerating pace.

I recognize fully that carefully devised tax measures can provide powerful impetus for corporations to enlist in the service of important public purposes. But those measures need not always take the form of offering rewards—at the expense of the Treasury—for doing what is desired (and certainly not rewards for doing what corporations would do in any event in their own interests). Equally powerful, and often more powerful, are tax measures that add to revenues at the expense of those who refuse to cooperate toward the attainment of society's goals. Few, in fact, will withhold their cooperation if such measures are carefully designed. Thus, the end result is to accomplish the desired social purpose without impairment of public revenues.

Specific examples of the kinds of tax measures I have in mind appear below in connection with incentives for research and development and manpower training.

RECOMMENDATIONS

The recommendations with regard to taxes and employment are as follows:

1. ADR—Congress should rescind ADR by legislative action and should prohibit any future changes in depreciation rules by the Executive Branch.

2. Investment tax credit—Congress should reject the Administration's proposal to revive the credit.

To subsidize private investment indiscriminately out of government revenues is both unsound and highly distasteful. The soundest and most effective means for stimulating investment is a full employment economy. In the event, however, that Congress should find politically irresistible the pressure for some form of credit, I would propose that:

(a) The credit should be established on an incremental basis. This would mean that the credit would be available only for investment in excess of (i) the dollar amount of investment in excess of the average during a base period of, say, the preceding 3 years, or (ii) the amount of investment in excess of the average ratio of investment to sales in a similar base period, or (iii) the amount of investment in excess of the depreciation taken for tax purposes in the same year. This approach at least would make the results more nearly commensurate with the revenue loss.

(b) Given the assertions by Mr. Roche and other business spokesmen that the investment plans of large corporations are not affected by the credit, the credit should be either (i) limited to corporations below a specified size measured in terms of net worth, sales or employment, or (ii) if applied to all corporations, limited to a maximum amount related to the legitimate needs of small firms.

(c) Half of the credit should be set aside temporarily in a government trust fund to cushion adjustment for workers who might be displaced as a result of investment for "modernization" purposes. The monies involved would be held in the reserve for 5 years during which period it would be used to pay specified benefits to adversely affected workers. The amount required to be set aside would be reduced for companies that established sound programs to pay such benefits. Monies remaining at the end of five years would revert to the company involved. Thus, the firm would have an incentive to plan carefully to minimize dislocation of its workers. If the firm's reserve proved inadequate to pay the specified benefits, the deficiency would be made up by the Treasury. (The National Commission on Technology, Automation and Economic Progress, popularly known as the "Automation Commission," commended this proposal for study by the Treasury, the Council of Economic Advisers and other appropriate agencies.)

3. DISC—Congress should reject the Administration's attempt to open this new loophole in the tax laws for the benefit of a relative handful of giant international corporations. Instead, Congress should close the existing loophole which is used as the excuse for the DISC proposal—i.e., profits of foreign subsidiaries of U.S. corporations should be taxed currently, whether or not they are immediately repatriated.

4. Manpower Training Incentive—Congress should reject any Administration proposal to create a new tax windfall under guise of a training "incentive" and, instead, should enact legislation based upon the principles of the British Industrial Training Act. That Act imposes a training tax on all employers. Those who establish approved training programs receive rebates of their taxes (plus additional funds, if needed) to finance the training. Small employers may pool their training activities in order to obtain the tax rebates. This approach has proved highly successful in Britain.

5. R & D Incentive—Congress should similarly reject proposals to create windfall tax handouts for R & D and, instead, should apply the principles of the British Industrial Training Act to stimulate R & D. An R & D tax should be imposed on all firms with rebates to those with R & D programs that meet specified standards. Small firms would be permitted to pool their R & D activities in order to obtain the rebates. If anti-trust legislation should be found to prohibit pooling of R & D by small firms, carefully safeguarded amendments should be adopted to legalize such pooling. There are many industries in which the typical firm is so small as to make impossible any significant R & D. Some are industries suffering severely from import competition, to the detriment of the balance of payments. The approach suggested would help them to become more competitive with imports.

6. Income tax changes—In order to create employment opportunities and to raise the living standards of low- and middle-income families:

(a) Changes in personal income taxes should be made effective retroactively to January 1, 1971, instead of a year later as proposed by the President.

(b) A flat dollar credit per exemption should be substituted for the total of $100 in exemption increases presently scheduled to take effect in two stages at the beginning of 1972 and 1973, respectively. This would redistribute the tax savings involved in favor of low- and middle-income families. The total amount of the credit should be no less than the $4.1 billion dollars involved in the presently scheduled exemption increases or at least $20 per exemption.

(c) The "low income allowance" should be increased substantially.

7. Loophole closing—A thoroughgoing revision of existing law should be undertaken to close loopholes that favor corporations and the wealthy, with the understanding that the additional revenues raised will be spent promptly on employment-generating programs serving national priority purposes.

8. Auto Excise Tax—This discriminatory tax should be repealed promptly, conditioned upon assurances that the auto manufacturers will give consumers the full benefit of the tax savings on a continuing basis. Congress should consider reinforcing such assurances legislatively by the means suggested earlier in this statement.

9. Overtime Premium—In view of the fact that the two leading auto corporations have indicated an intention to meet increased production schedules flowing from excise tax removal through overtime rather than through increased employment, and the likelihood the other industries will take the same course, Congress should move promptly to increase the overtime premium under the Fair Labor Standards Act from the present time-and-a-half to double time. The growth of fringe benefits whose costs are related to numbers employed rather than to hours worked has made the present premium ineffective as a deterrent to scheduling overtime work and therefore ineffective in opening up job opportunities for the unemployed.

10. Welfare Reform—The welfare reform bill passed by the House should be improved in the Senate (to provide, among other things, for maintenance with federal financing of existing benefit levels higher than the national minimum) and made effective at the earliest practicable date.

11. Aid to cities—Greatly liberalized financing for grant-in-aid programs should be substituted for the Administration's revenue sharing proposals and put into effect without delay. The grant-in-aid approach should be extended to meet important urban needs not now covered. Red tape and overlapping involved in such programs should be eliminated. The coordinated package approach applied in Gary, Indiana, should be used on a broad scale, embracing all related programs. In addition, consideration should be given to the proposal made by former Budget Bureau director, Charles Schultze, for a temporary program of direct aid to cities whose finances have been impaired by the recession in the national economy.

12. Federal Employees—Congress should refuse concurrence in President Nixon's proposal to delay presently scheduled wage and salary increases and should take whatever steps may be necessary to assure that those increases are paid in accordance with the previously established timetable. In addition, Congress should use all means available to it to assure that no reductions in federal employment are made which would either impair the execution of governmental programs or impose an unduly heavy workload on government employees.

13. Release of impounded funds—Congress should seek means to compel President Nixon to release for spending the $12 billion in appropriated funds that he has impounded. One method which may perhaps not be the best, would be to provide that the proportion spent out of monies appropriated to the Department of Defense shall at no time exceed the proportion spent out of the presently impounded $12 billion. Prompt spending of the $12 billion would provide a major boost to employment, much of it in the service of the financially hard-pressed cities.

14. Public Service Employment—Despite threats of a veto (which should be overridden if it materializes), Congress should provide for a substantial increase in the number of jobs available for the unemployed in public service employment. This program, also, would be of great help to the cities as well as to the jobless.

15. Unemployment insurance—The present intolerably high rate of unemployment is the deliberate creation of the national gov-

ernment. As William Butler, vice president of the Chase Manhattan Bank, has said, if increased unemployment is the price of curbing inflation, then:

". . . the unemployed perform an important social service by being out of work. I do not see why they should not be paid for it."

Certainly, the unemployed have a legitimate claim to benefits higher than the miserably inadequate amounts now paid. Congress, therefore, should promptly enact realistic minimum federal standards governing benefit amounts and duration under the state unemployment insurance laws and provide for temporary federal supplementation of benefits up to the level of those standards until the states have had time to conform their laws to the standards. The standards with respect to benefit amounts should take into account the value of fringe benefits, as well as of wages, lost by unemployed workers.

BALANCE OF PAYMENTS

We in the UAW support the two features of NEP aimed at correcting the balance of payments deficit. Suspension of gold convertibility was an essential step toward compelling the revaluation of undervalued currencies, which put the U.S. under an unfair disadvantage in world trade, and toward reform of the world monetary system. The temporary import surcharge can also be a useful bargaining lever contributing to the same end and perhaps also to the relaxation of discriminatory and improper barriers to American exports. We are aware, however, that these measures have created serious problems in other countries. We hope that escalating retaliation and counter-retaliation can be avoided and that negotiations will proceed smoothly to a conclusion acceptable, even if not perfectly satisfactory, to all nations involved.

It must be noted, however, that those Europeans and Japanese who attribute the plight of the dollar to the unbridled export of capital by large U.S.-based international corporations are on sound ground. This problem—and a host of associated problems flowing from it—will continue to plague our country until capital exports by such corporations are brought under control. To that end, the UAW has proposed creation of a Foreign Investment Licensing Board which would permit only those foreign investments by American firms which can be shown to be in the interests of the United States. I hope there will be opportunity at some time to explain the proposal in detail to this Committee and to other Congressional bodies because I believe it merits the most serious consideration.

The difficulties of the dollar in world money markets were aggravated, as President Nixon said, by "international money speculators" who "have been waging an all-out war on the American dollar."

He neglected to say, however, that prominent among those speculators were some of the U.S.-based international corporations mentioned above. They are within reach of our government and its laws but the President called for no action to penalize them or to curb their damaging activities. On behalf of the UAW, I have asked Chairman Patman of the House Banking and Currency Committee to launch a searching investigation of the monetary manipulations of such corporations with a view to enactment of legislation which will prevent future speculation by Americans inimical to the interests of their own country.

A third factor contributing to the difficulties of the dollar and the deficit in the balance of payments is the refusal of certain American corporations to complete vigorously with foreign producers both in our domestic market and in the world market. Outstanding among these are the major automobile corporations.

Here we have an industry whose profits persistently run at rates far higher than the average for all manufacturing corporations while, simultaneously, 16 percent of its domestic market is served by imports. Where these two conditions exist side by side, the conclusion is inescapable that the industry is refusing to engage in price competition with imports.

In an economy whose basic premise is competition, clear-cut refusal to compete provides ample justification for any action required to remedy the situation, no matter how drastic it may appear. I will outline below a form of tax that would give the auto industry, and other industries similarly guilty of refusal to compete with imports, a powerful incentive to change their ways. The tax, at first glance, may seem harsh but it should be kept in mind that some of the remedies for noncompetition under antitrust legislation, although infrequently applied, are even harsher. Breaking up a firm is certainly a more radical procedure than imposing a special tax designed to induce competition.

COMPETITION PROMOTION TAX

The proposed tax might be called a "Competition Promotion Tax" because that would express its purpose. It would apply only to corporations in industries where:

(1) average rates of profits on net worth for the industry had persistently (e.g., over the preceding 5 years) and significantly (e.g., by 15 percent) exceeded the average rate for all manufacturing corporations; and

(2) imports of the general type of product made by the industry exceeded a specified percentage (e.g., 10 percent) of total domestic consumption during the tax year.

If both those conditions existed, the special tax would be calculated in accordance with the following formula:

$$T_s = \left(1.05 - \frac{P_a(1-T)}{P_c}\right) \times \left(\frac{C_b}{C_y}\right)^2$$

where:

T_s is the special tax rate to be applied to the corporations in question;

T is the regular corporate profits tax rate (48 percent at present);

P_a is the average before-tax rate of return on net worth for all manufacturing industry;

P_c is the before-tax rate of return on net worth of the particular corporation subject to the special tax;

C_b is the percentage of consumption accounted for by domestic production in the base year; and

C_y is the corresponding percentage for the tax year.

EFFECT OF TAX

With such a tax in effect, the firms covered could increase their after-tax profits only by reducing their before-tax profits (which would require price cuts) or by reducing the inflow of imports or by a combination of both. The reduction of prices, of course, would contribute to the reduction of imports.

So long as the industry remained subject to the tax, none of its constituent corporations could realistically hope to obtain a rate of return as high as the average for all U.S. manufacturing firms.

The industry, however, would have two escape hatches by which to free itself from the tax—both consistent with the purpose for which it would be imposed. The tax would cease to apply if, during a period of five consecutive years, average rates of return in the industry fell to less than 15 percent above the all-manufacturing average for the same period. The tax would be removed in that case even though imports remained above 10 percent of consumption but the decrease in profit rates presumably would attest to reductions in prices, reflecting an effort to compete.

Alternatively the firms in the industry could free themselves from the special tax by competitive actions—price reduction, quality improvement, production of less expensive models, etc.—which would reduce imports below 10 percent of domestic consumption. While no firm might be able single-handedly to reduce imports below that level, all in the industry would be impelled by the tax to try to do so and price cuts put into effect by one or more for that purpose would compel the others to follow.

The tax would have no effect (except in an extraordinarily profitable year) on firms, such as American Motors in the auto industry, whose rates of return run lower than the average rate for all manufacturing corporations. They would pay the normal profits tax (now 48 percent) which would be the minimum rate applicable to all firms in the industry regardless of the rate computed from the formula.

The incentive provided by the tax would be extremely powerful because the formula is highly sensitive to even small changes in prices or in the level of imports. Any increase in either or both would reduce after-tax profits. Any reduction in prices or imports or both would increase after-tax profits.

The purpose of the tax is not to raise revenues but to stimulate competition against imports. It would not be inconsistent with that purpose to give reasonable advance notice to the industries concerned—to provide in the legislation imposing the tax that it not become effective until, say, three years after enactment. Such advance notice might induce the desired competitive behavior and thus create conditions under which the tax would not be payable (i.e., industry profits less than 15 percent above the all-manufacturing average, or imports less than 10 percent of consumption, or both).

The proposed tax is novel, of course. But novelty should not deter serious consideration of its merits. The phenomenon of corporations that deliberately refuse to compete is also rather novel. New problems require new solutions.

I urge this Committee to look into the possibility of this type of tax as one means to correct the payments deficit, to create additional employment in domestic industry and to regain the former share of the United States in the world market for automobiles and for other products as well.

HALTING INFLATION

It is now almost universally recognized that the wage-price freeze imposed as part of NEP creates so many serious inequities that its continuation for more than 90 days would be intolerable. The Administration has committed itself to limit the freeze to 90 days and to substitute some other form of stabilization thereafter.

INEQUITIES UNDER THE FREEZE

It is imperative even before the freeze period ends, however, to begin to apply that provision of the Economic Stabilization Act which authorizes "the making of such adjustments as may be necessary to prevent gross inequities." The Cost of Living Council (CLC), delegated by the President to exercise the powers granted him by the Act, has, by interpretation, provided significant price leeway to industry. Noteworthy in this connection was the reinterpretation for the benefit of the steel industry of the words "substantial volume of actual transactions . . . during the 30-day period ending August 14, 1971." Steel corporations were permitted to consider "substantial" sales equal to more than 10 percent of total sales made *after* the last price increase they had imposed during the 30-day period.

The CLC has yet to show comparable flexibility, however, even with respect to the most glaring types of inequities on the wage front.

I will not burden the Committee with the many serious types of inequities being inflicted on UAW members by the freeze because of the failure of CLC to show the same sympathetic understanding for workers'

problems as it has shown for industry's. I have no doubt, however, that, if I were to recite some of the inequities that our members are now suffering, the members of the Committee would wonder, first, why they have not been corrected and, second, why the workers have been so patient in waiting for correction.

It is urgent that there be no further delay.

I would point out to the Committee, however, one significant difference between the current situation and that under the freeze imposed temporarily during the Korean War. At that time, long-term collective bargaining contracts were a rarity. Most contracts ran for one year or, at most, for two years with provision for renegotiation of wages at the end of the first year. The UAW was one of a very few unions that had longer term contracts providing for deferred wage increases rather than renegotiation.

Thus, generally speaking, the Korean-War freeze did not have the effect, as today's freeze does, of converting into profits monies contractually committed to workers. We in the UAW were compelled, during the 1951 freeze, to warn the stabilization authorities that if the wage increase provisions of our contracts were made inoperative, we would have to consider the contracts null and void and would deem ourselves free to use whatever means might be necessary to negotiate acceptable new contracts. Fortunately, the freeze was relaxed in time to permit payment on schedule of a cost-of-living increase, which came due first, and, later, of an annual improvement factor wage increase.

Today's freeze must be similarly relaxed to permit effectuation within the 90-day period of the economic provisions of existing contracts. Every collective bargaining contract contains provisions (generally noneconomic) sought by the employer as well as economic provisions for the benefit of workers. It is obviously unfair to permit the employer to retain the benefit of provisions written into the contract on his behalf while denying workers the benefits they obtained in return.

AFTER THE FREEZE

What should follow the freeze? It should now be evident to all that we need a permanent program for price stability. We should not have to lurch from a vacuum of policy, to an inequitable freeze, to rigid bureaucratic controls, back to the vacuum and so on *ad infinitum*.

The UAW, for more than 14 years, has been urging such a program in the form of a Price-Wage Review Board, the detailed specifications of which have now been set forth in legislative language in HR 10592 introduced by Congressman Reuss on September 13. I am strongly of the opinion that, had that legislation been in effect during the 1960's, the present inflationary spiral would never have started.

PREMISE OF BILL

Congressman Reuss' Bill is based upon the same premise as that underlying other voluntary stabilization measures (as distinguished from price and wage controls) such as guideposts or incomes policies. Proponents of all such measures recognize that the restraining influence of effective price competition is absent from certain important industries having significant effect on the general price level. They therefore propose to make up for that lack by substituting the restraining influence of public opinion.

The Council of Economic Advisers, for example, in its initial statement of its guideposts in its 1962 annual report, said:

"An informed public, aware of the significance of major wage bargains and price decisions, and equipped to judge for itself their compatibility with the national interest, can help to create an atmosphere in which the parties to such decisions will exercise their powers responsibly."

It is important that the nature of the problem be clearly understood. It was well-stated, I believe, in a letter that Walter Reuther sent to President Kennedy on April 12, 1962, immediately after the President had publicly denounced U.S. Steel for increasing its prices. The letter said in part:

"There is no room to doubt any longer either the power of the giant corporations in certain industries to rig prices against the public interest or their readiness to do so. Both were amply documented in the hearings of the Senate Antitrust and Monopoly Subcommittee on administered prices in the drug, steel, and automobile industries, among others. Any lingering doubts that some might have entertained should have been dispelled by the guilty pleas in the recent antitrust case against the electrical equipment manufacturers. If the corporations involved in that trial—some of which rank among the largest and (formerly) most reputable in the country—are prepared, in direct violation of law, to conspire to rig prices on products sold to the government of the United States, only the most gullible would believe that they and leading corporations in other industries would hesitate to rig the prices they charge their private customers—especially when the latter can be done without running afoul of the law.

"We confront a phenomenon anticipated neither by Adam Smith nor by our antitrust laws—the phenomenon of 'price leadership' in industries where prices are administered and not determined by market forces. Where one corporate giant dominates an industry, prices can be rigged at monopolistic levels without the necessity for an actual conspiracy that would involve a conflict with the law. The unseemly haste of U.S. Steel's 'competitors' in following in its lead did not necessarily require communication between the leader and the rest of the pack. The latter dare not set their prices higher than U.S. Steel's for fear of losing customers. They dare not set them lower for fear the giant will retaliate. They comfort themselves in these conditions of their existence by grasping eagerly the opportunities for higher profits that become available to them when the giant, by raising its prices, permits them to raise theirs.

"Thus we have the fact of monopoly prices, set by a single corporation, without the overt appearance of actual monopoly. We have the effects which the antitrust laws were intended to prevent without the only causes—monopoly or conspiracy—that can set the machinery of the laws in motion. U.S. Steel has shown us once again that we need new legislation aimed at today's price leaders in administered price industries instead of at the obsolete concept of conspiracies which reflected economic facts of past years—legislation drafted to meet the monopoly and conspiracy problems of more than half a century ago."

The above describes the problems with which we propose to deal by informing and mobilizing public opinion.

Public opinion can be invoked effectively, however, only when pertinent information is made available to all who are interested. The Kennedy-Johnson guideposts broke down, among other reasons, because of a failure to equip the public with the data needed to judge the propriety of price actions in general and, particularly, in cases of maintenance of excessive prices that should have been reduced. HR 10592 is designed to assure that the public is fully informed.

SUMMARY OF BILL

HR 10592 would require the price-leading corporation in each major administered price industry to give advance notice of proposed price increases. Other firms could be brought under the procedure by the President if he thought it necessary in the interests of price stability. A tripartite Price-Wage Review Board, with members representing labor, industry and the public, would hold hearings on the proposed increases with a Consumer Counsel representing the public interest. The subpoena power would be used to assure the presence of needed witnesses and the availability of all pertinent books and records. The Consumer Counsel would be empowered to initiate hearings aimed at bringing about reductions of prices he considered excessive. Unions would be required to participate in the hearings if the corporation proposing the price increase alleged that granting union demands would necessitate the increase. At the conclusion of the hearings, the Board would not pass on the merits of the proposed price increases (or union demands) but would issue findings of fact designed to enable the public to make its own judgment of the merits. After the notice period expired, the corporation would be free to raise its prices and the union, if any were involved, would be free to press its demands. Both would act, however, in the knowledge that the public had the facts required to pass informed judgment on their actions.

EXPLANATION

The above summary of HR 10592 is largely self-explanatory. It may be desirable, however, to elaborate on certain of its features and to emphasize the significance of certain others.

To begin with, the Bill's approach differs from that of the now discredited guideposts in a number of highly important respects:

1. Focus on prices—The Bill recognizes the obvious fact that the goal of stabilization policy is to achieve reasonable stability of the price level. It therefore parts company with those who shift the conversation from prices to wages whenever inflation is discussed.

Government data show conclusively that the last three periods of inflation (including the present one) began at times when unit labor costs were actually declining. Thus, it is clear that wage restraint will not prevent prices from rising. On the other hand, price restraint will make unnecessary the augmented wage increases that are required to compensate workers for the erosion of their buying power by inflation. Wage increases are relevant to price stability only when they would necessitate price increases or would prevent price reductions that otherwise would be put into effect.

For these reasons, wages would be involved in the proposed procedure only when a corporation alleges that its proposed price increase (or refusal to reduce excessive prices) is attributable to the cost of meeting union demands that have been presented to it. Under those circumstances, the union involved would have to justify its demands in public hearings side by side with the corporation employing its members.

The focus on prices also recognizes that it is both perfectly proper and entirely compatible with price stability for labor and management to bargain over their relative shares in the income generated by an industry or enterprise. This principle was recognized under the guideposts. In fact, in the Council of Economic Advisers 1962 *Report*, which presented the initial statement of the guideposts in 1962, it was stated and restated three times, as follows:

On page 186:

". . . there is nothing immutable in fact or in justice about the distribution of the total product between labor and non-labor incomes."

On page 188:

"The proportions in which labor and non-labor incomes share the product of industry have not been immutable throughout American history, nor can they be expected to stand forever where they are today. *It is desirable that labor and management should*

bargain explicitly about the distribution of particular firms or industries. It is, however, undesirable that they should bargain implicitly about the general price levels." [emphasis added]

On page 190:

"Finally, it must be reiterated that collective bargaining within an industry over the division of the proceeds between labor and nonlabor income is not necessarily disruptive of overall price stability. The relative shares can change within the bonds of noninflationary price behavior."

The same thought was reiterated in subsequent Council reports.

The principle involved was recognized as a practical matter under the stabilization programs established during both World War II and the Korean War. Executive Order No. 9599, issued on August 18, 1945, after the war with Japan ended, permitted wage increases to be put into effect:

". . . without the necessity of obtaining approval therefor, upon the condition that such increases will not be used in whole or in part as the basis for seeking an increase in price ceilings, or for resisting otherwise justifiable reductions in price ceilings. . ."

Similarly, during the Korean War, wage increases comparable to the UAW's annual improvement factor increases were permitted to be paid provided the employer agreed not to use them as a basis for seeking approval of price increases.

It would be senseless, in any case, to waste the time and facilities of the Board in the hashing out of collective bargaining issues which, by the employers' own admissions (in not claiming them as the basis for proposed price increases) have no bearing on price stability.

2. Availability of facts—The Council of Economic Advisers, in its 1967 annual report, lamented that its efforts to apply its guideposts to prices were frustrated because it:

". . . ordinarily does not have the detailed information which would permit a clear judgment as to the appropriateness of the proposed price change on either the basis of the guidepost standards or other relevant considerations."

The Bill would meet that problem by equipping the Consumer Counsel with subpoena power to assure that all necessary witnesses and all pertinent data are available for examination in the public hearings.

3. Price reductions—The Bill would empower the Consumer Counsel to initiate hearings designed to mobilize public opinion in support of price reductions where the facts show existing prices to be excessive. The guideposts, as the Council confessed, were a complete failure in this respect. For example, the Council's 1967 annual report declared:

"In general terms, the greatest failure of observance of the price guidepost lies in the failure to reduce prices on a considerable number of the product lines of a large number of industries."

Yet, a major factor causing inflation has been the refusal of industries with rapidly advancing productivity or abnormally high profits to reduce their prices. The general price level obviously cannot be stabilized if industries with rising costs raise prices while those with low or falling costs maintain or even increase their prices.

4. Keeping the task manageable—The guideposts represented a scatter-gun approach. In theory they applied to every firm and every union in the entire country. In practice, the price guidepost was used to mobilize public opinion in only a handful of cases while the wage guidepost became a shibboleth for employers generally both in the public forum and across the bargaining table.

Application of the Bill would be confined to the potential sources of serious inflationary abuses—the price-leading corporation in major administered price industries and to such other firms or industries as the President might from time to time find it necessary to bring under the legislation.

The price leader (or "price-dominant" corporation, in the language of the Bill) is defined as the firm that accounts for 25 percent or more of the sales in a product category and more than the sales of any other corporation in the same category. Any field in which one firm controls that large a part of the total market is obviously one in which price administration or oligopoly prevails. Product categories would be established only for products having "a significant effect on overall price stability." If public opinion is to be effectively mobilized, it would be unwise to apply the procedure to industries or products having only negligible effect on the general price level.

It would be enough to confine the notification and hearings procedure to the price leader (i.e., the dominant corporation) in each industry because its decisions necessarily determine the prices of other firms in the same industry. The auto industry provides numerous examples of situations in which Ford and Chrysler adjusted their prices—up or down—to approximately the levels set by General Motors for comparable cars or optional equipment.

An analysis made by UAW economists some years ago indicated that coverage of only about 100 corporations in all would be sufficient to exert significant leverage on over-all price level changes.

At the same time the Bill would enable the President to bring other firms or industries under the procedure when necessary to safeguard price stability.

5. Advance notice—HR 10592 would assure that the public had advance notice of impending price increases in important industries. The facts would be brought out and public opinion would be able to exert its influence before the price increase became a *fait accompli*. Under the guideposts the Council often could do little more than wring its hands after an inexcusable price increase had been put into effect. *Post-mortems* on price increases conducted by Congressional committees have been revealing but have come too late to have any practical effect.

Unions are now required by law to give advance notice of intention to modify or terminate their contracts which, among other things, generally means to seek wage increases. This part of the Bill would do nothing more than to put a small number of corporations under a similar obligation with respect to price increases.

6. Case-by-case approach—President Johnson's tripartite (labor, management, public) Advisory Committee on Labor-Management Policy recognized the need for a case-by-case approach to problems of price stability. In a statement adopted August 18, 1966, after thorough and careful review of experience under the guideposts, the Committee felt compelled to say:

". . . it is impractical if not impossible to translate the goals reflected in the guideposts into formulae for application to every particular price or wage decision."

That conclusion applies with even greater force to the current situation because of the extremely uneven distribution among workers and firms of the gains from and sacrifices imposed by years of inflation. Attempts, under these circumstances, to hold wage and price changes within the confines of uniform formulae would be doomed to failure, for no system of voluntary restraint will work if its end product is flagrant inequity.

Implicit in the qualifications and exceptions noted in the Council's original 1962 statement of the guideposts was the necessity to look carefully into the facts of each case. Today's circumstances emphasize that need. H.R. 10592 provides for the required case-by-case approach and would establish machinery to assure that all pertinent facts of each situation are elicited and brought to the public's attention.

OTHER FEATURES OF BILL

I believe it will be useful to call to the Committee's attention certain other features, aspects or probable effects of the Bill which lead us to believe that it would be a workable mechanism contributing in important degree to price stability.

1. Deterrent—We believe it would create an effective deterrent to unjustifiable price increases. With the Bill in effect, we doubt that any major corporation would even formally propose to make any price increase for which it could not make at least a presentable case. It is almost inconceivable, for example, that U.S. Steel would have proposed the 1962 price increase which President Kennedy succeeded in rolling back if it had had to contemplate the prospect that its officers would have been required to submit to cross-examination in public hearings, with all pertinent data available, concerning the necessity and justification for the price decision.

The Bill contemplates that every reasonable effort would be made to give the hearings the widest possible publicity. Televising the hearings would be useful both for informing the public and for strengthening the deterrent effect of the procedure.

2. Relatively few hearings—The deterrent effect would have the further value of limiting the number of hearings which would have to be held. Public attention could therefore be focused sharply on relatively few cases. Toward this same end, the Bill would permit the Board, with the consent of the Consumer Counsel, to waive hearings where, for example, preliminary examination of the data indicated that the proposed price increase was clearly justified or where it would have negligible effect on the general price level or where it would be offset by price decreases for other products of the same company. With only about 100 corporations in all normally covered by the procedure, its scope would be sufficiently narrow to permit public opinion to zero in effectively on clear-cut cases of abusive price increases. Consumer groups and business or government customers having an important interest in the particular prices involved could be counted upon to help bring the pertinent facts of significant cases to public attention. It would be more difficult to do so effectively if the number of covered corporations were too large.

3. Permanent machinery—The Price-Wage Review Board and the Consumer Counsel are intended as permanent agencies. This would enable them and their staffs to develop a high level of expertise in dealing with price issues and in presenting their findings in a manner readily understandable by the public. The existence of the machinery on a permanent basis would also help to avoid the initiation of inflationary spirals. As is clear from the record of the present and past inflations, such spirals start with prices. Once some important prices rise, they work their way into the costs of other businesses or into consumer prices, inducing or compelling increases in other prices or in wages, which then, in turn, lead to further increases in prices and wages, etc. If public opinion is mobilized effectively to halt the initial price increases, there will be no spiral.

4. Emergency price increases—The Bill recognizes that on occasion firms may be confronted with sharp increases in costs which necessitate immediate price increases in order to avoid serious impairment of profits. It would therefore permit such price increases to be put into effect prior to the expiration of the period of advance notice which would otherwise apply. Severe penalties would be imposed, however, for price increases improperly made under false claim, or exaggeration of the extent, of an emergency. The amount of the penalty could be

objectively determined on the basis of the size of the price increase measured against the actual cost increase, if any. The Board, in consultation with the Consumer Counsel could develop standards and regulations concerning, for example, the extent of impairment of profits that could be considered to create an emergency and methods of measuring such impairment.

5. No recommendations—Under the Bill the Board would not pass on the merits of the proposed price (or wage) increase or make any recommendations as to whether or not it should be put into effect. The reason is that there is at present no generally accepted basis for determining the propriety of any level of prices, wages or profits nor, as previously noted, are there any general formulae that can properly be applied to the enormous variety of individual situations. Given the facts of particular cases, the public will begin to form, and to express, its own judgments as to what is or is not proper conduct under certain sets of conditions. Out of these judgments there should, in time, evolve generally accepted standards of proper conduct. When that occurs—but not before then—it may be possible to formulate criteria that could be used as the basis for recommendations and to write such criteria into law.

6. Findings of fact—Although the Bill would prohibit recommendations or judgments on the merits, it does call for the Board to issue findings of fact. The facts to be made public should include such matters as changes in production costs, the source of such changes (e.g., wage costs, materials prices, overhead costs, changes in volume of production, etc.), the degree to which cost increases are offset by cost savings (such as those flowing from advances in productivity), the profit position of the corporation, the effect of the proposed price increase upon per unit and total profits, the effect upon those profits if the ascertained net cost increases were to be absorbed by the corporation, and all similar matters which would enable the individual citizen to make an informed judgment as to the propriety or justification for the proposed price increase.

In order to insure that every area of pertinent fact is covered, the Bill contemplates that all parties to the hearings (which may include, besides the corporation proposing the price increase and the Consumer Counsel, unions, consumer organizations, customer corporations, government agencies, etc.) would be invited, at the conclusion of the hearing, to submit lists of their contentions based on the evidence presented at the hearing. The Board would issue its findings with respect to each such contention. For example, if a union contends that, after granting a proposed wage increase, the corporation would still have, at a given volume of output, a profit equal to X percent of its investment, the Board would make a finding of fact on that claim. If the corporation should contend that it requires a profit of Y percent in order to attract needed capital, the Board might issue a finding concerning profits earned by other corporations operating under similar risk factors and their experience in raising capital.

7. Flagrant cases—Despite the absence of provision for recommendations, the Bill definitely does not contemplate that responsible government authorities would do nothing in flagrant situations of abuse of pricing power. Although, as noted, there are no generally accepted standards of proper price behavior, it is possible to recognize clearly outrageous behavior totally unjustified by the facts of the situation. Where hearings had elicited evidence that effectuation of a proposed price (or wage) increase would be of that nature, it would be entirely appropriate for the President (or others high in government) to direct the fire of public opinion against the threatened abuse and to take such other action as might be appropriate. With the hearings having uncovered the facts, effective mobilization of public opinion would be greatly facilitated.

OTHER MEASURES NEEDED

I should make it clear that I do not advance HR 10592 as a panacea which, in and of itself, would eliminate the inflationary problem and all its damaging consequences. Administered price abuses are a major, probably the major, factor causing inflation in our economy. But there are other sources of inflation which have to be dealt with also. For example, there are serious supply bottlenecks in certain sectors of the economy, of which medical care is an outstanding example. There are situations in which disproportionate increases in certain forms of demand put inflationary pressures upon capacity. For example, rapid increases in profits following the end of a recession encourage and provide the means for speculative investment in new plant and equipment and in inventories. We need to be alert, always, to problems of these kinds and to develop a battery of selective measures designed to open up supply bottlenecks which interfere with the achievement of national priority goals, to suppress inflationary nonessential demand and, to the extent consistent with national needs and purposes, to route demand toward underutilized capacity and away from the supply bottlenecks.

Wise use of selective measures could help to prevent the onset of inflation. Such measures also could be helpful in ending inflations when they do occur and in minimizing the social damage and economic losses that flow from use of the blunderbuss of restrictive over-all fiscal and monetary policies to halt inflation. For example, selective credit policies could protect the flow of urgently needed funds for housing and the projects of state and local governments while choking off credit for excessive investment in new plant and equipment or for inventory speculation. Selective manpower measures, such as a public service employment program, for example, could provide useful jobs, maintain family incomes, supply valuable training, and serve important public purposes even as demand was curtailed in certain areas of the economy to damp down the inflationary fires. Insofar as health care costs are concerned, I see no solution short of enactment of the Kennedy-Griffiths-Corman Health Security Bill.

We regard HR 10592 as merely one element—although an important element—in the arsenal of selective economic weapons needed to maintain price stability simultaneously with full employment.

H.R. 10592 MEETS PHASE 2 REQUIREMENTS

I believe that H.R. 10592 meets the requirements of what has come to be known as "Phase 2"—the period immediately following the end of the freeze—as well as the need for on-going, permanent machinery to promote price stability. I am realist enough, however, to know that a direct move from the freeze to the machinery and procedures of HR 10592 is not going to occur. Nevertheless, I would like to state the reasons for concluding that HR 10592 would meet immediate as well as long range needs, in the hope that consideration of those reasons will contribute to the shortening of Phase 2 and its prompt replacement with the Bill's Price-Wage Review Board.

It is evident that the continuance of inflation does not have its source in those industries where price competition prevails. That would be most unlikely, if not in fact impossible, given the magnitude of present slack in the economy. Even a cursory reader of the newspapers prior to August 15, 1971, must have been aware that important price increases were centered in the oligopolistic, administered price industries. As those industries raised their prices, firms in some of the competitive sectors may have had no alternative but to try to compensate for resultant cost increases. But many were finding it increasingly difficult to do so. (Their difficulty or outright inability to raise prices is reflected in the maldistribution of profit increases to which Senator Proxmire has called attention and which I will discuss later in this statement.)

It therefore should now be possible to break the spiral through application of the force of public opinion to the price leaders of the oligopolies—as provided for in HR 10592.

As matters now stand, however, the White House will bring forward its own program for Phase 2. Whether or not that program will require legislation is not now known. However, both the White House and the Congress should be fully aware that no program will work that is not acceptable to America's workers. Stabilization policy is a delicate matter and one that, far more than most, requires that essential ingredient of democracy—the consent of the governed.

ESSENTIAL CONDITIONS

The union representatives who met with the President about 10 days ago made it clear that a price and wage stabilization program will be acceptable to America's organized workers only if it is voluntary and tripartite and applies equitably to all forms of income.

"Voluntary" means that the government keeps hands off, stays out and leaves all decisions including those pertaining to standards, rules, regulations and procedures to the sense of public responsibility of the labor and management parties directly concerned. It means also that those parties select their own representatives to develop and implement the program. "Tripartite" means that labor has an equal voice with management in all decisions, with deadlocks between them broken by public members who are independent of any form of government control and whose impartiality and integrity is beyond question.

The above is an exact description of the essential characteristics of mechanisms established for stabilization purposes in World War II and in the Korean War. There is no question but that those mechanisms worked—and with remarkable effectiveness. There were sharp differences between the labor and management members at times but, once decisions were made, no matter how distasteful to one group or the other, both sides cooperated unreservedly in carrying them out.

Based upon the proven success of the voluntary and tripartite approach, it would be a grave mistake to experiment now with other kinds of mechanisms. Particularly dangerous and futile would be to attempt to impose rules and standards from above and to administer them through an agency in which workers had no direct and effective voice and, therefore, no confidence. A number of witnesses before this Committee have stressed the importance of involving the affected parties. That proved essential under wartime conditions. It is far more essential now when there are no comparable external pressures for acquiescence in unpleasant measures.

NO STRAITJACKET

I feel compelled to make clear, with all the emphasis at my command, that there must be no straitjacket of any kind on the voluntary process. The tripartite body must not be restricted in any way—whether by the Administration or by Congress—with respect to the development of standards, rules, regulations and procedures.

I stress this point because of the various bills that have been submitted which would establish legislative guidelines of one kind or another to govern the movement of wages and/or prices.

At the point such guidelines are imposed, the stabilization process would cease in sub-

stance to be voluntary no matter what forms might be devised to disguise that fact. The parties to the voluntary, tripartite operations in two major wars demonstrated that they had the responsibility and the wisdom to establish their own standards without outside interference. There is no reason to believe that those who might be called upon to participate in a new voluntary stabilization effort would be any less wise or responsible.

PARTIAL COST-OF-LIVING COMPENSATION

With all due respect, I must say in all frankness that I am particularly appalled by suggestions made to this Committee for the establishment of guidelines that would allow only partial compensation for increases in living costs.

That goes farther than the wage rules in effect at the height of the Korean War. UAW contracts providing for substantially full compensation for increases in living costs were permitted to operate soon after the Korean War wage stabilization program became effective. Subsequently, under its General Wage Regulation 8, the Wage Stabilization Board permitted all cost-of-living wage increases (including those negotiated after the stabilization base date, January 25, 1951) to be put into effect without prior approval provided only that they did:

". . . not exceed the corresponding subsequent percentage increase in an acceptable index . . ."

No one could reasonably expect workers to accept less protection against rising living costs under today's circumstances than they had during the Korean War.

The inequity of the proposal that workers be limited to partial protection seems to have escaped or to be of no concern to the proponents. It must not be forgotten that, as inflation increases the prices of goods and services, it also increases the total of all incomes in the economy proportionately. If some get smaller shares of the increased total income, others must get larger shares and the goods and services output of the economy is thereby redistributed at the expense of the first group and in favor of the second.

Traditionally, the reason for combatting inflation has been its inequitable redistributional effects. Now it is proposed that inequities be created in order to combat inflation. To compound the inequity, the workers who are singled out to be the victims of deliberately created inequity are the very persons who have been the prime victims of inflation itself. Need this Committee be reminded that the average after-tax real weekly earnings of some 48 million production and nonsupervisory workers in the private economy are now lower than in the last quarter of 1965—nearly six years ago? They have been on a treadmill while living standards, generally, were on the rise. Now it is proposed to run the treadmill faster so that they will lose even more ground.

MAKING WORKERS PAY FOR PRICE FAILURES

It should be obvious that effective price restraint will make cost-of-living wage escalation inoperative. Escalator wage increases are paid only *after* prices have risen. To propose that workers receive only partial compensation for increased living costs is, therefore, to propose that they bear the burden of the government's failure to stabilize prices.

Any government genuinely determined to halt inflation of prices would have no hesitation in allowing wage escalators full and free play because the matter would be essentially academic. Proposals that limits be placed upon cost-of-living wage escalation therefore bring into grave question the genuineness and sincerity of the intention to stabilize prices. They cause me to wonder whether we will see in Phase 2 a continuance of the farcical "voluntary" price controls of the current freeze period during which wages are held in a straitjacket. Anyone who believes that there is in fact a freeze on prices will find it instructive to read the article in the September 20, 1971, issue of *Newsweek* headed "We Don't Want to be Heavyhanded." Heavyhandedness is confined to wages.

If the underlying assumption is that some prices will be free of restraint or that the prices restraints cannot be expected to work perfectly, why should the workers be selected to be the victims? Doctors fees, for example, could prove particularly difficult to restrain. The proposal, therefore, could well have the effect of compelling workers to contribute, at the cost of their families' living standards, to further increases in the real incomes of doctors whose average annual net earnings were reported recently to exceed $40,000 per year.

EQUITY

The proposal to limit workers to partial compensation for increased living costs is in direct conflict with the third essential condition for success of any stabilization policy—absolute adherence to the principle of equity. Even under wartime conditions it was found necessary to establish at least some highly visible symbols of equity. There were stiff excess profits taxes during both World War II and the Korean War. In both cases, top-bracket personal income tax rates ranged up to levels that earlier would have been considered confiscatory. Moreover, in the Korean War period, as noted, it was recognized, based upon experience derived from World War II, that no rigid ceilings such as the Little Steel formula could be placed upon wage increases. Allowance was made for increases in *real* wages so that the distribution of income would not be distorted to the disadvantage of workers.

Under conditions such as those that prevail today, when we are hopefully disengaging from war, equity becomes all the more essential to the success of stabilization efforts. There must be equity not only among workers or groups of workers; there must also be equity as between workers and other elements of society whose incomes are from non-wage sources.

The problem of equity arises in the second of the above forms because wages, generally, tend to be the only form of income, as such, to which stabilization policies apply. Certain other forms of income—interest, professional income, capital gains, executives' bonuses, stock options and expenses and other "perquisites"—are completely untouched. The attempt to restrain still other forms of income—profits and dividends—is usually indirect and based upon criteria concerning prices, ignoring the fact that profits can rise sharply even while prices remain unchanged. Ironically, the statistical record shows that wages—the only form of income to which stabilization policy usually directs itself—are a passive factor in the inflationary process. Wages do not initiate the spiral and their rate of increase tends to slow down as inflation itself abates.

The singling out of wages gives rise to inequities which bring the stabilization programs into disrepute and make them unworkable. The point was recognized and clearly expressed by President Johnson's Advisory Committee on Labor-Management Policy. In the statement quoted previously, the Committee said:

"We believe that in a free society any policy to achieve price stability will be acceptable and effective only if it bears equitably on all forms of incomes."

Other democratic countries have been compelled to the same conclusion. They had experimented with approaches similar to the U.S. guideposts which directly affected only income from wages. They found it necessary to place increasing emphasis on non-wage incomes.

They moved from wage policy toward "incomes policy." Instead of focusing upon the relationship between wages and productivity, they came to stress the relationship between total money incomes and real national output. Stress on the total of money incomes means that an incomes policy, among other things, is fully consistent with collective bargaining and with government policies designed to change the distribution of income by form or by size in the interests of equity and social justice.

The phrase "incomes policy" is being used in the United States today as a euphemism for measures that consider only wages and prices. Misuse of the phrase makes it important to emphasize that incomes policy contemplates a much broader scope.

The crucial difference is that incomes policy recognizes the need for equity as between workers and other groups in the society. Such recognition is reflected, for example, in a report of the Working Party on Costs of Production and Prices of the Organization for Economic Cooperation and Development (OECD), of which the United States is a member. The report said:

". . . experience shows that whatever may be the mechanism of cost inflation, wage earners will ask for some *quid pro quo* in return for any agreement to accept a more moderate increase in wages. As the Trade Union Advisory Committee has put it:

" 'An argument can be made out for planning or guiding incomes; an argument can also be made out for leaving them unplanned and unguided; but there is nothing at all to be said for planning or guiding half the incomes and leaving the other half unguided and unplanned and subject to market forces or varying degrees of monopoly control.'

"The existence of a policy for wages clearly gives this argument considerable weight. Those whose incomes are subject to restraint will naturally demand the establishment of criteria by which the inflationary or noninflationary behavior of other incomes can be clearly established, and the assurance that action will be taken if the assumption that—discounting short period fluctuations—other incomes will follow the development of wages, turns out to be wrong.

"In other words, it is not enough for justice to be done—it must be seen to be done; and it must be seen that the government has the ability to intervene effectively in cases where intervention would be justified."

PROFITS

As other democratic nations wrestle, individually and through OECD and the International Labor Organization (ILO), with the problems involved in developing and implementing an incomes policy, they are confronted insistently with the role of profits in the inflationary process. The chairman of the OECD Working Party mentioned above, in introducing a study prepared for his group, wrote:

"During the preparation of its second report, the Working Party had several discussions on the role of profits in the process of cost inflation. It concluded that: 'While it is difficult to disentangle the role of different elements in total costs, it seems probable that the failure of cost reductions to be reflected fully or immediately in prices is an important feature of the process by which costs and prices are levered up under conditions of cost inflation.'

"As a result of the work of the experts, the Working Party feels that it should have been rather more positive about the role of profits.

"In this connection, the evidence presented in Chapter VI of the report suggesting a quite strong relationship between profits and changes in profits, and wage movements, is both interesting and significant. While this evidence is open to alternative interpretations, it seems to provide further support for the view that a successful incomes policy must cover prices, profits, and other non-wage incomes as well as income from employment."

No democratic country has yet developed a successful incomes policy because none has met the test of equity as between workers

and other groups in society. The guideposts collapsed in our country under the weight of the inequities to which they gave rise and a similar fate has met peacetime stabilization effort in other countries for the same reason.

Any new stabilization effort to be made in the United States which goes beyond the principles of HR 10592 must therefore restrain all forms of non-wage incomes to the same degree as wages are restrained.

With regard to profits, I have hitherto urged an excess profits tax, despite its defects, because it is a familiar device to most Americans. Later in this statement, I will propose what I believe to be a better approach. Clearly, however, there is need to restrain the rise of profits by one means or another if wages are to be restrained to any degree.

THE MYTH OF "LOW" PROFITS

Attempts have been made in recent weeks to create the impression that profits are too low and must be encouraged to increase. It has been said, in particular, that profits now form a smaller proportion of GNP than in 1938. To this there are several answers.

The first is that the comparison is between apples and oranges. The measure of profits in the national income accounts, upon which the comparison is based, reflects repeated changes in tax rules which have transformed a large part of what were formerly called "profits" into "capital consumption allowances." The monies involved still go to the corporations, but the labels on part of them have been changed.

The second answer is that economists generally would agree that, as capital becomes more abundant in relation to labor, rates of return on capital should decline. All other things being equal, this should have meant a significant decrease in the profit share of GNP since 1938. However, except for temporary cyclical dips, the evidence suggests that rates of return may actually have been on a rising trend.

The third answer is that profits, in the aggregate, are not low at all. In fact, in the second quarter of this year, they were approximately at their all-time peak and, by now, quite likely have exceeded it.

The Department of Commerce, on August 20, 1971, reported corporate profits before taxes were at an annual rate of $82.0 billion in the second quarter of this year. The same release stated, however, that the figure reflected an upward adjustment of $3¾ billion in depreciation charges because of ADR. Thus, before that adjustment, profits would have been $85.8 billion. The same release showed that profits in the record high year 1968 were $87.6 billion. The latter figure, obviously, reflects no ADR adjustment and is therefore comparable with $85.8 billion for the second quarter of 1971. The decrease from the peak year was thus only 2.1 percent.

Narrowing the focus to manufacturing profits, it appears they also were approximately at their all-time peak in the second quarter of this year. The August 1971 issue of the First National City Bank's Monthly Economic Letter says:

"After adjustment for seasonal variation, FNCB's index of manufacturers' after-tax profits (1967=100) advanced 4% to 118. This puts it within striking distance of the all-time high of 119 reached in the fourth quarter of 1968. In other words, virtually all of the 22% decline in manufacturing earnings during the recession has been made up during the first two quarters of recovery." [emphasis added]

Under the caption "Two sets of books?" the bank letter goes on to explain that its profit figures (and those of the FTC–SEC) reflect "accounting practices used by corporations for reports to their stockholders" while the Department of Commerce figures, which the Administration uses to argue that profits are low, reflect "accounting used on income tax returns."

It is remarkable that, after only two quarters of a most anemic recovery, profits had already approximately regained their all-time peaks.

There is every reason to believe, therefore, that as recovery continues and capacity (much of it, because of the pre-recession capital goods boom, consisting of the most advanced equipment obtainable) is more fully utilized, productivity will soar and profits will skyrocket even if prices are held absolutely rigid.

Clearly, measures are needed to keep profits in balance with wages if the latter are to be subject to any form of restraint.

MALDISTRIBUTION OF PROFITS

While profits in the aggregate have recovered, the latest FTC–SEC report on profits of manufacturing corporations reveals a gross maldistribution of the recovery in profits as between the largest corporations, on the one hand, and those of small and medium size, on the other. Senator Proxmire deserves credit for calling attention to this fact.

Total before-tax profits of all manufacturing corporations in the first quarter of 1971 were 0.3 percent higher than in the same quarter of 1970.

However, corporations with assets of less than $1 billion showed a profit decrease of 16.2 percent for the period. The smallest corporations—those with assets of less than $1 million—suffered a decrease of 40.4 percent. Every one of the 8 asset size groups below $1 billion had lower profits in the first quarter of 1971 than in the same quarter a year earlier.

Profits of corporations in the $1 billion and over asset category, in marked contrast, increased by 18.8 percent in the same period.

While the percentage decreases varied irregularly among the asset size classes below $1 billion, the following picture emerges when the 9 FTC–SEC groupings are consolidated into 3 classes:

Corporations with Assets:	*Change in pre-tax profits* *Percent*
Under $100 million	−20.1
$100 million but less than $1 billion	−13.3
$1 billion and over	+18.8

The contrast between increased profits for the largest corporations and decreases for the others remains even if General Motors profits are eliminated on the theory that GM's post-strike "catch-up" sales tended to inflate 1971 profits in the $1 billion and over category. With GM profits subtracted in both 1970 and 1971, that category nevertheless showed an increase amounting to 11.8 percent.

SUPPORT FOR H.R. 10592 APPROACH

I now turn back, parenthetically, to an earlier point. The maldistribution of profits reinforces the conclusion that the machinery provided for in HR 10592 would be appropriate for the present situation and Phase 2 as well as for the long term future.

The discrepancy in profit movements must, at least in significant part, reflect continued price increases by the oligopolies, on the one hand, and the inability of smaller firms to pass on the cost increases resulting from the giants' price increases, on the other. The same conclusion is supported by other evidence.

Thus, the spiral could be broken now by a Price-Wage Review Board that would concentrate its efforts on the price leaders of the oligopolies. Moreover, the danger that smaller firms might raise their prices as recovery proceeds could be minimized under H.R. 10592 by hearings held on the initative of the proposed Consumer Counsel to bring the force of public opinion to bear upon existing oligopolistic prices that yield excessive profits. Public airing of the facts in such cases, or even the possibility of public examination, could bring about price rollbacks which would lessen the cost pressures upon smaller firms and permit price competition among them to operate above a lower cost floor.

THE DIVIDEND CHARADE

Returning now to forms of restraint other than H.R. 10592, it must be noted that restraint on dividends (although necessary to achieve equity) is not a substitute for restraint on profits as such. If profits are sufficient to pay increased divdends, it makes little difference to most stockholders whether dividends are actually increased. Dividend increases not paid now can always be paid later. Meanwhile (or if they are never paid) the monies involved become part of the corporation's net worth and (aside from short-term fluctuations) add to the market value of the stock. Many stockholders, in fact, would prefer that dividends not be increased because they prefer capital gains which are taxed at lower rates, to dividends which are subject to regular income tax rates.

In a transparent effort to distract attention from the Administration's omission to ask Congress for power to control profits, an elaborate charade is being acted out over the essentially meaningless issue of dividend increases during the 90-day freeze. First came the President's plea to corporations not to raise their dividends. Then there were the highly dramatized and publicized calls to Washington of executives of corporations that had ignored the plea. Next were the chants of victory over roll-backs of dividend increases—or over promises to reduce the next quarterly dividend. This, in turn, was followed by the issuance of a "dividend guideline" which actually relaxed the previous "guidance" not to increase dividends over the effective rate declared in the most recent dividend period prior to August 15, 1971.

The significance of all this was hardly commensurate with the dramatics.

INTEREST

Interest is a form of non-wage income the President did and does have power to control. He refused to use the authority granted him under the Credit Control Act on grounds, according to Administration spokesmen, that interest ceilings would become floors and, therefore, it would have been unwise to freeze interest rates at the high levels prevailing in August, 1971.

This argument does violence to the facts of the situation because it ignores the authority provided in the Credit Control Act to *roll back* interest rates. The rates in effect in August are totally irrelevant. The Act states unequivocally that the Federal Reserve Board:

". . . upon being authorized by the President under section 205 and for such period of time as he may determine, may by regulation . . .

"(7) prescribe the maximum rate of interest, maximum maturity, minimum periodic payment, maximum period between payments, and any other specification or limitation of the terms and conditions of any extension of credit."

The powers available under the Act were not used despite the facts that interest rates have been a major causal factor of inflation and that a roll-back would have brought substantial relief from inflation to millions of families, to financially hard-pressed state and local governments and to thousands of small businesses.

INCOME EQUALIZATION TAX

The Administration's tender treatment of profits and interest in contrast to the freeze on wages emphasizes the need for measures to assure equity as between wage and non-wage incomes.

A means to achieve equity was presented by the British journal, The Economist in articles published in the September 28 and November 30, 1963, issues. Recognizing the

essentiality of equity to the success of an incomes policy, the magazine proposed what it called an "Incomes Equalization Tax (IET)" to be applied to non-wage incomes. It then went on to say:

"The *principle* on which the proposal is based, which is assumed to be reasonably generally acceptable, is that the rewards to capital per unit should not increase faster than the rewards to labour per unit.

"The *method* of the proposal is to vary the tax on unearned incomes to make the average rate of increase in unearned incomes equal to the average rate of increase in wages." [emphasis in original].

Without repeating the detailed arithmetical illustrations offered by The Economist, the IET may be explained as follows. An annual index would be computed for wage rates and for each form of non-wage income subject to the tax. Assume, for example, that in year X the index for wages was 115.7 and that for dividends was 126.4. The difference between the two indexes in favor of dividends is 10.7 index points. This figure is then divided by the index for dividends (10.7 divided by 126.4). The result (multiplied by 100 to convert it from a decimal to a pertentage) is 8.5 percent, which is used as the IET rate applicable to dividends.

A tax of 8.5 percent applied to all dividend income would reduce the total of such income to the same level relative to the base period as the index for wages

$$(126.4 \times (100.0 - 8.5) = 115.7).$$

The regular income tax is then applied to the sum of all forms of income received by the taxpayer after deduction of the sum of the IET liabilities applicable to each form of non-wage income received.

To avoid imposing undue tax calculation burdens on individuals receiving relatively small amounts of non-wage income, persons with less than specified amounts of such forms of income could be exempted from IET. Certain forms of income which the individual has no means of increasing (pensions, for example) could also be exempted. (Unlike The Economist, however, I would not propose tax remission for forms of income which lagged behind wages. The reason is that the tax assumes that only wage income is subject to direct restraint, so that non-wage incomes remain free to fluctuate in the normal manner. The purpose of the tax, therefore, must be to prevent increases in non-wage incomes from outstripping wages.)

This tax is subject to none of the criticisms usually directed at the excess profits tax. In addition, it can be applied not only to profits but to all forms of non-wage income, thus making for across-the-board equity for wages. Applied to profits, it would not penalize unusually successful firms. Their IET rates would be no higher than those of the less successful. Similarly, the IET rate would be the same for all individuals receiving the same form of income regardless of whether their amounts of such income had increased or decreased in the year.

EFFECTS OF APPLYING IET TO PROFITS

There is convincing evidence that an IET applied to profits would not only contribute to equity but also would contribute materially to the attainment of other highly desirable economic goals.

An article in the Summer, 1971, issue of the *Wharton Quarterly* (published by the Wharton School of Finance of the University of Pennsylvania) examined the effects of a hypothetical special tax that would confine increases in profits to the same rate of increase as wages. (The tax is not called "IET" and the article seems to have been written without knowledge of the proposal made by The Economist.) One of the authors of the article is Professor Lawrence R. Klein who is widely respected as an outstanding econometrician. The analysis involved use of the Wharton Econometric Model of the U.S. economy.

The conclusion is that such a tax would have the effects of increasing output, sharply reducing unemployment and markedly retarding the rate of price increase.

Several variants with the tax assumed to be in effect were run through the econometric model. All pointed to essentially the same general conclusions. One version, based upon quarterly data and assuming the tax had become effective in the fourth quarter of 1970, showed that over a two-year period:

Real GNP would be $17 billion higher (in 1958 prices) than it would have been in the absence of the tax.

The unemployment rate at the end of the period would be 3.39 percent instead of 4.83 percent in the absence of the tax.

The GNP price deflator would increase at a rate of 2 percent instead of 3.3 percent in the first year and by 1 percent instead of 2.4 percent in the second year.

In addition, the government deficit would be smaller than if the tax had not been in effect.

The analysis also shows that controls on wage rates alone, without the special tax on profits, would have the effects of reducing real GNP and increasing unemployment.

Carried to 1980 on the basis of annual data, the model shows that the special profits tax would yield similarly favorable results over a longer period. GNP in 1958 prices is $28 billion higher by 1980 than it otherwise would have been. The average unemployment rate for the 10 year period is substantially lower than in the absence of the tax. Practical price stability (an annual increase of 0.8 percent) is achieved by 1973 and beyond 1975 "the price index stays constant or drops a little."

ENACT IET

I strongly urge enactment of IET if Phase 2 provides for any form of restraint of wages to which non-wage incomes are not subjected.

IET, as the Wharton Quarterly article demonstrates, would yield substantial economic gains as well as contribute materially to equity. With respect to importance of equity, the article is quite emphatic. It says:

"A deficiency of past guideline rules is that they overemphasized restraint in wage patterns to the exclusion of restraints in other income shares and that they have not been enforced or enforceable. A balanced policy stands a better chance of being acceptable now.

* * * * *

There is a much greater chance that American labor will accept a guideline principle for earnings if there is a corresponding guideline principle for profits. Wage restraint, by itself, would tend to be reflected in unusually large profit increases and this would lead to an eventual breakdown of the principle.

Without equity as between wage and non-wage incomes, whether established through IET or some other device, the cooperation of American workers in the stabilization program cannot be expected and will not be deserved. Absent equity, the end result, as it has been in every democratic country where stabilization measures have been applied in peacetime, will be collapse of the stabilization program. Collapse, it should be added, has generally been followed by a wage explosion as workers act to remedy the inequities inflicted upon them.

OTHER PROBLEMS OF EQUITY

Whatever form Phase 2 assumes, there will be other matters of equity that will urgently require attention. Without attempting a complete list, there is, for example, the necessity to assure retroactive payment of contractually owed wage increases withheld during the freeze period. Otherwise, the workers involved will have the right to consider their contracts cancelled and to negotiate others in their place.

Similar problems arise with respect to individual workers denied, during the freeze period, longevity and progression wage increases, additional days or weeks of vacation based upon length of service and a variety of other types of wage increases and fringe benefits.

For the longer run, it goes without saying that fairness will require, among other things, latitude for workers trapped by the accidental timing of the expiration of their contracts to restore their normal position relative to those who have recently negotiated new contracts. It will require, also, freedom to obtain wage increases that compensate fully for increases in living costs plus additional amounts to allow workers to share equitably in the growth of the economy's output (and more where more can be obtained without increasing prices), provision for correction of wage inequities and substandard wages and no impairment of existing contractual rights.

RESPECTING CONTRACTUAL RIGHTS

Respecting rights established under existing contracts, even though the wage increases provided for exceed standards that may be adopted by a tripartite board, does not mean acquiescence in continuing inflation. Newly negotiated contracts, of course, would have to conform to the established standards. This will mean—assuming price increases are effectively restrained—that the average rate of increase in wages will tend to decline. The declining tendency resulting from new contracts will be reinforced by existing contracts because many of the latter are heavily "front-loaded" wtih wage increases scheduled for the second year and beyond substantially lower than in the first year. In fact, second and third year increases provided under most contracts are within reasonable stabilization standards. As a result, the average rate of increase will steadily approach such standards and within a short time will conform to them if every contract now in effect is permitted to be implemented in full.

PROFIT SHARING

I urge also that negotiation of profit sharing agreements be not only permitted but encouraged if wages are subject to any form of direct restraint. Profit sharing can under no circumstances be considered inflationary. Profits are a residual—computed after the consumer has paid the price involved and after all costs have been met. The sharing of that residual can neither add to the costs nor increase the price.

Any form of restraint requires some safety valve. If the possibility for economic gains is limited, improvement of working conditions will serve to some extent as the safety valve to relieve the pressures that cannot find an economic outlet. Under the World War II stabilization program, certain forms of fringe benefits served that purpose. Profit sharing can be an important additional safety valve, serving simultaneously to advance economic equity as between workers and stockholders.

CONGRESS IS ULTIMATELY RESPONSIBLE

The ultimate responsibility for an equitable stabilization policy rests squarely upon Congress. It was Congress that gave the President the power to impose the freeze. Congress alone can decide whether the President will be allowed to continue his inequitable use of those powers or whether the legislation involved shall be rewritten or replaced to assure an equitable and effective stabilization policy.

Reports in the press on the predictions of Secretary of Commerce Stans with respect to Phase 2 sound an ominous warning that the Administration may be bent on imposing grave inequities upon America's workers—to make them and them alone bear the sacrifices of combatting inflation. Only Congress

can stand in the way and see to it that equity is done.

It is imperative that Congress accept its responsibility to assure by legislation that stabilization measures will be fair to all concerned.

I urge specifically that such legislation require the President to stabilize only through the voluntary and tripartite mechanism that I have described. I urge further that, whether through IET or some other device, Congress assure that equity prevails as between wages and all forms of non-wage income.

LEGAL STATUS OF MARIHUANA

Mr. PERCY. Mr. President, in connection with the problem of drug abuse and drug dependence which is far too rampant in this country today, as well as among our Armed Forces overseas, I have been joined by Senator RIBICOFF as chief cosponsor, together with 26 of my colleagues, in introducing S. 2097, the administration's proposal to create a Special Action Office for Drug Abuse Prevention in the Executive Office of the President. During the extensive hearings on this bill, held by the Subcommittee on Executive Reorganization in conjunction with Senator MUSKIE's Subcommittee on Intergovernmental Relations, most of the testimony was naturally directed to the ravaging effects of heroin addiction in this country and among our GI's abroad. With hearings now completed, the bill is in committee, and I look forward to having it reported out in the very near future with appropriate amendments based upon what we learned at the hearings.

Repeatedly during those sessions, questions arose as to the purpose and efficacy of our current laws—at the Federal, State, and local levels—regarding marihuana. In my travels to college campuses over the past year, the question that is most frequently asked of me is whether we should further modify our laws respecting marihuana, and specifically whether we should eliminate criminal penalties for possession of marihuana for personal use.

The clearest point to come out of our hearings, and there was general agreement, is that we need more information as to the effects of marihuana use. Indeed, extensive research is now being done, for the first time, with respect to the use and effects of this drug. At the same time, testimony was adduced indicating that a great deal of "scare" information has been disseminated in the past in this regard, that such misinformation has created a credibility gap among our youth with respect to what we know to be the very serious psychological and physical effects of hard drugs, and that the failure of existing laws to differentiate as to possession, use and sale of marihuana as compared to hard drugs has led to the imprisonment of many of our youth for extended periods for engaging in an activity whose illegality they seriously question. Moreover, we were told of inequities that exist with respect to the punishment which different States mete out for possession and use of marihuana. For example, a first offense in the State of Texas can mean a jail sentence of 2 years to life, while the same offense in the State of Nebraska may result in a sentence of 7 days, which can be expunged. To a large degree, this disparity has resulted from misinformation and myth which often characterize marihuana as the "killer weed," leading to the imposition of penalties for its use which in some instances exceed those for crimes of violence.

Apropos of this, last year's Federal Comprehensive Drug Abuse Prevention and Control Act established a Commission on Marihuana and Drug Abuse which has been holding extensive hearings around the country, most recently in Chicago, as part of its responsibility to investigate and report to the President and Congress on the appropriateness of existing marihuana laws. My two esteemed colleagues, Senator HUGHES and Senator JAVITS, both sharing a long-term concern about drug use, have spent long hours and given tireless effort in the deliberations of that Commission which is chaired by former Pennsylvania Gov. Raymond P. Shafer.

In Chicago last month, the Commission heard testimony about the recently enacted Illinois Cannabis Control Act liberalizing the penalties for simple possession of marihuana for individual use, so as to differentiate between the pusher and the user. A first offender found in possession of 2.5 grams or less may be given conditional probation without the entry of a judgment of conviction. The maximum penalty for first time possession of 2.5 grams or less has been reduced from 1 year to 90 days.

Testifying before the Commission on August 23, 1971, Illinois Gov. Richard Ogilvie explained how important it is to distinguish between the marihuana pusher and the teenager possessing several joints. He noted:

> In the past we have been guilty of a kind of overkill in the way we punished and criminalizd some marijuana users. It would seem that sometimes the punishment meted out was more damaging to individuals and to the whole of society than was the use of the drug itself. We often succeeded only in driving young men and women toward those dangerous criminals who thrive on the addictive drug culture.
>
> The authority of our laws and the institutions that stand behind them depend upon their being responsible and equitable. What is at issue is the credibility of government, the legitimacy of the authority that holds our society together. In this perspective, fair and workable marijuana laws may be more significant for the majority of citizens who have never tried the drug than for those who do experiment with it.

Appearing before the Commission the very next day on behalf of the National Coordinating Council on Drug Education, Daniel X. Freedman—chairman of the University of Chicago Department of Psychiatry, who did an outstanding job in helping to found the Illinois drug abuse program—addressed himself to some of the mythology surrounding marihuana use:

> In recent hearings of several committees in the House of Representatives, four congressmen have stated that marijuana leads to heroin use. This statement could be based on the well-publicized statement that 90% of heroin addicts used marijuana as their first illegal drug. What never seems to get reported is the other half of this statement which speaks more directly to the question. A consensus indicates that *only* 3 to 5% of marijuana smokers go on to use heroin. Not to emphasize this aspect is a distortion of the facts. . . . Many people are approaching a solution to the problem by using selected information to strengthen preconceived ideas.
>
> A year ago, a national opinion poll revealed that 82% of those questioned agree that using marijuana leads people to commit crimes and acts of violence. 81% think that marijuana is an addictive drug. 76% think that using marijuana over a long period of time has harmful effects on the babies of pregnant women.
>
> 44% of the people questioned think that the regular use of marijuana is equal/more dangerous than the regular use of heroin. This seems like an unbelievable response to anyone with even an unsophisticated knowledge of drugs. The last statement is a startling miscalculation of the effects of heroin, regardless of what it says about marijuana.

The National Coordinating Council had concluded last June that:

> The enforcement of laws against the possession and use of marijuana has primarily been the function of state and local law enforcement agencies. Marijuana laws vary from state to state; consequently, enforcement policies and procedures also vary geographically. At the same time, the application of these laws, which treat the marijuana user as a criminal, frequently causes serious social, economic and psychological consequences for the individual and society that appear to be more serious than any apparent direct consequence of using the substance. These laws and variations in enforcement appear to contribute to a lack of respect among young people for laws in general and drug control laws in particular.

An estimated 20 million Americans, mostly young people, have smoked marihuana in some form and many of these use it regularly. One out of three college students, by conservative count, have experimented with marihuana. We can expect, therefore, as we have already seen, increasing reports of sons and daughters being sent to jail for the mistake of getting caught. We all suffer the anguish of seeing our youth treated as criminals, their personal lives and job opportunities marred by a prison record, their alienation from the society in which they live made more severe.

The questions we must ask ourselves are twofold: Whether, in the context of substantial public usage of marihuana and relatively few known deleterious effects to the individual or to the society, criminal sanctions for possession intended for personal use should be eliminated? Whether the harm caused by criminalizing a large segment of our society outweighs the harm that may result from a predictable increase in use were penalties to be eliminated?

The report of the Commission on Marihuana and Drug Abuse is due in the spring of 1972, and we anxiously await its findings and recommendations as to whether we should decriminalize altogether our laws with respect to possession of marihuana for individual use. In the interim, I find extremely interesting two recent statements from the legal community to the Commission. In response to a Commission request for the views of the American Bar Association on the marihuana issue, then President Edward L. Wright asked the chairmen of the individual committees of the association to submit their separate views.

In a letter to Governor Shafer dated July 29, 1971, Peter Barton Hutt, chairman of the Committee on Drug Abuse of the ABA Section on Criminal Law and newly designated assistant General Counsel for Food, Drugs, and Environmental Health, of the Department of Health, Education and Welfare, appended a committee resolution on the legal status of marihuana, backed up by a brief report. The resolution reads:

Resolved, That because the individual and social costs resulting from imposition of penalties for simple possession of marihuana substantially outweigh the harm caused to the individual and society as a consequence of the use of marihuana, Federal, State, and Local penalties for simple possession of marihuana should be eliminated; and

Be it further resolved, That casual distribution of a small amount of marihuana be handled in the same manner as simple possession; and

Be it further resolved, That the Commission on Marihuana and Drug Abuse consider the feasibility of licensing the distribution of marihuana, in lieu of imposing penalties, in order to control its use; and

Be it further resolved, That a uniform national policy on marihuana be developed by conforming State and Local penalties to the Federal law and by eliminating application of ancillary State and Local statutory provisions—such as possession of the implements of crime, presence in or maintaining an illegal establishment, loitering and vagrancy—to the possession and distribution of marihuana; and

Be it further resolved, That all information provided by drug abusers to physicians and other engaged in drug abuse counseling should be protected as confidential."

In an earlier letter of July 9, 1971, to Governor Shafer, Gerald Stern, chairman of the Committee on Alcoholism and Drug Reform of the ABA Section on Individual Rights, reported on the recommendations of his committee as follows:

Our Committee urges this Commission to recommend the removal of all criminal penalties for the possession of marijuana. We suggest that the distribution of marijuana be regulated along the lines presently employed for the sale of alcohol. Licensing provisions should be used to ensure that the drug is not sold to children, and that other standards are met. If a less drastic reform is preferred we would urge the Commission to retain criminal penalties (in reduced form) only for selling (for profit). There is simply no basis for employing the criminal sanction, with its threat of imprisonment, against people who, at the very worst, are harming themselves.

I also note with interest the recommendations of the San Francisco Committee on Crime, contained in "A Report on Non-Victim Crime in San Francisco—Part III: Dangerous Drugs and Narcotics." The report was submitted July 19, 1971, in partial satisfaction of a grant award from the Law Enforcement Assistance Administration. Cochairmened by attorney Moses Lasky and former Assistant Attorney General for Antitrust William H. Orrick, Jr., the committee report concludes:

The sum of our recommendations concerning marijuana is as follows:

1. Repeal of the laws prohibiting the use by adults of marijuana or forbidding adults from visiting a place where marijuana is used.

2. Repeal the laws prohibiting possession by adults.

3. Repeal the laws prohibiting sale of marijuana to adults and regulate sale to them by laws on the general order of those regulating alcoholic beverages.

4. Continue to prohibit sale to minors and possession by minors.

5. Prohibit any advertising of marijuana.

6. Prohibit the importation of marijuana into California (probably would require federal action).

7. Regulate the production of marijuana in California for sale by laws similar to those regulating the commercial production of alcoholic beverages.

8. Devise and expand a vigorous educational campaign about marijuana.

We do not propose that society discontinue efforts to deter people from using marijuana. Its use is probably not as deleterious as its most earnest detractors say, but certainly people would be better off without it. In an age when human wits are most needed, they should not be subjected to manipulation or alteration by drugs. We simply conclude that the criminal process is not the way to go about achieving the goal given the present state of evidence. Indeed, removing the stigma of criminality may remove attraction of the illicit and eliminate the impetus to use that comes from bravado.

Criminalization has failed; we suggest that society now try non-criminalization.

By way of pointing up the disparity of treatment attendant to existing marihuana laws within the States, a compilation of "Criminal Penalties Under the Current Marihuana Laws" current as of July 1, 1971, was recently compiled at my suggestion by a nonprofit private group located here in Washington called the National Organization for the Reform of Marihuana Laws. The organization does not advocate the use of marihuana, but does call for the elimination of criminal penalties for its use. The listing shows, among other things, that 28 States have rewritten their marihuana laws during 1971 alone, largely in the direction of reduced penalties for possession intended for individual use, by adopting various forms of the Uniform Controlled Substances Act which is similar to provisions of the Comprehensive Drug Abuse and Control Act of 1970. The compendium incorporates these amendments with the caveat that "because many of the recent changes were not available in written form we were often forced to rely upon telephone inquiries with State officials. Minor errors may have resulted from this less-than-optimum research method."

Mr. President, I ask unanimous consent that this material be printed in the RECORD in order that Senators and other persons can be likewise apprised of the wide-scale differences among the marihuana laws of the various States. I also ask that the complete text of the letters and accompanying reports of American Bar Association Committee Chairmen Hutt and Stern, referred to above; excerpts from Governor Ogilvie's and Professor Freedman's remarks of last month before the Commission on Marihuana and Drug Abuse; and relevant segments of the "Report on Non-Victim Crime in San Francisco/Part III: Dangerous Drugs and Narcotics," be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

THE CRIMINAL PENALTIES UNDER THE CURRENT MARIHUANA LAWS

(Compiled by NORML—The National Organization for the Reform of Marihuana Laws)

The data appearing in these tables is current as of July 1, 1971. Starting with a similar compilation a year earlier, prepared by Richard J. Bonnie and Charles H. Whitebread, II, appearing in the October 1970 Virginia Law Review, Vol. 56, No. 6, we have attempted to incorporate all subsequent changes. Largely due to adoption of various forms of the Uniform Controlled Substances Act, similar to the Federal Controlled Substances Act of 1970, 28 states have undergone changes in their marijuana laws during 1971. We hasten to add that the next year will surely occasion many additional changes. Finally, a caveat is in order. Because many of the recent changes were not available in written form, we were often forced to rely on telephone inquiries with state officials. Minor errors may have resulted from this less-than-optimum research method.

TABLE I.—THE FEDERAL LAW.—THE CONTROLLED SUBSTANCES ACT OF 1970, PUB. LAW 91-513 (OCT. 27, 1970)

Offense	1st offense	2d offense	Subsequent offense
Simple possession	0 to 1 year, $5,000 [1]	0 to 2 years, $10,000	Same
Possession with intent to distribute	0 to 5 years, $15,000	0 to 10 years, $30,000	Do.
Sale or distribution	0 to 5 years, $15,000 [2]	0 to 10 years, $30,000	Do.
Sale or distribution to a minor	0 to 10 years, $30,000	0 to 15 years, $45,000	Do.

[1] For first offender, court has discretionary authority to defer proceedings and place defendant on probation, which, if successfully discharged, avoids an adjudication of guilt. For offenders under 21, court has further discretionary authority to completely expunge the records.

[2] Distribution of a "small amount of marihuana for no remuneration" is to be treated the same as simple possession.

TABLE II.—STATE LAWS—STATUTORY SCHEMES FOR MARIHUANA PROHIBITION

Jurisdiction	Distinction between marihuana and narcotics	First offense possession classified as felony	Federal Model Uniform Controlled Substances Act
Alabama	Yes	Yes	
Alaska	Yes	No	
Arizona	Yes	No	
Arkansas	Yes	No	Yes.
California	Yes	No	
Colorado	No	No	
Connecticut	Yes	No	
Delaware	Yes	No	
Florida	Yes	No	
Georgia	Yes	Yes	
Hawaii	No	No	
Idaho	Yes	No	Yes.
Illinois [1]	Yes	No	
Indiana	No	Yes	
Iowa	Yes	No	Yes.
Kansas	No	Yes	
Kentucky	Yes	No	
Louisiana	Yes	No	Yes.
Maine	Yes	No	
Maryland	Yes	No	Yes.
Massachusetts	No	No	
Michigan	No	Yes	
Minnesota	Yes	No	Yes.
Mississippi	Yes	Yes	Yes.
Missouri	Yes	No	Yes.
Montana	Yes	No	
Nebraska	Yes	No	Yes.
Nevada	Yes	Yes	Yes.
New Hampshire	Yes	No	
New Jersey	Yes	No	Yes.
New Mexico	Yes	No	
New York	No	No	
North Carolina	No	No	
North Dakota	Yes	No	Yes.
Ohio	Yes	No	
Oklahoma	Yes	Yes	Yes.
Oregon	No	Yes	
Pennsylvania	No	Yes	
Rhode Island	No	Yes	
South Carolina	Yes	No	Yes.
South Dakota	Yes	No	Yes.
Tennessee	Yes	No	Yes.
Texas	No	Yes	
Utah	Yes	No	Yes.
Vermont	Yes	No	
Virginia	Yes	No	Yes.
Washington	Yes	No	Yes.
West Virginia	Yes	No	Yes.
Wisconsin	Yes	No	
Wyoming	Yes	No	Yes.
District of Columbia	No	No	

[1] Effective Aug. 16, 1971.

TABLE III.—PENALTY PROVISIONS FOR MAJOR MARIHUANA OFFENSES (ALL FINES ARE REPRESENTED AS MAXIMUM AMOUNTS POSSIBLE)

	1st offense	2d offense	Subsequent offense
A. POSSESSION			
Alabama	2 to 10 years and/or $20,000	5 to 20 years and/or $20,000	10 to 40 years and/or $20,000.
Alaska	0 to 1 year and/or $1,000 or rehabilitation treatment by State for 1 year.		
Arizona	0 to 1 year in county jail and/or $1,000 or 1 to 10 years	2 to 20 years	5 years to life.
Arkansas	0 to 1 year and/or $250 [1]	0 to 1 year and/or $250	2 to 5 years.
California	County jail for up to 1 year or 1 to 10 years	2 to 20 years	5 years to life.
Colorado	Under ½ oz., 0 to 1 year and/or $500; Over ½ oz., 2 to 15 years and/or $10,000.	1 to 14 years and/or $1,000 to $2,000	
Connecticut	0 to 1 year and/or $1,000 or up to 3 years in custody of commissioner		
Delaware	0 to 2 years and/or $500 [1]	2 to 7 years and/or $500	
Florida	Less than 5 grams, 0 to 1 year and/or $1,000; More than 5 grams, 0 to 2 years and/or $1,000.	0 to 2 years and/or $1,000	
Georgia	Under 1 oz., 0 to 1 year and/or $1,000; Over 1 oz., 0 to 2 years and/or $2,000.	0 to 5 years and/or $5,000	
Hawaii	0 to 5 years	0 to 10 years	
Idaho	0 to 6 months and/or $300		
Illinois	Less than 25 grams, 90 days; 2.5 to 10 grams, 180 days; 10 to 30 grams, 1 year; 30 to 500 grams, 1 to 3 years; more than 500 grams, 1 to 5 years.	10 to 30 grams, 1 to 2 years; 30 to 500 grams, 2 to 6 years, over 500 grams, 2 to 7 years.	
Indiana	Less than 25 grams or 5 grams hashish, 0 to 6 months and/or $25 to $100; over these amounts, 30 days to a year and/or $500.	2 to 15 years and/or $3,000	
Iowa	0 to 6 months and/or $1,000	0 to 18 months and/or $3,000	
Kansas	0 to 1 year	1 to 3 years	
Kentucky	0 to 1 year mental health facility [1]	0 to 1 year county jail and/or $1,000	5 years and/or $5,000.
Louisiana	0 to 1 year and/or $500 [1]	0 to 5 years with or without hard labor and/or $2,000	0 to 20 years hard labor.
Maine	0 to 11 months and/or $1,000	0 to 2 years and/or $2,000	
Maryland	0 to 1 year and/or $1,000 [1]	0 to 2 years and/or $2,000	0 to 2 years and/or $2,000
Massachusetts	0 to 3½ years in prison, or 0 to 2½ years in jail and/or $1,000		
Michigan	0 to 10 years and/or $5,000	0 to 20 years and/or $5,000	20 to 40 years and/or $5,000.
Minnesota	Under 1.5 oz., 0 to 1 year and/or $1,000; over 1.5 oz., 0 to 3 years and/or $3,000.	0 to 6 years and/or $5,000	
Mississippi	0 to 4 years and/or $2,000	5 to 10 years and/or $2,000	10 to 20 years and/or $2,000 mandatory fine.
Missouri	Under 35 grams or 5 grams hashish, 0 to 1 year and/or $1,000; over these amounts, 0 to 5 years and/or $1,000.	0 to 5 years and/or $1,000	
Montana	Up to 60 grams or 1 gram of hashish, 0 to 1 year and/or $1,000; over these amounts, 0 to 5 years.	0 to 3 years and/or $1,000	
Nebraska	Less than 1 pound, 7 days in county jail to be held separately and/or $500; over 1 pound, 0 to 6 months in county jail or 1 year in prison and/or $500.	Under 1 pound, up to 14 days and/or $1,000; over 1 pound, 0 to 1 year in county jail or 2 years in prison and/or $1,000.	
Nevada	If under 21 and less than 1 oz., 0 to 1 year and/or $1,000 and/or suspension of driver's license; if over 1 oz., 1 to 6 years and/or $2,000.[1]	Under 1 oz., 1 to 6 years and/or $2,000; over 1 oz., 1 to 10 years and/or $2,000.	Under 1 oz., 1 to 10 years and/or $2,000; over 1 oz., 1 to 20 years and/or $5,000.
New Hampshire	Less than 1 pound, 0 to 1 year and/or $500; Over 1 pound, 0 to 5 years and/or $2,000.	Less than 1 pound, 0 to 3 years and/or $1,000; over 1 pound, 0 to 10 years and/or $5,000.	
New Jersey	Under 25 grams or 5 grams hashish, 0 to 6 months; [1] over 25 grams, 0 to 5 years and/or $15,000.		
New Mexico	0 to 1 year in county jail and/or $1,000	5 to 20 years and/or $2,000	10 to 40 years and/or $2,000 minimum.
New York	Less than 25 cigarettes or ¼ oz., up to 1 year; [1] 25–99 cigarettes or ¼ to 1 oz., 1 to 7 years; over 100 cigarettes or over 1 oz., 1 to 15 years		
North Carolina	Less than 1 gram, misdemeanor with fine or imprisonment left to court; over 1 gram, 0 to 5 years and/or $1,000.		
North Dakota	0 to 1 year and/or $500		
Ohio	0 to 1 year and/or $1,000	1 to 10 years	
Oklahoma	0 to 1 year	2 to 10 years	
Oregon	0 to 1 year in county jail and/or $5,000 or 0 to 10 years in prison and/or $5,000.		
Pennsylvania	2 to 5 years of separate or solitary confinement and/or $2,000	5 to 10 years of separate or solitary confinement and $5,000.	10 to 30 years of separate or solitary confinement and $7,500.
Rhode Island	0 to 10 years and $5,000	0 to 20 years and $10,000	0 to 30 years and $10,000.
South Carolina	Under 1 oz. or 10 grams of hashish, 0 to 3 months and/or $100; Over these amounts, 0 to 6 months and/or $1,000.	Under 1 oz. or 10 grams of hashish, 0 to 6 months and/or $200; Over these amounts, 0 to 1 year and/or $2,000.	
South Dakota	Less than 1 oz., 0 to 1 year n county jail and/or $500, Over 1 oz., 0 to 5 years and/or $5,000.	0 to 15 years and/or $10,000	0 to 40 years and/or $20,000.

TABLE III.—PENALTY PROVISIONS FOR MAJOR MARIHUANA OFFENSES (ALL FINES ARE REPRESENTED AS MAXIMUM AMOUNTS POSSIBLE)—Continued

	1st offense	2d offense	Subsequent offense
Tennessee	Commitment to a State-operated drug treatment facility or community mental health center or, at the discretion of the court, up to 11 months, 29 days and/or $1,000.	0 to 2 years	
Texas	2 years to life	10 years to life	
Utah	0 to 6 months and/or $299	0 to 1 year and/or $1,000	0 to 5 years in penitentiary.
Vermont	0 to 6 months and/or $500	0 to 2 years and/or $2,000	
Virginia	0 to 12 months and/or $1,000	0 to 12 months and/or $10,000 or 2 to 20 years and/or $10,000.	
Washington	Less than 40 grams, 30 days; Over 40 grams, 0 to 5 years and/or $10,000.	0 to 10 years and/or $10,000	
West Virginia	90 days to 6 months and/or $1,000 [3]		
Wisconsin	0 to 1 year in county jail and/or $500		
Wyoming	0 to 6 months and/or $1,000	0 to 6 months and/or $1,000	0 to 5 years and/or $5,000.
District of Columbia	0 to 1 year and/or $100 to $1,000	0 to 10 years and/or $500 to $5,000	
B. POSSESSION WITH INTENT TO SELL			
Alabama	No such offense		
Alaska	0 to 25 years and/or $20,000	0 years to life and/or $25,000	0 years to life and/or $25,000.
Arizona	2 to 10 years	5 to 15 years	10 years to life.
Arkansas	0 to 5 years and/or $15,000	0 to 10 years and/or $30,000	
California	2 to 10 years	5 to 15 years	10 years to life.
Colorado	2 to 15 years and/or $10,000	5 to 20 years and/or $10,000	1 to 30 years and/or $10,000.
Connecticut	5 to 10 years and/or $3,000	10 to 15 years and/or $5,000	25 years.
Delaware	5 to 10 years and/or $1,000 to $10,000	7 to 15 years and/or $1,000 to $10,000	
Florida	No such offense		
Georgia	do		
Hawaii	0 to 10 years and/or $1,000	0 to 20 years and/or $2,000	
Idaho	0 to 5 years and/or $15,000		
Illinois [2]	Less than 2.5 grams, 6 mo.; 2.5 to 10 grams, 1 to 2 years; 10 to 30 grams, 1 to 3 years; 30 to 500 grams, 1 to 4 years; over 500 grams, 1 to 7 years.	10 to 30 grams, 1 to 4 years; 30 to 500 grams, 2 to 8 years; over 500 grams, 2 to 10 years.	
Indiana	5 to 20 years and/or $2,000	5 years to life and/or $5,000	
Iowa	0 to 5 years and/or $1,000	0 to 15 years and/or $3,000	
Kansas	1 to 3 years	1 to 3 years	
Kentucky	0 to 5 years and/or $5,000	0 to 10 years and/or $10,000	
Louisiana	0 to 10 years and/or $15,000	0 to 20 years and/or $30,000	
Maine	No such offense		
Maryland	0 to 5 years and/or $15,000	0 to 10 years and/or $30,000	
Massachusetts	5 to 10 years	10 to 25 years	
Michigan	No such offense		
Minnesota	0 to 5 years and/or $15,000	1 to 10 years and/or $30,000	
Mississippi	0 to 4 years and/or $2,000	0 to 8 years and/or $2,000	
Missouri	5 years to life	10 years to life	
Montana	No such offense		
Nebraska	0 to 6 months in county jail or 1 to 5 years in prison and/or $2,000	0 to 12 months in county jail or 2 to 10 years in prison and/or $4,000.	
Nevada	No such offense		
New Hampshire	0 to 10 years and/or $2,000	0 to 15 years and/or $5,000	
New Jersey	0 to 5 years and/or $15,000	0 to 10 years and/or $30,000	
New Mexico	No such offense		
New York	1 to 7 years		
North Carolina	0 to 5 years and/or $1,000	5 to 10 years and/or $2,000	15 years to life and/or $3,000.
North Dakota	0 to 10 years and/or $5,000	0 to 20 years and/of $10,000	
Ohio	10 to 20 years	15 to 30 years	20 to 40 years.
Oklahoma	2 to 10 years and/or $5,000	4 to 20 years and/or $10,000	
Oregon	No such offense		
Pennsylvania	No such offense		
Rhode Island	0 to 20 years	0 to 30 years	0 to 40 years.
South Carolina	0 to 5 years and/or $5,000	0 to 10 years and/or $10,000	
South Dakota	0 to 10 years and/or $5,000	0 to 15 years and/or $10,000	0 to 40 years and/or $20,000.
Tennessee	1 to 5 years and/or $3,000	2 to 10 years and/or $6,000	
Texas	No such offense		
Utah	0 to 5 years and/or $5,000		
Vermont	25 cigarettes or more, 0 to 2 years and/or $2,000; 100 cigarettes or more, 0 to 5 years and/or $5,000.		
Virginia	1 to 40 years and/or $25,000	10 years to life and/or $50,000	
Washington	0 to 10 years and/or $10,000		
West Virginia	1 to 5 years and/or $15,000	2 to 10 years and/or $15,000	
Wisconsin	0 to 5 years and/or $5,000	0 to 10 years and/or $5,000	
Wyoming	0 to 10 years and/or $10,000	0 to 20 years and/or $20,000	
District of Columbia	No such offense		
C. SALE			
Alabama	5 to 20 years and/or $20,000	10 to 40 years and/or $20,000	
Alaska	0 to 25 years and/or $20,000	0 years to life and/or $25,000	
Arizona	2 to 10 years	5 to 15 years	10 years to life.
Arkansas	0 to 5 years and/or $15,000	0 to 10 years and/or $30,000	
California	5 years to life		10 years to life.
Colorado	2 to 15 years and/or $10,000	5 to 20 years and/or $10,000	10 to 30 years and/or $10,000.
Connecticut	5 to 10 years and/or $3,000	10 to 15 years and/or $5,000	25 years.
Delaware	5 to 10 years and/or $1,000 to $10,000	7 to 15 years and/or $1,000 to $10,000	
Florida	0 to 10 years and/or $10,000	0 to 20 years and/or $20,000	20 years to life and/or $20,000.
Georgia	0 to 2 years and/or $2,000	0 to 5 years and/or $5,000	
Hawaii	0 to 10 years and/or $1,000	0 to 20 years and/or $2,000	
Idaho	0 to 5 years and/or $15,000	0 to 10 years and/or $15,000	
Illinois [1]	Less than 2.5 grams, 6 months; 2.5 to 10 grams, 1 to 2 years; 10 to 30 grams, 1 to 3 years; 30 to 500 grams, 1 to 4 years; over 500 grams, 1 to 7 years.		
Indiana	5 to 20 years and/or $2,000	20 years to life and/or $5,000	
Iowa	0 to 5 years and/or $1,000	0 to 15 years and/or $3,000	
Kansas	1 to 3 years	1 to 3 years	
Kentucky	0 to 5 years and/or $5,000	0 to 10 years and/or $10,000	
Louisiana	0 to 10 years and/or $15,000	0 to 20 years and/or $30,000	
Maine	1 to 5 years	3 to 10 years	
Maryland	0 to 5 years and/or $15,000	0 to 10 years and/or $30,000	
Massachusetts	5 to 10 years	10 to 25 years	
Michigan	20 years to life	1 to 10 years and/or $30,000	
Minnesota	0 to 5 years and/or $15,000	1 to 10 years and/or $30,000	
Mississippi	0 to 4 years and/or $2,000	0 to 8 years and/or $2,000	
Missouri	5 years to life	10 years to life	
Montana	1 year to life		
Nebraska	0 to 6 months in jail or 1 to 5 years in prison and/or $2,000 and/or $5,000.	0 to 1 year in jail or 2 to 10 years in prison and/or $4,000	
Nevada	By minor, 1 to 20 years with possible probation; Adult, 1 to 20 years and/or $5,000.	Life, no parole, and/or $5,000 (no difference for minors).	
New Hampshire	0 to 10 years and/or $2,000	0 to 15 years and/or $5,000	
New Jersey	0 to 5 years and/or $15,000	0 to 10 years and/or $30,000	
New Mexico	1 to 5 years	2 to 10 years	
New York	1 to 15 years		
North Carolina	0 to 5 years and/or $1,000	5 to 10 years and/or $2,000	15 years to life and/or $3,000.

Footnotes at end of table.

	1st offense	2d offense	Subsequent offense
North Dakota	0 to 10 years and/or $5,000	0 to 20 years and/or $10,000	
Ohio	20 to 40 years		
Oklahoma	2 to 10 years and/or $5,000	4 to 20 years and/or $10,000	
Oregon	0 to 1 year and/or $5,000 or 0 to 10 years and/or $5,000		
Pennsylvania	5 to 10 years separate or solitary confinement and $5,000	10 to 20 years separate or solitary confinement and $10,000.	Life and/or $30,000
Rhode Island	0 to 40 years maximum		
South Carolina	0 to 5 years and/or $5,000	0 to 10 years and/or $10,000	5 to 20 years and/or $20,000.
South Dakota	0 to 10 years and/or $5,000	0 to 15 years and/or $10,000	0 to 40 years and/or $20,000.
Tennessee	1 to 5 years and/or $3,000	2 to 10 years and/or $6,000	
Texas	5 years to life	10 years to life	
Utah	0 to 5 years and/or $5,000		10 years to life.
Vermont	0 to 5 years and/or $10,000	10 to 25 years and/or $25,000	
Virginia	1 to 40 years and/or $25,000	10 years to life and/or $50,000	
Washington	0 to 10 years and/or $10,000	0 to 10 years and/or $10,000	
West Virginia	1 to 5 years and/or $15,000	2 to 10 years and/or $15,000	
Wisconsin	0 to 5 years and/or $5,000	0 to 10 years and/or $5,000	
Wyoming	0 to 10 years and/or $10,000	0 to 20 years and/or $20,000	
District of Columbia	0 to 1 year and/or $100 to $1,000	0 to 10 years and/or $500 to $5,000	
D. SALE TO A MINOR			
Alabama	10 to 40 years and/or $20,000		
Alaska	0 years to life and/or $25,000		
Arizona	10 years to life		15 years to life.
Arkansas	0 to 10 years and/or $15,000	0 to 20 years and/or $30,000	
California	10 years to life		Do.
Colorado	No such offense		
Connecticut	do		
Delaware	7 to 15 years and/or discretionary fine	15 to 25 years and/or discretionary fine	
Florida	10 years to life and/or $10,000	10 years to life and/or $20,000	20 years to life and/or $20,000.
Georgia	0 to 5 years and/or $5,000	0 to 10 years and/or $10,000	
Hawaii	0 to 20 years and/or $1,000	Life and/or $2,000	Life and/or $2,000.
Idaho	0 to 10 years and/or $15,000	0 to 20 years and/or $15,000	
Illinois[2]	Twice the minimum for sale		
Indiana	No such offense		
Iowa	0 to 7½ years and/or $1,000	0 to 22½ years and/or $3,000	
Kansas	No such offense		
Kentucky	0 to 10 years and/or $20,000	0 to 20 years and/or $40,000	
Louisiana	0 to 20 years and/or $30,000	0 to 40 years and/or $60,000	
Maine	For sale to people 18 to 20, 2 to 6 years to people under 18, 3 to 8 years.	4 to 10 years	
Maryland	5 to 20 years and/or $1,000		
Massachusetts	10 to 25 years	20 to 50 years	
Michigan	20 years to life		
Minnesota	0 to 10 years and/or $15,000	0 to 20 years and/or $30,000	
Mississippi	0 to 8 years and/or $2,000	0 to 16 years and/or $4,000	
Missouri	5 years to life or death	10 years to life or death	
Montana	1 year to life		
Nebraska	No such offense		
Nevada	If sold by minor, 1 to 20 years with possible probation; by adult, life and/or $5,000.	Life, no parole	
New Hampshire	0 to 10 years and/or $2,000	0 to 15 years and/or $5,000	
New Jersey	0 to 10 years and/or $15,000	0 to 20 years and/or $30,000	
New Mexico	2 to 10 years	10 to 50 years	
New York	1 to 25 years		
North Carolina	10 years to life and/or $3,000		
North Dakota	0 to 20 years and/or $5,000	0 to 40 years and/or $10,000	
Ohio	30 years to life		
Oklahoma	4 to 20 years and/or $10,000	8 to 40 years and/or $20,000	
Oregon	No such offense		
Pennsylvania	do		
Rhode Island	0 years to life		
South Carolina	0 to 10 years and/or $10,000		
South Dakota	0 to 20 years and/or $5,000	0 to 30 years and/or $10,000	0 to 80 years and/or $20,000.
Tennessee	2 to 10 years and/or $6,000	4 to 20 years and/or $12,000	
Texas	5 years to life	10 years to life or death	
Utah	0 to 10 years and/or $5,000		
Vermont	0 to 5 years and/or $10,000	10 to 25 years and/or $25,000	
Virginia	5 to 40 years and/or $50,000		
Washington	0 to 10 years and/or $10,000	0 to 20 years and/or $10,000	
West Virginia	2 to 10 years and/or $15,000	2 to 10 years and/or $15,000	
Wisconsin	0 to 15 years	30 years to life	Life.
Wyoming	0 to 20 years and/or $10,000	0 to 40 years and/or $20,000	
District of Columbia	No such offense		

[1] May be expunged.
[2] Effective Aug. 16, 1971.
[3] May be expunged; less than 15 grams shall be expunged.

TABLE IV.—MARIHUANA PROHIBITION CITATIONS

	Antimarihuana statute citation	Most recent amendment
Alabama	Ala. Code Tit. 22, sec. 232–258 (1958), as amended, (Supp. 1969).	1969
Alaska	Alaska Stat. sec. 17.10.010–.240 (1953), as amended, (Supp. 1969).	1968
Arizona	Ariz. Rev. Stat. Ann. sec. 36–1001 to –1002.10, –1017 (Supp. 1969).	1961
Arkansas	Ark. Stat. Ann. sec. 82–1001 to –1020 (1937), as amended, (Supp. 1969).	1971
California	Cal. Health and S. Code sec. 11530–11533 (West 1964), as amended, (Supp. 1970).	1968
Colorado	Colo. Rev. Stat. Ann. sec. 48–5–1 to –21 (1963)	1963
Connecticut	Conn. Gen. Stat. Ann. sec. 19–443 to –485 (1958). Conn. Pub. Act. No. 753, sec. 1–42 (1969).	1969
Delaware	Del. Code Ann. Tit. 16, sec. 4701–4722 (1953), as amended, (Supp. 1968).	1971
Florida	Fla. Stat. Ann. sec. 398.01–.24 (1959), *as amended*, (Supp. 1969)	1971
Georgia	Ga. Code Ann. sec. 79A–802 to –822, –9910, –9911 (Supp. 1969)	1971
Hawaii	Hawaii Rev. Laws sec. 329–1 to –32 (1968)	1969
Idaho	Idaho Code Ann. sec. 37–2701 to –3321 (Supp. 1969)	1971
Illinois	Ill. Ann. Stat. Ch. 38, sec. 22–1 to –53 (Smith-Hurd 1964), *as amended*, (effective Aug. 16, 1971).	1971
Indiana	Ind. Ann. Stat. sec. 10–3519 to –3552 (1956), *as amended*, (Supp. 1970).	1971
Iowa	Iowa Code Ann. sec. 204.1–.23 (1969), *as amended*, (Supp. 1970).	1971
Kansas	Kan. Stat. Ann. sec. 65–2501 to –2522 (1964)	1971
Kentucky	Ky. Rev. Stat. Ann. sec. 218.010–.245 (1969)	1970
Louisiana	La. Rev. Stat. Ann. sec. 40.961–.984 (1965)	1970
Maine	Me. Rev. Stat. Ann. Tit. 22, sec. 2381–2386 (Supp. 1970)	1969
Maryland	Md. Ann. Code Art. 27, sec. 276–302 (1957)	1970
Massachusetts	Mass. Gen. Laws Ann. Ch. 94, sec. 197–217E (1958), *as amended*, (Supp. 1970).	1958
Michigan	Mich. Comp. Laws Ann. sec. 335.51–.77 and 335.151–.154 (1967), *as amended*, (Supp. 1970).	1952
Minnesota	Minn. Stat. Ann. sec. 618.01–.25 (1964), as amended, (Supp. 1970).	1971
Mississippi	Miss. Code Ann. sec. 6844–6869 (1942), as amended, (Supp. 1969).	1971
Missouri	Mo. Rev. Stat. sec. 195.010–.210 (1970)	1971
Montana	Mont. Rev. Codes Ann. sec. 54–129 to –138 (Supp. 1969)	1971
Nebraska	Ch. 197, (1969) Neb. Acts	1971
Nevada	Nev. Rev. Stat. sec. 453.010–.240 (1967)	1971
New Hampshire	Ch. 421, (1969) N.H. Laws	1971

Antimarihuana statute citation		Most recent amendment
New Jersey	N.J. Rev. Stat. sec. 24.18-1 to -47 (1937), as amended, (Supp. 1969).	1971
New Mexico	N.M. Stat. Ann. sec. 54-7-1 to -51 (1962), as amended, (Supp. 1969).	1965
New York	N.Y. Penal Law sec. 220.00-.95 (1967), as amended, (Supp. 1970).	1971
North Carolina	N.C. Gen. Stat. sec. 90-86 to -113 (1965), as amended, 1969).	1969
North Dakota	N.D. Cent. Code sec. 19-03-01 to -32 (1960), as amended, (Supp. 1969).	1971
Ohio	Ohio Rev. Code sec. 3719.01-3719.99 (Page 1953), as amended, (Supp. 1961).	1970
Oklahoma	Okla. Stat. Ann. Tit. 63, sec. 451-457 (1961)	1971
Oregon	Ore. Rev. Stat. sec. 474.010-.990 (1969)	1971
Pennsylvania	Pa. Stat. Tit. 35, sec. 780 (1964), as amended, (Supp. 1970)	1961
Rhode Island	R.I. Gen. Laws Ann. sec. 21-28-1 to 21-28-68 (1956), as amended, (Supp. 1969).	1962
South Carolina	S.C. Code Ann. sec. 32-1461 to -1495 (1962), as amended, (Supp. 1969).	1971
South Dakota	S.D. Comp. Laws Ann. sec. 39-17-44 to -155 (Supp. 1970)	1971
Tennessee	Tenn. Code Ann. sec. 52-1301 to -1323 (1966), as amended, (Supp. 1969).	1971
Texas	Tex. Pen. Code Art. 7256 (1960), as amended, (Supp. 1969-70).	1969
Utah	Utah Code Ann. sec. 58-13a-1 to -44 (1963), as amended, (Supp. 1969).	1971
Vermont	Vt. Stat. Ann. Tit. 18, sec. 4201-25 (1968), as amended, (Supp. 1970).	1969
Virginia	Va. Code Ann. sec. 54-524.1 to .109 (Supp. 1970)	1971
Washington	Wash. Rev. Code Ann. sec. 69.40.1-69.40.100	1969
West Virginia	W. Va. Code sec. 16-8A-1 to -24 (1966)	1971
Wisconsin	Wis. Stat. Ann. sec. 161.01 to .275 (1957), as amended, (Supp. 1969).	1969
Wyoming	Wyo. Stat. sec. 35-348 to -371 (1957), as amended, (Supp. 1969).	1971
District of Columbia	D.C. Code Ann. sec. 33-401 to -425 (1968)	1966

COVINGTON & BURLING,
Washington, D.C., July 29, 1971.

Hon. RAYMOND P. SHAFER,
Commission on Marihuana and Drug Abuse, Washington, D.C.

DEAR GOVERNOR SHAFER: In response to your letter to the American Bar Association requesting its views on the legal status of marihuana, the President of the ABA has said that each Committee should make available to you any pertinent material it may believe to be helpful. Accordingly, I am attaching 20 copies of a Resolution and Report of the Committee on Drug Abuse of the ABA Section of Criminal Law, which was unanimously adopted after several months of study and work by the Committee members.

As you will appreciate, this represents only the views of the Committee, of which I am the outgoing Chairman, and has not been reviewed by the Section or the Association. It is our understanding that other Committees have already sent you their views, or are in the process of doing so. The new Chairman of the Committee may also wish to consider these matters with his Committee further, and forward additional material to you.

Should you wish any additional information, or if we can be of any further assistance, please let the Committee know.

Sincerely yours,

PETER BARTON HUTT.

LEGAL STATUS OF MARIHUANA

The Committee on Drug Abuse of the American Bar Association's Section of Criminal Law adopts the following resolution in response to the request of the Commission on Marihuana and Drug Abuse, appointed by the President pursuant to the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513), for its position on marihuana:

Resolved, That because the individual and social costs resulting from imposition of penalties for simple possession of marihuana substantially outweigh the harm caused to the individual and society as a consequence of the use of marihuana, Federal, State, and Local penalties for simple possession of marihuana should be eliminated; and

Be it further resolved, That casual distribution of a small amount of marihuana be handled in the same manner as simple possession; and

Be it further resolved, That the Commission on Marijuana and Drug Abuse consider the feasibility of licensing the distribution of marihuana, in lieu of imposing penalties, in order better to control its use; and

Be it further resolved, That a uniform national policy on marihuana be developed by conforming State and Local penalties to the Federal law and by eliminating application of ancillary State and Local statutory provisions—such as possession of the implements of crime, presence in or maintaining an illegal establishment, loitering and vagrancy—to the possession and distribution of marihuana; and

Be it further resolved, That all information provided by drug abusers to physicians and others engaged in drug abuse counseling should be protected as confidential.

REPORT

The Commission on Marihuana and Drug Abuse, appointed by the President pursuant to Section 601 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, requested a report on marihuana by the American Bar Association. The President of the Association, in his response, requested this and other Committees to furnish relevant information to the Commission.

I. Background

Under the Comprehensive Drug Abuse Prevention and Control Act of 1970, which became effective on May 1, 1971, simple possession (*i.e.*, possession for personal use, without intention to distribute or dispense) of marihuana is punishable by a term of imprisonment of not more than one year, a fine of not more than $5,000, or both. Trafficking (*i.e.*, manufacturing, distributing, dispensing, or possession with intent to manufacture, distribute, or dispense) in marihuana is punishable by a term of imprisonment of not more than five years, a fine of not more than $15,000, or both, except that distribution of a small amount of marihuana for no remuneration is treated as simple possession rather than as trafficking. Second or subsequent offenses carry double these penalties. It was recognized in the legislative history of this Act that the classification of, and penalties for, marihuana were to be reconsidered on the basis of the Report of the Commission on Marihuana and Drug Abuse which is to be submitted to the President and the Congress within one year.

The recent Report to the Congress from the Secretary of the Department of Health, Education, and Welfare on "Marihuana and Health" states that:

"Virtually all of the American data indicate that use of marihuana has rapidly increased over the past several years. While the number of those who have tried the substance at some point in their lives remains a minority of the population it is continuing to increase rapidly. In some high school or college settings it is virtually certain that a majority have at least tried marihuana. By the end of 1970 about one college student in seven was using it on a weekly or more frequent basis. High School use has generally lagged behind that of colleges and universities, although in areas of high use as many as a third to a half have experimented with it." (p. 6)

It is estimated that 20 million Americans have used marihuana at least once, and probably several million use it periodically. Marihuana use has thus become a matter of major social concern, and is no longer merely a medical or legal problem.

The recent Report of the Secretary of HEW on "Marihuana and Health" reaches the following medical conclusions:

"Physiological changes accompanying marihuana use at typical levels of American social usage are relatively few."

"Neurological examinations consistently reveal no major abnormalities during marihuana intoxication."

"From the standpoint of lethality, cannabis products must be counted among the safer of the drugs in widespread use. Death directly attributable to the drug's effects is extremely rare even at very high doses."

"Acute psychotic episodes precipitated by marihuana intoxication have been reported by a number of investigators. These appear to occur infrequently, usually at high dosages, but may occur, even at levels of social usage, in particularly susceptible individuals."

"There is no evidence to suggest that marihuana use in humans affects fetal development."

"If one confines his use of the term to a description of the present American scene one must conclude that present evidence does not permit the establishment of a causal relationship between marihuana use and the amotivational syndrome."

"It is generally conceded that marihuana use does not necessarily lead directly to the use of other drugs." (p. 16)

On the basis of a separate study, the National Commission on Reform of Federal Criminal Laws took the view that:

". . . available evidence does not demonstrate significant deleterious effects of marihuana in quantities ordinarily consumed; that any risks appear to be significantly lower than those attributable to alcoholic beverages; that the social cost of criminalizing a substantial segment of otherwise law abiding citizenry is not justified by the, as yet, undemonstrated harm of marihuana use; and that jail penalties for use of marihuana jeopardize the credibility and therefore the deterrent value of our drug laws with respect to other, demonstrably harmful drugs." (p. 255)

Thus, while marihuana is not harmless, the clear majority of responsible scientific opinion is that it appears to be no more dangerous than alcohol, and not as dangerous as some other drugs, such as heroin.

II. Simple possession of marihuana

It is important that the public, and particularly young people, understand the relative dangers involved in the use of all drugs, and especially of controlled drugs. It must repeatedly be emphasized that not all controlled drugs are equally dangerous either to the individual or to the community as a whole. Nowhere can this educational function be carried out more directly than in the sanctions applied to simple possession of these drugs.

Under the circumstances of substantial public usage of marihuana, combined with evidence of relatively few deleterious effects to the individual or to society, the criminal sanctions imposed for simple possession of this drug should be eliminated. The harm caused by criminalizing a large segment of the population far outweighs any harm that can be predicted from its increase in use resulting from elimination of such penalties. The country is not prepared to impose a penalty for simple possession of marihuana on up to 20 million citizens who have used this drug, and selective enforcement or a total lack of enforcement of the present law is reprehensible and indefensible.

III. Casual distribution of marihuana

Section 401(b)(4) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 provides that casual distribution of a small amount of marihuana, for no remuneration, shall be handled the same as simple possession rather than as trafficking. The Department of Justice, which agreed to inclusion of this provision in the Federal law, has described its intended meaning as follows:

"The language 'distributes a small amount of marihuana for no remuneration' . . . is intended to cover the type of situation where a college student makes a quasi-donative transfer of one or two marihuana cigarettes and receives 50 cents or a dollar in exchange to cover the cost of the marihuana. Transfers of larger quantities in exchange for larger amounts of money, or transfers for profit, are not intended to be covered by this section, but rather are to be covered by . . . unlawful distribution." (Summary and Analysis, H.R. 17463, attached to letter from Deputy Attorney General Kleindienst to Hon. Wilbur Mills, July 2, 1970).

For the same reasons for which this provision was included in the Controlled Substances Act, casual distribution of marihuana should continue to be handled in the same way as simple possession, and not as trafficking.

IV. Distribution of marihuana

Strong arguments can be made in favor of regulating the distribution of marihuana rather than prohibiting it. Prohibition has been such a complete failure as to make a mockery of the law. The current Federal enforcement policy—under which it will handle only major trafficking cases—is widely known, and contributes to disrespect for the law. Prohibition also forces users to associate with the criminal world, in order to purchase it. Strict control through government regulation would permit quality control and might, by reducing its glamor, actually decrease its current popularity. The Committee has not fully studied the feasibility of handling the problem in this manner, however, and therefore recommends that the Commission itself undertake to study the practical aspects and consequences of this possibility.

V. State and local marihuana laws

State and municipalities throughout the country have developed, over the years, a wide variety of penal measures designed to deal with the growing problem of drug abuse. The State penalty for simple possession of marihuana ranges from a low of 7 days imprisonment in Nebraska to a high of life imprisonment in Texas, for a first offender. In some jurisdictions, marihuana offenses are handled under the additional statutory provisions dealing with narcotic vagrancy, possession of the implements of crime, presence in an illegal establishment, and even loitering and disorderly conduct. Some statutes require parents to inform upon their children or suffer criminal penalties themselves. Statutes which prohibit any person from being present in a place where marihuana is kept or used criminalize virtually all high school and college students. Under current Federal policy, moreover, non-trafficking offenses involving marihuana are left to State officials for enforcement.

A uniform national policy with respect to marihuana is extremely important. The penalties under State and Local laws must be no greater than those under Federal law for the same offense, and the substantative offenses should conform to the Federal law. This necessarily means eliminating application of the many and varied ancillary offenses mentioned above to the possession and distribution of marihuana.

Finally, there is a wide variety of Federal, State, and Local statutory and regulatory provisions governing the responsibility of physicians and others engaged in drug abuse counseling either to keep the information they obtain in confidence, or to divulge it to law enforcement officials or others in authority. The failure to maintain such information in confidence would seriously undermine education, treatment, and rehabilitation efforts. If a student cannot confide in his school physician or counselor, without fear that the information he provides will be disclosed, there is little or no hope that those who need and wish to have information and assistance about drug abuse will be willing to seek and obtain it. It is therefore critical that the Commission on Marihuana and Drug Abuse review the present statutes and regulations governing confidentiality of information of this type, and formulate a national policy under which information received in confidence may not be divulged.

VI. Conclusion

Elimination of the penalties for simple possession of marihuana, perhaps accompanied by strict licensing of the distribution of this drug, would have substantial social benefits, and is a realizeable goal that could unite all segments of society. While many of the social and scientific facts about marihuana must remain unknown or uncertain at this time, there is now sufficient information available to take at least this initial step toward resolving one of the major social problems that confronts the country.

WHITE PLAINS, N.Y.,
July 9, 1971.

HON. RAYMOND P. SHAFER,
Chairman, Commission of Marijuana and Drug Abuse, Washington, D.C.

DEAR GOVERNOR SHAFER: By his letter to you of May 7, 1971, Edward L. Wright, Esq., President of the American Bar Association, stated that the Chairman of committees of the Association submit their views to the Commission on Marijuana and Drug Abuse.

As Chairman of the Committee on Alcoholism and Drug Reform of the ABA Section on Individual Rights and Responsibilities I submit herewith the report of my committee. Of the fourteen members of the committee one, Professor G. Joseph Vining of the Michigan University School of Law, chose not to join in the majority report but concurred in its basic recommendations. There was no dissent.

I trust that the committee's views will be of some assistance to the Commission.

Very truly yours,

GERALD STERN.

STATEMENT OF THE COMMITTEE ON ALCOHOLISM AND DRUG REFORM OF THE AMERICAN BAR ASSOCIATION'S SECTION ON INDIVIDUAL RIGHTS AND RESPONSIBILITIES TO THE COMMISSION ON MARIJUANA AND DRUG ABUSE

The Committee on Alcoholism and Drug Reform of the American Bar Association's Section on Individual Rights and Responsibilities is pleased to have this opportunity to offer its views to the Commission on Marijuana and other Dangerous Drugs. Our committee has a continuing interest in laws governing the possession, use and sale of alcohol and drugs. As lawyers and as members of the A.B.A. Section on Individual Rights and Responsibilities we feel obliged to consider the effect of these laws on individual freedom, as well as on the ability of the courts and other agencies of criminal justice to enforce the entire body of criminal law.

The present untenable status of laws prohibiting possession and sale of marijuana has been highlighted by published reports of widespread use of the drug and sentencing policies which vary from jurisdiction to jurisdiction and sometimes from case to case. In some jurisdictions ten and fifteen-year jail sentences have been rendered for the possession of a single marijuana cigarette, while in other jurisdictions prosecutors and judges have applied their best talents in attempting to avoid stigmatizing the many middle-class youths being charged for these crimes. Highly publicized arrests of the sons and daughters of very prominent people in industry, education and government has helped call attention to the widespread use of the drug. Arrests for violating drug laws have resulted in a variety of petty-offense convictions including loitering, public intoxication, and disorderly conduct. Cases against other youths simply have been dismissed, sometimes after referral to some probation-like program.

There is a discernible trend toward reduction of penalties, and there seems to be little doubt that within the near future most marijuana arrests will be for petty offenses. A former Director of the National Institute of Mental Health, Dr. Stanley F. Yolles, testified before a congressional committee in 1969 that penalties "are strict enough to ruin the life of a first-time offender, with total disregard for medical and scientific evidence of the properties of the drug or its effects." He observed: "I know of no clearer instance in which the punishment for an infraction of the law is more harmful than the crime." Classification of marijuana with "hard" drugs with attendant severe penalties has been criticized by the President's Advisory Commission on Narcotic and Drug Abuse (1963), the President's Commission on Law Enforcement and Administration of Justice (1967), and the National Commission on the Causes and Prevention of Violence (1969). Significantly, the National Commission on Reform of Federal Criminal Laws recommended that possession of marijuana be classified as an infraction, punishable by a maximum sentence of probation, unconditional discharge, a $500 fine, or both probation and a $500 fine. This Commission undoubtedly will want to add to the other concerned voices speaking out for these crucial reforms and seeking reduced penalties for the possession of marijuana.

Our Committee urges this Commission to recommend the removal of all criminal penalties for the possession of marijuana. We suggest that the distribution of marijuana be regulated along the lines presently employed for the sale of alcohol. Licensing provisions should be used to ensure that the drug is not sold to children, and that other standards are met. If a less drastic reform is preferred we would urge the Commission to retain criminal penalties (in reduced form) only for selling (for profit). There is simply no basis for employing the criminal sanction, with its threat of imprisonment, against people who, at the very worst, are harming themselves.

As a means of clarifying our position it is important to note that we acknowledge marijuana to be a dangerous drug. Given the dearth of information on the effects of prolonged excessive usage of marijuana, government has a responsibility to place the label of "dangerous drug" on marijuana and to take reasonable steps in regulating its distribution. Drugs, by definition, are dangerous. Aspirin is dangerous—deadly, in fact, if taken in large dosage at one time, and extremely harmful if taken excessively over any substantial period. We share in the nation's

concern that almost any amount of marijuana may someday prove to be harmful. We are cognizant of the high percentage of traffic fatalities associated with alcohol consumption and would dread seeing more automobile drivers "high" on any drug.

A comparison of alcohol and marijuana, their effects, dangers, and the legal restraints imposed on their use has been offered by proponents of what has been called "legalization" of marijuana. The legal handling of these two drugs (alcohol also is a drug) presents a graphic illustration of inconsistency within the criminal law. The possession (and use) of alcohol is legal although it has been shown to be: More dangerous than marijuana to health (heavy drinking is associated with brain damage, cirrhosis, heart disease and other illnesses), physically addictive (if untreated, delirium tremens, the distressing withdrawal symptoms of alcoholics may lead to death), and a causal factor in serious crime (consumption of alcohol is known to have preceded many homicides, assaults, rapes and other violent crimes), and in traffic fatalities (in more than half of all serious traffic accidents the drivers were under the influence of alcohol).

Opponents of "legalization" of marihuana, while apparently conceding that alcohol presents greater dangers, appear not to have been persuaded by the alcohol analogy. As lawyers we are sensitive to anomalies in the law and, particularly, in the criminal law which severely punishes people for certain acts while, at the same time, sanctions less dangerous but similar acts. The laws governing the use of alcohol, cigarettes, and marihuana play a disproportionate role in enlarging the generation gap. They are indefensible when considered together, and represent perhaps the most often-cited example of hypocrisy in our nation. Any fair study of this area will demonstrate the failure of law enforcement to stem the increasing use of marihuana, and the devastating impact that marihuana laws have on our society.

An estimated 12 million Americans regularly use this drug. Many more—perhaps 8 million—have experimented with it and rejected it. The most conservative estimates are that one of every three college students has used it at one time or another. Thus the laws have the effect of making criminals out of a substantial proportion of the otherwise law-abiding American population.

Those who argue that marihuana use "leads" to heroin addiction ignore both the evidence and the more logical relation between marihuana laws and heroin addiction. Even the President's Commission on Crime and the Administration of Justice observed that only a small percentage—estimated at five percent—of marihuana users eventually turn to heroin. No serious argument can be made in good faith that if marihuana were wiped off the face of this earth the heroin problem would be abated. The people who now turn from marihuana to heroin would somehow find the "harder" drug. Ironically, if the stepping stone theory has any merit it is that people who use marihuana are forced to deal with sellers whose wares are not limited to the relatively (low profit) softer drugs. It is a further irony that perhaps the primary reason given to retain present laws is the fear that the increased accessibility of the drug will prompt more people to use it; actually, by forcing marihuana users to buy from sellers anxious to sell other (higher profit) drugs, we are making these harder drugs more accessible.

In their present form marijuana laws hamper sound drug education effects. Some drug users may be ignoring the warnings of the danger of heroin because of their favorable experiences with marijuana. By lumping marijuana and heroin together we have succeeded in impairing the law's credibility and turning some people into heroin addicts who might have otherwise considered the message of a statute outlawing the possession of a drug.

Increasing attention is being given to the adverse effects—on violators, on our conception of law and on the already overwhelmed criminal justice system—of overextending the criminal laws. Disrespect and, more significantly, alienation are generated by laws such as those relating to the use of marijuana, at the very time when the hue and cry from public officeholders and the vocal public is for "respect" for law and for the institutions of government. An assessment of the laws relating to marijuana, alcohol, and cigarettes does not promote respect. Neither does the sharp variation in sentencing practices—brought about, in part, by such incongruities in law which permit one state to impose seven day's imprisonment and another to impose a life sentence for the same (marijuana) offense. Nor, incidentally, is respect for law promoted by the widespread flouting of marijuana laws, sometimes in public, in full view of the police.

Every segment of the criminal justice system is overworked. The police fail miserably at apprehending dangerous criminals, the courts resemble crowded market places, and the prisons dehumanize and harden convicted offenders. Yet we insist upon retaining a variety of victimless crimes which accounts for almost half the arrests and prosecutions in the nation.

As Professor Packer has said in "The Limits of the Criminal Sanction" (Stanford, 1968):

"We simply cannot have all the things we want, crime prevention included . . . every trivial, imaginary or otherwise dubious crime that is removed from the list of criminal offenses represents the freeing of substantial resources to deal more effectively with the high-priority needs of the criminal justice system."

These words apply equally to marijuana use and to public drunkenness, to consensual sex offenses and to vagrancy. This Commission can make a contribution in one area. It can strike an important blow for good sense as well as for good government. Our Committee urges it to advise the President that the proven dangers associated with the use of marijuana in no way justify any criminal penalties.

Respectfully submitted,

GERALD STERN,
Chairman.

STATEMENT OF GOV. RICHARD B. OGILVIE OF ILLINOIS

Americans have tended to construct a pervasive culture of drugs, a mass syndrome of escape by pill or by alcohol. The use of heroin, amphetamines, and marijuana within the youth culture is only one element, albeit a truly grave one, in the crisis. Who is the more drug dependent and in need of help—the young man who is arrested for possession of marijuana, or his mother who must take a drink or a tranquilizer to ameliorate the shock?

Major progress against drug abuse will be difficult to achieve. We are faced with the prospect of dealing with a vast, complex problem, the origins of which have grown deep into our culture.

Much of our uncertainty comes from the realization that drug abuse is deeply rooted in anxieties which spring from all the things that are wrong with our society: too-rapid change, the bigness and impersonality of our institutions, deterioration of the family, the decline of religion, shifting values, hypocrisy, disregard for justice. The junkies and drug freaks are witnesses to the worst aspects of our civilization. In the end, we may be able to do more about drug abuse by addressing the challenges of social justice than through specific drug abuse efforts.

Yet we cannot afford to leave the drug problem to more general attempts at social reform, for drug abuse has been greatly intensified by our technological civilization, and it requires a specialized response.

I believe that in Illinois we have taken important steps to provide that response. In our treatment program, which is respected throughout the world, we have made a reality of treating narcotic addicts not merely as criminals but as human beings with a disease requiring treatment and rehabilitation. Our prisons have established a strong program of drug rehabilitation. The Illinois Law Enforcement Commission helped launch Project Straight Dope, a national model of effective drug abuse advertising, and the commission supports other innovative drug abuse efforts. The state's enforcement efforts through the Illinois Bureau of Investigation have been aimed at the pushers, not at the drug users who could be exploited as easy targets for arrest and conviction.

One of the major pieces of (new) legislation is the Illinois Controlled Substances Act, which revises, recodifies and modernizes the laws affecting narcotics and dangerous drugs, making them consistent with federal law and with the laws of other states which have adopted the model uniform dangerous substances act. This law is in substantial conformity with the major federal legislation enacted in October of 1970.

Those uniform state provisions which conform to federal law will be particularly useful in such matters as the manufacture and distribution of pharmaceuticals which require interstate or federal-state cooperation.

The Controlled Substances Act is also more flexible in controlling drugs. It contains five schedules, like the federal law, differentiating various chemical substances according to the degree of hazard, medical usefulness, potential for abuse, and other relevant criteria.

There are aspects of drug legislation which must vary from state to state, however, and one of these is in the area of penalties. We believe that the prescribed penalties in the new Illinois law are appropriate to our situation.

We now have a penalty structure which is tougher, more realistic, and more humane than the former penalty system.

It is tougher on those who deserve it—the criminals who traffic in drugs, especially with young people.

The big traffickers, those who deal illegally in very large quantities of the most commonly sold illegal drugs, are subject to stiff mandatory minimum penalties: 10 years for delivery and 3 years for possession of specified large quantities.

The law is tougher on those who distribute drugs to youths under 18 and more than two years their junior by authorizing doubled sentences for such conduct.

It is tougher on the leaders and financiers of the organized criminal drug traffic in the very dangerous drugs—requiring sentences of 10 years to life and fines up to $200,000.

It classifies drugs more realistically for penalty purposes, treating distribution violations differently from possession, separating distribution of less dangerous substances from distribution of addictive narcotics. Possession of large amounts of common illict drugs—quantities large enough for major trafficking and not just individual use—is treated as a serious crime because of the clear threat to others in our society.

Marijuana is dealt within a separate act, the Cannabis Control Act, which has a graduated penalty structure based on the quantity of marijuana involved. In this manner we will be able to distinguish between the marijuana pusher and the teenager with two or three cigarettes.

The act is more humane toward young first offenders found in possession of 2.5 grams or less of marijuana, in that they may be given conditional probation without the entry of a judgment of conviction. If they

complete their probation successfully, they are discharged without a conviction which otherwise would appear for life on their record. The maximum penalty for non-profit marijuana violations involving 2.5 grams or less is reduced from one year to 180 days, if it is the first offense.

We have provided for flexibility in punishment to allow consideration of the danger of the drug, the circumstances of the offense, the nature of the offender, and other appropriate factors.

In addition to the general strengthening of control over the illicit drug traffic which we believe will be effected by the new laws, some special measures have been aimed at the organized drug traffic.

One of these makes calculated criminal drug conspiracy a special crime with heavy penalties of 10 years to life. This charge would apply to those who organize, direct, finance or obtain substantial profit from a conspiracy with two or more other persons which involves the most dangerous drugs. It is aimed directly at the directors and financiers of major drug peddling.

Another improvement in our enforcement machinery includes administrative controls to strengthen inspection of commercial drug manufacturers and distributors, so as to prevent diversion of drugs from legal distribution channels into the illegal market.

These new statutes will be a significant supplement to other existing or future projects.

One of these projects, designed to deal primarily with one of the most vicious drug problems, heroin addiction, is the Illinois Drug Addiction Program.

The program began in 1968 as a pilot, with the invaluable collaboration of the University of Chicago. Its aim at that time was to determine which of a number of proposed approaches to the treatment of heroin addiction are best suited to the needs of this state. The approach was to evaluate a number of different treatment techniques in terms of concrete results, such as the decrease in illicit drug use, productive activity, decreased anti-social activity and overall costs.

At the start of 1969, there were a few more than 100 patients in treatment, all as outpatients.

Today more than 2200 patients are receiving treatment in 26 facilities. Twenty-one of these offer out-patient care and seven have residential capabilities. While in treatment, the patient can take advantage of rehabilitative programs that are designed to suit his individul treatment needs.

A great deal of the credit for the success of the program is due to Dr. Jerome H. Jaffe, its originator and, until recently, its director. Dr. Jaffe, as you know, is now special consultant on drug abuse to President Nixon.

The use of multiple approaches within one coordinated administrative structure—a system pioneered by Illinois—not only benefits the patient, but also reduces the inefficiency and destructive rivalry which often characterizes single-method treatment programs operated by administratively autonomous agencies.

The success of the Illinois Drug Abuse Program has been demonstrated in several ways. In a typical program week, 88 per cent of the patients are free of illegal activity—a way of life for most addicts. In spite of a tight job market, employment among patients has historically increased 71 per cent in the first 12 months of treatment. Most of the patients are now able to control their drug intake to such an extent that in any given week, about 78 per cent of them have not used illicit drugs. These figures are especially encouraging since 86 per cent of this group do not live in a highly controlled environment, but are out-patients, free to return to old neighborhoods, old friends and old temptations every day.

Although the program was initially concerned with the treatment of heroin addicts, it is now becoming increasingly involved in providing services for those involved with other types of psychoactive drugs. Five facilities currently provide help for young multiple-drug abusers who have voluntarily sought treatment.

The Illinois Drug Abuse Program has opened numerous avenues of drug research. Unfortunately, however, no individual state can single-handedly take a primary role in drug research. That role, in my view, must be assumed by the federal government and our major research institutions.

It is our intent, nevertheless, that Illinois will continue in its leading position as a demonstration and proving ground for applied research. It is important that the program provide the community with the educational and research information necessary to cope with the problems of drug abuse.

We have taken steps to improve the climate for drug research. One of these is a new law which provides for the total confidentiality of research subjects and their identities, under authorized projects. Also, the program is now authorized to obtain arrest records of its patients to permit a thorough analysis of the medical and social success and failure of treatment efforts.

In any general discussion of the drug abuse situation today, there is one matter which is invariably the subject of special concern and often heated debate. I am speaking of marijuana.

I would state at the outset that in my judgment a case has not been made for the legalization of marijuana.

At present there is too much that we do not know about the immediate as well as long-term effects of marijuana. And recently we are beginning to see more scientific assertions of its harmful possibilities.

Each of the many varieties and mixtures of marijuana can be greatly affected by its content of active ingredients and by additives and contaminants. Some individuals appear to have unusual reactions, ad sometimes these may be harmful. The intensity and the duration of use appear to be important in terms of the drug's impact, and may produce psychological changes. The long-term physical and mental effects of marijuana are little known, but certainly in light of what we do know, there is cause for concern and caution.

There is legitimate controversy over the methods and meaning of some of the research that has been conducted. The existence of such controversy is indicative of the state of knowledge about marijuana.

On balance, there are simply too many unanswered questions. And the demand for drug freedom should not take precedence over the reality of possible harm.

One thing is clear, however. In the past we have been guilty of a kind of overkill in the way we punished and criminalized some marijuana users. It would seem that sometimes the punishment meted out was more damaging to individuals and to the whole of society than was the use of the drug itself. We often succeeded only in driving young men and women toward those dangerous criminals who thrive on the addictive drug culture.

The authority of our laws and the institutions that stand behind them depend upon their being responsible and equitable. What is at issue is the credibility of government, the legitimacy of the authority that holds our society together. In this perspective, fair and workable marijuana laws may be more significant for the majority of citizens who have never tried the drug than for those who do experiment with it.

We in Illinois are committed to a solid, common-sense approach. We cannot provide a panacea. But we can provide assistance by using the most complete, constructive, and effective tools at our disposal. All aspects of today's drug problem deserve the most careful attention from all of us, for in the light of experience, only the foolhardy will claim to have the only solution for drug abuse.

STATEMENT OF NATIONAL COORDINATING COUNCIL ON DRUG EDUCATION

(Presented by Daniel X. Freedman, M.D., vice president, National Coordinating Council on Drug Education and chairman, Department of Psychiatry, University of Chicago)

The National Coordinating Council on Drug Education, representing over 100 national and state organizations, is the largest independent agency which coordinates, evaluates and disseminates information on drug abuse.

There are three basic sources of information about marijuana:

1. Mythology, or an accumulation of assumptions, myths, folklore, and observations about people who use marijuana;

2. A countermythology emerging out of experimentation and use; and

3. Research reports that vary in scope, quality, and accuracy.

The majority of Americans formulate their opinions and "educate" others from mythology.

To illustrate some of the comments we intend to make, let's look at some clips from two drug abuse education films. The first scene . . . is from a 1930 movie which portrays the effects of smoking marijuana. The second is from a 1967 film which also shows the "dangers" of marijuana.

Forty years have not produced much evidence of progress in our general attitude, perhaps because there was no serious interest in challenging our beliefs. No tests. No need for verification. No one asking why? Or how do you know? And when the challenge did come, it came from a flood of young users who cited personal experiences as the basis of the challenge.

The last film we saw is one of 120 drug abuse audiovisuals recently evaluated by the Natioinal Coordinating Council. Dr. Jerome Jaffe, now the Director of President Nixon's Special Action Office for Drug Abuse Prevention, was a member of the original scientific review panel. In his evaluation of this film he stated, "This film is so filled with myths that it offers a good takeoff point for discussions of how to erode the credibility of the adult generation."

Many of the films viewed contain inaccurate statements or misleading information about marijuana, and more than one-third have been classified "scientific unacceptable." Some of the examples are quite blatant, such as the one you just saw. Others portray an attitude which is more cleverly disguised. The films perpetuate many of the myths about marijuana. (It is compellingly addictive; it leads to crimes of passion and murder; it produces a killer instinct; it inevitably leads to heroin use.) Some films imply that marijuana is a narcotic by using the term "narcotic" in the title. And others confuse the effects of marijuana with those of LSD.

3,000 copies of the films . . . have already been sold around the world. It is even available in French. Misinformation, presented in these films, continue to spread and characterize much of our education programs.

We know that formal education programs are only one aspect of the learning process which influences the decision to take or not to take drugs. In a policy statement which the Council recently adopted, we state that "education includes a series of experiences and influences that help shape the learning environment—the atmosphere of the school, the life style present at home, the attitude of parents, the pressures within a peer group, the popular culture, personal experiences with or without drugs, and the availability of alternative mechanisms employed to carry out certain kinds of behavior."

Prevailing attitudes, current laws, media presentations and obvious prejudices all play a significant role in shaping the cultural forces which are part of the learning process. In fact, one strengthens the other.

For example, social attitudes help to shape laws and laws reinforce such attitudes.

What is being thought and said by persons in responsible positions also contributes to the formation of attitudes and beliefs.

In recent hearings of several committees in the House of Representatives, four congressmen have stated that marijuana leads to heroin use. This statement could be based on the well-publicized statemenut that 90% of heroin addicts used marijuana as their first illegal drug. What never seems to get reported is the other half of this statement which speaks more directly to the question. A consensus indicates that only 3 to 5% of marijuana smokers go on to use heroin. Not to emphasize this aspect is a distortion of the facts. . . . Many people are approaching a solution to the problem by using selected information to strengthen preconceived ideas.

A year ago, a national opinion poll revealed that 82% of those questioned agree that using marijuana leads people to commit crimes and acts of violence. 81% think that marijuana is an addictive drug. 76% think that using marijuana over a long period of time has harmful effects on the babies of pregnant women.

44% of the people questioned think that the regular use of marijuana is equal/more dangerous than the regular use of heroin. This seems like an unbelievable response to anyone with even an unsophisticated knowledge of drugs. The last statement is a startling miscalculation of the effects of heroin, regardless of what it says about marijuana.

One of the ways people get this notion is from our laws. The Comprehensive Drug Bill (PL 91–513) passed by Congress last session makes no distinction between heroin and marijuana in legislating penalties for simple possession. 17 of our states still prescribe the same penalties for possession of the two substances. In a society that tends to rationalize everything, it is quite natural to assume that if the law provides the same penalty, marijuana must be as dangerous as heroin.

The drug laws of this country have hampered education and research. In spite of our knowledge that laws will not bring about society's desired behavior change with respect to abstinence of marijuana use, we continue to insist on legal sanctions and recriminations.

We must examine what laws are for. Police need to know *why* they are policing. They can receive help in not falling into an emotional "set" in which long hair or an occasional drug experimenter are automatically seen as society's mortal enemies. The courts have to know why they are penalizing. Thus, both police and courts can generate feedback information for policy planning. Do we want to control vice or to dampen epidemics of drug trials and their occasional victims? Do we want laws against a new ideology, or against illicit drug traffic? Do we want to stop children from worrying us, or see if they in fact become victims—do we want to treat them or penalize them? Do we want to protect the unwary from exposure? Do we want to try new general constraints on our total approach to *all* drugs?

Even the diverse members of our Council in a marijuana discussion at our 3rd Annual Meeting this past June agreed that:

"The enforcement of laws against the possession and use of marijuana has primarily been the function of state and local law enforcement agencies. Marijuana laws vary from state to state; consequently enforcement policies and procedures also vary geographically. At the same time, the application of these laws, which treat the marijuana user as a criminal, frequently causes serious social, economic and psychological consequences for the individual and society that appear to be more serious than any apparent direct consequence of using the substance. These laws and variations in enforcement appear to contribute to a lack of respect among young people for laws in general and drug control laws in particular."

In response to this mythology, an increasing number of people are challenging these assumptions, myths, and observations. Experimentation and occasional use at low and moderate dosage levels has—in the opinion of many young people—nullified this existing body of beliefs. The variety of experiences emerging from use of marijuana—usually subjective in nature—has developed an opposite attitude or countermythology which is equally dangerous to drug education programs.

Those individuals who claim that marijuana is a harmless drug and does nothing to alter the state of consciousness certainly do not help to create a rational atmosphere for discussion.

Books that tell you how to get high on marijuana and cookbooks which give recipes using marijuana and hash are being circulated.

When AMORPHIA, a group organized for the legalization of marijuana, testified before your Commission in San Francisco, their representative stated, "I for one would be delighted to sit down with this nation's present leaders, including your Commission members, share a big pipe of peaceful grass and talk over ways and means of ending the thorny civil war in which our generations are now engaged." To imply that a pipe of grass can help to solve the nation's problems lacks as much credibility as the earlier mythology. It increases polarization and blocks communication. This is misjudgment on the effects of marijuana and reflects a careless attitude which characterizes the countermythology. Neither mythology is satisfactory or helpful, so we have turned to research. But how does current research resolve the differences?

Current research on marijuana is generally directed toward the medical significance of the drug. We are beginning to witness a shift from testing pure THC on rats to testing pure THC on humans. This is a healthy sign and useful for questions directed at drug metabolism and fundamental mechanisms of drug action. But it still disregards the fact that "street grass" contains little amounts of THC. There are no 12% THC joints.

There is an urgent need for research to be conducted on the social and legal implications of marijuana use and other issues of concern to the user population. Headlines constantly publicize the physical and psychological effects of marijuana on the individual. And because the emotionally charged atmosphere surrounding marijuana precipitates sensation-type media coverage, the message that comes through is that the medical effects are the only concern. When prominence is given to this aspect of research instead of the broader concerns of the user, there is little basis for communication and education.

Another aspect of the presentation of marijuana research is the use of the general term "marijuana user." All findings seem to refer to a typical individual who uses marijuana frequently and at high dosage levels. It excludes the experimenter and occasional user who uses marijuana at moderate and low dosage levels. Dosage, purpose, method of administration, frequency and pattern of use are the arbitrators of the "dangerousness" of any drug use.

Much of this type of research which is being conducted and the manner in which research findings are presented often create new hurdles for the education process.

The challenge of this Commission is to write a report in this desert of fire fighters. This is a difficult task. We offer these suggestions.

A realistic goal of any drug education program should be to enable a person to reach a decision after real consideration of the effects of drug use on the attainment of a satisfying life. The user is often more concerned with his *right to use* and who has made that decision for him than his use. The real function of education is thereby hampered by our marijuana laws, mythology and research. In order to achieve our objective it is imperative that we stop moralizing the drug issue. It is necessary to provide the opportunity for a person to relate information about drugs to his own personal experiences and values. Through this approach the individual may come to realize how his real interests can be best achieved.

There are many components in this approach to prevention. But there is one essential element which constitutes the foundation for any drug education program. Unless we are completely honest, any method we use will eventually be unsuccessful. The whole truth, whether it is favorable or unfavorable, must be presented. It is also essential that what is said relate to what is experienced, recognizing that long term effects have not yet been experienced. There is distance between use and consequences, such as in the case of cigarettes. However, exaggeration, half truths and overgeneralizations are immediately perceived as dishonest by the individual. This most often leads to counterproductive results. Unless credibility is established there is a general tendency to reject all information, even valid information. It is evident that the mythology and countermythology about marijuana today blocks any effective communication concerning the use of *all* drugs.

[The San Francisco Committee on Crime]

A REPORT ON NONVICTIM CRIME IN SAN FRANCISCO—PART III

DANGEROUS DRUGS AND NARCOTICS

SAN FRANCISCO COMMITTEE ON CRIME,

San Francisco, Calif., July 19, 1971.

Hon. JOSEPH L. ALIOTO,
Mayor of the City and County of San Francisco, City Hall, San Francisco, Calif.

DEAR MR. MAYOR: On behalf of the San Francisco Committee on Crime, we submit to you, as the Committee's Eleventh Report, a report on Dangerous Drugs and Narcotics. The Committee's term of existence, under the resolutions of the Board of Supervisors creating it, came to an end at the close of June 30, 1971, but this Eleventh Report was adopted before June 30th. The Committee's principal funding came from the Ford Foundation, and, as we informed you in our Tenth Report, Ford Foundation extended the period of its grant to July 31, 1971, to permit an orderly winding up and the publication and distribution of the Committee's reports. Because this Eleventh Report, although adopted before June 30th, has been released after that date, only funds received from Ford Foundation have been used for its publication and distribution; no funds from the City have been used for that purpose.

All the previous reports of the Committee have been unanimous or virtually so. This is not true of the Eleventh Report. That report consists of two sections in addition to a preliminary discussion, one on marijuana and the other on heroin. The section on heroin has been adopted by the virtually unanimous action of all members of the Comimttee participating. The section on marijuana has been adopted by a vote of not quite two-thirds of the partipants. A two-thirds vote on any of the important and difficult subjects with which this Committee has dealt would be a notable achievement; it is particularly notable with respect to a subject so charged with emotion and fears as dangerous drugs and narcotics.

Yet, in a very real sense, there is unanimity—unanimity that the present marijuana laws are too rigorous and repressive. Attached to the report are two minority re-

ports which speak for themselves. One minority report states that "it is not necessarily in agreement with the existing laws and procedures which may be too punitive with respect to adults who use or possess small amounts of marijuana"; the other minority report believes that the precent laws are "unreasonable" as respects the "severity of punishment for such offenses as the possession of small amounts". And these suggestions for amelioration come on top of the fact that California law was amended to ameliorate the penalties in 1969.

The minority reports were received as the Committee Report was about to go to the printer, and therefore the Report itself does not respond. Some brief comment, however, is in order.

The present restrictive criminal laws on marijuana were adopted in the 1930's. It was then believed that marijuana made its users into dangerous criminals. No one who has looked into that subject even slightly any longer believes that. The present fears about marijuana are, largely, of two kinds: (1) That its use leads to the use of "harder" drugs, and (2) that it makes its users "amotivational", that is, that it reduces its users to a state of passive vegetation. The Report fully discusses these two questions. The consensus at the present time is that the deleteriousness of marijuana, or its extent, remains largely unestablished. Those who oppose change in the law do not appear to contend that if those laws were not already in effect it would now be appropriate to enact them in the present state of knowledge. The view of one minority report, is that, as the laws are on the books, they should stay there in view of the uncertainty of knowledge. The majority of the Committee believes that laws that would not have been adopted on the basis of present knowledge ought not be retained.

The further statement in one minority report, that the Committee has not gathered enough data on the subject, is completely unwarranted, and it is rejected out-of-hand by the Chairman, the staff, and the majority of the Committee. The present literature is abundant and fairly uniform in its conclusions, which, as the Report states, adds up to a Scotch verdict. As late as Friday, July 2, 1971, at the Commonwealth Club, Dr. Leo Hollister of the Veterans Administration Hospital at Palo Alto reported the state of present knowledge about the pharmacological aspects of marijuana quite in accord with the majority report.

Another reason for dissent expressed in the minority reports is the belief that the repeal of present laws on marijuana may be regarded in some areas as an approval of the use of the drug and might lead to the spread of its use. The majority of the Committee does not dismiss that objection lightly; the Report discusses it with care and gives it the weight it deserves. One minority report speaks of the Committee report as recommending "legalization" of marijuana as respects adults; the recommendation, of course, is for regulating the sale, possession and use relative to adults by a system adapted from the control of alcoholic beverages.

We realize that previous portions of our report on non-victim crime, such as those dealing with prostitution and pornography, have been carelessly read by portions of the public, including those who should know better. The Committee thoroughly deplores prostitution and has the utmost detestation for pornography. Yet our reports have been carelessly interpreted as an endorsement of these vices. We resign ourselves to a like misinterpretation that the Committee approves the use of marijuana, despite our reiteration that we disapprove the use of marijuana and encourage all non-criminal processes to prevent it.

In the last analysis, the basic question is exactly the same as this Committee emphasized with respect to every type of non-victim crime. That question is simply this: Is the criminal process the correct and effective way by which society should seek to meet a problem; are the resources of society best spent on the criminal process? We have said that the law cannot successfully make criminal what a substantial portion of the public does not want made criminal, and we know that a vast number of the citizenry—perhaps an overwhelming number of the younger generation—cannot understand and will not accept the marijuana laws. We have said that not all the ills or aberrancies of society are the concern of government; that when the government acts, it is not inevitably necessary that it do so by means of criminal processes; that every person should be free of the coercion of criminal law unless his conduct injures others or damages society; that when criminal law seeks to express a sense of public outrage, it should be sure that its senses of outrage is that of substantially the public as a whole. We have said that there is a matter of priorities in the expenditures of the energies and resources of criminal law enforcement. If we are correct in all these statements—and we are convinced that we are—then we are convinced that the conclusions expressed in the majority report are also correct, and that only formless fears deter the minority members from following to its rational end their own belief that the present law needs some change.

Inasmuch as the reports and recommendations of this Committee on matters entirely within the hands of this City have yet to be put into effect, the Committee is not so sanguine as to believe that its recommendations on marijuana, the control of which lies in the State and National sphere, will be speedily adopted. We submit the Committee Report and the minority reports in the hope that they will, at least, encourage and focus thoughtful consideration.

The control of heroin lies even more largely in federal hands, and our report on that subject is confined to an analysis and delineation of the difficulties and to pointing out the matters to which serious attention should be given.

With this Eleventh Report, the work of the San Francisco Committee on Crime comes to an end.

Respectfully,

MOSES LASKY,
WILLIAM H. ORRICK, Jr.,
Cochairmen.

INTRODUCTION

This is the third in a series of reports by the Committee on "non-victim crimes" in San Francisco. The first report on this subject dealt with basic principles and public drunkenness. The second report discussed gambling, sexual conduct and pornography. This report covers "drugs and narcotics," concentrating on laws concerning marijuana and heroin.

Throughout our examination of laws dealing with "non-victim crime," we have been guided by the seven "basic principles" set out and discussed in some detail in Part I of this Report. We list those principles again, for they are referred to in this Report. Readers interested in the origins of these guidelines can return to Part I of this Report, which is available in local bookstores and through the Public Library. Our principles are:

1. The law cannot successfully make criminal what the public does not want made criminal.

2. Not all the ills or aberrancies of society are the concern of the government. Government is not the only human institution to handle the problems, hopes, fears or ambitions of people.

3. Every person should be left free of coercion of criminal law unless his conduct impinges on others and injures others, or if it damages society.

4. When government acts, it is not inevitably necessary that it do so by means of criminal processes.

5. Society has an obligation to protect the young.

6. Criminal law cannot lag far behind a strong sense of public outrage.

7. Even where conduct may properly be condemned as criminal under the first six principles, it may be that the energies and resources of criminal law enforcement are better spent by concentrating on more serious things. This is a matter of priorities.

The only aspect of drug and narcotic use that comes within the assigned task of this Committee or within the area of its competence is to determine the part to be played by criminal law. We cannot pass on morals.

In 1960 in California, 4,245 adults were arrested for violating laws on marijuana; in 1969 there were 38,670, an increase of over 800%. In 1960 there were 910 arrests of juveniles under the same laws; in 1969 there were about 16,000, an increase of more than 1650%. For dangerous drugs the increase was even greater, both for adults and juveniles.[1]

Other available data are equally startling. In January of this year, the Federal Department of Health, Education and Welfare (H.E.W.) reported that 31% of American college students had used marijuana by 1970, and that in that year, 42% of the students in the San Mateo County High School system asserted that they had used marijuana. H.E.W. summarized a study showing that 40% of college-age residents of San Francisco who were not in school had tried marijuana by 1969.[2] Professor John Kaplan of the Stanford Law School has estimated that in 1968 state and local government agencies in California spent $72 million enforcing the marijuana laws.[3]

In 1969, 14% of all felony arrests in San Francisco were for violating the marijuana laws,[4] but 38% of all so arrested were released without prosecution,[5] doubtless because the District Attorney's Office believed that it had insufficient legally admissible evidence. Since 1969, State Law has permitted District Attorneys to charge either a felony or a misdemeanor for possession of marijuana.[6] In San Francisco, a defendant is ordinarily charged with a misdemeanor if he has no prior record of drug or narcotic convictions and he has been arrested for possessing not more than a "lid" (about one ounce) of marijuana. About 15% of all Municipal Court cases in San Francisco[7] involve either possession of marijuana or "visiting a place" where marijuana is being used.

Someone has said that statistics are used the same way a drunk uses a light standard, for support and not for illumination. Advocates for the repeal of criminal laws on marijuana and other drugs point to statistics like the foregoing as demonstrating that criminal law does not deter the use of these drugs. Another explanation would be that the social and economic conditions of the 1960's produced an upsurge of use that might have been even greater but for criminal laws. All that is speculation. We cite the statistics for the neutral purpose of showing the gravity of the problem, the enormous drain on law enforcement money and manpower, and the lack of satisfactory effect of all this effort.

Clearing the underbrush

This subject of drugs and narcotics is the most difficult to analyze and resolve of all those discussed in our Report on "Non-Victim Crime." A major difficulty is that the discussion in the literature is bedeviled with hyperbole, emotion, irrational argument and pedantic quibble.

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On the threshold, we note that to categorize the subject as non-victim crime is itself to vault to a conclusion over thorny obstacles. "Drugs and narcotics" are placed in that category because the user acts voluntarily. But whatever may be said about using drugs, the act of *selling* is not non-victim conduct in the case of a drug like heroin which addicts the user; one deprived of either physiological or mental power to resist is no longer a "voluntary" participant. Thus whether the act of *selling* can be categorized as non-victim conduct depends upon the nature and effect of a particular drug. Nor is it all crystal clear that the act of use is non-victim conduct; society can be the victim in several ways. For example, we said in Part I of this Report on Non-Victim Crime that:

"If it could be shown that the use of marijuana threatens to reduce the next generation to a state of passive vegetation, devoid of the drive that made this nation the haven of all peoples, no stronger reason would be needed for seeking to eradicate the use of the weed by almost any means."

This states a possibility. No evidence yet discovered by us shows it to be a probability, but the reported use of heroin among the troops in Vietnam could pose a worse threat to the future of the country. The use of drugs and narcotics could also be an injury to society in ways less sweeping than that of the destruction of a generation of youth. For example, it would be so if its use were frequently to induce violent or aggressive behavior toward others. It would also be so if drug use were to make ordinary and gainful employment by the user difficult or impossible, for society would then have loaded upon its back the costs of support and medical care.

Discussion is also handicapped by the extreme positions taken by partisans on the one side or the other. At the one extreme, users are assailed as immoral or indecent, as "freaks" or misfits or as a disgrace to society. This kind of reaction gets one nowhere; the law would have no business whatever trying to prohibit adults from using drugs to get "high" or to alter their perceptions unless injury to society were also present. At the other extreme, society is itself assailed as the very *cause* of the abuse of drugs. It is argued that, while people resort to drug abuse for a variety of reasons, psychological or psychotic illness, or to find new experiences, or to do what their peers do, the unifying explanation is that drug abuse represents an attempt to reconcile serious contradictions between self and society. It is no accident, we are told, that until recently heroin was a problem confined to the ghettos of this country, and that, when young people are asked why they turn to drugs, their reply is almost uniformly that modern urban mass society is becoming increasingly inhuman. The blame is laid on pollution, racism, poverty, "loss of identity," and so on and on. When so many young people are unable to "integrate with society," when they turn to drugs as only one of a number of means of escape, it is time to look hard at society: so the assertions go.

All this may be true, or it may be only the fashion of the moment to say so. Perhaps the causes are in the very structure of contemporary civilization. And if society could find the causes and root them out, it should do so. But that truism gets us nowhere in finding an answer to the only aspect of drug and narcotic use that comes within the assigned task of this Committee or within its area of competence, which, as already observed is to determine the part, if any, to be played by criminal law.

In the previous paragraphs we have sometimes spoken of "drug abuse" rather than "use," and of "dangerous" drugs instead of merely "drugs." We have done so to avoid the pedantry of being told that coffee, tea, nicotine and alcohol are drugs or narcotics, that there are legitimate drugs and legitimate uses for even dangerous drugs and narcotics, that "dangerous" drugs and narcotics can be administered and controlled in small doses without harm, and that even drugs like aspirin can be harmful if abused. All that is true; even LSD might have a legitimate use in the hands of expert researchers; marijuana was once prescribed by physicians for some purposes. But observations like these simply enmesh rational analyses in irrelevant distinctions. Suffice it to say, once and for all, that when this Report speaks of drugs, it means "dangerous drugs" within the meaning of current law, and when its speaks of use it means "abuse."

Another red herring frequently drawn across the path of rational consideration is the assertion that alcohol is far more injurious to the user and society than any other drug whether legal or illegal. The late Louis S. Goodman, Chief Judge of the United States District Court in San Francisco, used to comment impatiently on the habit of attorneys to defend a charge of wrongdoing with the riposte that someone else or some other conduct was equally as bad or worse. The use of alcohol is as old as mankind and is to be found in every civilization and culture; in a sense it is symbiotic with man himself. Whole ways of living and coping with it have arisen, and mankind evidently must endure it while enjoying it. Efforts to eradicate its use have failed. The fact that alcohol is abused to the injury of society is no reason whatever for permitting the introduction and spread of other abuses not yet so ingrained in our social structure, even though they may not be so harmful, providing it is *reasonably* possible to prevent them. Nor should the effort to prevent them be deterred by cries from the young that their elders are guilty of "hypocrisy." The history of the use of alcohol can, however, teach us one valuable lesson. The failure of the Volstead Act and the 18th Amendment does warn us that criminal sanctions do not work when a large segment of society is opposed to them and that, on the contrary, severe prohibition can produce evils such as organized crime. If, in what we have said above, we have expressed some impatience with certain arguments for change in drug laws, we have equal impatience with opponents of change when they speak of "legalizing (or illegalizing) marijuana or heroin." Any drug is a mere physical object. It can be neither legal nor illegal. All that can be made illegal is human conduct. The appropriate question, therefore, is: What human conduct with respect to a given drug or narcotic should be illegal? With the question thus properly stated, one can begin to distinguish between types of conduct instead of making lump judgments.

Each type of drug or drug abuse must be examined on its own and handled on its own. To that end we now review the subjects of marijuana and of heroin. We shall not touch on other substances in this Report. We refrain from doing so for lack of time and study.

A. Marijuana [8]

This Committee does not condone or endorse the use of marijuana or any drug that may be mind-altering. On the contrary, we deplore that use and encourage searching for proper and successful ways to discourage it. But the assigned area of concern of this Committee is to determine what part criminal law should play in discouraging that use.

The starting point of that consideration ought to be a determination of what deleterious effects marijuana produces. No member of this Committee is persuaded that marijuana is not really injurious to the user or only mildly so. Rather, we simply find the whole voluminous literature unsatisfactory. Partisans on both sides are intemperate, untrustworthy and unreliable; the conclusions drawn by more temperate and sober writers from their data are unpersuasive.

On the one hand we know that the active ingredient in marijuana is the same as produces hashish, and that historically hashish has been considered an evil in the Oriental countries of its use. Despite the fact that defenders of marijuana often cite the findings of the Indian Hemp Commission of 1894, India today prohibits hashish. On the other hand, medical studies are cited, from the La Guardia Report of 1944 to a recent report of the United States Department of Health, Education and Welfare [9] and a more recent one by Dr. Lester Grinspoon.[10] The various reports become involved in quibbles about what constitutes "addiction;" the defenders of marijuana claim that it is not addictive because there are no physical withdrawal symptoms, their antagonists retorting that its use creates psychic dependence. One group asserts that the use of marijuana causes users to abandon motivation and to become socially indifferent; the rejoinder is that "present evidence does not permit the establishment of a causal relationship between marihuana and the amotivational syndrome." [11]

The antagonists of marijuana argue that its use leads to the use of harder drugs. The soberest reply is that it does not "necessarily" do so "directly," and that the fact that a high percentage of heroin addicts have used marijuana is a coincidence stemming from the character of the users.[12] While the evidence is that a large percentage of heroin users have used marijuana, the evidence does not show that a large percentage of marijuana users have turned to heroin. Advocates of change in the marijuana laws sometimes do concede that denizens of the drug subculture use a variety of drugs and, starting with marijuana, move on to others. But they argue, quite persuasively, that what throws the marijuana user into the drug sub-culture is the fact that its sale and use are made illegal, forcing the user to procure it from drug pushers and to use it in drug-oriented surroundings.

Neutral observations concede that psychotic episodes have followed use in high dosages and even use at levels of social usage "in particularly susceptible individuals." [13] Dr. Grinspoon has written: [14]

While there can be no question that the use of psychoactive drugs may be harmful to the social fabric, the harm resulting from the use of marihuana is of a far lower order of magnitude than the harm caused by abuse of narcotics, alcohol, and other drugs. Marihuana itself is not criminogenic; it does not lead to sexual debauchery; it is not addicting; there is no evidence that it leads to the use of narcotics. It does not, under ordinary circumstances, lead to psychoses, and there is no convincing evidence that it causes personality deterioration. Even with respect to automobile driving, although the use of any psychoactive drug must perforce be detrimental to this skill, there exists evidence that marihuana is less so than alcohol. Marihuana use, even over a considerable period of time, does not lead to malnutrition or to any known organic illness. There is no evidence that mortality rates are any higher among users than nonusers; in fact, relative to other psychoactive drugs, it is remarkably safe.

This hardly exonerates marijuana; comparison of marijuana with alcohol or other drugs, as we have suggested, an irrelevance. But, on the other hand, Dr. Grinspoon's statement adds up to no severe condemnation.

The Crime Committee concludes that it cannot return a verdict about marijuana of either "guilty" or "not guilty." We return a "Scotch verdict" on the present evidence; that is, the evils of marijuana use are *not proved*. With that verdict, what is the ques-

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tion to be answered? It is *not* whether marijuana should be used. Every member of the Crime Committee opposes its use. The question is something entirely different. The critical question is this: How far is the *criminal law* justified in imposing its criminal sanctions on a not proved verdict?

Bearing in mind that the physical object—marijuana—can be neither legal nor illegal and that only human conduct can be, the question must be separately asked relative (1) to minors and (2) to adults. And as respects adults, it must be separately asked of (a) use, (b) possession, (c) sale, and (d) commercial exploitation.

1. Sale of Marijuana to Minors and Possession by Minors:

The fifth principle stated in Chapter I of Part I of this Report on Non-Victim Crime is this:

Fifth principle: Society has an obligation to protect the young, and it may be appropriate for government to intervene by imposing criminal controls on adult relations with the young although controls on similar relations between adults would not accord with our other principles.

The doubts about the effect of marijuana compel us to recommend continued prohibition of sale to minors. An adult may be left free to take chances on his own condition, to play Russian roulette if he will with his own mind and character. By definition, a minor is not yet mature enough to reach sound judgments for himself, and doubt should be resolved for the minor's protection. With the trend toward reducing the age of majority to 18, the young will soon enough reach the age of choosing their own route. The law prohibits sale of alcoholic beverages to minors, although alcohol has long been with us; marijuana, a relative upstart, should fare no better. The prohibitions on use of marijuana by minors should parallel those with respect to alcohol.

2. Use of Marijuana by Adults:

The case as to adults is different. And it is different for several reasons.

First, as we have seen, the verdict on marijuana is a "Scotch verdict"—not proved. Certainly, on a not proved verdict, criminal law cannot impose its criminal sanctions on the user who is more a victim than he is a perpetrator of evil.

Opponents of change in the law argue that if the evidence is uncertain, the status quo should be maintained by leaving the law as it is. But those laws originated when legislators assumed that the dangers of marijuana were far worse than a dispassionate examination of the evidence now available warrants. If that evidence would not warrant enactment, now, of the highly restrictive laws presently on the books, it cannot justify their retention. In a free society there ought always to be a presumption against illegalizing conduct until evidence is produced to warrant criminalization.

In the second place, educators tell us that by casting the whole marijuana scene into a criminal underworld, minors are estranged from sound counselling. It is said that minors can more readily be deflected from use of marijuana if it is regulated and controlled as alcohol is.

Finally, our conclusions are fortified by the socially injurious consequences flowing from attempts to enforce the present statutes. We find, in the literature on the subject the following, which we are persuaded do exist.[15]

(1) Users of marijuana, mainly the young, perceive no rational distinction between the dangers of alcohol and cigarettes and those of marijuana. Consequently, "massive numbers of young people today regard the marijuana laws as one of the clearest examples of their elders' hypocrisy." And since numerous young persons have used marijuana, widespread disrespect for law and for law-making institutions has arisen. (The invalidity of the charge of hypocrisy would not alter the fact that the young people believe it.)

(2) By exaggerating the dangers believed by the young to be possessed by marijuana, the law degrades its educational effect with more dangerous drugs.

(3) Because the enforcement of marijuana laws requires the police to conduct searches of persons, homes and cars for small quantities, feelings of hostility toward the police are created.

(4) Possession of marijuana has come to be associated with several identifiable segments of society—those with long hair, juveniles and ethnic minorities. Enforcement ". . . contributes to the hostility of three groups that one might most wish to bring into the mainstream of our society: the alienated middle-class drug-user, the high school youth, and the inhabitants of our urban Negro and Spanish-American ghettos." [15a]

To this list may be added the fact that use of marijuana has made its way to some extent into the San Francisco middle-class business and professional communities. As was said in Part I of this Report:

"The law cannot outrun the public conscience—not simply the public conscience as professed from its pulpits and by its public figures, but the public conscience as demonstrated by how the public lives."

The soundness of our recommendation that the law cease criminalizing the use of marijuana or a visit to a place where it is used is fortified by the fact that the courts by and large have come to look with distaste on enforcing these laws. A defendant who pleads guilty in San Francisco to a misdemeanor charge for one of these violations is likely to receive a suspended sentence with a year's probation; and some judges will impose a $50 fine. In 1969 the courts disposed of the cases of 328 defendants who were originally charged with felony possession but whose charges were reduced to the misdemeanor "visiting" [16] Consequently, of the 702 felony cases pending in Superior Court in San Francisco on May 1, 1971, only 43 involved isolated charges of possession or sale of marijuana.[17] During the same year only one person convicted of a marijuana offense in San Francisco was sent to state prison, and over 75% were given straight probation.[18] In the entire state during 1969 only 1.7% of those convicted of felony possession of marijuana were sent to prison, and 56% were placed on straight probation without any jail time at all.[19]

One of the principles stated in Part I of this Report was that even where conduct may properly be condemned as criminal under other principles, "it may be that the energies and resources of criminal law enforcement are better spent by concentrating on more serious things. There is a matter of priorities." That principle is particularly applicable to marijuana where it is dubious that *use* should be made criminal under any principle. Because possession of marijuana is still a crime, the police spend considerable time and energy on the matter. Then each case is handled by a Deputy District Attorney, and many cases are handled by the Public Defender's Office. As already noted, 15% of all cases in the Municipal Court deal with marijuana, and they consume the time of a judge, a court reporter and two bailiffs. Yet, in the end, most of those convicted are treated with more leniency than common drunks. The judicial system is recognizing that it has more important things to do than to spend time and resources on processing most defendants arrested for possessing marijuana.

Another perversion of priorities worked by the marijuana law is with respect to the work of the San Francisco Police Crime Laboratory. That agency is responsible for conducting various scientific tests—for the police and the District Attorney—ranging from blood types to tool mark identifications. Currently it employs a criminologist and three assistants.[20] According to charts prepared by the laboratory, each criminologist handled slightly more than 200 narcotic cases in 1960, but in 1969 this peaked at 1000 (nearly five times as many), declining slightly to about 900 in 1970. The total number of narcotic cases in the laboratory in 1960 was about 400; in 1970 it was over 3,900, an increase by a multiple of about 10. During the same period the number of criminologists increased from only two to four, and the laboratory estimates that 38% of its staff time is now devoted exclusively to marijuana analysis alone.

The number of many other scientific tests, normally associated with serious offenses, has decreased. A summary of crime laboratory cases for the years 1960, 1969 and 1970 is found in Appendix A to this Report, but we note the following here.

In 1960 the laboratory processed 106 casts (either plaster, moulage or silicone) but only eight casts in 1970. It performed 182 blood analyses in 1960 but only 85 in 1970. It made 170 tests for semen in 1960 and only 64 in 1970. It performed 19 microscopic examinations on hair and fibres in 1960 and only 5 in 1970.

The statistics for 1970 may be imprecise; an unknown number of tests may not be tabulated in the official report. Moreover, more criminal cases were disposed of on a plea bargain in 1970 than in 1960, and where a case is disposed of by a negotiated plea rather than trial, the crime laboratory may not have to perform tests. Nonetheless, the fact remains that the number of laboratory tests associated with serious offenses has declined during a period when offenses of the identical type reported to the police have more than doubled.[21] Criminologist Williams estimates that his staff would have to be doubled to do all that it should be doing. During the same period the "clearance rate" for serious crimes—murder, manslaughter, forcible rape, robbery, burglary, aggravated assault, larceny and auto theft—has declined by nearly a third to about 13% of all reported cases.[22]

The conclusion of the Crime Committee is that the *demonstrable* harm associated with marijuana does not justify the voracious demands on the resources of criminal justice made by the marijuana laws. The police, court system, and correctional resources are desperately needed to handle matters demonstrating greater harm to society. Add to these "economic" costs the social costs of the marijuana laws, and we have no doubt that the use of marijuana should be handled outside the criminal justice system.

Consequently, the Crime Committee recommends:

"Repeal the laws prohibiting the use by adults of marijuana and prohibiting adults from visiting a place where marijuana is used as now provided in the California Health & Safety Code Section 11556."

If and when medical evidence is developed that shifts the verdict from non-proved to guilty, this recommendation can be reconsidered.

3. Possession of Marijuana by Adults:

Thus far we have been speaking of use of marijuana and of visiting a place where it is used. We still must answer the question, what should be recommended about possession and sale.

The answer about possession is relatively easy. Possession of a "small" amount is probably for personal use and should be treated the same way as use, that is, it should not be made criminal. Possession of a "large" amount should be treated the same way as sale, since there is a reasonable inference that one who possessed a "large" amount will either sell it or give it away. A "large" amount

Footnotes at end of article.

is an amount more than sufficient for one person's use for several days, and, when and if it should be necessary to make the distinction, it may be left to testimony before a legislative committee to determine the dividing line.

4. Sale of Marijuana to Adults:

Curiously, writers who almost feverishly oppose the marijuana laws become uncertain of their ground when they turn to consider sale to adults. We encounter proposals for a system of government monopoly of sale or government licensing of a limited number of vendors. We are not impressed by the proposal. The sale of marijuana to adults can be regulated by laws on the general order of those regulating alcoholic beverages. We recommend simply that sale of marijuana to adults, within that kind of regulation, should not be subjected to criminal sanction unless and until medical evidence, by moving the verdict from "not proved" to "guilty," requires reconsideration.

We are impelled to this conclusion by two sets of considerations:

1. Government monopoly presupposes that the traffic is evil and therefore not to be left in private industry. But if the traffic be evil, organized society should not indulge in it.[23] Moreover, any system of licensing that is more selective or restrictive than our present system of alcoholic beverage control is fruitful for bribery and corruption.

2. The fourth principle set forth in Part I of this Report was:

"When government acts, it is not inevitably necessary that it do so by means of criminal process. * * * The methods of the criminal law may be ill suited, or there may be better ways of achieving an end, better ways to deter or rehabilitate than to arrest, charge with crime, prosecute, convict and sentence."

By criminalizing manufacture or sale of various drugs and narcotics, what the law hopes to accomplish is: (1) To deter the manufacture, or (2) to deter those who might use or experiment with the drugs or narcotics by stamping them with a stigma of dangerousness, or (3) to rehabilitate the offender.

Criminal law has not been spectacularly successful in achieving any of these goals. Where the evil is great, even modest success will justify the effort. Where the evil is dubious, that is no longer true. The lack of success in achieving its goals as respects marijuana seems inherent in the nature of the thing sought to be regulated. If the threat of criminal sanctions is to have any effect, there must be a real fear of arrest. But usable quantities of virtually every illegal drug or narcotic can be carried or secreted in a coat pocket, glove compartment, drawer or other hiding place, and ordinarily in a private residence. Police detection of the "crime" is extraordinarily difficult. The contrast with robbery, burglary, assault, rape, homicide or auto theft is striking, for in these offenses the offender must intrude upon others or accomplish his crime in a public place, with greater chances of identification, detection and arrest.

Of course, the deterrent effect of making conduct criminal depends only partly on the fear of arrest. Perhaps in greater degree it rests on the stigma of social disapproval or social warning of danger. By making the possession of certain drugs illegal, the law announces that their use will result in harm to the user. But this warning of dangerousness has not been taken seriously. To the extent that criminal laws declare that certain drugs are dangerous or harmful, they are widely disbelieved by a sizable segment of young people simply because these laws are handed down by the "establishment." Moreover, young people in their twenties and even into their thirties are the largest users of marijuana. Having used marijuana, innumerable young persons believe that they have discovered for themselves that the harms from the drug are not nearly so great as the law had claimed. Whether their judgment in this respect is sound is irrelevant. The relevant fact is that they believe it. Some even carry this belief into distrust of warnings about the harms resulting from hard drugs.

If the sale of marijuana were no longer criminal, the cost of acquiring it would decline, for it can grow almost anywhere. There would then be no incentive for purveyors to push it, unless it can be merchandised and exploited on a large scale just as cigarette manufacturers have exploited cigarettes and brewers have exploited beer with suggestions that the use of cigarettes or beer creates *virility* and allure.

5. Commercial Exploitation:

Advertising of marijuana should be prohibited. The very doubts which call for legalizing use call for prohibiting mass enticement to use. While no longer criminalizing use, society should continue efforts to educate against use; and those efforts would be out-matched by multimillion-dollar advertising budgets spent by the equivalent of the large cigarette companies. Were advertising permitted, any change toward prohibiting marijuana, if and when new evidence developed, would encounter the entrenchment of vested interests. Nicotine and alcohol have become vested. There is no reason to permit this to happen with marijuana.

The sale of marijuana should not become "merchandising." To that end interstate and foreign commerce in marijuana should also be prohibited, as a way of keeping the sale of the drug from becoming a large-scale operation. On the other hand, if importation into the state is prohibited, it seems evident that production of marijuana within the state must be permitted to avoid restoring the business to black market operation. Production for sale should be subjected to regulations paralleling those governing production of alcoholic beverages. Included in this type of regulation could be provisions fixing standards of potency, particularly maximal limits. Also included in this type of regulation could be stiff taxation, as in the case of alcoholic beverages. The tax should not be so stiff, as in the case of "hard" narcotics, as to drive the business underground into the hands of pushers and racketeers, but stiff enough to dampen demand and discourage idle experimentation.

More on whether criminalization should be retained as a deterrent

Some people who follow the chain of reasoning that has led us to our conclusions, admitting the truth of every link in the chain, balk at the end at the conclusion. They do so out of an uneasiness or tormenting fear that if criminalization is abandoned, many people will take to marijuana who do not use it now. Nobody knows the certain answer. Repealing prohibition of marijuana use might result in an increase of use for awhile by some people. Probably most of those who would turn to the weed would try it only once or twice as an experience but would soon drop it or use it only occasionally. A few might go on to frequent use. But, in order to appraise what injury to society would follow, we must consider once more the physiological aspects of marijuana use. Unlike heroin, use of marijuana is easily ended. The hard narcotics produce an irresistible "craving;" lack of the drug produces the tortures of "withdrawal;" continued use produces increasing "tolerance," so that more and more is needed to obtain the desired effect. One thing about marijuana that seems clear is that its use does none of these things. There are no withdrawal symptoms; there is no increasing tolerance; craving is psychological, as with cigarettes, not physiological. In short, if some spread of use should follow repeal of prohibitions, it is likely to be a transitory phenomenon, subject to reversal by education without the counterproductive effect of the policeman's billy club and the filthy jail.

Moreover, the fear that repeal will lead to a spread of use is, we think, more a subconscious reaction than a rationally held belief. Many who oppose repeal favor reduction of the penalties. Indeed, California has already moved in that direction and if California fails to move even further, it may well be left behind the march of events throughout the nation. If continued criminalization is justified as a deterrent, reduction of penalties will diminish the deterrence and leave the laws largely dead letter, resting in the books for use by police or prosecutor whenever it suits their purposes.

If one favors reduction of penalties, if he believes that smoking a half "joint" is no basis for being imprisoned, then he does not really think that the use of marijuana is a serious injury to society. Continued prohibition of use then becomes nothing more than an expression of moral condemnation. And moral condemnation is no basis for criminal law.

Among the seven basic principles enumerated in Chapter I of Part I of our Report on Non-Victim Crime was this:

Sixth principle: Criminal law cannot lag far behind a strong sense of public outrage. This is the other side of the coin from the first principle. Although criminal law cannot outrun the public conscience in condemning conduct, neither can it hold aloof entirely from a public sense of outrage. If the law suffers when it tries to do too much, it also suffers when it does not do what most people feel strongly that it ought to do. Because the sixth principle acts as a counterbalance to some of the others, it must be applied with great circumspection. Before applying it one must be certain that his personal sense of outrage—his personal morals—or that of his group is that of the public as a whole.

It appears to us that the opposition to change of the marijuana laws expressed by many responsible people is explicable only under a variation of this sixth principle. It is not so much a sense of outrage but a fear or terror of something unknown. The majority of the Committee is unable to see in the evidence any valid basis for that fear; the majority does not believe that unsupported fear is enough basis for keeping and trying to enforce laws that divide the generations so sharply.

Recapitulation

The sum of our recommendations concerning marijuana is as follows:

1. Repeal the laws prohibiting the use by adults of marijuana or forbidding adults from visiting a place where marijuana is used.

2. Repeal the laws prohibiting possession by adults.

3. Repeal the laws prohibiting sale of marijuana to adults and regulate sale to them by laws on the general order of those regulating alcoholic beverages.

4. Continue to prohibit sale to minors and possession by minors.

5. Prohibit any advertising of marijuana.

6. Prohibit the importation of marijuana into California (probably would require federal action).

7. Regulate the production of marijuana in California for sale by laws similar to those regulating the commercial production of alcoholic beverages.

8. Devise and expand a vigorous educational campaign about marijuana.

We do not propose that society discontinue efforts to deter people from using marijuana. Its use is probably not as deleterious as its most earnest detractors say, but certainly people would be better off without it. In an age when human wits are most needed, they should not be subjected to manipulation or alteration by drugs. We simply conclude that the criminal process is not the way to go about achieving the goal given the present

Footnotes at end of article.

state of evidence. Indeed, removing the stigma of criminality may remove the attraction of the illicit and eliminate the impetus to use that comes from bravado.

Criminalization has failed; we suggest that society now try non-criminalization.

We have one more recommendation: Until such time as the laws on marijuana are changed, what should the authorities in San Francisco do about enforcing them? In the Chapter on basic principles we said:

"The following chapters of this Report will propose the repeal of certain laws. Obviously, the City of San Francisco has no power to repeal State or Federal statutes. But until such time as Congress or the State Legislature sees eye to eye with San Francisco, this City can choose what it will enforce, for its coffers pay the bills. It can choose its priorities. If it should decide that it is poor policy to 'bust' a small gambling game in the Fillmore, the police need not arrest and can preserve its manpower for more vital work. If an arrest is made, the District Attorney need not prosecute. However, lest there be misunderstanding, we emphasize two cautions. The first is that once a case reaches a court, no judge is free to ignore the law or make up his own rules. But matters need not reach the courts. Jurists have long recognized that a system of criminal law would break down were there no play in the hinges, points where the officers of justice can exercise discretion. Our second caution is that individual policemen cannot be let to decide what laws to enforce or when. What we say is that, pending repeal of legislation, all the agencies of justice, under strong central municipal leadership, can together lay down a policy to follow, open and above-board, and proudly declared to the State and Nation."

We recommend that course with respect to marijuana to the end of laying out a policy of action as close as is possible to what it would be under the kind of law we recommend.

At the risk of repetition but so that a hasty reader may not be misled, we conclude by saying: No responsible reader of this Report should take the Crime Committee's recommendations regarding marijuana to mean an endorsement of marijuana's use. On the contrary, we oppose its use by anyone, but we believe that our present criminal laws on the subject do more harm than good in forwarding that opposition.

FOOTNOTES

[1] California Bureau of Criminal Statistics, *Drug Arrests and Dispositions, 1969*, p. 1.

[2] United States Department of Health, Education and Welfare, a Report to Congress: *Marihuana and Health*, Jan. 31, 1971, pp. 35–38.

[3] John Kaplan, *Marijuana, The New Prohibition*, World Publishing Co., 1970, p. 29.

[4] California Bureau of Criminal Statistics, *Crime and Arrests, Reference Tables, 1969*, Table II, p. 22; *Drug Arrests and Disposition in California*, Reference Tables 1969, Table IV, p. 9.

[5] This figure was computed by Mr. Bruce Johnson, a sociologist at the University of California at Berkeley, in connection with a study of felony release rates prepared for the Crime Committee in December, 1970. Mr. Johnson's source data consisted of Monthly Adult Felony Arrest Reports submitted by the San Francisco Police Department to the California Bureau of Criminal Statistics.

[6] See Sec. 17 Penal Code, as amended, Sec. 11530 H. & S. Code.

[7] Based on all cases filed in Municipal Court Departments 9 and 10, January 1, 1971–May 1, 1971.

[8] Because of correct pronunciation of this Mexican word, its spelling is sometimes anglicized as "marihuana," as in the Report of the U.S. Department of Health, Education and Welfare.

[9] U.S. Department of Health, Education and Welfare, *Marihuana and Health*, a Report from the Secretary to Congress, January 31, 1971.

[10] Lester Grinspoon, M.D., *Marijuana Reconsidered* (Harvard University Press, 1971).

[11] *H.E.W. Report*, p. 10.

[12] *Id.* at p. 16.

[13] *Id.* at p. 11.

[14] Grinspoon, pp. 25, 26.

[15] John Kaplan, "Marijuana" *supra*, note 3, contains a convenient portrayal of these consequences. While we do not agree with all of Professor Kaplan's book, there is much useful material in it.

[15a] Kaplan, *supra*, p. 42.

[16] San Francisco Police Department, *Annual Report, 1969*, p. 173. The common practice of reducing a charge of felony possession to "visiting a place," a misdemeanor, has since become infrequent, because state law was amended in 1969 to permit charging possession of marijuana as a misdemeanor. See Sec. 17 P.C.

[17] Source: List of Cases Pending, prepared by the San Francisco District Attorney's Office. In addition, there were 56 pending cases in which a marijuana charge was joined with other felonies.

[18] California Bureau of Criminal Statistics, *Felony Arrest Dispositions in San Francisco, 1969*, Table 2.

[19] California Bureau of Criminal Statistics, *Drug Arrests and Dispositions in California: Reference Tables, 1969*, Table 33, p. 33.

[20] Between 9 and 11 police officers are also assigned to the laboratory's "mobile units," which travel to the scene of crimes and collect evidence.

[21] From 30,919 actual Part I offense in 1960 to 83,481 in 1970. San Francisco Police Department, *Annual Report*, for years indicated.

[22] *Id.* A case is "cleared" when the police believe that it is "solved," either by arrest, by the death of a known suspect, by a discovery that the reported crime did not, in fact, take place, etc.

[23] Addictive narcotic drugs pose a unique problem. Whether society should engage in the traffic of that peculiar evil is discussed later in this Report.

THE SCHOOL LUNCH CRISIS

Mr. TALMADGE. Mr. President, as chairman of the Committee on Agriculture and Forestry, I am calling a special executive session of the committee for 10 a.m. Wednesday, September 29, in order to come to grips with the crisis surrounding the school lunch program.

The committee will consider an emergency resolution which I submitted on September 20 to provide adequate finaning for the Nation's school lunch program.

This resolution, Senate Joint Resolution 157, will require the Secretary of Agriculture to use money available in section 32 to provide a rate of reimbursement that will assure every needy school child in America a free or reduced price lunch.

On August 13 the Department of Agriculture issued to the Nation's schools a new set of regulations which will reduce significantly the amount of money many districts will receive.

These regulations were issued only a few days before many schools opened their doors, making it impossible for local money to be raised to supplement the Federal payment.

This set of circumstances insures that many children who last year received free or reduced price lunches will not receive them this year. It insures that many fine school lunch programs will have to be demolished, in direct contradiction to the law which Congress passed.

On September 2, I wrote to President Nixon, strongly protesting these new school lunch regulations. Later, 44 Members of the Senate signed another letter to the President objecting to the regulations.

I called a hearing of our committee on September 16, attempting to gather testimony from a representative group of witnesses—the people directly affected by the new school lunch regulations.

We heard from B. P. Taylor, superintendent of schools at San Diego, Tex. Mr. Taylor is doing an outstanding job of feeding the children of his school district, where 60 to 70 percent of his students come from families below the poverty line.

Mr. Taylor's dropout rate before the school lunch and school breakfast programs became a reality was in the realm of hundreds of students a year. The mere addition of decent meals reduced this to 12 students last year, and he was able to convince eight of the 12 students who left school to return.

This is a phenomenal accomplishment. And as we all know, the first step toward leading young people away from the cycle of poverty, to the point where they can become working, taxpaying citizens is through education.

Mr. Taylor testified that the new guidelines would affect his school district so severely that he will have to cut back on academic programs in order to carry on his nutrition program.

In addition to Mr. Taylor, the committee heard from representatives of two big-city school districts, Mr. Howard Briggs of the Detroit, Mich., public schools, and Dr. Eugene Sampter of the Buffalo, N.Y., schools.

Mr. Briggs was highly critical of the new school lunch regulations, and he testified that the rate of reimbursement was going to be extremely inadequate. At the end of the last school year, he said, the Detroit schools were being reimbursed at a total rate of 52 cents per meal. The new regulations would provide only 35 cents per meal. According to Mr. Briggs' testimony, the actual cost of a lunch is 55 cents.

That is a 20-cents-per-meal differential that someone must pay, and as the mayor of Detroit has testified on this Hill many times, that city is on the brink of economic collapse.

Dr. Eugene Sampter of the Buffalo schools told a similar story. He testified that Buffalo will be forced to suspend the feeding of needy children in the city some time during the coming winter if the rate of federal reimbursement is not increased.

Buffalo is not blessed with the same moderate weather as my State. Often in the winter, temperatures reach tens of degrees below zero, and the city is located in what is known as New York's snow belt. The prospect of the suspension of the school lunch program under such conditions is a grim one.

The final public witness who testified was Miss Josephine Martin, administra-

tor of the school food service program in Georgia. Miss Martin is one of the leading authorities in the Nation on this problem.

She testified that at the end of the last school year, Georgia schools were reimbursed at a rate of 42 cents per meal. Under the new regulations, Georgia schools will receive less than 36 cents per meal.

Miss Martin also gave us an idea of what effect the new regulations would have on other schools in this country. According to a survey conducted by the American School Food Service Association, the nationwide deficit in school lunch funds would be between $150 and $180 million.

Finally, the committee heard from Richard E. Lyng, Assistant Secretary of Agriculture, who presented the USDA justification for the new regulations. Assistant Secretary Lyng presented an excellent statement attempting to show that the Department had devised regulations which provided the most equitable distribution of the available funds.

Several members of the committee questioned Assistant Secretary Lyng repeatedly about the amount of money that would be needed to carry out the mandate of the law. The Senator from Louisiana (Mr. ELLENDER), chairman of the Committee on Appropriations and author of the original school lunch legislation, was especially anxious to determine whether additional funding was needed. However, the committee could get no answer as to the amount of funds which would be required. I believe that the Senator from Florida (Mr. CHILES) summed up the feeling of the committee members when he declared that he was forced to vote in the dark in regard to the school lunch program. We have been told repeatedly by the administration that we have sufficient funds for an adequate school lunch program. We appropriated more than the administration requested, and then suddenly we are faced with a money crisis.

The Senator from Alabama (Mr. ALLEN) attempted to find out whether the administration would spend additional funds to provide free meals to needy children if Congress appropriated it. Again, we received no answer.

Although the congressional appropriations for school lunches for fiscal 1972 is $615.2 million—$33.8 million more than was requested by the administration—it is apparent that these funds are not sufficient.

We have no indication that the White House will request additional funding in a supplemental appropriation and we don't know whether the money would be spent if appropriated.

Therefore, the resolution I submitted on September 20 would require the Secretary of Agriculture to use funds made available by section 32 of the Agriculture Act of 1935 to provide a rate of reimbursement that makes certain these children are fed. Under the resolution, the Secretary would be required to use this money until Congress has an opportunity to act on a supplemental appropriations bill.

Mr. President, at the conclusion of the hearings on September 16, I stated that I did not feel that Congress would stand idle while schoolchildren go hungry. I suggested that the USDA convene its advisory committee, the National Advisory Council on Child Nutrition, and reevaluate its regulations.

I understand that my recommendation has not been followed. I have received no indication that the administration is considering a change in the regulations, despite the fact that many school districts are in desperate trouble.

Therefore Congress must act quickly. A failure to approve this emergency legislation will mean that the progress made in the school lunch program during the last school year will be lost. More important, it will mean that schoolchildren will go hungry.

Mr. President, I ask unanimous consent that the text of Senate Joint Resolution 157, a copy of a press release I issued on September 20, and copies of the statements presented to the Committee on Agriculture and Forestry on September 16 be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

S.J. RES. 157

Joint Resolution to assure that every needy schoolchild will receive a free or reduced price lunch as required by section 9 of the National School Lunch Act

Whereas it appears that under the proposed apportionment of funds available for special assistance under section 11 of the National School Lunch Act for the fiscal year ending June 30, 1972 (including funds appropriated by section 32 of the Act of August 24, 1935, and made available for that purpose), only six States will receive more than 30 cents in such assistance per free or reduced price lunch; and

Whereas it appears that this amount per lunch is not adequate to enable States and schools to continue to participate in the school lunch program and to achieve the objectives of the National School Lunch Act, particularly that of providing a free or reduced price lunch to every needy child: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other provision of law, the Secretary of Agriculture shall until such time as a supplemental appropriation may provide additional funds for such purpose use so much of the funds appropriated by section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), as may be necessary, in addition to the funds now available therefor, to carry out the purposes of section 11 of the National School Lunch Act and provide a rate of reimbursement which will assure every needy child of free or reduced price lunches during the fiscal year ending June 30, 1972. In determining the amount of funds needed and the requirements of the various States therefor, the Secretary shall consult with the National Advisory Council on Child Nutrition and interested parties. Funds expended under the foregoing provisions of this resolution shall be reimbursed out of any supplemental appropriation hereafter enacted for the purpose of carrying out section 11 of the National School Lunch Act, and such reimbursements shall be deposited into the fund established pursuant to section 32 of the Act of August 24, 1935, to be available for the purposes of said section 32.

STATEMENT OF B. P. TAYLOR, SUPERINTENDENT OF SCHOOLS, SAN DIEGO INDEPENDENT SCHOOL DISTRICT, SAN DIEGO, TEX.

Chairman and Members of Committee: My name is Bryan P. Taylor. I am superintendent of San Diego Independent School District in San Diego, Texas. I have been superintendent in San Diego for some thirteen years San Diego is located in deep southwest Texas. Our school district consists of some 400 sq. miles; 1700 students of which some ninety-nine per-cent (99%) are of Latin American descent.

We are a poor school district from the standpoint of taxable property. Some sixty to seventy per-cent of the students come from families that have income of less than the poverty guidelines and consequently will qualify under the guidelines set forth by the U.S. Department of Agriculture. These students, of course, qualify for free meals.

We have been participating in the National School Lunch Program for many years and I think, the records will show that we have gladly participated in this program knowing full well that it is a good one. When it was possible to serve breakfast under this program, we were among the first to serve, not just breakfast consisting of dry cereal, toast, and milk, but a breakfast consisting of bacon, eggs, hot cereal, homemade bread, fruit juice, and milk. For the past eighteen months we have been serving three meals a day to our children. I think that we are probably the only school district in the nation doing this. Part of the money for the third meal comes from the Vanic Act which is administered by the U.S. Department of Agriculture. I am sure that the San Diego Independent School District is unique in that we sincerely believe that hungry children should be fed, and that the proper meeting place for the hungry child and good wholesome food is the public school cafeteria.

For many years I have been a supporter of the National School Lunch Program. All school people strongly believe that food is certainly an important factor in a child's ability to learn. No one will deny that a hungry child cannot be taught. Only a child that receives plenty of food and nourishment can be educated to his or her utmost. I have made the foregoing statement to show the Committee what we have been doing and are doing in the realm of food services for our students. Our services reach much further than just food. The food program is an important part of our educational system. It is not enough to try to feed and educate the needy child. We must feed the hungry child and educate him. Support in the past has been coming from the U.S. Department of Agriculture and Title I allotments. These funds were never enough, but some schools, for some reason, did not recognize that they had the obligation of feeding the needy students.

Our school district and many more public schools will lose more money than ever before by giving food services. The U.S. Department of Agriculture mandated all public schools to feed hungry children. This I completely agree with. I don't think that anyone has the right to deny a child food. But to tell a school district this and then not furnish money for this service is almost asking for an impossible task to be performed, especially if the schools are not in full agreement with the program in the beginning. I think that the U.S. Department of Agriculture should assure the school districts that its meal cost will be reimbursed. With the help of Title I money, the U.S. Department of Agriculture, and the Vanic Act, we, at San Diego Independent School District, have been contributing some $30,000.00 to $40,000.00 a year to our food services.

However, without the Title I money, as the administrators of the Elementary & Secondary Act have said that this money should not be used to purchase complete lunches, and with a reimbursement rate of only 30¢ plus 5¢ from the National School Lunch Program (35¢ total), we will look at an even larger deficit. In addition to this, Mr. Hicks, State Lunch Program Director, informs me that no additional schools wanting to participate in the Breakfast Program can be

added at this time. He also informed me that at the rate we are going, we will run out of money for breakfast sometime in March or April which means that there will be no reimbursement for breakfast these months. A food program has a direct relationship to a child's learning ability. This is the reason we, at San Diego Independent School District, serve three meals a day for twelve months.

In the local level school districts cannot and will not afford expenses for meals. I have talked to many school superintendents in the State of Texas and the story is the same. We cannot afford this program. Everything is going up in price and people in general are so conscious of taxation. We, at San Diego Independent School District, like all school districts, are dedicated to the cause of education, but we also know that without good nutrition and good health, a child cannot achieve academic goals. It seems that the new regulation set down by the U.S. Department of Agriculture not only hurts schools that want to be included in the lunch program for the first time but punishes the schools, like ours, who have been doing the right thing for many years. I hope that some part of the above statement will clarify just what is happening on the local level in our public schools.

We have more schools participating in the lunch program today than we have had before. But, unless the federal government gives strong and financial support to this program, the local school district cannot afford to continue with what has been right for twenty-five years, and I should think that the federal government should be pleased and honored to participate fully in this kind of a program.

STATEMENT OF CLAUDE D. CLAPP, DEPUTY SUPERINTENDENT OF SCHOOLS, BUFFALO, N.Y.

At the outset, let me make clear our support, not only of the free lunch program but also of a more comprehensive program of proper nutrition and nutrition education for all school children. Consistent with this goal, our Superintendent, Dr. Joseph Manch, has gone on record as favoring the expansion of the free lunch program to include all of the children in the Buffalo Public Schools.

It is no longer either fashionable or reasonable to suggest that a free public school education should be provided only to those who are economically disadvantaged. You will recall that as recently as the middle of the last century free public education was available only to the indigent, others had to pay. The need for education is found at all levels of society. In view of its direct and indirect educational value, therefore, the feasibility of a universal free lunch program merits serious consideration.

However, to date we have only been able to undertake a free lunch program for children of the needy.

The Buffalo Public School System is the second largest in New York State. Nearly half of our pupils participate in the National School Lunch Program and we are grateful to the Administration and to the Congress for the support this program has received over the years. Almost 75 percent of the pupils participating in the National School Lunch Program receive free lunches daily, which figure suggests that we are operating one of the most extensive free lunch programs of any large city in the nation.

Institutions magazine has reported that the Buffalo School Food Service Department is the seventh fastest growing food service organization in the world. This is true because our free lunch program which served 1,700 pupils daily in February 1970 was serving more than 23,000 needy pupils daily less than a year later.

Every needy child in every public school in the City of Buffalo was served a free hot lunch each day last year. By needy, I mean those children who qualified because they are members of families whose income and size meet the criteria used to determine economic need.

The question may well be asked how were we able to gear up to such a huge feeding program in such a short time. The answers are:

1. Our Superintendent and Board of Education expected it.

2. We have an outstanding staff.

3. Buffalo was one of the first districts to use a commercial vendor to deliver hot prepackaged Type A lunches to schools.

We had to do the latter because 55 of our 99 schools do not have cafeteria facilities. Even if we had the funds to construct the facilities, which we did not, we could not afford the time construction would have taken. I am proud to be able to say that we were able to expand our free lunch program as I have described without any sacrifice of the high standards our school food service programs have always maintained. Evidence that this is so can be found in the fact that the Buffalo Public Schools free lunch program has received public praise from community groups and from elected public officials.

As of course you recognize, the increase in the number of pupils served by the free lunch program is accompanied by an increase in the cost of that program. Therein lies the last major and still unresolved problem we in Buffalo face in attempts to provide this important educational and health service to needy boys and girls.

That is why I am here this morning to acquaint you gentlemen with the problems we face if we are to continue to give free school lunches to those children whose parents can not afford to buy them. I am here to ask that the Congress and the Administration take whatever action is necessary to secure full federal funding of the free lunch program. Specifically, I am asking that local school districts receive a sixty cents reimbursement for each meal given to a needy child.

Let me tell you some of the fiscal facts of life about the Buffalo Public Schools and how they affect our ability to operate a free lunch program and why we need a sixty cents reimbursement.

Our Board of Education is fiscally dependent upon the Mayor and the Common Council. The Board does not have the power to go directly to the taxpayers of its district for the funds to operate its schools as do all but five of more than 700 school districts in New York State. We must rely on an appropriation from the municipal government. We asked the City of Buffalo for $89.3 million for the operation and maintenance of our schools in 1971–72. We have received appropriations of less than $75 million, which amount is not enough to enable the Board to continue the programs and services it provided last year and to meet its mandate increases and to carry out its contractual obligations. As a matter of fact, the Board of Education's inability to fund all of the provisions in its contract with its teacher organization has resulted in that organization lodging a complaint alleging unfair labor practices. That complaint is being adjudicated at the present time.

As chief fiscal officer for the Board of Education, I have advised it that the school foods program faces an operating deficit of almost $700,000 in the current year. This deficit arises from the fact that while it costs the Board of Education approximately 68 cents to put a hot free lunch before a needy child, our revenue for that lunch totals only 39 cents, 35 cents of which represents federal support and the remaining 4 cents a contribution by the State of New York.

In spite of the fact that the Buffalo Public Schools began the fiscal year some $14 million short of the funds requested, a shortage which required a reduction in teaching, administrative and non-instructional staffs, a shortage which required that the Board make decisions which resulted in unfair labor practices being lodged against it, the Board nevertheless reaffirmed its commitment to the free lunch program by allocating $265,000 of its own funds to that effort. It is recognized that $265,000 is only sufficient to permit the program to operate about a third of the school year. It is the Board of Education's hope and my own that before these funds are exhausted, you the Congress will have taken the necessary action to make additional funds available. Certainly nothing could be more tragic than for the Board of Education to be forced to discontinue providing hot free meals to needy children this winter and I think Buffalo's winters are well enough known that it is not necessary for me to characterize them here this morning.

Gentlemen, I do not want to end my statement with a maudlin, sentimental appeal, but it is a fact that the future of the free lunch program in Buffalo rests with you.

STATEMENT OF JOSEPHINE MARTIN

Mr. Chairman, Members of the Committee: My name is Josephine Martin, and I am the Administrator of the School Food Service Program in Georgia. I am here today because of my concern for the school children in my state and for all the school children in the Nation. I believe their nutritional well being is going to be harmed if the USDA adopts the amendments to the regulations which they have proposed as mandates under which we in the states must administer and operate the National School Lunch Program.

I welcome the opportunity to describe in detail how these regulations will adversely affect the school lunch program in Georgia. These proposed rules have been described as a "breakthrough" in program funding. I would describe these proposals rather as a "breakdown" in Federal assistance to the states in the programs to end hunger and malnutrition in America's school rooms.

The USDA insists its proposals will place a floor of 35 cents under the amount each state can expect to be reimbursed by the Federal government for each free and reduced price lunch served to needy children. Last week, for example, Assistant Secretary Richard Lyng said the USDA proposals "guarantee each state that, no matter how much it expanded its program, it could be assured that it would be able to maintain a statewide average rate of 5 cents under Section 4 and a statewide average rate of 30 cents under Section 11."

I intend to show you that this pledge may not be carried out under the proposed regulations because of conflicts in the regulations. The USDA claims the regulations will insure the school lunch program is being expanded and improved to reach more needy children, but I will show you how the regulations will make it more difficult for the states to achieve that goal; and, at the same time, I will show you how the regulations have the effect of rewriting portions of PL 91–248 which the Congress enacted last year and also the formula for general cash for food assistance (Section 4). The USDA has sought to emphasize the need for a "high degree of management integrity," as Secretary Lyng told us last month at the Annual Convention of the American School Food Service Association. He said the department would show "proper concern and demand proper responsibility for prudent decisions and for good management." I will describe for you how the USDA's own actions fall short of this rhetoric, and, in fact, create

an environment in which the states are unable to carry out this laudable goal.

Let me emphasize that our disagreement with the USDA is not over the goals which the words portray; rather, it is with the actions the department proposes to take to help us carry out those goals.

I am a State Director, responsible for the Child Nutrition Programs which are operated in 99 percent of the public and private schools in Georgia. School administrators, school food service directors in each school district, and the State Department of Education together are the operating and administrative personnel who will determine the success or failure of the National School Lunch Program and in fact all the Child Nutrition Programs.

In the nature of the Federal system of government we practice, sometimes I wonder if the Federal level is aware of or responsive to needs of the state and local levels where the problems are and the action is. There are no hungry children in this committee room, nor on the floor of the Senate or the House. There are no hungry children in the office of the Secretary of Agriculture, nor in my office in Atlanta. The hungry children are in the schools where nutrition programs must be operated to feed them.

Now, the Congress has said that all needy children shall be fed; and President Nixon has said that all needy children shall be fed—he promised it would be done by last Thanksgiving. I along with the other 50 school lunch directors, and all school district food service personnel want to do this. We want to see that every child is fed because we believe a hungry child cannot learn.

We recognize that if this job is going to be done—if the rhetoric is to become a tangible reality—then school food service personnel will be the persons who do it. If we don't, we ask who will? However, we cannot convert promises into food, we can only convert resources into better nutrition.

Thus, I and the other state school food service directors were dismayed when the USDA last March told the Congress that the states could achieve an expansion in the school lunch program during 1972 with no more funding than in 1971. Charts No. 1 and 2 indicate the level of Federal assistance to Georgia for the Fiscal Years 1970, 1971 and 1972, and the pupil participation in those years. Is it any wonder that state directors are alarmed over the proposed funding pattern? Chart 1 reflects an increase of $10,400,000 in 1971 over 1970 and tentative allocations for 1972 reflect $4.5 million decrease in apportionment. Chart 2 reflects an increase of 12,000,000 free and reduced lunches in 1971, and with full implementation of PL 91–248, we project 63.8 million free and reduced lunches in 1972. But how will we, can we ever reach that goal with only 35 cents per meal, and with no assurance of even 35 cents per meal? It was clear to the state directors and American School Food Service Association in March, that a national program to serve lunches to all needy children could not succeed if the Federal Government limited its contribution to a maximum of 35 cents for every lunch served. USDA gave authority in March, 1971 that permitted us to pay up to 42 cents per meal by using Section 32 funds. In Georgia, for example, a school lunch cost 44 cents, on the average last year; and the cost will be higher this year by at least 5 percent. The Georgia General Assembly appropriated $3.2 million for school lunch program for this year or about three times as much as the Congress requires under the state matching provision. As Georgia is a large state, the state funds will provide only 2 cents per lunch.

Thus, with 35 cents from the USDA and 2 cents from state funds, the cost of a lunch will be about 7 cents higher than we supposedly can pay, on the average. If we serve all the needy children we can reach in Georgia, then we must operate the program at a $6 million deficit. We could try, I suppose, to get the local school boards to assume these costs. However, their budgets are set, and revenues are down. Title I and OEO monies are gone. The result then will be that many schools and possibly entire school districts will simply drop out of the National School Lunch Program. We have heard that several school districts in Connecticut will not have lunch programs in 1971–72 because of deficits, and at least two low income schools in Lincoln, Nebraska have cancelled plans for school lunch programs. School operating costs already are high, and communities do not have additional tax dollars available to pick up these program costs. Georgia figures have been used as an example to describe the problem. This multiplied fifty times presents the national problem. A survey conducted by the American School Food Service Association is summarized in the summary report which is attached. This report shows the amount of projected deficit by each state and certain school districts within these states. The national average cost of producing a meal excluding USDA foods in 1970–71 was 52.6 cents per meal. The projected deficit for 1971–72 for all the states based on the survey by American School Food Service Association is $187 million. It would be a shame if national policy and national rhetoric were to combine in such a way as to deny better nutrition to all children.

We, however, have not been able to get to these arguments in a meaningful way with the USDA, and therefore to the Congress, because we first must contend with the fact that the 35 cents floor which the USDA promises is a fiscal mirage.

The USDA regulations, as opposed to the USDA claims will actually require me to set an average reimbursement rate of about 15 cents from USDA funds for meals served to needy children, or about 20 cents less than Secretary Lyng told the Congress I will receive.

I will be required to take the funds allocated to Georgia for helping needy children and determine the amount I can pay local schools by this formula: Divide the dollar amount (which is $9.7 million) by the number of free or reduced price lunches I plan to serve this year. (Some 63.8 million).

Under this formula the USDA appears to be proposing a limit on the reimbursement rate in Georgia to 15 cents a lunch for needy children. I say appears because elsewhere in the regulations the USDA is proposing to reimburse the states at 30 cents for each lunch served to needy children after a minimum number (or base) of free or reduced price lunches has been reached.

(I apologize to the committee if what I am saying is confusing. It is not me, but the language of the regulations as proposed. We have asked the USDA to clarify what appears to be a contradiction, and to omit the cumbersome bases, but nothing as yet has been forthcoming.)

As of today, I can only assume that I would be able to reimburse local schools only 15 cents for each free and reduced lunch; and perhaps, after a time, when we have reached a trigger point, I could raise the payment to 30 cents for each lunch served to a needy child. The harsh truth, however, is that unless I can reimburse local districts at least 40 cents for a free or reduced price lunch, from the start to the finish of the school year, then I may not have to worry about trigger points, base figures or anything else the department may devise.

Now the USDA will say that I can give individual schools more than 30 cents if that is necessary to insure the needy child is fed in a particular school. That is all well and good, except I must do it within an average reimbursement rate (which means I must do it within cumbersome guidelines which reward poor management and promote unsound business practices.)

Higher reimbursements are allowed only where a lunch program is costing a school more than is typical of the state as a whole, and where the operating costs would exceed its lunch program revenues, and where remedial action will not eliminate a deficit. This regulation only makes it harder, if not impossible, for me to respond to the many varying conditions and situations I can expect to find within the 219 school districts in Georgia.

This is an example of how the proposed rules will restrict the program. Let me cite other examples of where the regulations proposed by the USDA will actually deny authority to the states which the Congress extended to them.

Last year, Kentucky for example, spent one and one-half million dollars from Section 32 funds on the school breakfast program, as the state was allocated only $317,262 from breakfast funds. The only reason Kentucky could expand its program to 500 schools as it did was by the transfer of funds from other child nutrition program activities. Unless the transfer authority is extended, Kentucky breakfast programs will collapse by late September. The Congress authorized the transfer authority in PL 91–248 as a way to give the states increased flexibility in the management of funds; as a way for the states to determine greatest needs of their state.

Overall, the states last year spent $20 million on the breakfast program, even though the appropriation from the Congress was $15 million. This indicates, I believe the wisdom of permitting the state to adjust programs to local needs.

This authority will no longer be available to the states, however, not because the Congress has repealed any authority, but because the USDA has directed that states will earn Section 32 funds only for free or reduced lunches served, and has made no provision for transfer of funds from any programs. In reality, this is a double blow. On the first of this month the USDA informed the states that breakfast program funds would be restricted to $18.5 million, even though the Congress had appropriated $25 million. With another $3 million carryover from Fiscal Year 1971, the USDA actually has $28 million available for breakfast, or over $10 million more than the department now proposed to spend. In effect, the breakfast program will be sharply cut back in order to fit into the smaller spending level set by the USDA.

The regulations also propose to rewrite the legislative policy another way. Last year the states spent nearly $38 million to modernize old kitchens and equip new cafeteria facilities, even though the Congress appropriated only $16 million directly. The Congress authorized $38 million, however, the department only asked for $16 million. The difference was made up with the transfer authority.

The department, in addition to cutting off the transfer power, has proposed that half of the $16 million available for non-food assistance (equipment) be spent after March 1 unless spent in schools without facilities. Permission for states to spend those funds in schools with facilities even after March 1 negates legislative intent that half the non-food assistance funds would be used exclusively to expand programs to schools without facilities in schools, regardless of the meager nature of those facilities. Meagerness or adequacy are not considered in allocating half the funds. Yet, the regulations favor the states that have more schools without facilities by permitting intended funds for those schools to be used in schools with facilities.

The effect of this regulation also will delay or postpone expenditures of non-food assistance funds, thereby resulting in unexpended funds at the close of the year.

The regulation proposes to rewrite legislative policy in still another way.

The budget request for 1972 contained the same amount for Section 4 purposes appropriated in 1971 when the program growth by USDA figures would require an additional $18,000,000 to provide a 5 cents average. The Department now proposes to use a portion of Section 32 money to make up this difference. The Department also proposes to guarantee 5 cents to all states including those that earned less by the formula. The Department proposes to do this at the expense of 37 states that had earned more than 5 cents. By using Section 32 funds to supplement Section 4, less Section 32 money will be available for special cash assistance for free lunches in all states.

We have requested a 5 cents floor for all states since the early 60's, so we are pleased that the Department has recognized that need. We wonder if it is within the prerogative of the Department to provide a regulation that has the effect of changing the formula for earning funds in the National School Lunch Act. The goal of cents would have been achieved had additional Section 4 funds been requested by the Department in the budget request.

For longer than I care to remember, each school year has begun with uncertainties regarding the amount of financial support the Federal government would provide, and worried that when we were told it would not be sufficient to our needs. With the new law last year, we accepted with reluctance the obstructions as growing problems.

This year, however, was expected to be different! The Congress completed action on the appropriations for the child feeding programs as the fiscal year was beginning, more than two months before school was to begin; the Congress provided authority for the Secretary of Agriculture to spend $100 million from Section 32 (in addition to the increased amounts in the child nutrition appropriations) for school lunch. And, further, the Secretary announced in June the national eligibility standards for children who are eligible to receive free and reduced price lunches.

It was a heady period where many of us felt that, for the first time, we could really show what the states could do with meaningful Federal support. That sense of hope is rapidly disappearing, and the 1971–72 school year is beginning to parallel the confusion and disorganization which characterized the start of the school year in 1970–71.

We managed to overcome the shaky start a year ago, and carried the school lunch program to a record level of service to needy children, and to all school children. Rather than start from that plateau, it appears that the school lunch program is headed in the wrong direction.

If the proposed regulations are to become the policy for the school lunch program this year, then it will mean that:

The level of funding to the states will not sustain the school lunch and breakfast program operating in April and May, 1971 nor the objectives contained in the State plans of operation;

The lack of transfer authority will strip the states of the flexibility needed to strengthen the child nutrition program by adjusting it to the individual needs of the states;

The efforts to restrict the funding availability will create unworkable and undesirable administrative procedures;

The intent of PL 91–248 and PL 92–32 cannot be fulfilled.

Mr. Chairman, school food service people are committed to fulfill the intent of PL 91–248; school food service people are responsible for administering the program at state and local levels. Reasonable regulations and adequate funding are two prerequisites to implement Child Nutrition Programs in accordance with congressional intent.

The specific comments relating to proposed regulations prepared for American School Food Service Association by an ad hoc committee of state directors and major city directors were transmitted to Mr. Herbert Rorex in accordance with instructions. However, I wish to summarize the recommendations which American School Food Service Association believes necessary if we are to fulfill the commitment;

(1) Increase level of apportionment to states for Section 11 and Section 32 funds for free and reduced meals to a minimum of 40 cents per meal.

(2) Eliminate concept of establishing a base for paid and free lunches.

(3) Provide for transfer of funds between sources within the state to permit individual states the flexibility and autonomy to determine the priorities for funding within states.

(4) Rewrite criteria for states to use in determining eligibility for rates in excess of 30¢ per meal to simplify and permit higher rates wherever needed.

(5) Rewrite regulations on non-food assistance that will permit use of funds, and regulations that will use funds in accordance with congressional intent.

Finally, I wish to thank you for this opportunity to have dialogue with USDA pertaining to the needs of Child Nutrition Programs, and make one final recommendation that USDA be urged:

(1) To involve program administration (CSSO, SD, FSD) in identifying needs (funding and procedural);

(2) To present realistic budget proposals which reflect opportunities for growth and expansion; and

(3) To issue regulations by May 1 which are expected to be effective the following school year.

Many additional children received improved nutrition in 1970–71 in spite of difficulties encountered in late funding, restrictive regulations, and uncertainties in fund utilization. The history of school food service success has been built on cooperation, meaningful dialogue, and uniformity of purpose. We the school food service practitioners, earnestly seek to put an end to hunger in American school rooms for all children, and we know that such a goal will only be achieved through cooperation, uniformity of purpose, and dedication to the American School Food Service Association theme, "Always the Child First."

I would hope that this committee can prevail upon the Secretary of Agriculture to suspend any further action of the proposed regulations, and to assure the states and school districts that a level of funding will be available (even if it means asking for more money) to continue the progress we have begun to make in child nutrition programs. I would hope that this committee would insist that the Department establish reasonable regulations that reflect knowledge of the problems involved in food service administration at state and local level.

Our concern is "Always the Child First." Will you ask the Department to place a high priority on the future of our country—its children?

In behalf of American School Food Service Association, I thank you for holding this hearing to focus attention on the dilemma faced by school food service personnel. I thank you for the privilege of appearing here today.

SUMMARY REPORT, FREE AND REDUCED PRICE LUNCH PROGRAM, FISCAL YEAR 1971-72

State or school district	No. type A lunches served 1970–71 (free or reduced)	No. type A lunches to be served 1971–72 (free or reduced)	Anticipated loss in 1971–72 at 35 cents
Alabama	35,789,305	40,000,000	$5,250,000.00
Birmingham	2,606,563	2,668,812	373,633.68
Alaska: Anchorage	234,000	277,200	85,100.00
Arizona	7,434,448	10,000,000	1,476,159.00
Phoenix (Isaac District No. 5)	52,220	75,000	8,775.00
Phoenix	42,220	50,000	17,700.00
Tucson	930,889	1,000,000	150,000.00
Arkansas	18,873,010	22,703,962	987,622.00
California	89,000,000	133,500,000	9,000,000.00
Oakland	3,455,540	4,000,000	724,000.00
Sacramento	1,285,411	1,542,493	116,927.34
Palm Springs	43,246	57,000	11,400.00
Colorado	8,560,387	11,000,000	550,000.00
Littleton	26,435	31,000	29,450.00
Denver	3,094,057	3,500,000	(?)
Connecticut	4,829,218	5,312,139	700,000.00
East Haven	71,282	72,000	22,320.00
Delaware	1,724,159	2,500,000	(1)
Florida	36,674,477	43,067,674	6,916,668.00
Miami	5,370,196	5,859,180	412,858.00
Broward County	2,658,354	3,000,000	222,300.00
Bay County	418,890	564,256	67,710.00
Baker County	100,897	101,197	13,356.00
Hillsborough County	3,660,067	4,323,600	367,586.00
Palm Beach County	2,543,286	3,000,000	150,000.00
Georgia	44,298,239	63,859,511	6,002,794.00
Columbus (Muscogee County Southern District)	1,050,517	1,075,517	75,286.19
Atlanta	7,005,696	7,461,066	500,000.00
De Kalb County	756,851	800,000	80,000.00
Macon	1,311,486	1,861,569	186,156.90
Hawaii	1,945,713	2,288,000	$457,600.00
Idaho: Jerome	35,688	40,000	1,600.00
Illinois	47,255,707	52,272,000	16,000,000.00
Chicago (archdiocese of)	1,374,559	1,700,000	?
Indiana	9,832,652	27,068,940	5,251,104.00
Indianapolis	1,915,468	2,563,730	307,647.60
Iowa	6,783,989	9,900,000	352,440.00
Ames	18,941	20,000	3,500.00
Kansas	4,766,830	6,595,865	659,586.50
Shawnee Mission	90,727	95,200	20,000.00
Dodge City	76,188	77,688	8,500,000.00
Wichita	648,000	1,000,000	(?)
Kentucky:			
Todd County	78,081	93,690	12,179.70
Louisiana	37,346,845	48,600,000	0
New Orleans	72,000	77,000	0
Maine	4,677,677	6,630,000	1,326,000.00
Maryland	14,533,800	15,987,180	3,996,795.00
Montgomery County	475,238	1,110,000	388,500.00
Baltimore County	327,162	500,000	100,000.00
Massachusetts	11,677,391	16,200,000	3,240,000.00
Boston	988,027	3,554,040	248,783.00
Michigan:			
Detroit	5,800,657	7,000,000	1,400,000.00
Levonia	32,585	[2] 6,800	[2] 1,402.14
Midland	44,100	50,000	6,500.00
Minnesota	13,563,160	14,919,476	2,154,000.00
Minneapolis	2,683,045	3,000,000	750,000.00
Crosby	36,058	50,000	6,500.00
St. Louis County	159,709	165,000	21,450.00

Footnotes at end of table.

State or school district	No. type A lunches served 1970–71 (free or reduced)	No. type A lunches to be served 1971–72 (free or reduced)	Anticipated loss in 1971–72 at 35 cents
Mississippi	34,715,547	38,187,101	$1,140,000.00
Greenodle	709,885	735,000	30,000.00
Missouri	15,449,143	20,000,000	4,000,000.00
St. Louis	3,500,000	6,000,000	750,000.00
Kansas City	2,114,997	2,326,496	465,299.20
Hazelwood School District	10,648	10,648	44,000.00
Kirkwood	10,982	12,000	2,400.00
Montana	1,573,014	1,844,460	?
Great Falls	170,404	200,000	60,000.00
Nebraska	5,166,556	6,202,800	496,224.00
Omaha	1,602,318	2,052,300	420,000.00
Nevada			
Las Vegas	479,935	749,835	64,485.00
New Hampshire	1,907,254	2,155,187	215,518.70
New Jersey	17,154,000	24,300,000	8,019,000.00
Patterson	522,381	525,341	?
Newark	5,495,241	64,000,000	1,936,000.00
Elizabeth	738,717	838,323	159,281.37
New Mexico	11,187,023	12,000,000	1,200,000.00
Albuquerque	2,151,923	2,582,308	82,375.63
Gallup	1,230,312	1,275,000	185,000.00
Santa Fe	500,686	756,000	604,800.00
New York	95,000,000	110,000,000	?
Sweet Home Central Southern District	7,000	12,000	3,600.00
Buffalo	4,082,758	3,750,000	950,000.00
North Carolina	44,229,463	48,652,409	3,259,711.00
Winston-Salem	1,096,757	1,276,757	293,654.00
North Dakota	2,286,001	2,500,000	?
Ohio	24,419,524	26,500,000	5,565,000.00
Cleveland	3,388,359	5,312,199	1,965,513.63
Lima	201,304	215,000	55,000.00
Columbus	1,327,691	1,600,000	320,000.00
Cincinnati	2,866,733	3,000,000	210,000.00
Akron	1,467,415	2,000,000	380,000.00
Dayton	1,268,972	2,000,000	500,000.00
Toledo	289,857	450,000	47,000.00
New Philadelphia	26,946	30,000	5,658.45
Oklahoma	12,892,752	14,697,737	1,000,000.00
Tulsa	927,558	1,159,448	200,000.00
Oklahoma City	1,645,000	2,000,000	317,027.00
Oregon	5,926,467	8,473,249	1,476,175.54
Portland	1,473,112	1,732,500	361,471.56
Pennsylvania	22,442,315	23,400,000	5,000,000.00
Elizabeth	29,847	39,000	10,000.00
Pittsburgh	4,188,618	3,587,580	748,203.00
Cheltenham Township	6,790	10,620	----------
Philadelphia	4,809,661	8,447,400	$777,161.00
Monongahela	54,000	60,000	12,960.00
Murrysville	22,832	25,000	10,000.00
East Allegheny School District	299,460	389,298	52,764.94
Marietta	14,395	17,525	6,200.00
Ligonier	19,800	30,000	10,000.00
Shaler Area School District	6,000	47,840	9,568.00
Plymouth Meeting	31,477	34,624	10,387.20
Fort Washington	11,965	14,000	4,900.00
South Carolina	31,794,679	52,800,000	9,891,200.00
South Dakota	2,900,000	5,525,000	828,750.00
Tennessee	29,179,653	31,500,000	2,772,000.00
Memphis	7,000,000	7,500,000	975,000.00
Knoxville	656,214	750,000	26,250.00
Kingsport	110,561	135,000	34,750.00
Nashville	1,617,503	2,644,800	259,190.00
Texas	50,930,126	88,500,000	8,850,000.00
Austin	1,337,711	1,515,960	197,177.00
Dallas	3,787,408	4,700,000	569,466.00
El Paso	1,333,543	1,500,000	750,000.00
Corpus Christi	1,061,150	2,500,000	125,000.00
Houston	3,720,979	5,437,440	652,493.00
Fort Worth	1,090,532	1,658,432	331,686.40
Utah	4,095,241	4,259,050	468,495.00
Grant School District	603,000	660,000	6,600.00
Davis County	318,380	100,000	15,000.00
Vermont	1,454,000	1,900,000	600,000.00
Rutland	85,565	90,000	16,650.00
Virginia:			
Newport News	739,856	813,842	48,000.00
Arlington County	180,000	230,000	77,000.00
Fairfax County	476,989	524,688	5,246.88
Washington	10,245,426	12,593,000	2,668,000.00
Northshore School District	85,888	100,000	13,939.40
West Virginia	19,799,891	28,300,000	2,661,300.00
Wyoming	455,676	501,244	45,823.93
Wisconsin	7,427,518	9,900,000	1,435,500.00
Addendum—Information reviewed too late for tabulation			
San Diego, Calif	2,147,260	2,301,000	345,150.00
Michigan	16,440,549	25,000,000	3,500,000.00
Caswell County, N.C	282,379	300,000	27,900.00
Sanderton, Pa	1,725	1,743	0

[1] Insufficient data.

[2] Lunches discontinued in elementary schools—high schools only.

CHART NO. 1.—COMPARISON OF TENTATIVE ALLOCATIONS, GEORGIA, FISCAL YEARS 1970–72

	1970	1971	1972	Difference
Sec. 4	$7,583,774	$10,018,000	$9,792,918	—$225,972
Sec. 11	2,345,755	8,630,000	9,689,669	----------
Sec. 32	4,578,506	6,321,685	0	----------
Total	14,508,035	24,969,685	19,482,587	----------
Nonfood assistance	326,402	372,386	372,386	----------
Breakfast	280,291	466,563	740,020	[1] 36,304

[1] Projected deficit.

CHART NO. 2.—PARTICIPATION DATA

	1969–70	1970–71	Projected 1971–72
Total lunches	146,452,482	152,055,403	157,784,940
Free and reduced	32,494,780	44,307,188	63,859,511
Average daily participation (percent)	79	83	----------
Percent free and reduced (percent)	22	29	----------

STATEMENT OF ASSISTANT SECRETARY RICHARD LYNG

We are pleased to meet with the Committee this morning to discuss the amendments to the school lunch regulations we issued for public comment on August 13.

Those proposed amendments deal with the program's funding structure for 1972—specifically, with the method to be used to distribute the special section 32 funds to States. They represent our judgment as to the most effective and equitable way to distribute the school lunch funds made available in the Department's appropriation act for fiscal 1972.

Last year—the initial year of operation under Public Law 91–248—resulted in substantial program progress. In September of 1970, a total of 22.1 million children were being reached with a school lunch. Four million of these children were being reached with a free or reduced-price lunch. By April 1971, 24.1 million children were being reached—up 9 percent over September. A total of 7.3 million children were being reached with a free or reduced-price lunch—up 82 percent over September.

The total number of school lunches served last year increased by 7.7 percent—from just over 3.5 billion in fiscal 1970 to just over 3.8 billion in 1972. But, there were substantial differences in growth rates among the States. In eight of the State agencies, the rate of increase was more than double the national rate. The growth rate was less than 5 percent in 23 States.

The number of free and reduced-price lunches served increased 35.6 percent last year—from 852 million in fiscal 1970 to one billion in fiscal 1971. Again, the growth rate varied among the States. In 10 of the State agencies, the growth rate was more than double the national average. In contrast, 14 State agencies had a growth rate of less than 25 percent.

Last year's progress represented the combined work of local, State, and Federal governmental units, thousands of dedicated school officials, and concerned citizens—backed by the traditional combination of Federal, State, and local financial support.

There has been a sharp increase in Federal funding for cash assistance payments to schools. Between 1970 and 1971, direct appropriations under sections 4 and 11 of the Act more than doubled. In addition, in 1971, these direct appropriations were augmented by over $150 million in special section 32 funds—most of which was intended for free and reduced-price lunches. In three years, the amounts made available under section 4, section 11, and in special section 32 funds increased from $204 million in fiscal 1969 to just over $300 million in fiscal 1970, and to over double that amount in fiscal 1971.

States have raised a question as to whether past progress in the program can be maintained in 1972—much less additional progress obtained—under the funds requested and appropriated for 1972 and the funding structure outlined in the proposed regulations the Department issued on August 13.

We believe that significant additional progress is possible.

First, there is an increase in the amount of Federal funds available to provide special assistance for free and reduced-price lunches in 1972—about $78.8 million more than was spent in 1971.

Second, available funds will be distributed to States in better relationship to program growth in the various States. Thus, we can avoid the mid-year funding uncertainties of last year. At that time, fund shortages in some States were threatening the continuation of their programs while other States had millions of dollars in excess funds.

Third, for the first time in the history of the program—a State needing to expand its program to substantially more schools and substantially more children can do so within its available funds, without fear that such expansion will be at the expense of an unwarranted reduction in levels of assistance to already participating schools and children.

It is clear, Mr. Chairman, that some States do not understand the method we are proposing to use to distribute the available funds in 1972. We hope to clear up that misunderstanding in the course of this hearing.

THE BASIC FUNDING STRUCTURE

The National School Lunch Act authorizes two annual appropriations for the program—one under section 4 of the Act and one under section 11. The Act also specifies exactly how each of these annual appropriations is to be apportioned among the States.

Section 4 funds are apportioned among the States on the basis of the number of Type A lunches previously served by each State and the relationship between each State's per capita income and the per capita income of the United States. For fiscal 1972, the apportionment formula uses the number of Type A lunches served by each State two years ago—in fiscal 1970.

Section 11 funds are apportioned on the basis of the relative number of school-age children in households with annual incomes below $4,000 that reside in each of the States.

The section 4 funds are used to help schools buy food for the lunches served to *all* children—to both children who pay the full price of the lunch and the children who receive free and reduced-price lunches. The section 11 funds are used to provide additional special assistance for lunches served free or at a reduced price to children who meet a school's eligibility standards for such lunches.

Both the section 4 and 11 funds actually disbursed to schools by the State on the basis of an assigned per-lunch reimbursement rate. The section 4 rate is applied to all the lunches; the section 11 rate applies only to the free and reduced-price lunches. In the program regulations, the Department of Agriculture establishes maximum reimbursement rates that a State may pay under section 4 and section 11. Thus, the actual rates of assistance a State pays an individual school under section 4 or section 11 depend upon three factors: (1) The amount of funds made available to the State for section 4 and 11 purposes each fiscal year—the Statewide average rate that can be financed; (2) the maximum per-lunch rates of assistance authorized by the Department; and (3) how the State varies rates of assistance in accordance with the relative need of the individual schools, within that Statewide average rate.

MAXIMUM RATES OF ASSISTANCE

Many people first interpreted our proposed regulations as requiring a reduction in the maximum rates of assistance that were in effect during the last school year. This is not the case.

In the regulations we issued last September for the 1970–71 school year, the following *maximum* rates were authorized:

12 cents per lunch under section 4;

30 cents in addition for each free and reduced-price lunch under section 11, with a proviso that the neediest schools could receive up to 60 cents for each free and reduced-price lunch.

If a State determined that a school needed in excess of 30 cents for a free and reduced-price lunch, our regulations required that such a school receive section 4 assistance at the maximum rate of 12 cents. The section 11 rate could then exceed 30 cents—up to a maximum of 48 cents—or a total of 60 cents in combined funds.

This latter proviso—called the "12-cent rule"—met opposition among the States. They felt it endangered the total program because section 4 funds had to be diverted from the more affluent schools in order to pay 12 cents in section 4 funds to the neediest schools. They felt *all* the extra assistance for free and reduced-price lunches required by the neediest schools should be financed out of funds available for section 11 purposes.

Effective in February, we did, in effect, suspend the 12-cent rule. We allowed States to finance the required increase in section 4 rates for the neediest schools out of funds available for section 11 purposes.

The maximum rates of assistance we have authorized in the proposed regulations remain essentially unchanged from the 1970-71 rates. A State is still authorized to pay its neediest schools up to 60 cents for a free or reduced-price lunch. (A maximum rate of 50 cents is proposed if the school is serving a significant number of reduced-price lunches because it would be receiving revenues from the reduced-price payments.)

Our proposed amendments are concerned with the distribution of available funds among the States—with the average reimbursement to be paid on a Statewide basis—not with the maximum rates.

1971 PROGRAM FUNDING

The 1971 appropriation act contemplated a national average section 4 rate of 5 cents and a national average reimbursement rate of 30 cents in additional assistance for free and reduced-price lunches.

The following amounts were provided in the 1971 appropriation act to finance those contemplated rates: A direct appropriation of $225 million in section 4 funds and a direct appropriation of $204.7 million in section 11 funds. The use of $154.7 million in special section 32 funds also was authorized in our appropriation act.

As I indicated earlier, the National School Lunch Act specified how the section 4 and section 11 funds are to be divided among the States. The use of the special section 32 funds is at the discretion of the Department but the appropriation act contemplated that most of the special section 32 funds would be used to supplement the section 11 appropriation for free and reduced-price lunches.

Without any experience on which to judge the impact of Public Law 91–248, the Department decided to use the special section 32 funds as follows:

The entire amount—$154.7 million—was apportioned to States under the section 11 apportionment formula. The section 11 formula was selected because most of these section 32 funds were expected to be used for section 11 purposes for free and reduced-price lunches.

We did give States flexibility in the use of these section 32 funds. In addition to using them for free and reduced-price lunches, they were authorized to use the funds to augment funds appropriated for the school breakfast program and the funds for equipment assistance for needy schools, especially for "no-program" needy schools.

However, as we gained operating experience under Public Law 91–248, it was apparent that the method of distributing the special section 32 funds was creating a problem. It did not put the funds in the States where they were needed. By January, some States were reporting that they would soon exhaust their funds; other States reported they had a surplus in funds. By mid-April—under the cumbersome and time-consuming reapportionment method—we were able to transfer over $30 million from States with a surplus to States with a deficit. But, during the period we were effecting those fund transfers, the deficit States had to operate upon our assurance that we could obtain the release of funds from other States.

THE 1972 PROPOSAL

After this experience, we concluded that it would be in the best interest of all of the States if a method for distributing the available funds could be found that would better distribute the funds among the States in accordance with expected participation at the beginning of the school year.

This exploration led us to another conclusion; one that—in our view—represents a real breakthrough in school lunch financing. We concluded that we needed to go beyond the funding level planned in the 1972 appropriation—a national average reimbursement rate of 5 cents under section 4 and a national average rate of 30 cents under section 11. We felt the available section 32 funds should be used to guarantee each State that—no matter how much expanded its program—it could be assured that it would be able to maintain a Statewide average rate of 5 cents under section 4 and a Statewide average rate of 30 cents under section 11.

This is the essence of our August 13th proposal.

Some States have interpreted our proposed regulations to require them to initially establish rates of assistance within the funds apportioned to them under sections 4 and 11 of the Act. That is not the case. That would, in effect, cancel out our announced guarantee that no State will have to establish Statewide averages rates at less than 5 and 30 cents.

The regulations, as amended by our proposal, instruct States to establish rates "within the funds available" to the State agency. The funds available to a State agency in 1972 under the regulations are:

Its apportioned share of the $225 million appropriated for section 4, *plus* such amounts of special section 32 funds as the State needs to maintain a Statewide average section 4 rate of 5 cents; and

Its apportioned share of the $237 million appropriated for section 11, *plus* such amounts of special section 32 funds as the State needs to maintain a Statewide section 11 rate of 30 cents.

With program expansion in 1972, these 5-cent and 30-cent guarantees will use all of the special section 32 funds made available under our 1972 appropriation act.

Under our proposal, some States would be able to maintain Statewide average rates in excess of 5 cents or 30 cents in 1972—out of our apportioned share of the direct appropriations for section 4 and section 11. They would be able to pay those higher rates. They would not, of course, receive any section 32 funds to enable them to pay still higher rates. On the other hand, they would not be asked to release any of their apportioned funds for use by other States.

Some have interpreted our proposed regulations to mean that no school can receive more than 35 cents for a free or reduced-price lunch. That, too, is not the case. States can continue their past authority to vary rates among schools—paying above the Statewide average rate to the needier schools and less than the Statewide average rate to the more affluent schools.

THE IMPACT OF OUR PROPOSALS

We have a series of charts that summarize the impact of our proposed regulations on section 4 and section 11 funding.

This first chart shows the 1971 expenditures for section 4 and section 11 purposes and the amounts provided under our annual appropriation act for 1972 for these same purposes:

[In millions of dollars]

	1971	1972
Section 4 apportionment	225.0	225.0
Needy schools and children:		
Section 11 apportionment	203.8	237.0
Special section 32:		
To finance the 12-cent rule	20.8	.....
Free and reduced-price lunches	86.8	153.2
Subtotal	311.4	390.2
Grand total	536.4	615.2

As this chart indicates, the amount of money available for section 4 purposes in 1972 is the same as was appropriated in 1971—$225 million. There is $78.8 million

more available for special assistance for free and reduced-price lunches than was spent in 1971—$390.2 million compared to $311.4 million.

The second chart shows the Statewide average section 4 rates that were paid out of the $225 million in 1971 by the 50 States and the District of Columbia; the projected average rates that those States could have paid in 1972 without our proposed change in the use of the special section 32 funds; and the projected average rates under our proposal:

	Number of States—1972		
	1971	Without revision	With revision
Statewide rate—Section 4:			
7 cents and above	6	2	2
6 to 6.9 cents	9	11	11
5 to 5.9 cents	22	21	38
4 to 4.9 cents	12	12	0
Below 4 cents	2	5	0
Total	51	51	51

In the absence of our proposed change, 17 States were faced with an average Statewide section 4 rate of less than 5 cents and five of these were faced with an average rate of less than 4 cents. We are proposing to guarantee these States a Statewide average rate of 5 cents.

The third chart shows the same information for the section 11 rates—the special assistance for free and reduced-price lunches: The average Statewide payments out of the $311.4 million expended for this purpose in 1971; the projected rates that would have prevailed in 1972 if we had not proposed a change in the distribution of special section 32 funds; and the projected rates under our proposal.

	Number of States—1972		
	1971	Without revision	With revision
Statewide rate—Section 11:			
40 cents and above	11	15	0
35 to 39.9 cents	9	8	1
30 to 34.9 cents	15	9	50
25 to 29.9 cents	12	7	0
20 to 24.9 cents	2	9	0
Below 20 cents	2	3	0
Total	51	51	51

If we had continued last year's method of distributing the $153.2 million in special section 32 funds, and every State used all of its section 32 money for free and reduced-price lunches, the average rate in seven States would have been between 25 and 29.9 cents. In an additional 12 States, the average rate could have been below 25 cents, and 3 of the 12 could have faced an average Statewide rate of less than 20 cents for each free and reduced-price lunch. Our proposal guarantees every State at least a minimum Statewide rate of 30 cents for each free and reduced-price lunch.

It is true that a few fortunate States would have been able to pay higher rates of assistance under section 11 in 1972, if we had continued last year's method of distributing section 32 funds. But, these higher rates would have meant that up to 19 States would have a Statewide rate of less than 30 cents in 1972.

EQUIPMENT ASSISTANCE

Before summarizing these proposals on the distribution of available funds, I want to comment on a second part of our August 13th proposals—those that affect the equipment assistance funds.

Section 5 of the Child Nutrition Act authorizes Federal equipment assistance for schools which draw their attendance from areas in which poor economic conditions exist—in short, needy schools. The funds can be used to help needy schools which have "no, or grossly inadequate" food service equipment.

In 1971, a total of $15 million was appropriated for this equipment assistance. But States elected to use substantial amounts of their special section 32 apportionment for equipment assistance last year. In total, reports from the States now show that a total of $36.7 million was used for equipment assistance last year.

Our fourth chart shows the amounts used for equipment assistance for needy schools in 1970 and 1971. You note that most of these funds went to schools that were already operating a food service.

There is no doubt that some already participating schools did have "grossly inadequate" equipment. But, we now believe greater emphasis should be placed on the use of these funds to bring needy "no-program" schools into the Type A program.

We are holding equipment funds in 1972 to the $16.1 million authorized in our appropriation act. We have amended our regulations to place a positive obligation on States to seek out—and work with—needy "no-program" schools.

And, we are proposing that at least half of each State's equipment funds be held in reserve for "no-program" schools until March 1—unless the State can demonstrate that the funds should be released for already participating schools at an earlier date.

SUMMARY

Returning to our August 13th proposals on the distribution of cash assistance funds to the States, we would want to emphasize these points:

First, our proposals are not designed to save funds. We expect to spend all the funds authorized in our 1972 appropriation act.

Second, we have not reduced the maximum rates of assistance that were authorized for last year.

Third, we will be placing a floor under section 4 and section 11 rates on a Statewide basis for the first time—a floor that is guaranteed no matter how much expansion a State is able to achieve.

Fourth, we do not believe that we should have continued a method of distributing available funds among the States which—because of the vagaries of statistical apportionment formulas—allowed some States a "funding feast" while other States suffered from a "funding famine".

Finally, we want to re-emphasize that the National School Lunch Act contemplated that the funding of the program would be a joint Federal, State, and local responsibility. This principle was reaffirmed in the Public Law 91–248 amendments. One of those amendments required, beginning this fiscal year that all States put State tax revenues into the program. State matching is required only for the funds made available under section 4 of the Act. But, Public Law 91–248 requires States to distribute the matching State revenues they put into the program in a manner that concentrates their use on the financing of free and reduced-price lunches.

FEDERAL FUNDING—NATIONAL SCHOOL LUNCH PROGRAM, FISCAL YEARS 1971 AND 1972

[In millions of dollars]

	Fiscal year 1971 (preliminary)	Fiscal year 1972 (appropriation)
Regular sec. 4 apportionment	$225.0	$225.0
Needy schools and children:		
Sec. 11 apportionment	203.8	237.0
Special sec. 32:		
To finance 12-cent rule	20.8	
Free and reduced-price lunches	86.8	153.2
Subtotal	311.4	390.2
Grand total	536.4	615.2

Source: U.S. Department of Agriculture, Food and Nutrition Service.

AVERAGE SEC. 4 REIMBURSEMENT RATES FROM $225,000,000 APPORTIONMENT

[50 State agencies and the District of Columbia]

	Number of States		
		Fiscal year 1972	
Average statewide rate per lunch	Fiscal year 1971 (preliminary)	Without USDA proposal	With USDA proposal
7 cents and above	6	2	2
6 to 6.9 cents	9	11	11
5 to 5.9 cents	22	21	38
4 to 4.9 cents	12	12	0
Below 4 cents	2	5	0
Total	51	51	51

Source: U.S. Department of Agriculture, Food and Nutrition Service.

AVERAGE REIMBURSEMENT PAYMENTS FOR FREE AND REDUCED-PRICE LUNCHES

[50 State agencies and the District of Columbia]

	Number of States		
		Fiscal year 1972	
Average statewide rate per lunch	Fiscal year 1971 (preliminary)	Without USDA proposal	With USDA proposal
40 cents and above	11	15	0
35 to 39.9 cents	9	8	1
30 to 34.9 cents	15	9	50
25 to 29.9 cents	12	7	0
20 to 24.9 cents	2	9	0
Below 20 cents	2	3	0
Total	51	51	51

Source: U.S. Department of Agriculture, Food and Nutrition Service.

EQUIPMENT ASSISTANCE FOR NEEDY SCHOOLS

	Fiscal year 1970	Fiscal year 1971 (preliminary)
Schools:		
Total schools assisted	7,974	15,500
No-program schools assisted	534	1,402
Dollars:		
Total for nonfood assistance	$16,705,170	$36,697,000
Total for no-program schools	$2,799,569	$9,242,966

Source: U.S. Department of Agriculture, Food and Nutrition Service.

BREAKING THE LOGJAM IN STUDENT VOTER REGISTRATION

Mr. KENNEDY. Mr. President, one of the most important issues that has emerged in the wake of the ratification of the 26th amendment to the Constitution is the question of the voting residence of students. Neither the Voting Rights Act Amendments of 1970, nor the 26th amendment itself, which lowered the voting age to 18, dealt with this issue. As a result, in the absence of further action by Congress, the resolution of the question has been left largely to State and local governments, who have the primary responsibility under the Constitution for establishing voting requirements.

In essence, the present controversy involves the question whether a student may establish a voting residence at his college, separate from the residence of his parents, or whether he may be disqualified from voting in his college community on the ground that he does not

satisfy State or local residence requirements for voting.

It is my view that for the purpose of voting, a student can be treated no differently from any other citizen, and that he is entitled to establish a voting residence in his college community, separate from the residence of his parents, so long as he meets traditional legal definitions of residence, applied even handedly to all citizens. In other words, I believe that as a matter of constitutional interpretation under the 26th amendment and other provisions of the Constitution, a person's status as a student is constitutionally irrelevant for the purpose of determining his voting residence. Any other result would subject students to discrimination of the sort that the 26th amendment was designed to end.

Although major legislation is now pending in Congress to establish this principle as a uniform national policy for student voting, a number of States have already taken action on their own to achieve this result. A few months ago, it appeared that a deep nationwide controversy was developing over the issue. More recently, however, a number of States have thoroughly examined the issue and concluded that students are not necessarily disqualified from voting in their college communities. I am pleased to note that one of the earliest opinions in this respect came from Massachusetts, where Attorney General Robert Quinn ruled last July that a student in the Commonwealth could establish a voting residence in his college community. Subsequently, the attorneys general in the States of Florida, Georgia, Idaho, Louisiana, Missouri, and Pennsylvania have issued similar opinions. Similarly, judicial decisions by the Supreme Courts of California and Michigan have established similar principles in those States. As a result of these significant State executive and judicial actions, it appears that the logjam over student registration is breaking, and I am hopeful that other States will now follow suit.

Mr. President, I believe that the seven executive opinions and the two court decisions I have mentioned will be of interest to all Members of Congress. I ask unanimous consent that they be printed in the RECORD.

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

MASSACHUSETTS

THE COMMONWEALTH OF MASSACHUSETTS, DEPARTMENT OF THE ATTORNEY GENERAL,

Boston, July 21, 1971.

HON. JOHN F. X. DAVOREN,
Secretary of the Commonwealth, State House, Boston, Mass.

DEAR MR. SECRETARY: You have requested my opinion on certain questions propounded by representatives of the city and town clerks of the Commonwealth. The questions relate to persons between the ages of 18 and 21, both students and non-students, who seek to register to vote in Massachusetts cities and towns where they presently live. The hypothetical situations which have been presented to me include the following: (1) students residing in dormitory residences who are supported by their parents; (2) students residing in dormitory residences who are self-supporting; (3) students residing in apartments or other non-college residence facilities, both dependent upon their parents and self-supporting; and (4) non-students who have left their parents' homes and are either dependent upon their parents or self-supporting.

First, it is assumed in all cases that the student or non-student, as the case may be, seeks to register to vote in a community other than where his or her parents reside. Secondly, the cases which have been presented to me include persons whose parents reside within the Commonwealth and cases where parents reside in another state.

For the purposes of the discussion which follows, it is immaterial whether the parents reside within Massachusetts or elsewhere. Finally it is also assumed that the student or non-student, as the case may be, is a citizen of the United States either by birth or naturalization.

While I would ordinarily decline to answer questions propounded by municipal officials, even though presented by the head of a state agency or a constitutional office (Compare Op. Atty. Gen'l 1969–1970, No. 37, June 30, 1970), the questions posed appear to be of general applicability and are recurring. In addition, there are presently pending in the United States District Court for the District of Massachusetts three suits raising questions analogous to those presented by your request (*Garrett* v. *Larkin, et al.*, Civil Action No. 71–651–W, *Vance et al.* v. *Board of Election Commissioners*, Civil Action No. 71–1229–F and *Monroe* v. *Board of Election Commissioners of Cambridge*, Civil Action No. 71–1442–F). Since I am required to defend in those cases, inasmuch as you, in your official capacity, are a defendant in the cases, and because diversity of answers to your questions would create "a problem of statewide importance" (see 1968 Op. Atty. Gen'l 129, 130), I proceed to answer the questions presented in the "hope that these views will bring about consistent application [of the principles applying to voter registration] throughout the Commonwealth." (*Id.*)

The answers to these questions require examination of federal and state constitutional provisions, as well as of a number of court decisions and advisory opinions.

I. MINOR VOTERS IN GENERAL

The Twenty-sixth Amendment to the Constitution of the United States, recently ratified by three-fourths of the states, provides in section 1 that "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any state on account of age." The states, however, "have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised." *Lassiter* v. *Northampton Election Bd.*, 360 U.S. 45, 50; *Evans* v. *Cornman*, 398 U.S. 419, 422. Included among them is the "power to impose reasonable residence restrictions on the availability of the ballot." *Carrington* v. *Rash*, 380 U.S. 89, 91. Under the Constitution of Massachusetts, "Every citizen of nineteen [1] years of age and upwards . . . who shall have resided within the town or district in which he may claim a right to vote, six calendar months next preceding any election . . . shall have a right to vote in such election . . . and no other person shall be entitled to vote in such election." The requirement that the applicant "shall have resided" in the town for six months has traditionally been construed as requiring that the applicant has established his "domicil" in the town. *Opinion of the Justices*, 5 Met. 587, 588. The concept of "domicil" is utilized for many purposes, including property tax liability and probate jurisdiction of wills [2] and the custody of children. Some of the stricter requirements of "domicil" pertaining to those areas have not always been applied when the question concerns "domicil" for voting purposes. See *Putnam* v. *Johnson*, 10 Mass. 487, 501. In general, "domicil" means actual residence in the town, coupled with an intention to remain indefinitely. See *Putnam* v. *Johnson, supra, at* 500–501; *Opinion of the Justices, supra*, at 590. See also *Carrington* v. *Rash, supra*, at 94. The intention to remain indefinitely does not mean an intention to stay forever, but merely that there is no present intention of leaving. *Putnam* v. *Johnson, supra.*

The recent extension of the franchise to citizens between eighteen and twenty-one years of age presents some difficulty in establishing whether an applicant of that age is entitled to register. Although some disabilities of minors have recently been removed from those over eighteen, see St. 1971, c. 253 (lowering the age at which a person may make a campaign contribution in excess of twenty-five dollars to eighteen years); St. 1971, c. 255 (males may marry without parental consent at age eighteen); and St. 1971, c. 291 (person may make a will at age eighteen), they remain minors until they are twenty-one or otherwise emancipated. It is the general rule that "[o]rdinarily, 'the domicil of a legitimate minor child is that of the father.' *Glass* v. *Glass*, 260 Mass. 562, 564. Restatement: Conflict of Laws, § 30." *Green* v. *Green*, 351 Mass. 466, 467–468. It appears, however, that an unemancipated minor may establish his own domicil with the assent, express or implied, of his parents or guardian. See *Kirkland* v. *Kirkland*, 4 Allen 462. An emancipated minor of course has the power to establish his own domicil. Restatement: Conflict of Laws, § 31. If these principles were applied to voter registration, an unemancipated minor over eighteen would be restricted to his father's voting residence unless his father gave his assent to a change of residence.

As noted above, however, the rules pertaining to domicil for tax or probate purposes may not always prevail where domicil for voting purposes is concerned. *Putnam* v. *Johnson*, 10 Mass. 487, 501. The purposes of the domicil requirement are to afford the registrars of voters the opportunity to ascertain the qualifications of the voter, and to prevent the possibility of fraud through multiple voting. *Id.* at 502. To restrict the ability of an unemancipated minor, over the age of eighteen, to choose his domicil for voting purposes would serve neither of these purposes. Moreover, to restrict the eighteen year old's right to choose his residence for voting purposes, a right possessed by voters over twenty-one years of age, would be to "abridge" his right to vote "on account of age," in contravention of the Twenty-sixth Amendment. Consequently, it must be concluded that, for purposes of registering to vote, a minor either emancipated or unemancipated over the age of eighteen years has the right to establish his own domicil with or without the consent of his parents or guardian.

II. MINOR VOTERS WHO ARE STUDENTS

The determination whether a student from another city or state, who has taken up residence at or near the college or university he attends, has made his new residence his domicil for voting purposes is, as in all cases of recently moved registrants, a question of fact, to be determined by all the circumstances of the case. *Opinion of the Justices*, 5 Met. 537. As noted above, the basic elements of domicil are the actual establishment of residence in the city or town, and an intent to remain there indefinitely. Once a student living at or near a college or uni-

[1] Since ratification of the Twenty-sixth Amendment the number "eighteen" should be read in place of "nineteen."

[2] See, e.g., *Texas* v. *Florida*, 306 U.S. 398, 413–428.

versity has shown that he has resided in the city or town "in which he may claim a right to vote, six calendar months next preceding any election of governor, lieutenant governor, senators, or representatives," [3] and has declared his intention to stay in the city or town for an indefinite period, he has shown himself eligible to register as a voter. (Am. Art. III, Mass. Const.)

As in the case of any other applicant for registration, of course the circumstances may be such as to show that the student applicant in fact lacks the necessary intent to establish his domicil in the town. However, the fact that he is a student, residing in the town for the purpose of pursuing a course of studies for a number of years, should place on him no greater burden of proving his domiciliary intent. Whether he prefers or is required to reside in a college dormitory rather than in privately purchased or leased premises is of no real utility in determining his intent, *see Putnam* v. *Johnson, supra,* at 490; and while in 1843 great weight was placed in the *Opinion of the Justices, supra,* upon whether the student's father was supporting him while at college, this factor is of little relevance today. It is common for parents to contribute to the support of their children attending college. Yet it is also common today that students upon graduation do not return to their home towns. Many decide to stay in the communities where their colleges are located; many others move to different cities and different parts of the country, according to the opportunities for employment or post-graduate studies. It may have been the general habit for students in 1843 to return home after graduation; if their families paid for their education, there may have been even more reason for assuming an intention to return. However, in view of the mobility of persons and families in today's society, and of the indefinite nature of the plans of college undergraduates generally, the same cannot be said today. Perhaps most college students do return home at graduation, but an intention on the part of a college student to return to his former home cannot be presumed on the basis of his family's financial support.

There may exist fear that some small communities with a large percentage of students in the population may be "taken over" by student voters, who may then implement "radical" programs. The possibility of such a "take-over", however, would depend largely upon how many students were willing to give up their right to vote in their communities of origin. Moreover, the fear that student-voters would tend to take radical measures may be groundless. See Legislative History on Twenty-sixth Amendment U.S. Code Cong. & Ad. News, 92d Cong. 1st Sess., 364 (Adv. Sh. No. 3, April 25, 1971). At any rate, students over the age of eighteen years, if they have the intention of making the college town their home indefinitely, "have a right to an equal opportunity for political representation. . . . 'Fencing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible." *Carrington* v. *Rash,* 380 U.S. 89, 94; *Evans* v. *Cornman,* 398 U.S. 419, 423.

III. SUMMARY

In summary, no definitive answer can be given to the question whether the persons described in the above hypothetical situations are entitled to register to vote in the cities or towns where they presently reside. The resolution of each case will depend upon the particular facts of that case. While I have been urged to provide the various Boards of Registrars of Voters and Election Commissioners with general guidelines to aid them in resolving questions in this area, I deem it inappropriate to do so. Each case will, of course, be different, and the varying factual situations cannot be identified with any degree of certainty. Any attempt to treat exhaustively the different situations which may arise, will, of necessity, fail because some situations will be omitted or overlooked. Moreover, I deem it unwise to commit myself in advance to the resolution of factual problems which may never occur, and I consider it the better course to leave myself free to resolve situations and cases which are presented to me at such time as resolution is required.

There can be stated, however, certain general principles which may be of aid in resolving particular cases as they arise. First, the fact that a minor over eighteen years of age is not emancipated, financially or otherwise, from his parents has no bearing on his right to choose his own domicil for voting purposes. The fact that such a minor, whether or not a student, may be supported in whole or in part by his parents is in itself insufficient reason to refuse to register an otherwise qualified applicant. Second, the fact that a minor voter who is a student resides in a dormitory, fraternity house or other college residence is of no relevance. The basic question to be answered is whether he intends to return to his former home as soon as his course of studies is completed. The fact that he may find residence in a dormitory or fraternity house more convenient or less expensive than renting an off-campus apartment does not answer that question.

In conclusion, the decision whether a minor voter in one of the above hypothetical situations is entitled to register to vote should be reached in the same manner as a like decision regarding an applicant for registration who is over twenty-one years of age and has recently moved into the city or town. And, although the 1843 *Opinion of the Justices,* to which I have referred, does state that "stronger facts and circumstances must concur to establish the proof of change of domicil in the . . . case [of a student residing at an educational institution]" (*Opinion of the Justices, supra,* 5 Met. 587, 590), that statement cannot be considered valid today in the light of the Twenty-sixth Amendment to the Federal Constitution.

Very truly yours,

ROBERT H. QUINN,
Attorney General.

FLORIDA

STATE OF FLORIDA,
DEPARTMENT OF LEGAL AFFAIRS,
Tallahassee, Fla., August 3, 1971.

Re Voting by 18-year-olds in view of 26th Amendment to Constitution of United States. Residency requirements.

Hon. RICHARD STONE,
Secretary of State,
Capitol,
Tallahassee, Fla.

DEAR SECRETARY STONE: This opinion is in reply to your request of July 8, 1971, as supplemented by your letter of July 13, 1971, in which you ask substantially the following question:

May a voter registrant between the ages of eighteen and twenty-one years establish a residency, for the purposes of voting registration, in a locale different from the voting locale of his or her parents or guardian?

The following opinion answers your question in the affirmative.

Article VI, Section 2 of the 1968 Florida Constitution provides as follows:

Every citizen of the United States who is at least twenty-one years of age and who has been a permanent resident for one year in the state and six months in a county, if registered as provided by law, shall be an elector of that county. Provisions may be made by law for other bona fide residents of the state who are at least twenty-one years of age to vote in the election of presidential electors.

The cited constitutional provision is dealt with by general law in Florida Statutes, Section 97.041, which applies both residency requirements in describing the details of voter registration.

In view of the recently effective Twenty-sixth Amendment to the Constitution of the United States, I am of the view that the field of voting age requirement has been preempted from State control and that F.S. 97.041 and Article VI, Sec. 2 are changed, as a matter of law, to reflect the constitutional mandate of the eighteen-year-old vote.

It is significant that both the Florida constitutional and statutory provisions speak only in terms of durational residency requirements as a prerequisite to voter registration. It is the dual criteria of one year in the state and six months in the county coupled with the factor of permanence which qualify a person to register who is not otherwise disqualified under F.S. 97.041(5).

The qualification provisions do not mention or set forth any criterion requiring an intent to reside permanently in a given county. Neither do those provisions speak in terms of domicile which is clearly distinguishable from residency as a matter of legal principle. It is my view that the duration periods are self-executing in regard to the permanency criteria. This is to say that once a person has resided in the state for one year and in the county for six months, the presumption of permanent residence attaches. When the presumption occurs, I am of the opinion that the burden of proving the non-permanent nature of the potential voter registrant is on the person challenging the registrant's right to register.

For voting, a person over 18 years of age is *sui juris* for the purposes of the Twenty-sixth Amendment and the Voting Rights Act of 1970. Those two provisions have conferred upon the 18-year old a personal right exercisable in person, that being the right to vote. That personal right has a meaning only if it can be exercised in the political subdivision in which the elected political office holders represent their constituents' interest, and in the communities in which their interest of political moment may relate. Since the 18-year old is *sui juris* for voting purposes, the common law must be construed to permit him to acquire a residence for the specific purpose of voting.

I am mindful of the historical reason for the general rule for the incapacity of a minor; however, I am of the opinion that the reason for the general rule no longer exists. The reason for that general rule which imputes the father's residence to the unmarried minor offspring is the common law assumption that a minor is not *sui juris,* and therefore is not capable of forming an intent for residency purposes. However, under the Twenty-sixth Amendment and the Voting Rights Act of 1970, young adults do have the right to vote, and are therefore *sui juris* for that purpose, and do have the power to form the requisite intent for that purpose.

If the State, acting through the several voting registrars, should seek to impose the additional requirement of all persons enfranchised by the Twenty-sixth Amendment having to register in the voting locale of their parents or guardian, the uniformity and intent of that amendment might well be frustrated in Florida by the anomalous and diverse results.

To justify such a state imposed mandate there must be "compelling state interest." *Kramer v. Union Free School Dist.,* 395 U.S. 621 at 627 (1969); *Cipriano v. City of Houma,* 395 U.S. 701 (1969); *Burg v. Canniffe,* 315 F. Supp. 380 (D. Mass. 1970); *Kohn v. Davis,* 320 F. Supp. 246 (D. Vermont, 1970).

In the landmark case of *Carrington v. Rash,* 380 U.S. 89 (1965), the Supreme Court spoke to the issue of selective voter registration thusly:

[3] Or any other state, city or town election. See G. L. c. 51, § 1.

"We deal here with matters close to the core of our constitutional system. The right . . . to choose that this Court has been so zealous to protect, means, at least, that the States may not casually deprive a class of individuals of the vote because of some remote administrative benefit to the State." (at 780)

Before the right to register and vote may be validly restricted at least three elements must be operative and coalesce:

1. The State interest relied on to justify the restrictive classification must be "compelling," not merely "rational" or "legitimate." See *Cipriano v. City of Houma*, supra; *Kramer v. Union Free School Dist.*, supra; *Harper v. Virginia Bd. of Elections*, 383 U.S. 663; *Castro v. California*, 38 U.S.L.W. 2522 (Calif. Mar. 24, 1970).

2. Even assuming a sufficiently compelling state interest, the classification must be closely scrutinized to determine whether it is necessary. Moreover, the classification must be scrutinized to determine if the purpose has been accomplished with precision. *Kramer* v. *Union Free School Dist.*, supra; *Cipriano* v. *City of Houma*, supra; *Carrington* v. *Rash*, supra.

3. The State, not the voter, has the burden of proving and demonstrating that the standards of the cited cases have been met. See also, *Hadnott* v. *Amos*, 394 U.S. 358 (1969); *Gaston County* v. *United States*, 395 U.S. 285 (1969).

The traditional justifications for voter registration requirements are (1) promotion of a more intelligent vote by insuring that voters have at least had an opportunity to become knowledgeable about local affairs; (2) prevention of fraud; (3) identification of the voter; and (4) assurance of the voter's membership and interest in the community. *Dreuding* v. *Devlin*, 234 F. Supp. 721 (D. Md. 1964), Aff'd. Mem. 380 U.S. 125 (1965); MacLeod and Wilberding, *State Voting Residency Requirements and Civil Rights*, 38 Geo. Wash. L. Rev. 93; note, 77 Harv. L. Rev. 574 (1964).

The first three of the justifications for registration requirements described above would appear to be satisfied by the simple six-month waiting period contained in F.S. 97.041 and Art. 6, § 2. The only interest which might be furthered by a requirement that eighteen-year-old voters register in the voting locale of their parents or guardian is the fourth justification; namely, assurance of the voter's membership and interest in the community.

Even assuming that the state may have a "compelling" interest to assert such a restrictive criterion, I am of the view that such a restriction would be overbroad in its reach and would not accomplish the purpose with sufficient precision. *Kramer* v. *Union Free School Dist.*, supra, at 632.

Your request specifically asks my opinion in this matter in relation to the counties of our state having large universities within their boundaries. It is the students in residence at these universities and the counties concerned whom you suggest might be greatly interested in this matter.

It is my view, consistent with the cited case law, that a requirement that university students register to vote at the voting locale of their parents or guardian would be legally and constitutionally suspect. Such a requirement could indeed establish these students as "men and women without a county."

In *Kramer* v. *Union Free School Dist.*, supra, the plaintiff would have qualified to vote under state law if he had a spouse who owned property or if he had children in school. The U.S. Supreme Court struck down the law, emphasizing that the plaintiff was a bachelor and thus disadvantaged by the classification. A distinction between eighteen and twenty-one-year olds would appear also extraordinarily weakly based. Historically, the twenty-one-year age attained its importance because it was supposed that it was the minimum age at which a knight could bear his armor in battle. Congress, in adopting the eighteen-year-old statute, emphasized this historical antecedent and its inappropriateness today. *Cong. Rec.*, vol. 116, pt. 15, p. 19870. Proof of bona fide residency theoretically aims at assuring an electorate that has a real interest in local affairs, and a knowledge about them sufficient to create an informed electorate. Neither marriage nor minority is reasonably related to accomplishment of these objectives.

The salient point is that the students who are the subject of your inquiry live, and often work, in the county in which the university is situate. They read the newspapers there, observe local conditions, and are affected daily by local legislative, executive and, frequently, judicial decisions. It is not illogical to view such a restrictive registration policy as the one raised by your inquiry as one which allows participation in everything but the very essence of democracy.

In those counties having large numbers of resident students, it might well be that those students are the only group whose "occupation" may operate to exclude them from the franchise. It would seem to me that a classification which created an artificial distinction between an emancipated eighteen-year-old (by virtue of marriage, judicial removal of non-age, etc.) and an eighteen-year-old student, even though both otherwise meet the statutory and constitutional provisions, would be an impermissible classification under the constitutional mandate of equal protection. To attempt to tie an otherwise qualified student to the voting locale of his or her parents would be an arbitrary classification without rational nexus to a beneficial and compelling state interest. Loss of the vote is a high price for students to pay for education. But it is a far higher price for the community to pay, because it costs the interest, the vote and the will to vote of the college student who desires to work for change within the political process.

Although the restriction suggested by your letter might at face value have the worthy objective of assuring local interest, it is not at all clear that such a concern is relevant as a practical matter. The very inconvenience involved in registering and voting should serve to winnow out those who are uninterested.

Moreover, it would appear that the dominant "compelling" state interest is indeed to induce those new potential voters between eighteen and twenty-one to "drop in" the political process. Every caution should be indulged to prevent these voters from "dropping out" of the fundamental process of voting as a universal exercise of democracy. On the local level, any restriction which would deny participation in the selection of those office-holders who most directly govern a person could very well be viewed as constitutionally infirm and an abridgement of the franchise.

As stated above, the execution of the oath of registration pursuant to F.S. 97.051 would appear to be prima facie proof that the registrant meets the requisite qualifications.

It is easy to understand the "compelling" state interest in the residency requirement. In 19th century America the purity of elections required that adequate safeguards be devised to inhibit corruption of elections. Experience with gangs of "floaters" and the organized voting of "transients" constituted a very real problem for 19th century elections. These harsh experiences greatly influenced the development of our modern residency requirements. See Schmidhauser, *Residency Requirements for Voting and the Tensions of a Mobile Society*, 61 Mich. L. Rev. 823 (1963) cited in *Affeldt v. Whitcomb*, 319 F. Supp 69 (N.D. Ind., 1970).

It is clear that in today's society the eighteen-year-old student is less likely to be a transient than some other occupations which may be practiced by non-student eighteen-year olds. Census Bureau information indicates that today's "floaters" or "transients" are craftsmen, foremen, professional and technical personnel. Schmidhauser, *supra*, at 830.

Ours is a mobile society. The most mobile persons in our society are the young, whether in college or not. See Glenn and Grimes, *Aging, Voting and Political Interest*, 33 Amer. Soc. Rev. 563 (1968). The latest available information from the U.S. Census Bureau describes American society as one in which one of every five persons changes residence every year, 27.8 million of them crossing county borders. Of this group, the largest proportion is young people. The migration rate for those between 20 and 34 varies from 35% to 24%, which is substantially higher than that of any other age bracket. Glenn and Grimes, *supra*, at 762. In *Kohn v. Davis*, 320 F. Supp. 246 (D. Vermont, 1970), the Court recognized the above analysis thusly:

"In our highly mobile society, one who has lived in a particular locale for one year may be firmly rooted in the community or he may be ready to move on tomorrow," citing *Keenan v. Board of Law Examiners*, 317 F. Supp. 1350 (E.D. N.C. 1970).

To attempt to firmly bind an eighteen-year-old voter to the voting locale of another person would seem to fly in the face of the tone and tenor of the cited authorities and be a totally irrational classification.

It should be especially noted that where an impermissible factor *could have possibly* entered into the rejection of an applicant for voter registration, the doctrine enunciated in *Stromberg* v. *California*, 283 U.S. 359 (1931), could well become operative to counter the administrative decision. In *Stromberg* the Supreme Court held that where an unconstitutional consideration *could have* entered into a decision, notwithstanding the possibility of valid reasons, the entire result is tainted. See also *Greenbelt Cooperative Pub. Assn.* v. *Bresler*, 398 U.S. 6 (1970); *Street* v. *New York*, 394 U.S. 576 (1969); *Gregory* v. *City of Chicago*, 394 U.S. 111 (1969); *Cole* v. *Arkansas*, 333 U.S. 196 (1948).

The Twenty-sixth Amendment to the United States Constitution, ratified by the last of the required 38 states on June 30, 1971, provides that:

"The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age."

Its language is virtually identical to the 15th and 19th Amendments, which extended the franchise to forbid discrimination in voting against members of minority races and women. Interpretations of those Amendments—particularly the 15th—are pertinent to understanding the reach of the 26th.

As the Supreme Court held in *South Carolina* v. *Katzenbach*, 383 U.S. 301, 325, (1966):

"Section 1 of the Fifteenth Amendment declares that '[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.' This declaration has always been treated as self-executing and has repeatedly been construed, without further legislative specification, to invalidate state voting qualifications or procedures which are discriminatory on their face or in practice. . . . the gist of the matter is that the Fifteenth Amendment supersedes contrary exertions of state power. 'When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right.'"

The framers of the Twenty-Sixth Amendment, aware of these principles, thus considered and condemned special procedures that States were proposing to impose on young voters:

"Moreover, forcing young voters to undertake special burdens—obtaining absentee ballots, or travelling to one centralized location in each city, for example—in order to exercise their right to vote might well serve to dissuade them from participating in the election. This result, and the election procedures that create it, are at least inconsistent with the purpose of the Voting Rights Act, which sought to encourage greater political participation on the part of the young; such segregation might even amount to a denial of their 14th Amendment right to equal protection of the laws in the exercise of the franchise."

Senate Judiciary Committee, S. Rep. No. 92-26, 92nd Cong., 1st Sess. (Accompanying S.J. Res. 7 (1971), p. 14.)

The Supreme Court found, furthermore, in the one man-one vote Georgia primary case, *Gray v. Sanders*, 372 U.S. 368 (1963):

"The Fifteenth Amendment prohibits a State from denying or abridging a Negro's right to vote. The Nineteenth Amendment does the same for women. If a State in a statewide election weighted the male vote more heavily than the female vote or the white vote more heavily than the Negro vote, none could successfully contend that their discrimination was allowable."

It would, in my opinion, be just as discriminatory to, in effect, weight the over-21-year-old vote more heavily than the under-21-year-old vote.

This theory was well treated in a recent comprehensive law review article dealing with this subject:

"Still another infirmity in the present posture of the law is indicated by the fact that the United States Census Bureau, for purposes of counting population, considers students as residents of the University town.[1] Whatever impact this might have otherwise on the merits of the case, the fact is that to allow students to be counted for purposes of determining districting but not to be counted for purposes of electing the officials from that district might well contravene the 'one-man, one-vote' thesis of the Supreme Court. Thus, for example, let us assume that the Census Bureau finds 10,000 students and 40,000 non-students in town A, and 50,000 non-students in town B. Now, assuming that all students are 'non-native,' this means that Congressman B is being elected by 50,000 people, whereas Congressman A is being elected by 40,000. Townspeople in B, therefore, are having their votes diluted by 20%. This gross disparity is obviously inconsistent with the Court's mandate in the voting cases, and would arguably be enough to strike down the districting."

Singer, "Student Power at the Polls," *31 Ohio St. L. J.* 703, 720 (1970).

The framers of the Twenty-sixth Amendment to the United States Constitution intended to make persons 18 to 20 years old equal, *in respect of voting*, to persons over 21 years old. In my opinion, any special rule for voters under 21 would be repugnant to the Twenty-sixth Amendment.

In considering this matter, one should be cognizant of the Federal Voting Rights Act Amendments of 1970 (Public Law 91-285, 84 Stat. 314).

Section 302 of the Voting Rights Act Amendments of 1970 does not merely confer the right to vote on citizens over eighteen but under twenty-one years of age, but also declares that they may vote in the same political subdivision of a state in which they would be entitled to vote if adults. The operative language of the statute reads as follows:

" . . . no citizen of the United States who is otherwise qualified to vote in any state *or* political subdivision . . . shall be denied the right to vote in such primary or election on account of age if such citizen is eighteen years of age or older." (emphasis added)

Your question apparently assumes that no person over the age of twenty-one years should or would be required to register to vote in a county based on another person's residence.

The state may not deny registration solely on the ground that a registrant's parents reside in a different county. To do so would be a denial applicable to a person solely on account of age and would necessarily be a proscribed invidious discrimination.

Such a policy would not only violate the express terms of the federal right-to-vote statute, but also conflict with the central goals underlying the enactment of that statute. These goals are the elimination of the discriminatory "unfair treatment" (Title III, Section 301(a)(2)) of persons between the ages of eighteen and twenty-one with respect to the fundamental right to vote, and the full participation of these citizens in the political process. (See Statement of Senator Kennedy, inserted in the record by Senator Mansfield, *Cong. Rec.*, vol. 116, pt. 5, pp. 6649-6650.)

The Congressional judgment that persons under twenty-one years of age possess the maturity necessary to exercise the franchise would be frustrated by a requirement that disables these persons from voting in the political subdivision in which their interests lie. They cannot responsibly exercise the franchise unless they are permitted to vote in the political subdivision in which their political objectives deserve to be counted. That is the political subdivision of which they are truly constituents. I believe that Section 301 entitles all persons, regardless of age, to register in the country of their residence without regard to the residance of their parents.

Section 1971 (a) (2) (A) of Title 42, United States Code, enacted in 1964, provides as follows:

"2. No person acting under color of law: (A) shall in determining whether *any individual* is qualified under State law or laws to vote in any election, apply *any standard*, practice, or procedure different from the standards, practices, or procedures applied under such law or laws *to other individuals* within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote." (emphasis added)

By denying registration to persons between eighteen and twenty-one years of age on the ground that their parents reside in a different county, the State may be viewed as applying a standard not applied to persons over twenty-one years of age. The discriminatory treatment thus accorded these persons would be in clear violation of the express terms of this statute.

Section 1971 (a) (2) (A), unlike Section 1971 (a) (1), is not limited to discrimination on the basis of race, color, or previous condition of servitude. Representative Emanuel Celler (D N.Y.), Chairman of the House Judiciary Committee and the principal sponsor of the legislation, indicated the intent to prohibit non-racial discrimination in response to a statement by James Farmer, National Director of the Congress of Racial Equality. During the hearings, Mr. Farmer stated: ". . . I don't mean just Negro people, I mean white people are being abridged and we must not tolerate this because it is a moral issue." Responded Chairman Celler: "I agree with you, I would like to put that in myself." House Judiciary Committee, Hearings on H.R. 7152, Part III, pp. 2213-14. See also statements by Senator Keating, in the daily Congressional Record, page S6728 (April 1, 1964).

This is supported in the legislative history surrounding the 1965 amendment to the statute, which extended the reach of the prohibition to non-federal elections. Said Representative Silvio Conte (R. Mass.):

"But while the impetus for these hearings may have been given by the Selma marchers . . ., legislation by this Congress should not be limited to correcting the wrongs suffered by one group of citizens in several states of the Union. It must, as I have said, be designed to prevent the perversion of voting rights whenever and wherever they may occur, no matter what group of individuals is involved." House Judiciary Committee, Hearings on 1965 Voting Rights Bills, p. 445.

I am of the opinion that denial of registration on the ground that a person's parents reside in a different county would be discriminatory treatment prohibited by Section 1971 (a) (2) (A).

I am not unmindful of AGO 070-97 dated August 3, 1970, which deals with the same general subject matter as this opinion. My predecessor in office, on pages 1 through 5 of that opinion, treats the subject matter of residence as synonymous with domicile. In view of the case law and other authorities cited herein, as well as the constitutional and statutory specificity of "residence," I view the attempted synonymity as a crucial, albeit understandable error. I, therefore, recede from AGO 070-97 in those conclusions of my predecessor material to the foregoing analysis.

The general conclusion reached by a comprehensive study of the germane portions of 98 A.L.R. 2d 499, and other authorities cited herein, lead me to the inescapable result that, in the facts of Florida's situation, the person eighteen years old or older, regardless of "occupation," must be allowed to register to vote in the county in which he has resided, i.e. lived or inhabited, for a period of at least six months (assuming he has also been within the state for one year).

Mention should also be made that the provisions of 97.041(2) and 97.041(3) should be viewed by you in such a way as to allow a person who has not attained the age of eighteen at the times material to those sections, as well as 97.041(1), to register just as a twenty-year-old person could have prior to the Twenty-sixth Amendment.

SUMMARY

The eighteen-year old given the franchise by the Twenty-sixth Amendment to the Constitution of the United States may establish residency separate and apart from the residence of his parents or guardian for purposes of voter registration. If the requirements of the applicable statutory and constitutional provisions are otherwise met, persons eighteen years of age or older must be registered as voters in the county of their residence without regard to the residence of any parent or guardian.

Yours very truly,

ROBERT L. SHEVIN,
Attorney General.

GEORGIA

THE DEPARTMENT OF LAW,
STATE OF GEORGIA,
Atlanta, August 20, 1971.

Re: For voting purposes, an 18-year old may establish a residence apart from the residence of his parents.

Hon. BEN W. FORTSON, Jr.,
Secretary of State, State Capitol
Atlanta, Ga.

DEAR MR. FORTSON: You have requested an official opinion on whether a student may establish a residence apart from the residence

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[1] For census purposes, "College students were considered residents of the communities in which they were residing while attending College." U.S. Bureau of the Census, Dep't. of Commerce, *County and City Data Book* xix (1967). The same procedure was followed in the 1970 Census. Working persons under 21 are, of course, enumerated where they reside.

of his parents for the purpose of registering to vote.

"Residence" under Georgia's election laws means domicile. Ga. Code §§ 34–103(aa), 34A–103(ab). One's domicile is his place of permanent residence and is the result of actual residence without any present intention of leaving, and to which, whenever he is absent, he intends to return. Ga. Code § 34–632(a); Ga. Code Chap. 79–4; *Worsham v. Ligon*, 144 Ga., 707, 87 S.E. 1025 (1916). A person may be residing in two or more different counties at the same time, but only one may be his domicile and the person usually has the privilege of electing which shall be his domicile, Ga. Code § 79–402.

For general purposes, Georgia, as most states, fixes the domicile of a minor as that of his father. Ga. Code § 79–404. Until a minor reaches majority (21 years) or otherwise becomes emancipated, he is not *sui juris*, that is, he does not possess full social and civil rights. R. Stubbs, a summary of the Georgia law of Children, §§ 84, 97 (1969).

The question for us to decide is whether an 18-year old should be considered *sui juris* for voting purposes, so that he would be allowed to establish his domicile of his own accord.

In 1943, Georgia granted the franchise to its 18-year old citizens. In 1971, the rest of the United States followed this lead and passed the 26th Amendment, which granted the right to vote to all 18-year olds.

The 26th Amendment decrees:

"The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age."

If citizens under 21 years are prohibited from establishing a residence of their own for voting purposes while citizens over 21 years are not, then, in a very real sense, voting rights are being denied to those under 21 on account of their age. The clear language of the Amendment, together with its legislative history, indicates that this result would violate the letter and spirit of the Amendment. Senate Judiciary Committee, S. Rep. No. 92–26, 92d Cong., 1st Sess., [Report accompanying S. J. Res. 7 (1971), p. 14]. As further evidence of this intent, see Title III of the Voting Rights Act Amendments of 1970, esp. § 302 (42 U.S.C.A. § 1973 bb–1) and 42 U.S.C. § 1971(a)(2)(A).

There are numerous reasons why citizens under 21 may validly be treated as *sui juris* for voting. For census purposes, college students (no matter what age) are considered residents of the college communities in which they were residing while attending college. It is this population figure which determines the amount of state and federal grants to the community, as well as the population figure used in apportionment under the "one man-one vote" principle. If these communities rely on the students to gain more grant money and more representation in apportionment, then it may not be unreasonable to also consider them residents for the purposes of voting.

In a recent U.S. Supreme Court case on the question of whether residents of a federal enclave could vote in state and local elections, the Court decided that the state could not prohibit these residents from voting. The principal reasons relied on by the Court would also apply to college students, that is, they are included in census figures, the state criminal laws apply to them, the use of state courts is available to them and a significant share of the state's revenue is derived from the various taxes paid by them. *Evans v. Cornman*, 398 U.S. 419 (1970).

A student is affected by the executive, legislative and judicial decisions reached by local and state officials in the community. A student has the same opportunity to observe local conditions, has the same access to the news media and presumably has the same stake in the outcome of the elections as any other citizen in the community. To now decide that a student be treated differently, and made to vote in a community other than where he resides, because of an ancient artificial assumption of residence with parents, would be to deny the teachings of recent history, as well as a likely unconstitutional discrimination. *Carrington v. Rash*, 380 U.S. 89 (1965).

After a review of these materials, it is our opinion that a citizen over 18 years but under 21 years is *sui juris* for voting purposes and that he can establish a residence apart from the residence of his parents. Further, there is no reason to differentiate between students and others under 21. For voting purposes, either may establish a residence separate from his parents.

This opinion is not meant to imply that a student, or anyone, *must* register in his college town or that any other provision of the election law does not apply to him. A student must still fulfill the residence requirements established by law and each application should be decided by the voter registrars in accordance with established principles of determining residence. Ga. Code § 34–632, 34A–523. This opinion only decides that a citizen under 21 is *sui juris* for voting purposes and is capable under the law of establishing a separate residence if the requisite facts are present.

It should also be stressed that a person may only have one voting residence in Georgia and that voting in more than one election district in the same primary or election is a felony. Ga. Code § 34–1930.

Should additional problems develop, please feel free to call upon us at anytime.

Sincerely yours,

ARTHUR K. BOLTON,
Attorney General.

IDAHO

STATE OF IDAHO,
Boise, August 17, 1971.

Mr. R. L. STEPHENS,
Assistant Secretary of State,
Office of the Secretary of State.

DEAR MR. STEPHENS: This will acknowledge receipt of your letter of July 30, 1971, in which you requested this office to render an opinion upon the following election law questions: (1) For the purpose of voting, is a person who is in residence at a college or university considered a resident of the state and of the community in which he resides while attending the college or university? (2) For the purpose of conducting registration of voters, may a county clerk extend his office by deputizing other individuals to accept all registration at places where there is a substantial concentration of people such as a college campus, high school, or shopping center?

In addressing ourselves to your first question, it should be noted at the outset that Idaho has an election law statute in point. Section 34–107, *Idaho Code*, provides:

"Residence defined.—(1) Residence for voting purposes shall be the place in which a qualified elector has fixed his habitation and to which, whenever he is absent he has the intention of returning.

"(2) A qualified elector who has left his home and gone into another state or territory or county of this state for a temporary purpose only shall not be considered to have lost his residence.

"(3) A qualified elector shall not be considered to have gained a residence in any county or city of this state into which he comes for temporary purposes only, without the intention of making it his home but with the intention of leaving it when he has accomplished the purpose that brought him there.

"(4) If a qualified elector moves to another state, or to any of the other territories, with the intention of making it his permanent home, he shall be considered to have lost his residence in this state."

It is the mandate of the above-quoted statute that one's intent be the lodestar to guide in the ultimate determination of voter residence. Intent to stay in a place permanently or temporarily is subjective, and thus not ascertainable by objective observation. Frequently, those who attend a college or university decide to remain in the community subsequent to their college sojourn. The franchise is too precious for mechanical standards to dictate cold objective judgments which could easily prove inaccurate. Therefore, the residence determination for voting purposes should be left for the voter himself to determine. If an out-of-state student wishes to vote in an Idaho election, and he declares his intent to be that of becoming a permanent Idaho resident, and he satisfies the requirements for voters generally, which includes residing in the state for six months continuously, prior to the election in which he offers to vote, then it is the opinion of this office that such a student should be registered, and allowed to vote.

Implicit in your first question is the situation where an in-state student who lives with his parents in county "x" goes to college for 9 months of the year in county "y" and then returns to county "x" or somewhere else while awaiting the commencement of the next term. The question will then be, in which county is the student a resident for the purpose of voting?

Following the same kind of reasoning applicable to out-of-state students, the in-state student will likewise be the best person to determine his intent to become a resident somewhere. Therefore, if the student in the hypothetical situation above informs the county clerk of county "y" that he intends to become a permanent resident of that county, then the clerk should register him and he should be allowed to vote in the elections held therein.

In situations where the student does not desire to become a resident of the state and county wherein he attends college, and he has come from without, by virtue of Section 34–107(3), he need not worry about his established residence. He will remain a resident of his home state, or county for voting purposes.

Your second question deals primarily with administrative concerns and therefore statutes will be of limited worth in reaching a determination. Actually you wish to know two things: (a) whether county clerks may deputize additional help? (b) Whether the county clerk's office is the sole place where voters may register?

The simple answer to the first part of your second question is "yes". County officials may increase their staffs by appointing deputies. (31–2003, *Idaho Code*).

The second part of question # 2 will not be definitively answered by statute. There is no statute which prohibits the county clerk from extending the administrative functions of his office to other locations. So long as the clerk's office could function acceptably with regard to the services which it normally renders, there is nothing in the laws of Idaho which would prevent deputies, or the county clerk himself, from going outside the office to administer and assist in registering electors. Certainly the registration of students for their college classes would be an optimum time to register them to vote, and we see no reason why county clerks could not be directed by your office accordingly.

Hand in hand with the idea of registering students at college registration time is the question of how, and who would coordinate the effort. Certainly the county clerk, or his deputy in the county in which the school is located could register every person who wished to become a registered voter. Because these persons would fall into two classes,

(1) those residents of the county of the clerk so registering them, and (2) those residents of a different county, the question will be what should be done with the registration cards of the outside county residents? The answer is simply that the clerk should file his own registrants, and then bundle the cards by county of the out-of-county registrants and mail them to their respective county clerks. In this manner, no Idaho law is offended, and the student voter should be readily able to register if he has not done so by college registration time.

If you have further questions regarding election law concerns, do not hesitate to contact this office. This office can appreciate the adjustment which the new election laws will require, and will be indulgent in responding to your every request.

Very truly yours,

JOHN F. CRONER,
Assistant Attorney General.

LOUISIANA

STATE OF LOUISIANA,
DEPARTMENT OF JUSTICE,
Baton Rouge, August 2, 1971.

Hon. HUGH CUTRER,
Director of Registration,
State of Louisiana,
Baton Rouge, La.

DEAR SIR: Because of the many legal problems arising from the passage of the 26th Amendment to the Constitution allowing persons 18 years of age to vote, we hereby issue, per your request, the following advisory opinion·

The 26th Amendment to the Constitution of the United States states that the right of citizens of the United States 18 years of age or older to vote shall not be denied or abridged by the United States or any state on account of age.

Because of this recently ratified amendment, Article VIII, Section 1 of the Louisiana Constitution is amended as regards voters between the ages of 18–21 years.

The requirement of residence in the state for one year and in the parish where one wishes to register for six months is not changed.

A 1967 case in the Fourth Circuit Court of Appeals, *Stavis* v. *Engler*, 202 So. 2d 672 has ruled that a person may have more than one residence.

Article VIII, Section 11 states that no person shall be deemed to have gained a residence while a student of any institution of learning. However, Articles 42 and 44 of Code of Civil Procedure have been construed to allow students to file a letter of intent to have the parish in which the institution is located be considered a residence for voting purposes.

Now, because of the passage of the 26th Amendment enabling 18–21 year olds to register to vote, there is a problem with the requirement of having to wait six months after having filed a letter of intent before being able to register to vote.

These persons who have just been given the right to vote and have met the six month residency requirement within the parish would still not be able to vote because of their failure to file a letter of intent six months prior to election. However, for this special class of persons, a new procedure will allow them to register to vote without having to wait the entire six month period. The procedure will be to file an affidavit stating that the applicant has been a resident of the state for one year and of the parish for six months.

When a student 18 years of age or over wishes to register to vote he may register in any residence which he has established. Thus, he may normally register either in his home parish or in the parish of his college or university. Various problems are presented in the student registering to vote in the parish of his college or university. Article VIII, Section 11 of the Louisiana Constitution states that an individual is not deemed to have gained a residence by reason of his attending an institution of higher learning in this state. This means that a student does not acquire residency simply by enrolling in a college or university. However, if a student files a letter of intent to establish residency six months prior to registering to vote under Article VIII, Section 1 of the Louisiana Constitution, this would satisfy the requirement that a person does not acquire residency by simply enrolling in a college or university. The filing of this letter shows the intention of the student to vote in the parish of his school and serves as proof that he has resided in the parish.

If the student has failed to file this declaration of intent because he lacked the power to vote in the past six months or for some other reason, then he has an alternative method in proving his residence. According to an Attorney General Opinion rendered July 13, 1971 to the Honorable Hugh E. Cutrer, Jr., Director of the Board of Registration, the student may use other evidence to prove his residency. This "other evidence" will be explained in this opinion.

REGISTRATION PROCEDURE

1. The 18 to 21 year old must have established the requisite residency requirements.

2. He may choose the parish in which he wishes to vote (once he has established residency).

3. There is a registrar's office in each parish of the state. Usually these offices are open for registration on a Monday through Friday basis.

4. The 18 to 21 year old must appear at the registrar's office in person in order to register.

5. At the registrar's office the applicant will be required to answer an application for registration. (See Attached Application.) (Not printed in the RECORD).

6. The application includes the six month parish residency requirement.

7. Normally, if the applicant simply states that he has been a resident of the state for one year, of the parish for six months, etc., he will be enrolled as a registered voter of the parish.

8. If the registrar of voters in the parish challenges the applicant's time of residency in the parish, the student may follow only one of the following three procedures:

(a) He may go to the residence of his parents or legal guardian and register in that parish (the legal residence of an unemancipated minor).

(b) He may prove his residency in the parish of the college town by complying with one of two different procedures evidencing his prior six month presence in the parish. One procedure would be to submit pertinent information which would substantiate his claim of residency on the application (rent receipt, utility receipt, etc.). The other procedure (Attachment No. 1) would not require any supporting information. However, this second procedure, which is an affidavit, must be executed before a notary public.

(c) He may submit a letter of intent to make the college town parish his new legal residence for purposes of voting (to the Clerk of Court). After submitting the letter of intent, the applicant must wait six months (the normal parish residency requirement). The six month waiting period after the letter establishes the new parish residency. After six months the applicant then can validly register and the registrar will have no cause to deny the applicant because of the residency requirement. During that time (the six months) the applicant is not a registered voter. (The letter of intent should apply only to a new student or an incoming freshman.)

If the student (is a sophomore or above and) has been living in the parish of the college for at least six months, then he is a resident and can register. (As an example, a student who has attended the fall and spring semesters has established a voting residence—even if he was not in the parish of the college for the summer or vacation months.)

If the letter of intent is filed in the parish of the college and because of the six month residency requirement after filing of the letter, the student is unable to register or vote in the primary or general election, then the student is not precluded from going to the parish of the residence of his parents, parent, or legal guardian and registering in that parish. Since the letter of intent does not constitute full and legal registration, then a registration in a parish of actual residency subsequent to the filing of the letter is legal and effective registration and a person (student) so registered cannot be expelled from the rolls for the simple reason that he had previously filed a letter of intent.

The registration books are closed beginning thirty days before the election. Thus, a person must register prior to thirty days before the primary or general election. If a person becomes 18 years of age prior to the election, but less than thirty days before the election (when the registration books are closed), then this 17 year old can register prior to the closing of the registration books (that is prior to thirty days before the election). However, one will not be permitted to vote in the primary or general election if he becomes 18 on the day of the election

Any registered voter who is a student at an institution of higher learning, including any college or university in this state, located in Louisiana, and who, for the purpose of attending such institution, lives outside the parish where he is registered to vote, may make application to vote absentee.

If a student wishes to vote in his home parish, but has not yet registered to do so, he must register there at least thirty days prior to the election. After doing so, if he is or expects to be absent from his home parish at the time of the election, he is qualified to make application to vote absentee.

WITH REFERENCE TO ABSENTEE VOTING BE ADVISED AS TO THE FOLLOWING PROCEDURES

1. A registered voter, who is a student, and who desires to vote *absentee* shall make application for an official ballot in writing in the parish in which he is registered to vote. In the Parish of Orleans, this application shall be made to the Civil Sheriff.

2. Application by mail will be accepted by the Clerk of the Court, or Civil Sheriff in the Parish of Orleans, within a period beginning sixty days before an election and ending seven days before the election.

3. Applications in person may be made not more than nineteen days nor less than six days before an election.

4. All applications by mail should disclose that the applicant is a student at an institution of higher learning located in Louisiana who, for the purpose of attending such institution, lives outside of the parish where he is registered to vote.

5. Beginning thirty days before the election and thereafter, immediately upon receipt of the application by mail, the Clerk of the Court or Civil Sheriff in the Parish of Orleans will mail to the applicant, at the address furnished by him, postage prepaid, the necessary instructions, affidavits, certificates and ballots.

6. All absentee ballots must be returned by the voter to the officer issuing the ballot within sufficient time to enable the officials to deliver it to the special deputies appointed to deliver the election paraphernalia to the commissioners at each voting precinct.

In response to various requests for interpretation and clarification of the effect of the passage of the 26th Amendment to the

United States Constitution on 18 to 21 year old voters, we issued opinions which are summarized below. These opinions refer to rights acquired in addition to the right to vote by persons between the ages of 18 and 21 years. The additional rights given by the 26th Amendment are as follows:

1. Any person 18 years of age or older who is properly registered to vote and qualified can run for the Louisiana House of Representatives, Police Jury and School Board; and in East Baton Rouge can run for Parish Council and Mayor-President. (Atty. Gen. Op. 1971)

2. Any persons 18 years of age or older may be commissioned as a special officer if he is a duly qualified voter in the state, district, parish, municipality or ward where the functions of this office are to be performed. In addition, they are entitled to carry firearms as authorized for use in this office. For example, persons 18 to 21 years old may be employed as a private security guard but since they are still minors and this would be hazardous employment, approval by parent or guardian would be necessary. (Atty. Gen. Op. 1971)

With respect to all individuals who wish to vote in presidential elections only, that is, for electors for President and Vice President of the United States, Public Law 91-285 established a new durational residency requirement so that an individual who is a duly qualified resident of a state shall be entitled to register for and vote in a presidential election, provided that he applies to vote not later than thirty days immediately prior to any presidential election.

If there are any further questions or inquiry, please advise.

Sincerely yours,

JACK P. F. GREMILLION,
Attorney General.

MISSOURI

[Opinion No. 387]

SEPTEMBER 3, 1971.

Hon. CHARLES S. BROOMFIELD,
Representative, District 87,
Kansas City, Mo.

DEAR REPRESENTATIVE BROOMFIELD: This letter is in response to your opinion request in which you ask:

"Where must college students legally register and vote in Missouri?"

We understand that you are primarily concerned with the factors to be considered in determining the "residence" of voters under twenty-one years of age.

Section 2 of Article VIII of the Constitution of Missouri provides as follows:

"All citizens of the United States, including occupants of soldiers' and sailors' homes, over the age of twenty-one who have resided in this state one year, and in the county, city or town sixty days next preceding the election at which they offer to vote, are entitled to vote at all elections by the people. Citizens of the United States who are otherwise qualified to vote under this section and who have resided in this state sixty days or more, but less than one year, prior to the date of a presidential election may be permitted by law to vote for presidential and vice presidential electors at such election but for no other officers. No idiot, no person who has a guardian of his or her estate or person and no person while kept in any poorhouse at public expense or while confined in any public prison shall be entitled to vote, and persons convicted of felony, or crime connected with the exercise of the right of suffrage may be excluded by law from voting. All persons voting for the presidential and vice presidential electors under the sixty day resident provision shall sign an affidavit as to their eligibility to vote under said section, and any person who falsifies said affidavit shall, upon conviction, be deemed guilty of a felony."

Section 111.021, RSMo 1969, with respect to the qualification of voters generally states:

"Only citizens of the United States, including residents of soldiers' and sailors' homes, over the age of twenty-one years who have resided in this state one year, and the county, city or town sixty days immediately preceding the election at which they offer to vote, shall be entitled to register and vote at all elections by the people. Each voter shall vote only in the township or election district in which he resides, or if in a town or city, then in the election district or precinct in which he resides. No person who is adjudged incompetent or while confined in any public prison shall be entitled to register and vote at any election under the laws of this state; nor shall any person convicted of a felony, or of a misdemeanor connected with the exercise of the right of suffrage, be permitted to register and vote at any election unless he has been granted a full pardon by the properly authorized state or federal authority."

As you have noted in your opinion request, the minimum age requirement for voters has been changed to eighteen years of age by the adoption of the Twenty-sixth Amendment to the United States Constitution. This Amendment provides:

"Section 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

"Sec. 2. The Congress shall have power to enforce this article by appropriate legislation."

I

A student who attends school away from home does not thereby automatically abandon the residence he had previously nor does he automatically establish a residence at the place where he resides while attending school. Residency depends upon intent.

Section 6, Article VIII of the Missouri Constitution provides as follows:

"For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while engaged in the civil or military services of this state or of the United States, or in the navigation of the high seas or the waters of the state or of the United States, or while a student of any institution of learning, or kept in a poor house or other asylum at public expense, or confined in public prison."

In interpreting this Constitutional provision, the St. Louis Court of Appeals in *Chomeau* v. *Roth*, 72 S.W. 2d 997 (1934), a case involving the question of residency of student voters who had reached their majority, held at l.c.999:

"The fact that the challenged voters were students is in and of itself not at all decisive of the case. Our Missouri Constitution provides in article 8, § 7, (Const. art. 8, § 7, p. 677, Mo. St. Ann.), that for the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence, or to have lost it by reason of his absence, while a student of any institution of learning. So the Constitution leaves the student much as it finds him, permitting him either to retain his original residence for voting purposes, or to take up a residence wherever his school is located if he so elects. In other words, mere physical presence at the school is not enough either to gain for him a voting residence at the school, or to cause him to lose his existing voting residence at his home; the whole question, as in all similar situations, being largely one of intention, to be determined not alone from the evidence of the party himself, but in the light of all the facts and circumstances of the case. *Hall* v. *Schoenecke*, 128, Mo. 661, 31 S.W. 97; *Goben* v. *Murrell*, 195, Mo. App. 104, 190 S.W. 986, 197 S.W. 432.

"[3,4] The two cited cases, and particularly the former, control this case in all essential respects. As they announce the law, it is entirely possible for a student to gain a residence at the place where he is attending school, although he may have gone there for no other purpose than to attend school; the question of whether a change of residence is effected depending upon the intention with which the removal from the former residence was made. A temporary removal for the sole purpose of attending school, without any intention of abandoning his usual residence, and with the fixed intention of returning thereto when his purpose has been accomplished, will not constitute such a change of residence as to entitle the student to vote at his temporary abode. But conversely, an actual residence, coupled with the intention to remain either permanently or for an indefinite time, without any fixed or certain purpose to return to the former place of domicile. *Nolker* v. *Nolker* (Mo. Sup.) 257 S.W. 798; *Finley* v. *Finley* (Mo. App.) 6 S.W. 2d. 1066.

"[5] Now in this case, when the students entered the seminary, they at least came, so there was evidence to show, with the fixed intention of not resuming their respective residences at their former homes after graduation. Upon enrolling at the seminary they knew only that they were abandoning their former residences, and that they would reside at the seminary, not permanently, but for an indefinite time, depending upon the promptness with which they might complete the course, and upon whether they might subsequently take the postgraduate course. The abandonment of the former residence is the important factor; and the necessity of ultimate removal from the seminary should not affect the result. If, as the evidence shows, upon matriculation at the seminary the students abandoned their former residences, entering the school with the fixed intention of not returning to their original homes permanently, are they to be disfranchised from thenceforth until they acquire a residence after graduation? We think not. Rather, the policy of the law is to construe election laws liberally in aid of the right of suffrage.

"And in this view of the case, not only had the particular students abandoned their former residences upon entering the seminary, as there was evidence to disclose, but they presented themselves as voters at the proper precinct in the city of Clayton, declaring to the election officials in charge thereof that they regarded the seminary as their place of residence. We grant that such statements on their part were not conclusive upon the question of their intention, but the evidence thereof, together with the other matters we have heretofore dwelt upon as significant, amply warranted the trial court in finding, as it did, that they were qualified to vote. If, as is said in Goben v. Murrell, supra, residence for voting purposes must have home connection or identification with the community, such connection or identification could not better be evidenced than by a participation in the community's public affairs by those who claim no other community as their residence."

It is our view that the principles set forth in *Chomeau v. Roth* are applicable to students between the ages of 18 and 21 as well as those 21 and over.

II

Generally speaking, a person resides where his family permanently resides.

In this respect, the Springfield Court of Appeals in *Clarkson v. MFA Mutual Insurance Company*, 413 S.W. 2d 10 (1967) stated at l.c. 13-14:

". . . In this connection, we note also that our General Assembly has declared that '[a]s used in the statutory laws of this state * * * "[p]lace of residence" means the place where the family of any person *permanently* resides in this state, and the place where any person having no family generally lodges' [V.A.M.S. § 1.020 (9)], and that the St. Louis Court of Appeals has pointed out in this statutory definition 'merely codifies the presumption of law that would in any

event exist without it.' State upon Inf. of Reardom, supra, 388 S.W. 2d at 58. . . ."

As indicated by the court above, the quoted statutory provision is simply the codification of a presumption; and as the presumption that a person's residency follows that of this family is not conclusive, the student's residency may be otherwise evidenced by the facts of the particular case. Such other evidence necessarily includes the subjective intent of the person as shown by his declaration of residency as well as other varied objective indicia of residency.

III

A student, although under twenty-one years of age, may establish a residence for himself apart from his family and abandon his former place of residence.

While we have not lost sight of the common law doctrine of servitude which proclaims that until a minor is emancipated his legal residence is ordinarily the same as that of his father (or mother if a legal custody situation is present), *Beckmann v. Beckmann*, 218 S.W. 2d. 566 (1949), it is our view that by reason of the provisions of the Twenty-sixth Amendment a minor voter is *sui juris* and has the capacity to form the intent requisite to establish a place of residence of his own. Emancipation at common law resulted from an agreement by the parent and the child that the child could go his own way and provide for himself and was express or implied; *Spurgeon v. Missouri State Bank*, 151 F. 2d 702 (8th Cir., 1945) *Wurth v. Wurth*, 313 S.W. 2d 161 (1958). However, it is our view in the premises that neither parental control nor parental support precludes such a student from establishing his own place of residence.

IV

Certain factors are to be considered in determining residence.

We recognize the difficulty in prescribing a precise formula for determining residency. See *Clarkson v. MFA Mutual Insurance Company*, above. However, we believe that a change in residence is effected by:

a) A bona fide abandonment of the original residence and an intent not to return to it coupled with an intent to remain in the new community indefinitely and physical presence in the new locality. As observed in *Chomeau v. Roth*, above, "indefinitely" does not necessarily mean forever but can be for that period of time necessary to accomplish the objectives at the college with an intent not to return to the previous residence.

b) Other circumstances supporting or disproving the students residency intention may be considered. That is, whether a student (or any person) has established his residence at a place differing from his last residence depends upon all the facts and circumstances of the case. As stated by the Missouri Supreme Court in Hall v. Schoenecke, 31 S.W. 97 (1895): "The fact that he is supported and maintained by his parents, and spends his vacation with them, are strong, but not necessarily conclusive, circumstances to prove that he has not changed his residence. . . . The question is, as in other cases, largely one of intention, though, as to this, the evidence of the party himself is not necessarily conclusive. . . ." The same rules for determining residency apply to students as to other persons. 29 C.J.S. Elections, § 22, p. 80.

The question of intent is to be gathered largely from the acts and the utterances of the person whose residence is under question and the declarations of such person made before, at, and after the time the residence in dispute is alleged to have been established may be considered. In addition to physical presence the courts have considered the place of the person's church and other organization membership, statements of residence given on income tax returns, deeds and other contracts, place of business or labor, In Re Toler's Estate, 325 S.W. 2d 755 (1959); the payment of taxes, 28 C.J.S. Domicile § 18, p. 41; and, of course such residence addresses as have been given for various license purposes. Likewise in weighing these factors the courts have stated that the intent required to establish a residence cannot be for a mere special or temporary purpose. Trumbull v. Trumbull, 393 S.W. 2d 82 (1965). None of these factors are conclusive and they cannot be weighed hypothetically as to their evidentiary value as the courts have not held any one factor determinative.

CONCLUSION

It is the opinion of this office that a student of eighteen years of age or over meeting the necessary constitutional and statutory requirements for voting may:

(1) Retain his original residence and register and vote at such place.

(2) Establish a residence in a different community and register and vote at such place if,

(a) The student declares that he has abandoned his original residence and that he does not intend to return to such place; and,

(b) He declares his intent to establish a residence in the community in which he resides for an indefinite period; and

(c) Such declarations are consistent with facts which show that such voter has abandoned his original residence and intends to reside in such community.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Klaffenbach.

JOHN C. DANFORTH,
Attorney General.

PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
OFICE OF ATTORNEY GENERAL,
Harrisburg, Pa., September 9, 1971.

Re: *Residence of College Students for Voting Purposes.*

Hon. C. DELORES TUCKER,
Secretary of the Commonwealth,
Department of State,
Harrisburg, Pa.

DEAR MRS. TUCKER: You have requested an opinion as to whether the laws of the Commonwealth of Pennsylvania permit college students attending colleges and universities in Pennsylvania to register to vote where their university or college is located.

You are advised by this opinion that, subject to certain durational residency citizenship requirements established by the Constitution of the Commonwealth of Pennsylvania, Pa. Const. Article 7. Section 1 hereinafter discussed, that college students are permitted under State law to register to vote in the locality at which they are attending a college or university.

As of 1970 there were some 390,000 students enrolled in public and private, two and four year colleges and universities located within the Commonwealth of Pennsylvania. These figures, of course, do not include those students enrolled in vocational and technical institutions. The 1970 Pennsylvania Statistical Abstract, pages 142–143. From the time the students are first enrolled at their college or university they are engaged in the vocation of pursuing and obtaining an academic degree or some other form of recognition by the academic community. The time the student will reside in the academic community is indefinite in that his period of residency will extend over the time needed by the student to fulfill the requirement for his academic degree and, in that once having obtained a degree, he may seek additional academic credentials at the same institution. In addition to the student's commitment and intention to spend an indefinite period of time at the university or college of his choice, the student also establishes a number of permanent relationships (permanent in the sense that the relationship will last for an indefinite period of time), with various local institutions, businesses and persons. In most instances, students open bank accounts and charge accounts at local banks and retail establishments, enter into leases with local landlords and in many instances pay local taxes and are employed by local businessmen. Students also live in a variety of dwellings in the area of the college or university of their choice. These dwellings range from the typical on-campus dormitory to the private home owned by a married student. To all of these dwellings the students bring their personal possessions for use during the period of their studies. Students may or may not intend to return, upon termination of their studies, to their last residence prior to enrollment.

Of crucial significance also is the fact that the general elections fall on the Tuesday next following the first Monday in November, a date which comes in the middle of the first semester of the school year. Because of their studies and because no recesses or vacations are scheduled at that time students are unable to return or seriously hindered in returning, to the locality where their parents live to register and to vote. Therefore, should students be compelled to vote in the localities where their parents live, they will be forced to utilize the cumbersome procedure of the absentee ballot. The experience of electors utilizing this procedure where they are compelled to do so (e.g. servicemen stationed overseas) demonstrates that only a small percentage of the persons compelled to vote by absentee ballot exercise their franchise by this means.

The 26th Amendment to the Constitution of the United States provides:

"The right of citizens of the United States, who are 18 years of age or older, to vote shall not be denied or abridged by the United States or by any state on account of age."

As the report of the United States Senate regarding the 26th Amendment clearly indicates, it is the spirit and intention of this Amendment to remove any procedures which would substantially hamper or impose special burdens on persons 18 years and older in the exercise of the franchise guaranteed by this Amendment.

"Moreover, forcing young voters to undertake *special* burdens—obtaining absentee ballots or travelling to one centralized location in each city for example in order to exercise their right to vote might well serve to dissuade them from participating in the election. This result and the election procedure that created it are at least inconsistent with the purpose of the Voting Rights Act, which sought to encourage greater political participation on the part of the young; segregation might even amount to a denial of their 14th Amendment right to equal protection of the laws in the exercise of the franchise." Senate Judiciary Committee, Senate Report No. 92–96, 92nd Congress, First Session (emphasis supplied).

It is obviously a violation of the spirit of the Amendment to compel students to utilize the cumbersome, absentee ballot procedure. Secondly, it is a clear violation of the provisions of the Amendment to impose greater burdens on young people seeking to exercise their franchise than are otherwise imposed on older citizens seeking to exercise their franchise. In two cases arising in other states, *Wilkins* v. *Bentley*, ——— Mich. ——— (1971) and *Tabilio* v. *Mihaly*, ——— CA 2d ——— (1971) Courts in California and Michigan declared certain statutes imposing special burdens on young people in the exercise of their franchise unconstitutional. In the Michigan case a statute creating the presumption that a student is not a resident of the campus town where the college of his choice was located was declared unconsti-

tutional and in the California case an Attorney General's opinion barring unmarried persons under the age of 21 from establishing a residence for voting purposes different from their parents was held violative of California law and the United States Constitution. Attorney General's opinions which have been issued from the States of Massachusetts, Florida, Idaho, Georgia, Louisiana and Washington hold that no special barriers can be erected to the exercise of the franchise by younger citizens.

Article 7, Section 1 of the Pennsylvania Constitution establishes, among other requirements, durational residency and citizenship requirements for electors. These requirements are that the doctor shall have been a citizen of the United States at least one month, he shall have resided in the State 90 days immediately preceding the election and he shall have resided in the election district for at least 60 days immediately preceding the election.[1]

The Election Code, 25 P.S. § 2813 and § 2814, establishes rules for determining residency in the Commonwealth and the election district for voting purposes.

Section 2813 of Title 25 in part provides:

"For the purpose of registration and voting, no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, while employed in the service, either civil or military, of this State or of the United States . . . nor while a student of any institution of learning . . .".

Section 2814 of Title 25 further provides:

"In determining the residence of a person desiring to register or vote the following rules shall be followed so far as they may be applicable:

(a) That place shall be considered the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

(b) A person shall not be considered to have lost his residence who leaves his home and goes into another state or another election district of this State for temporary purposes only, with the intention of returning.

(c) A person shall not be considered to have gained a residence in any election district of this State into which he comes for temporary purposes only, without the intention of making such election district his permanent place of abode.

(d) The place where the family of a married man or woman resides shall be considered and held to be his or her place of residence, except where the husband and wife have actually separated and live apart, in which case the place where he or she has resided for two months or more shall be considered and held to be his or her place of residence . . .".

Two questions are raised by the foregoing statutory provisions. Firstly, do these statutory provisions by operation and court interpretation establish special categories of electors who may have the option of choosing between one of two residences for voting purposes. Secondly, do students who reside in their campus towns obtain a residence under the rules established by these provisions. The answer to the first question is critical in that if it has been certain electors have the choice of maintaining a residence for voting purposes at one of at least two locations, then Pennsylvania law has established a special category of electors for purposes of facilitating the exercise of their francise. If such a category of voters is established under present law, serious constitutional questions are presented, if by operation of the same law, students, who occupy a similar situation are not permitted to make such a choice. The answer to the first question, in light of the constitutional questions raised, of course, bears directly on the answer to the second question.

In the case of *Newport Township Election Contest,* 384 Pa. 474, 121 A.2d 141 (1956) votes in a municipal election of State employees who lived in state owned housing facilities and who, under state law, were required to move from these facilities, upon termination of State employment were challenged. The Supreme Court of Pennsylvania, in denying the challenges held:

"A person employed by the Commonwealth may, *if he sees fit,* establish his domicile and gain residence at this place of employment by taking the proper and appropriate steps to do so—as these voters did". (384 Pa. at 478, emphasis supplied)

In so ruling, the Court permitted State employees to choose between one of two residences for voting purposes, i.e., the residence where he lives during the period of his employment or the residence where he lived prior to State employment and to which he intends to return upon termination of his employment. Permitting this choice has been the practice in this State. In an Attorney General's opinion by Attorney General Margiotti, 225 A.G. Op. 1937, the predecessor provision of 25 P.S. 951–18(g) which provides that "state employees shall be registered as of the district wherein he or she shall have resided immediately prior to entering such service.", was construed to be directory and not mandatory on State employees. Such a construction meant that State employees, if they chose to register at their prior residence, were to be registered but, just as explicitly, meant that they could register at their place of employment if such was their choice.

In addition to State employees, who are permitted by operation of Pennsylvania law a choice of voter residence, Federal law appears to confer the same options on military personnel stationed at or in military installations. In *Carrington* v. *Rash,* 380 U.S. 89 (1965), the Supreme Court invalidated a provision of the Texas Constitution which barred servicemen from voting at their residence on or near a military installation and required them to vote at their last residence prior to entering the service. In so holding, the Court stated:

"We deal here with matters close to the core of our constitutional system. 'The right . . . to choose,' that this Court has been so zealous to protect, means, at the least, that States may not casually deprive a class of individuals of the vote because of some remote administrative benefit to the State. By forbidding a soldier ever to controvert the presumption of nonresidence, the Texas Constitution imposes an invidious discrimination in violation of the Fourteenth Amendment. '[T]here is no indication in the Constitution that . . . occupation affords a permissible basis for distinguishing between qualified voters within the State.'" (at page 96, citations omitted)

There is also a provision of Federal Law, 50 U.S.C. 1453, which recommends that states permit military personnel to vote in the state where his or her military installation is located. The obvious result of the above cited Federal law, as with the instance of State employees, is to permit military personnel the choice of registering to vote at the place where they are serving the tour of duty or at their last residence prior to military service to which residence they intend to return after their tour of duty.

There is little distinction, if any, for voting residency purposes between State employees and military personnel on the one hand and students on the other. Each class moves to a place away from a place where he or she has customarily maintained a home. Each moves for the purpose of pursuing a vocation be it state employment, military service or studies. Each intends to remain for an indefinite period of time or, in a legal sense, "permanently";—in the case of a State employee until he or she resigns, is removed from office or there is a change of administration, in the case of military personnel until his or her tour of duty is completed, cessation of hostilities or discharge from the service; and in the case of a student until his degree requirements are fulfilled, he is terminated from enrollment or withdraws voluntarily. With regard to either the State employee, the serviceman or student, he or she may intend to return to the last residence prior to employment, military service or pursuing studies at a college or university.

As pointed out previously, to discriminate between students on the one hand and State employees and military personnel on the other by barring students the choice of one or another voting residence would violate the clear intent on the 28th Amendment and recent case law on the subject. It follows from well established tenets of statutory construction that the question of whether students meet the standards of residing set forth in Sections 2813 and 2814 of the Election Code must be decided in light of these constitutional considerations.

In construing Section 2813 of Title 15, the intent of that provision is to eliminate the factor of "presence" at an institution of learning for purposes of obtaining a residence for voting. The case of *Newport Township Election Contest, supra.,* decided this point directly. There the Pennsylvania Supreme Court stated:

"To give these provisions [Section 2813] the construction and application to facts contended for contestants [those parties claiming that the votes of the State employees were valid] would be to lead to an absurd and unreasonable result. They were not intended to nor do they, preclude establishment of a domicile where the State employee works. They mean only what they state,—that their residence cannot be changed merely by reason of their employment. As stated in 29 C.J.S., Elections, Section 24, page 48, the fact, however, that a person does not gain or lose residence merely by reason of his presence or absence while in the service of the government does not preclude him from otherwise gaining a residence at the place so employed." (384 Pa. at page 478).

Having eliminated the factor of presence for purpose of a voting residence the rules for determining residence established in Section 2814 become critical. The operative language of Section 2814 is contained in clauses (a) and (b). As quoted at page 5 of this opinion, clause (a) defines voter residence as a fixed habitation to which the person intends to return whenever he is absent. The student who takes up a residence in his college town has acquired a habitation, i.e., a place where he pursues his vocation and keeps his personal possessions. See *Lesker Case,* 377 Pa. 411, 418, 105 A. 2d 376 (1954). In view of the fact that he intends to pursue his vocation for an indefinite period of time, his habitation becomes "fixed" or "permanent" and hence by being "permanent" it is presumed that he intends to return whenever he is absent. See *Lower Oxford Contested Election,* 1 Chester Co. 253

[1] In addition to the durational residency requirements of Article 7, Section 1 requires that every citizen be 21 years of age in order to vote. As a result of ratification of the 26th Amendment to the United States Constitution this provision is no longer valid. However, invalidation of the 21 year old age requirement of Section 1, on the basis of well accepted rules of statutory construction, does not render the durational residency requirements of that Section invalid. Moreover, Act 29, 71 Session, recently enacted into law and repealing in part §2811 of the Election Code, 25 P.S. §2811, extends the franchise to persons 18 years old or older subject to the same durational citizenship and residency requirements of Article 7, Section 1.

(1875) in which the Court defined permanency as not meaning "absolute permanency" and *Parrish* v. *Hainlen*, 124 Col. 229, 236 P. 2d 115 (1951) where the Colorado Supreme Court defined "permanency" in terms of an indefinite period of time necessary to pursue a vocation or an objective.

Clause (b) of Section 2814, on its face may properly be applied to the situation where a student takes up residence at a college or university and intends to return to his last prior residence upon completion of his studies. This clause, preserves to the student, as is the case with State employees and military personnel, the option of maintaining a voter residence at his last prior residence.

By construing the Sections 2813 and 2814 in the foregoing manner the constitutional problems previously described are obviated. By this interpretation, a student will have the same choice of voter residence as the State employee and serviceman.

It is necessary at this point to call your attention to a very early Pennsylvania Supreme Court case, *Fry's Election Case*, 71 Pa. 302 (1872). That case involved an election contest which challenged validity of votes cast by college students at their college residence. At the time that that decision was rendered, the provisions of Section 2813 and Section 2814 of Title 25 had not been enacted. However, there was a provision of the Constitution of 1838 applicable to that case which was similar to the present Section 2813. As noted above, Section 2813 and, of course, the analogous earlier constitutional provision, merely state that presence in a campus town is not a factor to be considered for determining residency. At the time that the *Fry's Election Case* was decided there were, however, no rules, similar to those contained in present Section 2814, which established criteria for determining residence for voting purposes. In the absence of such rules, the Court in *Fry's Election Case* was compelled to resort to the restrictive concept of "domicil" to determine whether the college students in that case obtained a residence for voting purposes. With constitutional changes, including ratification of the 26th Amendment, and the enactment of the statutory provision, Section 2814, since the decision in the *Fry's Election Case*, it is clear that the rules for determining residence for voting purposes are not based on the restrictive "domicil" test. Rather these rules as discussed above, are based on practical considerations of alternative means to exercise the franchise and the intention of the elector and his ties to the community in which he seeks to exercise the franchise. For the foregoing reasons we find that the decision in *Fry's Election Case* is distinguishable and does not govern present conditions.

Very truly yours,

J. SHANE CREAMER,
Attorney General.

CALIFORNIA

[S.F. 22826, S.F. 22827, L.A. 29906]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA: IN BANK

Colette Jolicoeur et al., Petitioners, v. Emmery Mihaly et al., Respondents.

James Tabilio et al., Petitioners, v. Emmery Mihaly et al., Respondents.

Mark Steven Randell et al., Petitioners v. James S. Allison, Registrar of voters of the County of Los Angeles, Respondent.

In these proceedings we are called upon to determine whether the newly enfranchised young people of this state residing apart from their parents shall be treated like other voters for purposes of acquiring a voting residence or, on the contrary, shall be presumed to reside with their parents. We conclude that for state officials to treat minor citizens differently from adults for any purpose related to voting would violate the Twenty-Sixth Amendment to the United States Constitution. We also conclude that strong state policies require that voters participate in elections where they reside and, in accordance with California law permitting a minor to be emancipated for residential or other purposes, that California law requires that minors of 18 years of age or older be treated as emancipated and hence as adults for voting purposes in light of the Twenty-Sixth Amendment.

Petitioners are nine individual unmarried minors and two organizations. The nine individuals sought to register to vote in the jurisdiction they claim to be their actual permanent residence. Registrars of voters in the City and County of San Francisco, Alameda County, Santa Barbara County, San Diego County, and Los Angeles County refused to register the individual petitioners because they did not register at their parents' address, pursuant to the California Attorney General's opinion of February 17, 1971 (Opn. No. 70/213, 54 Adv. Ops. Cal. Atty. Gen. 7, 12), in which he concluded that "for voting purposes the residence of an unmarried minor [whether student or not] . . . will normally be his parents' home" regardless of where the minor's present or intended future habitation might be.

In reliance upon this opinion, respondent Mihaly told petitioner McConville, whose parents live in Argentina, that he could not vote in local elections at all unless he became a *married* minor. Petitioners Pang and Fruchtendler were told that they would have to register to vote in Hawaii and Arizona, respectively. The six other individual petitioners were told to register in other California jurisdictions up to 700 miles away from their claimed permanent residences. Petitioners Jolicoeur and King, who are fully self-supporting and work full-time, were told that these facts were irrelevant to their capacity to establish a legal residence for voting purposes. Petitioner Randell, who has *never* lived at his parents' current domicile, and is not familiar with any political issues pertinent to that area, was told that he must vote there and not where he lives.

Petitioners invoke the original jurisdiction of this court,[1] seeking writs of mandate directed to the respondent registrars ordering respondents to register petitioners according to the same procedures and qualifications that are followed with respect to adult registrants, pursuant to Elections Code, sections 14280–14292.[2]

The Twenty-Sixth Amendment: On June 22, 1970, President Nixon signed into law the Voting Rights Act of 1970 (P.L. 91–285, 84 Stats. 314), title III of which purported to lower the voting age to 18 for all federal, state, and local elections. After the United States Supreme Court held unconstitutional that part of title III which applied to nonfederal elections (Oregon v. Mitchell (1970) 400 U.S. 112, 118), Congress passed Senate Joint Resolution 7 on March 23, 1971, submitting a proposed constitutional amendment to the states for ratification, pursuant to article 5 of the federal Constitution. On June 30, 1971, Ohio became the 38th state to ratify the Twenty-Sixth Amendment to the United States Constitution, and it became law.

Section 1 of the Twenty-Sixth Amendment provides: "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied *or abridged* by the United States or by any State on account of age." (Italics added.)

The Twenty-Sixth Amendment prohibits abridging the right to vote on account of age. The word "abridge" means diminish, curtail, deprive, cut off, reduce. (Webster's New Internat. Dictionary (3d ed. 1961) p. 6; Schermerhorn v. Local 1625 of Retail Clerks Int. Assn. (Fla. 1962) 141 So. 2d 269, 276; Plegts v. Amalgamated Meat Cutters, etc. (1955) 228 La. 131, 139, 81 So. 2d 835, 838; Gray v. Johnson (S.D. Miss. 1964) 234 F. Supp. 743, 746.) *Gray* is significant for its interpretation of similar language in the Twenty-Fourth Amendment, which forbids denial or abridgment of the right to vote on account of failure to pay a poll tax. The court in *Gray* held unconstitutional as abridging the right to vote a Mississippi statute which compelled persons exempted from the poll tax by the Twenty-Fourth Amendment to secure special receipts within a limited period of time. The burden put on exempted voters to obtain the special receipts was held to circumscribe, impair, and impede the right to vote.

Compelling young people who live apart from their parents to travel to their parents' district to register and vote or else to register and vote as absentees burdens their right to vote no less than the State of Mississippi burdened its poor people in *Gray*. Such young people would be isolated from local political activity, with a concomitant reduction. The burden placed on youth would be different than that placed on other absentee voters. The youth, unlike other absentee voters, claims his current residence as his domicile but would be disqualified solely "on account of age."

Sophisticated legal arguments regarding a minor's presumed residence cannot blind us to the real burden placed on the right to vote and associated rights of political expression by requiring minor voters residing apart from their parents to vote in ther parents' district. The Twenty-Sixth Amendment, like the Twenty-Fourth, Nineteenth, and Fifteenth before it, "nullifies sophisticated as well as simple-minded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise . . . although the abstract right to vote may remain unrestricted. . . ." (Lane v. Wilson (1939) 307 U.S. 268, 275.)

An unmarried minor must be subject to the same requirements in proving the location of his domicile as is any other voter. Fears of the way minors may vote or of their impermanency in the community may not be used to justify special presumptions—conclusive or otherwise—that they are not bona fide residents of the community in which they live.

In Carrington v. Rash (1965) 380 U.S. 89, the United States Supreme Court was faced with a quite similar problem. There a Texas statute prevented persons entering the state as soldiers from acquiring a voting residence in the state while soldiers. The state claimed that military personnel might not make responsible use of the ballot, might vote in a bloc if under the dominating influence of a commanding officer, and, as transients without a stake in the future of the area, might vote against needed bond issues and property taxes. The court's answer was clear: Texas might restrict the franchise to bona fide residents, but it could not conclusively presume soldiers to be transients. To the state's claim that soldiers could "take over" a small town near the base, the court responded firmly: "'Fencing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible." (*Id.* at p. 94.) *Carrington* obviously applies to minors as well as to soldiers.

Were there any doubt that the Twenty-Sixth Amendment is intended to compel adult treatment of minors for voting purposes, reference to the legislative history of the amendment would dispel it. It is clear from that history, which is entitled to "an important place in ascertaining the legislative intent" (Freedland v. Greco (1955) 45 Cal. 2d 462, 467; cf. Bourland v. Hildreth

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Footnotes at end of article.

(1864) 26 Cal. 161, 180; Keeler v. Superior Court (1970) 2 Cal. 3d 619, 624), that Congress believed both that minor voters are entitled to be treated as adults for voting purposes and that voting in the youth's actual place of residence is essential to accomplishing a primary congressional goal of channeling youthful idealism through the political process.

The legislative history of title III of the Voting Rights Act of 1970 and the Twenty-Sixth Amendment reveals a rare consensus of concerns and objectives among Senators and Representatives who engaged in debate. Congressmen stressed three consistent themes: first, that today's youth is better informed and more mature than any other generation in the nation's history.[3] Second, Congress was influenced by the fact that over half the deaths in Vietnam have been of men in the 18–20 age group.[4] Third, and perhaps of paramount immediate importance, Congressmen uniformly expressed distressed at the alienation felt by some youths, and expressed hope that youth's idealism could be channelled within the political system.[5]

It would be impossible here to analyze fully the extensive hearings and debates held on whether to extend the vote to 18-year-olds.[6] One of the best and most concise guides to congressional intent is the Senate Report accompanying Senate Joint Resolution 7 (later enacted as the Twenty-Sixth Amendment), a report adopted by both houses of Congress by more than a two-thirds majority. (S. Rep. 92–26, 1971, U.S. Code Cong. & Admin. News 362.) "Reports of commissions which have propcsed statutes that are subsequently adopted are entitled to substantial weight in construing the statutes. [Citations.]" (Van Arsdale v. Hollinger (1968) 68 Cal. 2d 245, 249.) That report makes the following "Case for 18-Year-Old Voting."

"First, these younger citizens are fully mature enough to vote. There is no magic to the age of 21. The 21 year age of maturity is derived only from historical accident. In the eleventh century 21 was the age at which most males were physically capable of carrying armor. But the physical ability to carry armor in the eleventh century clearly has no relation to the intellectual and emotional qualifications to vote in twentieth century America. . . . [¶] . . . Today more than half of the 18- to 21-year-olds are receiving some type of higher education. Today nearly 80 percent of these young people are high school graduates. It is interesting to compare these recent statistics with some from 1920, when less than 10 percent went on to college and less than 20 percent of our youngsters actually graduated from high school. [¶] Second, our 18-year-old citizens have earned the right to vote because they bear all or most of an adult citizen's responsibilities. . . . [¶] Third, these younger voters should be given the right to full participation in our political system because they will contribute a great deal to our society. Although some of the student unrest of recent years has led to deplorable violence and intolerance, much of this unrest reflects the interest and concern of today's youth over the important issues of our day. . . . [¶] The Committee believes that we must channel these energies into our political system and give young people the real opportunity to influence our society in a peaceful and constructive manner. . . . [¶] 'The anachronistic voting-age limitation tends to alienate them from systematic political processes and to drive them into a search for an alternative, sometimes violent, means to express their frustrations over the gap between the nation's ideals and actions. Lowering the voting age will provide them with a direct, constructive and democratic channel for making their views felt and for giving them a responsible stake in the future of the nation.' [¶] Thus the Committee is convinced that the time has come to extend the vote to 18-year-olds in all elections: . . ." (1971 U.S. Code Cong. & Admin. News at pp. 365–367.)

The committee did not ignore the importance of local elections, which are most affected by denying minors the right to establish a domicile of choice for voting purposes: "If the energy and idealism of the young are needed in elective politics, they are needed no less at the State and local level. [¶] Moreover, *many of the problems that most concern younger citizens are largely matters of local and State policy: the quality of education at all levels; the state of the environment; planning and community development. In these areas, participation of the young in local and State elections is particularly appropriate and necessary, and their point of view especially valuable in devising responsible programs.*" (1971 U.S. Code Cong. & Admin. News at p. 372; italics added.)

Finally, the report notes the confusion and delay that would be caused by a dual-age voting system. Hearings held in the Senate after the court's decision in Oregon v. Mitchell, *supra*, 400 U.S. 112, made clear what steps individual states might take to solve some of these administrative problems. Senate Report 92–26 recommends adoption of the Twenty-Sixth Amendment as one way of precluding individual states from embarking one several programs of which the Judiciary Committee strongly disapproved. Significantly, programs which would force youths to vote by absentee ballot or otherwise single them out came in for severe condemnation: *"A few States are at least considering the possibility of . . . requiring them to vote either in centralized locations or by absentee ballot. But this type of alternative has fostered criticism on several grounds. At least one voting official has criticized this type of segregation of the younger voters because it would give them less of a sense of participation in the election system, and they should not be removed from the heart of the process.* [¶] *Moreover, forcing younger voters to undertake special burdens—obtaining absentee ballots, or traveling to one centralized location in each city, for example—in order to exercise their right to vote might well serve to dissuade them from participating in the election. This result, and the election procedures that create it, are at least inconsistent with the purpose of the Voting Rights Act, which sought to encourage greater political participation on the part of the young; such segregation might even amount to a denial of their 14th Amendment right to equal protection of the laws in the exercise of the franchise.*" (1971 U.S. Code Cong. & Admin. News at pp. 374–375; italics added.)

It is clear that respondents have abridged petitioners' right to vote in precisely one of the ways that Congress sought to avoid—by singling minor voters out for special treatment and effectively making many of them vote by absentee ballot. The Senate Report indicates that Congress not only disapproved of such treatment, but feared that it would give youth "less of a sense of participation in the election system" and "might well serve to dissuade them from participating in the election," a result inconsistent with the goal of encouraging "greater political participation on the part of the young."

Respondents' policy would clearly frustrate youthful willingness to accomplish change at the local level through the political system. Whether a youth lives in Quincy, Berkeley, or Orange County, he will not be brought into the bosom of the political system by being told that he may not have a voice in the community in which he lives, but must instead vote wherever his parents live or may move to. Surely as well, such a system would give any group of voters less incentive in devising responsible programs" in the town in which they live. Only the most dedicated partisan would travel from Oakland to San Diego (or Tucson) in order to exercise effectively his First Amendment rights of political associatiton and expression.

America's youth entreated, pleaded for, demanded a voice in the governance of this nation. On campuses by the hundreds, at Lincoln's Monument by the hundreds of thousands, they voiced their frustration at their electoral impotence and their love of a country which they believed to be abandoning its ideals. Many more worked quietly and effectively within a system that gave them scant recognition. And in the land of Vietnam they lie as proof that death accords youth no protected status. Their struggle for recognititon divided a nation against itself. Congress and more than three-fourths of the states have now determined in their wisdom that youth "shall have a new birth of freedom"—the franchise. Rights won at the cost of so much individual and societal suffering may not and shall not be curtailed on the basis of hoary fictions that these men and women are children tied to residential apron strings. Respondents' refusal to treat petitioners as adults for voting purposes violates the letter and spirit of the Twenty-Sixth Amendment.

California Law: California law also compels respondents to treat citizens of 18 years of age or older as adults for all purposes related to voting.

Petitioners sought to register at addresses they claim to be their residences for voting purposes. If petitioners *are* residents of the districts they claim, the integrity of our state's political system demands that they be allowed to vote in those areas. This is true for two reasons.

First, basic democratic principles require that citizens be able to participate in making decisions that intimately affect their lives. Forcing residents of one locality to vote in the elections of another locality denies to those voters the right to help determine the resolution of issues which vitally affect them, and eventually alienates them from the political process.

Decisions of this court (e.g., Castro v. State of California (1970) 2 Cal. 3d 223, 235–241) and the United States Supreme Court have made clear that *all* bona fide residents substantially affected by the outcome of an election and capable of voting intelligently and responsibly in it should be allowed to vote. As stated in Kramer v. Union School District (1969) 395 U.S. 621, 626–627, "Statutes granting the franchise to residents on a selective basis always pose the danger of denying some citizens any effective voice in the government affairs which substantially affect their lives." (Fn. omitted.)

The rules announced by respondents not only would deny to some residents the right to vote where they live, but could also serve to give an unmarried minor a series of voting residences which he has never seen. The 18-year-old who lives and works in San Francisco for the three years he is a voting minor might well wind up voting in turn for the Mayor of Seattle, the Governor of Maine, and school bonds in Oshkosh, Wisconsin, only to be disenfranchised completely on the local level when his parents move permanently to Paris.

It may be objected that to allow unmarried minors to establish a domicile where they live may swell the rolls of college town electorates. It is contended that college students may "take over" a town by all voting the same way, that they are not "truly" residents in that many of them will move to other areas after they leave school, and that local governments have a legitimate interest in excluding such persons from the local polity.[7]

In many states special rules are applied in determining the voting residence of stu-

Footnotes at end of article.

dents. (Singer, *Student Power at the Polls* (1970) 31 Ohio St. L.J. 703, 721–723.) The underlying rationale of these various tests is that students are apt to be transient inhabitants of the community, little concerned about long-term policies and problems, and often may not pay local property taxes. (But see Note, *Restrictions on Student Voting: An Unconstitutional Anachronism?* (1970) 4 U. Mich. J. Law Reform 215.) The possible transiency, penury, or ignorance of students did not, however, impress the California Legislature, which has expressly provided that the law "shall not be construed to prevent a student at an institution of learning from qualifying as an elector in the locality where he resides while attending that institution, when in fact the student has abandoned his former residence." (Elec. Code, § 14283.) Student status is therefore a neutral fact in determining residence for voting purposes.

The Legislature has thus determined that differential treatment of students for voting purposes may not be condoned as a legitimate governmental policy. No reason appears for construing differential treatment of minors in a more favorable light.

The second major evil accomplished by allowing or forcing voters to vote in districts not their own is that voters of other districts have inflicted upon them a voter with no stake or interest in the outcome of the election. The extent of the evil is not only that residents of California would be asked to decide issues in Arizona or Hawaii. Small towns in California would be especially affected by such a rule, since the number of young people from the town who have left for other areas may be substantial in comparison to the town's total population. Allowing unmarried minors who reside elsewhere to vote may effectively turn a small town over to the control of unconcerned outsiders. Over a century ago we recognized the wisdom of requiring voters to be residents of the jurisdiction: "[C]itizens . . . should not deal with public questions through the ballot box until they at least [have] the benefit of an opportunity to learn the public wants, of concerting measures the best calculated to provide for them, and of selecting proper men to carry those measures into effect; . . ." (Bourland v. Hildreth, *supra*, 26 Cal. 161, 179.) Allowing minors to vote at fictional residences would compromise the integrity of the political process.

In addition to these fundamental policies requiring that a person vote where he actually resides and not be compelled to vote at a fictional residence, there are further legislative policies which require that a minor residing apart from his parents be permitted to vote at his residence.

Although our statutes provide for absentee registration as well as absentee voting (Elec. Code, § 213), it is likely that individuals forced to vote in elections they care and know little about will be inclined not to register or vote at all. While the rational man might register in one county as well as another for purposes of a presidential primary, why should he register or vote in any local election when he knows nothing of the issues or candidates? Forcing voters to register at fictional residences would therefore frustrate the legislative intent "to promote and encourage voter registrations . . . to the end that registration may be maintained at a high level." (Elec. Code, § 201.)

The provisions of the Elections Code governing determination of residence for voting purposes also reflect the state policy of recognizing an actual rather than a fictional residence.

Section 14282 provides the general standard for determining an individual's domicile for voting purposes. It provides: "The residence of a person is that place in which his habitation is fixed and to which, whenever he is absent, he has the intention of returning."[8]

Footnotes at end of article.

The registrar obviously has the power not to register someone who is not a resident of the jurisdiction. But California law gives great weight to the voter's representation of where his domicile is. If a voter is challenged at the polls on the ground that he has not been a resident of the state, county, or precinct for a sufficient time, the precinct board may ask the voter only four questions. If the voter answers them with a "yes" or "no" which indicates he is a resident of the jurisdiction, the board must take his word for it and must allow him to vote. (Elec. Code, §§ 14243–14244.5.) Moreover, "*Any doubt in the interpretation of the law shall be resolved in favor of the challenged voter.*" (Elec. Code, § 14255; italics added.)

Section 14282 would normally govern the determination of petitioners' domiciles for voting purposes. Any presumption that a given class of persons are not residents of the place they live would contravene the spirit and text of the Elections Code. (Elec. Code, §§ 14255, 14282; see also §§ 14283, 14290, allowing soldiers, students, inmates of institutions, and wives living apart from their husbands to acquire domiciles in the place they live.)

Respondents apparently do apply section 14282 in determining the residence of a married minor (who may be considered an adult for some purposes, but would still be a minor under state law for voting purposes; see Civ. Code, § 25). They appear to refuse as a matter of policy, however, to accept affidavits of residence from unmarried minors, unless the residence claimed is that of the parents. Even considering state law alone, this policy may be sustained, in light of the Elections Code, and the strong state policies discussed above, only if unmarried minors are generally incapable of having a domicile of their own. Subject to some unspecified objections, the Attorney General so believed (54 Adv.Ops.Cal.Atty.Gen., *supra*, at pp. 11–12), relying on Government Code, section 244, subdivisions (d) and (f), which provide that an unmarried minor's residences is that of his parents, and cannot be changed by his own act alone.[9]

The Attorney General has misapplied section 244 by failing to view it in light of other pertinent statutes and decisions governing parent-child relations. Specifically, under California law a minor may be emancipated partially or completely by his parents or by operation of law. It is possible that a minor of 18 years of age or older, living apart from his parents, will be emancipated for all purposes; it is substantially probable that he will be emancipated for purposes of residence; and the minor is necessarily emancipated for all purposes related to voting when he is given the vote in his own right, without regard to the consent of his parent or guardian. In light of this California law regarding the emancipation of minors, we conclude that minors over 18 years of age must be treated as adults for voting purposes, and the location of their domiciles may not be questioned on account of their age.

Although section 244 is couched in absolute terms, it has not been so applied. Our courts have long held, for example, that the minor's residence does not follow that of the parent when the parent has abandoned him. (In re Vance (1891) 92 Cal. 195. 198; In re Hawkins (1920) 183 Cal. 568, 575; Guardianship of Brazeal (1953) 117 Cal.App.2d 59, 61; see also Harlan v. Industrial Acc. Com. (1924) 194 Cal. 352, 359–360.) Similarly, although section 244, subdivision (e) baldly states that "[t]he residence of the husband is the residence of the wife," the section has not been applied where the wife obviously maintained a separate domicile from that of her husband, to whom she was apparently happily married. (Lowe v. Ruhlman (1945) 67 Cal.App.2d 828, 833.)

Section 244's proviso that an unmarried minor's residence is that of his parents and cannot be changed by his own act must be construed in light of other statutes governing parent-child relations. In particular, Civil Code, section 211 provides in pertinent part: "The parent . . . may relinquish to the child the right of controlling him . . . ." Such relinquishment constitutes emancipation of the minor, and may be express or implied, complete or partial, conditional or absolute. (Perkins v. Robertson (1956) 140 Cal. App. 2d 536, 540; 67 C.J.S., Parent and Child, §86.) The emancipated child "is in all respects his own man." (Lackman v. Wood (1864) 25 Cal. 147, 151.) To the extent he is emancipated he becomes *sui juris*, with the same independence as though he had attained majority. (67 C.J.S., Parent and Child, § 87; see, e.g., Wadoz v. United Nat. Indemnity Co. (1957) 274 Wis. 383, 80 N.W. 2d 262, 265.) After consenting to the emancipation of a child old enough to work and care for himself, the parent has no right to custody or control. (Ex Parte Clark (1891) 87 Cal. 638, 642.) "A parent not entitled to the custody of a child has no right to control his residence." (Harlan v. Industrial Acc. Com., *supra*, 194 Cal. 352, 359–360; cf. Civ. Code, § 213).[10]

Nor must a child be fully emancipated in order to acquire a domicile of choice. California law recognizes that emancipation for specific purposes is effective. (Martinez v. Southern Pacific Co. (1955) 45 Cal. 2d 244, 253 [emancipation implied by circumstances]; Slater 1. California State Auto. Assn. (1962) 200 Cal. App. 2d 375 [partial emancipation implied]; Perkins v. Robertson, *supra*, 140 Cal. App. 2d 536 [partial emancipation implied]; Argonaut Ins. Exchange v. Kates (1955) 137 Cal. App. 2d 158 [partial emancipation implied].) As stated in Cole v. Superior Court (1915) 28 Cal. App. 1, 6, " 'the county of the husband's residence is [that] of the minor children, unless he has consented to their acquiring residence elsewhere, or has voluntarily relinquished his parental authority over them . . . .' "

Whether the minor has been emancipated for residential purposes is ordinarily a question of fact. (Martinez v. Southern Pacific Co., *supra*, 45 Cal.2d 244, 253.) Establishment of a separate abode is evidence of emancipation. (Spurgeon v. Mission State Bank, *supra*, 151 F.2d 702; Rounds Bros. v. McDaniel (1909) 133 Ky. 669, 118 S.W. 956; Ream v. Watkins (1858) 27 Mo. 516; see generally Annot., 165 A.L.R. 723, 740–742.)[11] In addition, it is common sense to believe that a good many minors over the age of 18 living apart from their parents *are* emancipated for these purposes. Eighteen is the age when most minors graduate from and leave school when many get full time jobs and become selfsupporting, when the state ceases to limit the number of hours they may work (Lab. Code, § 1172), when they may smoke cigarettes (Pen. Code, § 308), and when criminal proceedings begin to be brought in adult rather than juvenile courts. (Welf. & Inst. Code, § 604: Boches & Goldfarb, Cal. Juvenile Court Practice (Con.Ed.Bar 1968) 35.) It is an age when males register for the draft and females may get married without the consent of either parent. (Civ. Code, § 4101.) A minor 18 to 21 years old who lives apart from his parents will usually consider his house to be home.

Not only is there a substantial likelihood that a minor over the age of 18 living apart from his parents has been emancipated for all purposes or at least for purposes of residence; it is also clear that when the minor is given the right to vote he is emancipated for all purposes relating to voting. Obviously, in giving the minor the right to vote, it was never contemplated that the parent or guardian should be able to control whether or not the minor should be permitted to vote or how he should exercise the franchise. It was necessarily the intention to accept him as a responsible member of the community, capable of participating in its political affairs, directing its policies, and choosing its

leaders. For these purposes, he must be free entirely of parental control, and unless he is, the right to vote granted to him would be meaningless.[12]

The fundamental importance of the franchise, as both a symbol and a vital tool of our democracy, requires that every effort be made to apply uniform standards and procedures to all qualified voters equally. (Cf. 42 U.S.C. § 1971(a)(2)(A).) In this case the strong likelihood that substantial numbers of voting minors living apart from their parents are emancipated for residential purposes, coupled with the necessity that minors given the vote be treated as emancipated for all purposes related to voting, persuades us that a minor 18 years of age or older must be treated as an adult for voting purposes, and that the location of his domicile may not be questioned on account of age or occupational status.

We hold today that both the Twenty-Sixth Amendment to the United States Constitution and California law require respondent registrars to treat all citizens 18 years of age or older alike for all purposes related to voting. We do not imply that registrars may not question a citizen of any age as to his true domicile. However, the middle aged person who obtains a job and moves to San Francisco from San Diego, and the youth who moves from his family home in Grass Valley to Turlock to attend college must be treated equally. Whether either of them acquires a new domicile or retains the old one is governed by sections 14280–14292 of the Elections Code. We hold only that registrars may not specially question the validity of an affiant's claim of domicile on account of his age or occupational status.

Let the peremptory writ of mandate issue directing respondent voting registrars to determine each individual petitioner's residence for voting purposes strictly in accordance with Elections Code, sections 14280–14292, and by the same standards, tests, and procedures as are applied to persons 21 years of age or older.

PETERS, J.

We concur: Tobriner, J., Mosk, J., Sullivan, J.

FOOTNOTES

[1] Petitioners could have sued to enforce their rights pursuant to Elections Code, section 350. Instead petitioners ask us to exercise our original jurisdiction (Cal. Const., art. VI, § 10; Rules of Court, rule 56(a)). We exercise such jurisdiction only in cases in which "the issues presented are of great public importance and must be resolved promptly." (County of Sacramento v. Hickman (1967), 66 Cal. 2d 841, 845.) Cases affecting the right to vote and the method of conducting elections are obviously of great public importance. Moreover, the necessity of adjudicating the controversy before the election renders it moot usually warrants our bypassing normal procedures of trial and appeal. Thus we have exercised our original jurisdiction where electors sought to qualify an initiative for the ballot (Perry v. Jordan (1949), 34 Cal. 2d 87, 90–91; Farley v. Healey (1967), 67 Cal. 2d 325, 326–327), where a proposed local election would have violated the city charter (Miller v. Greiner (1964), 60 Cal. 2d 827, 830), and where an individual sought certification by the city clerk as a candidate for office. (Camara v. Mellon (1971), 4 Cal. 3d 714.)

No less speedy resolution of the issues presented by petitioners would be adequate here. The last day for registration for the November 2, 1971, election is September 9, 1971. The last day for registration for the June 6, 1972, election is April 13, 1972. It is highly unlikely that petitioners could secure a superior court decision *and* complete the inevitable appeals by either side from that decision in time to register for these elections.

[2] The remedy invoked—mandate—is appropriate. (Code Civ. Proc., §§ 1085–1086.) Voting registrars are public officers with the ministerial duty of permitting qualified voters to register. Mandamus is clearly the proper remedy for compelling an officer to conduct an election according to law. (Miller v. Greiner, *supra*, 60 Cal.2d 827, 830; Partridge v. Devoto (1905) 148 Cal. 167; see also Zeilenga v. Nelson (1971) 4 Cal.3d 716; cf. Keane v. Mihaly (1970) 11 Cal.App.3d 1037.) Mandamus is also appropriate for challenging the constitutionality or validity of statutes or official acts. (Metropolitan Water Dist. of Southern California v. Marquardt (1963) 59 Cal.2d 176, 28 Cal.Rptr. 724, 729; Zeilenga v. Nelson, *supra*, 4 Cal.3d 716; San Francisco Unified School Dist. v. Johnson (1971) 3 Cal.3d 937.)

[3] See, e.g., Hearings before the Subcommittee on Constitutional Amendments of the Committee on the Judiciary, 91st Cong., 2d Sess., at p. 130 (President Nixon); 116 Cong. Rec. S3216 (daily ed. March 9, 1970), remarks of Sen. Goldwater; 116 Cong. Rec. S3216, S3392, H5661, H5668 (daily ed. March 9, 10, and June 17, 1970), remarks of various Congressmen re educational attainment of youth.

[4] See, e.g., 116 Cong. Rec. S3058 (Sen. Kennedy), S3214 (Sen. Cook), H5651 (Rep. Stokes), H5654 (Rep. McCloskey, Jr.) (daily ed. March 5, 9 and June 17, 1970).

[5] See, e.g., 116 Cong. Rec. H5675 (Rep. Ottinger), and H5643 (Rep. Anderson) (daily ed. June 17, 1970).

[6] See generally, Note, *Legislative History of Title III of the Voting Rights Act of 1970* (1970) 8 Harv.J.Legis. 123.

[7] The fear of a deluge is more theoretical than real. In Berkeley, for example, some 51,464 votes were cast in the recent municipal election. (Oakland Tribune, April 7, 1971.) Of 27,000 students at the University of California, no more than 9,000 (freshmen through juniors) are likely to be in the 18–20 age group. If typical registration percentages adhere, no more than 5,000–6,000 of these minors would register to vote. Even if every single one of these minors registered in Berkeley, which is highly unlikely, and even if every one then voted (which is more unlikely), the *vote* total would be increased no more than 10 percent, and the rolls an even lesser percentage. Nor, among this highly educated group, is it very probable that all 5,000 minors would vote the same way on any issue.

[8] Sections 14280–14292, and the preceding sections 14240–14255, concern challenges to any voter at the polls by the precinct board appointed by the board of supervisors. Since challenges are based only on failure to possess qualifications set forth in the affidavit of registration, e.g., residence in the jurisdiction, it is clear that these same standards for determining residence apply as well to the registrar of voters.

[9] Government Code, section 244, subdivision (d) provides: "The residence of the father during his life, and after his death the residence of the mother, while she remains unmarried, is the residence of the unmarried minor child, provided that when the parents are separated, the residence of the parent with whom an unmarried minor child maintains his place of abode is the residence of such unmarried minor child." Subdivision (f) further provides: "The residence of an unmarried minor who has a parent living cannot be changed by his own act."

[10] The great preponderance of authority from other jurisdictions similarly holds that an emancipated minor, being *sui juris*, may acquire his own domicile. (See, e.g., Bonneau v. Russell (1952) 117 Vt. 134, 85 A. 2d 569, 570; Cohen v. Delaware, Lack. & Western R.R. Co. (1934) 150 Misc. 450, 269 N.Y.S. 667, 673–675; Bjornquist v. Boston & A.R. Co. (1st Cir. 1918) 250 F. 929, 932–933; Spurgeon v. Mission State Bank (8th Cir. 1945) 151 F. 2d 702, 705, cert. Den. (1946) 327 U.S. 782; Appelt v. Whitty (7th Cir. 1961) 286 F. 2d. 135, 137; 28 C.J.S., Domicile, § 12, p. 21; Rest., Conflict of Laws. § 31, Rest. 2d, Conflict of Laws, § 22.) As provided in Restatement Second of Conflict of Laws, section 22, comment f: "A parent has no power to control the domicile of an emancipated child. . . ."

[11] In Rounds Bros. v. McDaniel, *supra*, 133 Ky. 669, 118 S.W. 956, in particular, the child left home *without* express parental consent. The court held that the parent's failure to object constituted an implied emancipation, which would become irrevocable if the parent's inaction continued. Similarly, even where the father gave the child money with which to leave, but thereafter exercised no control over the minor's activities, and the minor lived in another state, an emancipation had occurred. (Johnson v. Gibson (N.Y.C.P. 1855) 4 E. D. Smith's Rep. 231.) (Cf. Grant v. Segawa (1941) 44 Cal. App. 2d Supp 945, 949)

[12] Since the minor is emancipated for all purposes relating to voting, we have concluded that petitioners may sue in their own right, and that it would be improper for us to appoint a guardian ad litem pursuant to Code of Civil Procedure, sections 372–373, and Civil Code, section 42.

CONCURRING OPINION BY WRIGHT, C.J.

Jolicoeur et al. v. Mihaly et al, S.F. 22826.
Tabilio et al. v. Mihaly et al. S.F. 22827.
Randell et al. v. Allison L.A. 29906.

I concur in the majority opinion insofar as it is concluded therein that the places of residence of minor citizens of voting age are to be fixed in a like manner with the places of residence of adults, for purposes of determining the jurisdiction in which they are to vote. This result is *compelled* by clear language of the Twenty-Sixth Amendment which provides in pertinent part that the "right of citizens of the United States . . . to vote shall not be . . . abridged . . . by any State on account of age."[1]

It cannot be disputed that state-imposed restrictions which compel a minor of voting age to vote, if at all, only in the jurisdiction where his parents reside whatever his legitimate reasons for living apart from them, necessarily diminishes, curtails, reduces and accordingly abridges his right to vote *only on account of his minority*. The minor would thus be incapable of voting in the jurisdiction where he permanently and legally resides, while the adult is free not only to vote in such jurisdiction but to change the place where he votes when he changes his residence. No basis for justifying such an abridgment or discrimination on the right to vote, other than the minor's age or distinctions dependent thereon, has been suggested in the instant case. As the Twenty-Sixth Amendment expressly prohibits the described state conduct, we need not inquire further and to do so only emphasizes matters which should be of no concern to us.

There is no stronger statement of governing policy considerations in any particular circumstance than an express declaration embodied in our federal Constitution. Where, as here, such a declaration is manifestly dispositive of the single issue no good purpose is served by a concurrent examination of state or federal policies, or legislative histories, in an attempt to ascertain that the supreme law of the land must be adhered to because lesser policy considerations likewise require the same result.

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[1] The majority correctly and, for purposes of the decision herein, conclusively holds that the "Twenty-Sixth Amendment prohibits abridging the right to vote on account of age. The word 'abridge' means diminish, curtail, deprive, cut off, reduce. [Citations.]"

Petitioners are entitled to their peremptory writ because the Constitution directs it, and we need and should not seek otherwise to justify such constitutional direction.

WRIGHT, C. J.

We concur: McComb, J., Burke, J.

MICHIGAN

[No. 52953]

STATE OF MICHIGAN SUPREME COURT

Sally Wilkins, Jeanne D'Haem, Timothy A. Schultz, Jacob Eichenbaum, Carol B. Shalita, Neill H. Hollenshead, Kenneth W. Jendryka, and Kathleen McDonnell Jones, Plaintiffs-Appellants, v. John P. Bentley, Clerk of the City of Ann Arbor, Michigan, Defendant-Appellee. Before the entire bench. Swainson, J.

Eight University of Michigan students were, upon timely application therefor, refused registration for the purpose of voting, by the defendant clerk. By this petition for writ of mandamus, they seek the right to register and vote in Ann Arbor. One plaintiff, Carol B. Shalita, was dropped prior to trial. The cause was tried on June 11 and 12, 1968, on the amended pleadings and the pretrial statement.

The opinion of the trial court was rendered on August 23, 1968, and judgment was entered on September 10, 1968. By consent of the defendant, plaintiffs Schultz and Jones were permitted to register and vote in Ann Arbor. By judgment of the court, plaintiffs Eichenbaum and Hollenshead were awarded the right to register and vote in Ann Arbor. Plaintiffs Wilkins, Jendryka and D'Haem were denied the right to register and vote in Ann Arbor.

The parties stipulated that the plaintiffs Wilkins, Jendryka and D'Haem are citizens of the United States and that at the time they had applied for voter registration were over the age of 21 years and had resided in the State of Michigan for more than six months. Each of them maintained an apartment in Ann Arbor and had habitually slept there. Each of them commonly kept his personal effects in his apartment and his regular place of lodging was in Ann Arbor. It is agreed that the trial court denied the plaintiffs-appellants the right to register and vote in Ann Arbor under the provisions of MCLA § 168.11(b). The Court of Appeals affirmed on the grounds that said subsection (b) aids in preserving the purity of elections and guards against abuses of the elective franchise by minimizing the possibility of a person voting twice in the same election. 24 Mich App 422, 427. We granted leave to appeal. 384 Mich 782.

MCLA § 168.11 provides as follows:

"(a) The term 'residence', as used in this act, for registration and voting purposes shall be construed to mean that place at which a person habitually sleeps, keeps his or her personal effects and has a regular place of lodging. Should a person have more than one residence, or should a wife have a residence separate from that of the husband, that place at which such person resides the greater part of the time shall be his or her official residence for the purposes of this act. *This section shall not be construed to affect existing judicial interpretation of the term residence.* (Emphasis added.)

"(b) *No elector shall be deemed to have gained or lost a residence* by reason of his being employed in the service of the United States or of this state, nor while engaged in the navigation of the waters of this state or of the United States or of the high seas, nor *while a student at any institution of learning*, nor while kept at any almshouse or other asylum at public expense, nor while confined in any public prison. Honorably discharged members of the armed forces of the United States or of this state and who reside in the veterans' facility established by this state may acquire a residence where the facility is located. (Emphasis added.)

"(c) No member of the armed forces of the United States shall be deemed a resident of this state in consequence of being stationed in any military or naval place within the state."

The part of subsection (b), dealing with students, has been defined by our Court to mean that a student must overcome a rebuttable presumption that he is not a resident in the locale of the institution of learning. *Wolcott* v. *Holcomb* (1893), 97 Mich 361; *People* v. *Osborn* (1912), 170 Mich 143; *Attorney General* v. *Miller* (1934), 266 Mich 127. Plaintiffs contend that this statute violates the due process and equal protection clauses of the Michigan Constitution [1] and the United States Constitution.[2] We turn first to plaintiffs' contentions under the due process clause.

I

We deal here with the right to vote, labeled by the U. S. Supreme Court almost a century ago "as a fundamental political right, because preservative of all rights." *Yick Wo* v. *Hopkins* (1886), 118 US 356, 370 (6 S Ct 1064, 30 L Ed 220). The courts have closely scrutinized any law that interferes with fundamental rights to insure that they are not unduly vague or give local officials unfettered discretion.[3] In cases involving voter registration, the U. S. Supreme Court has struck down State laws which gave unfettered discretion to local officials. As Mr. Justice Black stated for a unanimous court in *Louisiana* v. *United States* (1965), 380 US 145, 153 (85 S Ct 817, 13 L Ed 2d 709):

"The cherished right of people in a country like ours to vote cannot be obliterated by the use of laws like this, which leave the voting fate of a citizen to the passing whim or impulse of an individual registrar." [4]

In a recent article concerning student voting, W. P. Bullard and J. Rice, "Restrictions on Student Voting: An Unconstitutional Anachronism," 4 Journal of Law Reform 215 (1970), the authors point out by analogy, that students face many of the same problems as found by others when faced with voter qualification tests:

"Although the voter qualification tests involved were used to disfranchise blacks, thus bringing into play the fifteenth as well as the fourteenth amendment, the inherent vagueness of the interpretation test and the imprecise criteria used oy the registrars presented prospective black voters with a dilemma analogous to that faced today by students. Although students must demonstrate greater attachment to the university locale than must most other registrants, the quantum of required attachment is quite unclear." [5]

The authors point out that while the law defining voting residence for other citizens under MCLA § 168. 11(a) (Stat. Ann. 1971 Cum Supp. § 6.1011[a]), is clear and unequivocal, the effect of the law, as applied to students, under subsection (b) varies from city to city and from local clerk to local clerk.

"Therefore, in Michigan, as well as in other states, the standards which students must meet in order to vote in the locality in which their college is located are extremely vague. In Michigan, the guidelines are so vague as to be tantamount to no standards, thus each registration clerk determines himself which factors will overcome the presumption against student registrability in his city." [6]

The record in this case amply supports this assertion. The Ann Arbor city attorney conceded in oral argument before this Court that while Ann Arbor uses an elaborate questionnaire before allowing students to register,[7] the city clerk of Detroit (where Wayne State University and several colleges are located) does not ask any special questions of student registrants.

Footnotes at end of article.

At the trial, the plaintiffs were asked questions concerning bank accounts; where they obtained their support; whether they owned or leased property, and where they spent their vacations.[8] However, these questions concerning wealth,[9] property ownership,[10] and travel,[11] if used as criteria to establish residence for voting purposes are constitutionally impermissible.

We hold that MCLA § 168.11(b), insofar as it applies to students, does violate the due process clause of the Fourteenth Amendment of the U.S. Constitution. We further hold that said provision of MCLA § 168.11(b) violates art 1, § 17, of the 1963 Mich Const. Subsection (b), as it applies to students, is overly broad and grants a constitutionally prohibited discretion to local clerks in Michigan. The ability to exercise the precious right to vote cannot depend on whether a student attends school in a large city or a smaller town. *Reynolds* v. *Sims* (1964), 377 US 533 (84 S Ct 1362, 12 L Ed 2d 506).

However, if this were the only infirmity of the statute, we could correct this defect by issuing guidelines consistent with the Constitution. We, therefore, turn to plaintiffs' claim that subsection (b) violates the equal protection clauses of the U.S. and Michigan Constitutions.

II

Traditionally, statutes have been upheld as constitutional under the equal protection clause if they met the following test:

"1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary." *Naudius* v. *Lahr* (1931), 253 Mich 216, 222–223.

However, a different test has been used in two separate types of cases. First, if the asserted classification was on the basis of race or other disfavored classification, the state has to meet "the very heavy burden of jurisdiction * * *." *Loving* v. *Virginia* (1967), 388 US 1, 9 (87 S Ct 1817, 18 L Ed 2d 1010), and (p 11):

"At the very least the Equal Protection Clause demands that racial classification, especially suspect in criminal statutes, be subjected to the 'most rigid scrutiny,' *Korematsu* v. *United States*, 323 US 214, 216 (1944), and, if they are ever to be upheld, they must be shown to be necessary to the accomplishment of some permissible state objective independent of the racial discrimination which it was the object of the Fourteenth Amendment to eliminate."

The second group of cases requiring the higher standard involved the assertion of a fundamental constitutional right.

"But in moving from State to State or to the District of Columbia appellees were exercising a constitutional right, and any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a *compelling governmental interest*, is unconstitutional." (Emphasis added.) *Shapiro* v. *Thompson* (1969), 394 US 618, 634 (89 S Ct 1322, 22 L Ed 2d 600).

It can be stated without exaggeration that the right to vote is one of the most precious, if not the most precious, of all our constitu-

tional rights. The U.S. Supreme Court has stated concerning the right to vote:

"No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right." *Wesberry* v. *Sanders* (1964), 376 US 1, 17–18 (84 S Ct 526, 11 L Ed 2d 481).

"The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds* v. *Sims, supra* at p 555.

The U.S. Supreme Court has applied the compelling interest test in recent cases involving the right to vote. Chief Justice Warren in *Kramer* v. *Union Free School District* (1969), 395 US 621, 627 (89 S Ct 1886, 23 L Ed 2d 583), stated:

"Therefore, if a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are *necessary to a compelling interest.*" (Emphasis added.)

The compelling interest test has been applied with one exception [12] to all of the recent voting cases, including *Oregon* v. *Mitchell* (1970), 400 US 112 (91 S Ct 260, 27 L Ed 2d 272).

Thus, in datermining whether MCLA § 168.11(b), as it applies to students, violates the Equal Protection Clause, we must apply the compelling State interest test. If the State is unable to demonstrate a compelling interest, that part of the statute must fall.

III

Although there is no case directly on point, the U.S. Supreme Court has dealt with the denial of the right to vote to various groups of people on several occasions in the past few years.

Carrington v. *Rash* (1965), 380 US 89 (85 S Ct 775, 13 L Ed 2d 675), involved a provision of the Texas Constitution which prevented servicemen from voting in state elections as long as they remained in the service. The court struck down the law as a denial of the Equal Protection Clause.

In *Kramer* v. *Union Free School District* (1969), supra, the Supreme Court invalidated under the Equal Protection Clause a New York law [13] which provided that only people who owned or leased property or parents with children in schools could vote in certain school district elections.

In *Cipriano* v. *Houma* (1969), 395 US 701 (89 S Ct 1897, 23 L Ed 2d 647), a Louisiana law which only allowed property taxpayers to vote on revenue bonds issued by a municipal utility system was declared unconstitutional. Likewise, an Arizona law permitting only real property taxpayers to vote at an election on the issuance of general obligation bonds for various municipal improvements was overturned in *Phoenix* v. *Kolodziejski* (1970), 399 US 204 (90 S Ct 1990, 26 L Ed 2d 523).

In *Evans* v. *Cornman* (1970), 398 US 419 (90 S Ct 1752, 26 L Ed 2d 370), the Court held that residents of the National Institute of Health, which is a Federal enclave in the State of Maryland, must be allowed to vote in Maryland's elections.

Defendant contends that all of these cases are distinguishable because they involved an absolute denial of the right to vote, whereas MCLA § 168.11(b), as it affects students, involves merely a rebuttable presumption against gaining residence.

This, however, is demonstrably not in fact true. Despite the treatment by the U.S. Supreme Court of *Carrington* as a case involving the denial of the absolute right to vote, it only involved denial of the right to vote in Texas.[14] All states allow servicemen to vote by absentee ballot. In contrast, because of the various civilian absentee voters' laws, many students would be unable to register and vote anywhere. Several states make no provision for absentee ballots,[15] and many others have extremely complicated provisions which discourage instead of encourage voting. Moreover, with the exception of *Evans* v. *Corman, supra,* the other cases heretofore cited also involved rebuttable presumptions. The voters could overcome the presumptions if they owned property or had children in *Kramer,* or if they paid property taxes in *Cipriano* and *Kolodziejski.* Their task in overcoming the presumption was no more difficult than that faced by many students under the provisions of MCLA § 168.11(b). If those voters were denied the right to vote in special elections, they still could vote for every office from president to local officials. Some students, however, cannot. Because of the interaction of the provisions of MCLA § 168.11 (b) and the provisions of various state absentee-voter laws, the elective franchise is withheld from students. The ideal of one man-one vote dissolves into the harsh reality of one man but no vote.

Moreover, it is not mandatory that these plaintiffs demonstrate an absolute denial of the right to vote in order to require the State to show a compelling interest. Plaintiffs need only show that a burden has been placed on this precious right in order to avail themselves of the Equal Protection Clause. As Justice Frankfurter stated in *Lane* v. *Wilson* (1939), 307 US 268, 275 (59 S Ct 872, 83 L Ed 1281):

"The Amendment [Fifteenth] nullifies sophisticated as well as simple-minded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race."

The Equal Protection Clause likewise guards against subtle restraints on the right to vote, as well as outright denial. The U.S. Supreme Court in recent voting cases has been concerned about the more devious burdens that have been imposed on this most basic of all constitutional rights. In *Williams* v. *Rhodes* (1968), 393 US 23, 30–31 (89 S Ct 5, 21 L Ed 2d 24), the Court stated:

"But we have also held many times that 'invidious' distinctions cannot be enacted without a violation of the Equal Protection Clause. * * * In the present situation the state laws place burdens on two different, although overlapping, kinds of rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. * * * So, also, the right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot. In determining whether the State has power to place such unequal burdens on minority groups where rights of this kind are at stake, the decisions of this Court have consistently held that 'only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms.' "

Thus, the fact that a burden is placed on the right to vote because of the rebuttal presumption contained in MCLA § 168.11(b), as applied to students, is sufficient to require the State to demonstrate a compelling interest.

IV

There are several interests that the State has asserted in cases of this type. The Court of Appeals held that MCLA § 168.11(b) aids in preserving the purity of elections by insuring that students will not vote twice. 24 Mich App 427. However, the Court of Appeals did not analyze this problem under the compelling interest test. While it may be true that the provisions of subsection (b), as applied to students, does to some minor extent aid in this purpose, that is not sufficient to justify its constitutionality. As the U.S. Supreme Court stated in *United Mine Workers* v. *Illinois Bar Assn.* (1967), 389 US 217, 222 (88 S Ct 353, 19 L Ed 2d 426):

"We have therefore repeatedly held that laws which actually affect the exercise of these vital rights cannot be sustained merely because they were enacted for the purpose of dealing with some evil within the State's legislative competence, or even because the laws do in fact provide a helpful means of dealing with such an evil. *Schneider* v. *State,* 308 US 147 (1939); *Cantwell* v. *Connecticut,* 310 US 296 (1940)."

The Supreme Court in *Carrington* held that the prevention of transients from voting could not justify the Texas law. Moreover, our legislature has provided numerous sanctions which insure the sanctity and purity of elections. Some of the significant provisions include MCLA §§ 168.493, 168.495, and 168.499, which provide that a registrant's affidavit of qualification is enforced by misdemeanor sanctions if the registrant does not answer honestly; MCLA § 168.505 which provides that registration officers shall ascertain if the registrant is already registered in another township, etc.; MCLA § 168.508 which allows the clerk to transfer the registration of an elector upon the receipt of reliable information; MCLA § 168.510 which provides that clerks are notified monthly of persons over 21 who have died in the county; MCLA § 168.513 which provides that upon information that the elector has moved from the municipality the clerk may, after notice and time elapsed, cancel the registration, and MCLA § 168.515 which authorizes clerks to make a house to house canvass or "other means" to check correctness of registration cards. Finally, every voter before being given a ballot must execute an application showing his signature and address which is compared to the registration card "and if the same do not correspond the vote of such person shall be challenged." MCLA § 168.523.

Therefore, in view of this complete set of safeguards to insure the purity of the election process, we hold that MCLA § 168.11(b), insofar as it applies to students, is not necessary to insure the prevention of voting fraud.

The second asserted State interest is that of promoting a concerned and interested electorate. This same interest was asserted unsuccessfully in *Kramer, Cipriano, Evans* and *Kolodziejski.* The provisions of MCLA § 168.11(b), in regard to students, like § 2012 of the New York laws in *Kramer,* are not sufficiently drawn to insure that only voters who are primarily interested are allowed to vote. As Chief Justice Warren stated in *Kramer:*

"In other words, the classifications must be tailored so that the exclusion of appellant and members of his class is necessary to achieve the articulated state goal. Section 2012 does not meet the exacting standard of precision we require of statutes which selectively distribute the franchise. The classification in § 2012 permits inclusion of many persons who have, at best, a remote and indirect interest in school affairs and, on the other hand, exclude others who have a distinct and direct interest in the school meeting decisions." (p. 632).

Clearly, MCLA § 168.11(a) (the general voter registration statute) will allow many

Footnotes at end of article.

disinterested persons, by any criteria, to vote, while MCLA § 168.11(b), as applied to students, disenfranchises many interested and concerned citizens.

In *Evans, supra,* the court discussed at length the interests and concerns of the National Institutes of Health residents (p 424):

"Appellants do not deny that there are numerous and vital ways in which NIH residents are affected by electoral decisions. Thus, if elected representatives enact new state criminal laws or sanctions or make changes in those presently in effect, the changes apply equally to persons on NIH grounds * * *. Further, appellees are as concerned with state spending and taxing decisions as other Maryland residents, for Congress has permitted the States to levy and collect their income, gasoline, sales, and use taxes—the major sources of state revenues—on federal enclaves. See 4 U.S.C. §§ 104–110. State unemployment laws and workmen's compensation laws likewise apply to persons who live and work in federal areas. See 26 U.S.C. § 3305(d); 40 U.S.C. § 90. Appellees are required to register their automobiles in Maryland and obtain driver's permits and license plates from the state; they are subject to the process and jurisdiction of state courts; they themselves can resort to those courts in divorce and child adoption proceedings; and they send their children to Maryland public schools."

In *Phoenix* v. *Kolodziejski,* the court considered the relationship of property owners and those who rent property (like some of the appellants), and stated at p 210:

"Property taxes may be paid initially by property owners, but a significant part of the ultimate burden of each year's tax on rental property will very likely be borne by the tenant rather than the landlord since, as the parties also stipulated in this case, the landlord will treat the property tax as a business expense and normally will be able to pass all or a large part of this cost on to the tenants in the form of higher rent."

Turning to the facts of this case, we see that students have just as many connections with the community as those found by the Supreme Court in *Evans* and *Kolodziejski.* Students, like the National Institutes of Health residents, are included in the census determination of the state's congressional apportionment.[16] Students, of course, are subject to the state's laws and regulations. Jury lists are chosen from lists of registered voters.[17] Thus, by denying students the right to register and vote, they are also denied participation in the time honored Anglo-Saxon tradition of trial by a jury of their peers.[18] Students pay State income tax, city income tax (if any), gasoline, sales and use taxes. Michigan law provides a rebate of one-eighth of the sales tax revenue to counties and cities on a per capita basis[19] and a rebate of 20% of gasoline tax revenue on a combined population-highway mileage basis.[20] Clearly, without the students who are counted as residents for these purposes, the cities and counties would lose part of these rebates. As the U.S. Supreme Court has recognized,[21] property taxes are ultimately paid by renters such as some of the appellants. In addition, Michigan explicitly recognizes this fact by allowing all renters a 17% exemption on rent paid in lieu of the exemption that property owners receive for payment of property taxes.[22] Students with children can and do enroll them in the public school system, and, therefore, have more than a passing interest in the educational standards of the community.

The Federal government grants deductions on the Federal tax for state and local taxes in lieu of itemized deductions. These deductions vary from state to state.[23] Hence, if a student whose parents are from New York, goes to the University of Michigan and lives in Ann Arbor, he would take a deduction based on Michigan and not New York taxes. Thus, he is implicity recognized as a Michigan resident for Federal tax purposes. The Federal government further provides community health service grants to the states based on population (which includes students).[24]

This list is not exhaustive but merely shows some of the numerous interrelationships between students, their local communities, and the State of Michigan. Moreover, there are other groups more transient than students who are not required to meet the provisions of subsection (b) as are students. According to the 1960 census, the largest group of transients were operative and kindred workers with craftsmen and foremen second, and professionals (including students) third.[25]

Thus, we hold that students cannot be denied the right to vote under the provisions of MCLA § 168.11(b) because of the State's interest in promoting an informed and concerned electorate. There is every reason to believe they might be even better informed on current issues than other citizens.

V

Courts do not exist in a vacuum. They may take cognizance of facts and events surrounding the passage and purpose of legislation. *Traverse City School District* v. *Attorney General* (1971), 384 Mich 390, 405. As Mr. Justice Field stated in *Ho Ah Kow* v. *Nunan* (1879, USCC), 12 Fed Cases 252, 255:

"Besides, we cannot shut our eyes to matters of public notoriety and general cognizance. When we take our seats on the bench we are not struck with blindness and forbidden to know as judges what we see as men."

We thus may take judicial notice of extrajudicial material in recognizing other State interests. An article[26] in *The Wall Street Journal* of April 15, 1971, discusses the issue raised in this and similar cases around the country. A purported fear of the states involved is that the students would have a significant political impact if they were granted the elective franchise. The article quoted an Illinois State Representative as summing up the feelings of many citizens thusly: " 'For goodness sake, we could have these transients actually controlling the elections, voting city councils and mayors in or out of office.' " This fear of student voters overwhelming the townspeople at the polls was underlying the decision of our Court in *Wolcott* v. *Holcomb* (1893), 97 Mich 361, 367–368. However, what was constitutionally acceptable in 1893 is not necessarily constitutionally acceptable today. As the U.S. Supreme Court stated in *Harper* v. *Virginia Board of Elections* (1966), 383 US 663, 669 (86 S Ct 1079, 16 L Ed 2d 169):

"Likewise, the Equal Protection Clause is not shackled to the political theory of a particular era. In determining what lines are unconstitutionally discriminatory, we have never been confined to historic notions of equality, any more than we have restricted due process to a fixed catalogue of what was at a given time deemed to be the limits of fundamental rights."

The court went on to point out that the segregation upheld in *Plessy* v. *Ferguson* (1896), 163 US 537 (16 S Ct 1138. 41 L Ed 256), was overruled a half century later. Likewise, the restrictions on the franchise accepted in the mid-nineteenth century are not necessarily to be tolerated today. Under the Michigan Constitution of 1835, only 21-year old white male citizens could vote.[27] The Constitution of 1850, by amendment, removed the restriction of race[28] and by an amendment to the 1909 Constitution, the restrictions based on sex were removed.

* * * * *

Recently, Congress by statute,[29] and more recently by the adoption of constitutional amendment,[31] the voting age in all elections has been lowered to 18 years.

DeTocqueville over a century ago stated: "There is no more invariable rule in the history of society: The further electoral rights are extended, the greater is the need for extending them: for after each concession the strength of democracy increases, and its demands increase with its strength."[32]

We agree that it is no longer constitutionally permissible to exclude students from the franchise because of the fear of the way they may vote.

" 'Fencing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible. "[T]he exercise of rights so vital to the maintenance of democratic institutions,' (*Schneider* v. *State,* 308 US 147, 161) cannot constitutionally be obliterated because of a fear of the political views of a particular group of bona fide residents." *Carrington* v. *Rash, supra,* at p 94.

Fears have been expressed in the past when new groups have been granted the franchise, and these fears have proven to be largely unfounded. The fear that students will vote radically different from the bulk of the electorate is problematical at this point.[33] However, as the U.S. Supreme Court stated in *Williams* v. *Rhodes* (1968), 393 US 23, 32 (89 S Ct 5, 21 L Ed 2d 24): "Competition in ideas and governmental policies is at the core of our electoral process * * *." The right to vote means the right to vote for the candidate of one's choice regardless of ideology. As Justice Jackson stated in another case concerning the right of dissent:

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in *politics,* nationalism, religion, or other *matters of opinion.*" (Emphasis added.) *West Virginia Board of Education* v. *Barnette* (1943), 319 US 624, 642 (63 S Ct 1178, 87 L Ed 1628).

The right to vote has been considered to be the most vital of our constitutional rights. The cry of the American revolution of "no taxation without representation" articulated the desire of the colonists to have a voice in selecting the officials who made the decisions affecting their daily lives. At the present time, these students in many instances are being taxed without being represented. Therefore, we hold that MCLA § 168.11(b), as it applies to students, is unconstitutional as a violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. We further hold that the provisions of MCLA § 168.11(b) applying to students are unconstitutional as a violation of art 1, § 2, of the Michigan Constitution of 1963.

In the future, students must be treated the same as all other registrants. No special questions, forms, identifications, etc., may be required of students.

Article 1, § 1, of the Michigan Constitution of 1963 states that, "All political power is inherent in the people." This power resides in all of the people, student and nonstudent, alike.

The judgment is reversed and the cause is remanded to the circuit court for further proceedings consistent with this opinion.

FOOTNOTES

[1] Mich Const 1963, art 1, § 2, provides: "No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation."

Mich Const 1963, art 1, § 17, provides: "No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed."

[2] U.S. Const, 14th Amend, § 1, provides: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of

the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

[2] See, e.g., *Kunz* v. *New York* (1951), 340 US 290 (71 S Ct 312, 95 L Ed 280).

[4] See, also, *Schnell* v. *Davis* (1949), 336 US 933 (69 S Ct 750, 93 L Ed 1093), affirming 81 F Supp 872.

[5] Bullard & Rice, *supra*, at p 221.

[6] Bullard & Rice, *supra*, at p. 220.

[7] For a comparison of some of the questionnaires used by city clerks for student registration, see Appendix, 4 Journal of Law Reform, pp. 239–243.

[8] 4 Journal of Law Reform, pp. 239–240.

[9] In *Harper* v. *Virginia Board of Elections* (1966), 383 US 663 (86 S. Ct. 1079, 16 L. Ed. 2d 169), the court struck down a poll tax as a classification based on wealth. Questions concerning bank accounts, support, etc., are similarly classifications based on wealth.

[10] See, also, *Kramer v. Union Free School District* (1969), 395 US 621 (89 S. Ct. 1886 23 L. Ed. 2d 583); *Cipriano* v. *Houma* (1969), 395 US 701 (89 S. Ct. 1897, 23 L. Ed. 2d 647). These cases held that states cannot deny the right to vote to non-property owners.

[11] In *Shapiro* v. *Thompson* (1969), 394 US 618 (89 S. Ct. 1322, 22 L. Ed. 2d 600), the court struck down residency requirements for welfare recipients on the ground that they interfered with the right to travel, a fundamental constitutional right. Similarly, it is unconstitutional to deny the right to vote to students who exercise their right to travel and leave Ann Arbor for the summer.

[12] *McDonald* v. *Bd. of Comm.* (1969), 394 US 802 (89 S. Ct. 1404, 22 L. Ed. 2d 739).

[13] New York Education Law, § 2012 (Supp. 1968).

[14] Bullard & Rice, *supra*, at p. 232, fn. 97.

[15] C. Smith, *Voting & Election Laws* (1960), pp. 89–99.

[16] 398 US at 421 (90 S. Ct. at 1754, 26 L. Ed. 2d at 374).

[17] MCLA § 600.1310 et seq.

[18] *Glasser* v. *United States* (1942), 315 US 60 (62 S. Ct. 457, 86 L. Ed. 2d 680).

[19] MCLA § 205.75.

[20] MCLA §§ 247.660, 247.663.

[21] 399 US at 210 (90 S. Ct. 1994, 26 L. Ed. 2d 528). For a discussion of the problems of attempting to discern the long range effect of property taxes on property values, see 399 US at 211 and C. Shoup, Public Finance, 385–390 (1969).

[22] MCLA § 206.528(2) and Bullard & Rice, *supra*, at p. 233.

[23] 1970 Federal income tax form; 1970 Optional State sales tax table.

[24] 42 USCA § 246(a)(3)(A). "The Student Vote," New Republic, 11 (Sept. 19, 1970).

[25] J. Schmidhauser, "Residency Requirements for Voting and The Tensions of a Mobile Society." 61 MLR 823, 830, fn 10.

[26] A. Otten, "Should Collegians Vote at Home or at School?" *The Wall Street Journal*, April 15, 1971, (p. 1).

[27] Constitution of 1835, art 2, § 1.

[28] Constitution of 1850, art 7, § 1.

[29] Constitution of 1908, art 3, § 1.

[30] Voting Rights Act amendment of 1970, 42 USCA 1973aa–73bb.

[31] On June 30, 1971, the State of Ohio became the 38th State to approve the amendment. The amendment became law upon the ratification of three-fourths of the States. U.S. Constitution, art 5.

[32] A. deTocqueville, 1 Democracy in America 57 (knopf. ed. 1956).

[33] Bullard & Rice, *supra*, at 236: "A recent American Council on Education survey of college freshmen showing that 44% considered themselves liberal and 20% moderate conservative demonstrates that students would not vote as a solid unit. New York Times, Dec. 22, 1970, at 16, col. 4."

[No. 52953]

STATE OF MICHIGAN SUPREME COURT

Sally Wilkins, Jeanne D'Haem, Timothy A. Schultz, Jacob Eichenbaum, Carol B. Shalita, Neill H. Hollenshead, Kenneth W. Jendryka, and Kathleen McDonnell, Jones, Plaintiffs-Appellants, v. John P. Bentley, Clerk of the City of Ann Arbor, Michigan, Defendant-Appellee.

Before the entire bench, Brennan, J. (Concurring):

I agree with the result reached by my Brother Swainson, but would base my opinion on statutory construction rather than constitutional grounds.

The rule is that if a statute can be construed so as to avoid constitutional invalidity, the constitutionally valid construction is to be preferred.

Const 1850, art 7, § 5, which contained a provision similar to MCLA § 168.11(b) (Stat Ann 1971 Cum Supp § 6.1011[b]), was the subject of divided opinions in this Court in *Wolcott* v. *Holcomb* (1893), 97 Mich 361.

The dissenting opinion by Chief Justice Hooker, concurred in by Justice Long concluded that the provision simply meant that a student was not to be deemed to have lost his residence *automatically* by reason of being a student. In short, Hooker and Long believed that the proviso gave the student an option, his intention in the matter being controlling. He said it this way:

"The true construction of this section should be just what its language imports, i.e., that being kept in an alms-house, or attendance at college, or employment in the service of the United States, or the navigation of the lakes or high seas, does not work a change of residence against the intention or desire of the individual." *Walcott* v. *Holcomb*, *supra*, p 371

That construction of the act was wise, reasonable, just and proper. It should have been the majority opinion in 1893. It should be today.

If a student in residence is given the "Hooker option", all the senseless folderol of voter registration in some of our college towns would be dispensed with.

Hooker's words, written in dissent almost 80 years ago, need no gilding, but bear resonant repetition.

"the only reasons given for the construction contended for are that these classes are undesirable voters at the place of the asylum; that they pay no taxes, do no work for the benefit of the municipality, and have no interest in local affairs. The same may be said of many persons in all localities, and was probably as true of these before their admission as after. It is as true of those admitted from the locality of the asylum, who may vote under this section, as of those who come from a distance, who may not vote under this construction. It never has been a requisite to electoral rights that the citizen should pay taxes, do work for the benefit of the municipality, or evince interest in municipal affairs; nor does the right depend upon a wise or even honest exercise of the privilege of the ballot. Doubtless there are many whose votes could be dispensed with to the profit of their respective municipalities and the State as well, but the elector franchise is based upon broader principles. There is no man so poor or low that he is not richer and manlier for his political equality, and the ballot is essential to the protection of the rights of all classes. Immediately a class or race is disfranchised, its members are deprived of an equal chance with their fellows. This proposition is so important a part of the foundation of our institutions that it should not be eliminated or weakened by any unnecessary construction of a constitution based upon civil liberty and political equality." *Wolcott* v. *Holcomb*, *supra*, pp 370, 371.

I concur in reversal.

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[No 52953]

STATE OF MICHIGAN SUPREME COURT

Sally Wilkins, Jeanne D'Haem, Timothy A. Schulte, Jacob Eichenbaum, Carol B. Shalita, Neill H. Hollenshead, Kenneth W. Jendryka and Kathleen McDonnell Jones, Plaintiffs-Appellants, vs. John P. Bentley, Clerk of the City of Ann Arbor, Michigan, Defendant-Appellee.

Before the entire bench, Adams, J.:

I concur in reversal. There is no rational basis for treating students differently from other citizens in their exercise of the fundamental right to vote. The Michigan statute defining voting residence for all citizens provides that: "Should a person have more than 1 residence, * * * that place at which such person resides the greater part of the time shall be his or her official residence * * *." MCLA § 168.11(a); Stat Ann 1971 Cum Supp § 6.1011(a).

For voting purposes, there is no rational basis for distinguishing between students who reside at a given locality for nine months of the year and non-students who reside in the same locality for nine months of the year. Requiring additional qualifications to vote which affect different groups unequally, whether by income, occupation, or employer, is a denial of equal protection. *Harper* v. *Virginia Board of Elections* (1966), 383 US 663 (86 S Ct 1079, 16 L Ed 2d 169); *Carrington* v. *Rash* (1965), 380 US 89 (85 S Ct 775, 13 L Ed 2d 675); *Evans* v. *Cornman* (1970), 388 US 419 (90 S Ct 1752, 26 L Ed 2d 370). Special treatment of students is an arbitrary and invidious discrimination against them in violation of art 1, § 2 Michigan Constitution, and Amend XIV, United States Constitution. *Fox* v. *Employment Security Commission* (1967), 379 Mich 579.

PAUL L. ADAMS.

[No. 52952]

Sally Wilkins, Jeanne D'Haem, Timothy A. Schultz, Jacob Eichenbaum, Carol B. Shalita, Neill H. Hollenshead, Kenneth W. Jendryka, and Kathleen McDonnell Jones, Plaintiffs-Appellants, v. John P. Bentley, Clerk of the City of Ann Arbor, Michigan, Defendant-Appellee.

Before the entire bench, Williams, J. (Concurring with Brennan, J.):

I concur with my Brother Brennan. However, I agree with my Brother Swainson's constitutional analysis.

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CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. CHILES). Is there further morning business? If not, morning business is concluded.

MILITARY PROCUREMENT AUTHORIZATIONS, 1972

The PRESIDING OFFICER (Mr. CHILES). Pursuant to the previous order, the Chair lays before the Senate the unfinished business, which the clerk will state.

The legislative clerk read as follows:

H.R. 8687, to authorize appropriations during the fiscal year 1972 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

The Senate resumed the consideration of the bill.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. McGOVERN. 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. McGOVERN. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 9, line 11, strike the figure "$2,910,744,000," and insert in lieu thereof the figure "$2,571,744,000."

On page 9, line 11, strike the word "and" and insert in lieu thereof the following:

"Provided, however, That of the funds authorized to be appropriated by this section, no more than $20 million shall be expended for further development on the B–1 strategic bomber, and that an additional $11 million may be expended for research, development, test and evaluation of alternative strategic bomber programs including modernization of the later series B–52's and development of a subsonic bomber designed for a stand-off air-to-surface missile launching role; and".

Mr. McGOVERN. Mr. President, this amendment would have the effect of reducing by $339 million the $370 million figure that is now in the bill for further development of the B–1 bomber. In other words, the amendment brings about a saving of $339 million, and would leave $31 million to be expended for the following purposes:

Of that $31 million, $20 million would be earmarked for continued research on the B–1 bomber, in an effort to further define the mission of that bomber, to determine whether further development should proceed, and hopefully to answer some of the questions that are bothering many of us about the mission and the feasibility of that bomber.

In addition to that $20 million, the amendment would earmark $1 million for research and development purposes on a different type of bomber that would be limited to a standoff bomber role, and the final $10 million would be earmarked for modification of the existing B–52.

So what I am proposing here is that instead of proceeding with the prototype construction of the B–1 bomber, we eliminate that part of the program and use the funds exclusively for research and development related not only to the B–1, but to two other alternative possibilities.

Mr. President, as Senators know, I have been studying the B–1 bomber, formerly called the Advanced Manned Strategic Aircraft, for several years. Based on a recent reexamination of this project that I undertook in cooperation with Representative SEIBERLING of Ohio, I am convinced that the B–1 has come to exemplify many things that are objectionable in our weapons acquisition practice.

Air Force cost projections are wishful thinking at best, and at worst they are misleading. Each year they induce Congress to further expenditures that will probably run in multiples of current estimates for this program. The General Accounting Office study completed in March of this year confirms that startling cost overruns have already occurred in the B–1, and that more can be expected.

With the new tanker, which I am fully convinced will be an inevitable demand to accompany the B–1, the total cost for this project could easily reach, if not exceed, $47 billion.

The insistence on a supersonic capability is especially distressing. It has little or no relationship to the nuclear mission profiles contemplated for this aircraft—in fact, it may detract from those missions—yet it adds as much as 50 percent to procurement costs. Our investigations suggest that it is included for two basic purposes: to enhance the excitement for strategic bomber pilots and the glamor of the Air Force recruiting programs. Obviously, neither justifies the tremendous outlays it requires.

While retaining this questionable attribute, the Air Force has adopted an extremely curious approach to more important capabilities of the airplane. When costs threaten to exceed acceptable targets it simply drops another major feature of the aircraft. Thus far in the research and development phase, two flying prototypes have been scrapped and the number of engines has been reduced from 40 to 27. The low-level supersonic capability has been dropped, the internal capacity for carrying SRAM's and SCAD's has been reduced, and the avionics package has been sharply degraded. Yet, even Air Force cost estimates have continued to rise, in spite of the fact that they have eliminated these important capabilities, which were once said to be essential to the operation of this aircraft. Certainly, each step shrinks the differences which are supposed to make the B–1 a true follow-on to the B–52; already it is inferior in some respects to the FB–111.

We have found that the gravity bombing missions envisioned for the B–1 have little more than nostalgia going for them. By the time it is operational, it could very well be greeted by new Soviet defenses, eliminating any confidence that it could penetrate their airspace at any altitude or at any speed.

In light of these considerations and others in the report, the wisest course by far would be to confine funds for the B–1 bomber to additional research on questions relating to this bomber and its mission, and to research on alternative systems that might be more feasible than the B–1.

Mr. FULBRIGHT. Mr. President, will the Senator yield for a question?

Mr. McGOVERN. I yield.

Mr. FULBRIGHT. I am sorry that I was not in the Chamber when the Senator started his remarks. Could the Senator, very simply, tell me what he conceives as the mission of this bomber? Just what function is it to perform?

The reason I ask is that we are told by the administration, when we get into the ABM debate—that the ABM is a workable or effective weapon. At least, we have undertaken to spend $10 billion on it, and that is only the beginning. And they allege that the Russians, of course, are doing the same thing.

A bomber of this kind, it seems to me, would be exceptionally vulnerable not only to existing antiaircraft defenses, but also, if the ABM is effective against a missile, it surely ought to be effective against a plane of this character. What, really, is the overall rationale for this plane?

Mr. McGOVERN. Perhaps the Senator would get a more convincing answer as to what the bomber is supposed to do from one who advocates it than from one of its opponents.

As I understand the rationalization on the part of the Air Force in calling for the bomber, it is to preserve what they call the triad system. In other words, we depend partly for our deterrents on the Polaris submarines, partly on the land-based missiles, and partly on strategic bombers.

My objection to that is that, as the Senator's question implies, the chances seem to me to be very high that by the time this bomber becomes operational, in 1979 or 1978, the Soviets will long since have developed a defensive capability against it that would make it a very unfeasible instrument for us to use.

I might remind the Senator that even now we are reluctant to use B–52 bombers over North Vietnam—not because there is not a strategic role to be played, but because of the fear of the surface-to-air missiles with which the Russians have equipped the North Vietnamese, although it is a rather primitive model compared to some of the things they are capable of mounting against our planes, has kept us from sending any B–52's against North Vietnam.

If they are given another 7 or 8 years to develop more sophisticated defensive surface-to-air missiles, it would seem to me that long before this bomber is developed, it is highly questionable whether we would be able to use it in view of the danger.

Mr. FULBRIGHT. Personally, I cannot see any function that this bomber can perform under present conditions.

I thought this question had been fought out and decided some years ago—that there was no future to this type of bomber, that they decided against proceeding with it. Now it has been revived.

It strikes me as inherently inconsistent for the administration—the Pentagon, which is promoting this plane—when we are arguing about the ABM, to assert in the most fervent manner that ABM system is necessary, that it has developed to the point that they believe it is effective. I do not believe it is effective. Nevertheless, they say that, and the Senate has gone along with them.

If one accepts that and if they are effective, if the art has reached the point where they can shoot down an incoming missile going at 3,500 miles an hour or 5,000 miles an hour—I am talking about the international ballistic missile—then, surely, it would be like shooting fish in a barrel to shoot down a bomber of this

size. The Senator says it woud be supersonic. I suppose he means that it would not go more than 1,200 or 1,500 miles an hour.

It seems utterly inconsistent to give them both the ABM and the B–1. Either they admit that the ABM is not really effective and therefore it is possible that a bomber might penetrate the defenses or on the other hand, the administration should maintain that the ABM has reached such a point of development that we are justified in putting $10 billion into it at this stage; we are developing four missile sites, and therefore a bomber of this character cannot be expected to penetrate an ABM system. If this is right, it seems to me that it automatically makes this leg of the triad obsolete and of no use at all. I do not see how they can reconcile what I call an inherent inconsistency in the two arguments they make. They like to present them one at a time so that we do not compare them to each other.

This particular plane might have been justified in World War II, when there were no efficient defenses against a high-powered plane that could go so fast.

I honestly cannot see how they can justify it under present conditions, having made the argument that the ABM's are effective, working instruments. I do not believe they are but the Senate believes it, the administration and the Pentagon believes it. If they believe it, how do they justify a bomber of this character?

Mr. McGOVERN. I agree with the logic of the Senator from Arkansas. Even if one holds the view that we need the bomber, we have the B–52 and we have the FB–111. As I understand it, from the colloquy with General Holloway, Commander of SAC, they will continue those planes even if they build the B–1.

Let me read from one statement during the hearing on the military procurement bill in which the Commander of SAC, General Holloway responded to a prepared question from Senator THURMOND by stating:

> The proposed size of the FB–111 and B–1 forces will total only (deleted) airframes. We need more than that to do the SIOP task. Therefore, we should not plan on phasing out the B–52 when the B–1 comes into the inventory with the exception of the older models. The minimum aircraft force that SAC needs is 255 B–52 Gs and Hs, 66 FB–111s, and the proposed (deleted) B–1 force. (p. 1689)

In other words, we are not only going to build the B–1 bomber but we are also going to continue the operation of the B–52 and the FB–111.

It has been my view, from what I could read about the airplanes, that when we combine the capabilities of the B–52 with the capabilities of the FB–111, we have roughly the same operating capabilities of the B–1. I say to those Members of the Senate who think we need to continue a major bomber capability that there is nothing in the amendment that would do anything to strike that out. As a matter of fact, I am adding $10 million to be used for further research on how we can modify the B–52 to make it a more effective instrument.

Mr. FULBRIGHT. In view of what the Senator said about the reluctance of the President to use B–52's over North Vietnam, is not the Senator suggesting that our foreign policy is not to use it against Russia or another militarily sophisticated country but it is designed to fight future Vietnams, against small and primitive countries that do not have modern weapons. I suppose the Senator is suggesting that is what our foreign policy is, that they are not designed to be used against Russia. Is that correct?

Mr. McGOVERN. The briefing I got on the B–1 from General Holloway and his associates in Omaha a few weeks ago spoke entirely in terms of capability against the Soviet Union, but it may very well be that other countries are more likely.

Mr. FULBRIGHT. Did he say he thought they would be able to evade the ABM's?

Mr. McGOVERN. He expressed that hope.

One of the things that disturbs me is, when the profile of the plane, as they call it, was originally described, they said it would have a supersonic capability at low altitude, that it could go in under the detection systems and be even more difficult to shoot down; but now, because of the rising cost of the plane, they have given up on the supersonic capability to fly at low level. That has been dropped, so that it would operate about like a B–52 flying at a lower level. That is one advantage that has been surrendered.

Mr. FULBRIGHT. Only recently we were told, in justifying the giving of more planes to Israel, that they already have a missile effective at a lower level for Israeli planes that were flying over Egypt. When we put all the picture together, it strikes me there is an obvious inconsistency. If the anti-ballistic-missile system is an effective defense against missiles then surely it would be able to destroy a bomber of this kind. I do not see how they can argue that it has any reasonable mission other than to give the Air Force something for its planners to do.

Mr. McGOVERN. I say to the Senator from Arkansas, there is no way I can prove this but I have a strong hunch, speaking now as a former bomber pilot, that one of the principal reasons the Air Force wants to build this new bomber is out of nostalgia, because when one is trained to be a bomber pilot that is what he wants to do. I am sure it would be a great thrill to sit behind the controls of a B–1 bomber. I am sure that anyone who has a love for flying and a sense of the glory of the Air Force would find it an attractive and tempting prospect to have this fancy new airplane with the capabilities combined in one aircraft that we now have in the B–52 and the FB–111. It is something like buying a new automobile. There is always a certain thrill and satisfaction that comes from possessing the best, the shiniest, the newest, and the fastest automobile. But when we put all that against the other needs of this country, including the defense needs of the country, it strikes me as a rather superficial argument.

I am sure that the Air Force will not officially justify it in those terms, of course, but I cannot avoid the conviction, after studying the various arguments for the plane, that that at least must be one of the considerations in the minds of those who are pressing for this new aircraft.

Mr. FULBRIGHT. I do not know why the Senator should feel that that is not consistent with the program, for example, of a volunteer Military Establishment, because it might increase volunteers. It would make the Air Force more attractive, as the Senator has said. Perhaps that is part of the overall concept of changing from a drafted army into a volunteer army. It is a rather expensive way to induce volunteers, though, is it not?

Mr. McGOVERN. It surely is.

I would just like to say to the Senator that it has been my hope we could make use of some of the remarkable facilities of the aircraft production plants for other purposes.

I think there is another argument that is seldom expressed in public but is probably involved in the desire to build the new bomber, and that is the fact that we have these aircraft production plants which are now laying off men, including highly skilled engineers, machinists, electronic experts, all of whom have a close working relationship that has been built up over the years with the Air Force, along with the personal friendships and associations. I suspect that one of the unexpressed factors is the desire to keep those aircraft plants functioning. It is a legitimate concern as to what we are going to do with the aircraft workers and other skilled people if we do not continue to build bombers.

I discussed this matter with the president of one of the leading aircraft firms in California. I do not want to embarrass him in any way. However, I asked him why his firm could not go into the construction of something else—for example, the building of public transit facilities in the great cities of California and other cities across the country.

He said:

> Well, we could. However, no one is offering us that kind of contract. You can't get up and preach sermons in the aircraft industry on how we ought to start producing buses, washing machines, or automobiles, and expect that we will do so when those markets are already fairly crowded. If the United States, for example, would say that by the end of the decade we are going to build adequate public transit facilities in every city of America and provide the money and the contracts with which to do that, our company would be in tomorrow morning bidding on that business.

I think that is one of the missing elements. We are talking about $370 million for a new bomber. However, if that $370 million were available to the same companies with a clearcut commitment from Congress and the President that the money could be used to build public transit facilities and assist in the conversion of the plants to the new type of production, I have no doubt at all that that conversion could be made.

I really believe there is a lack of this kind of alternative plan that would provide the necessary thrust behind the decision to build a new bomber.

Mr. FULBRIGHT. Mr. President, if the Senator will yield at that point, the Senator reminds me that on yesterdav I was talking about the fact that the

Export-Import Bank has withheld approval of a loan to Chile to make purchases of civilian planes from the Boeing Aircraft Co. Presumably, they did it for ideological reasons, in addition to putting pressure on them to make a favorable settlement in compensation for nationalization of U.S.-owned properties. In any case, there is $20 million of business that Boeing wants and needs. The Government could facilitate that loan, but they have not done so.

I agree with the Senator that it is very likely that there is a need to keep the plants open. As I say, the reason has some substance to it. I would not deny its significance. However, I think that something more useful could be thought up than an obsolete weapon. There must be other things that could be manufactured that would be more useful.

Mr. McGOVERN. Mr. President, I thank the Senator for his comments. I think he has been very helpful in clarifying the issues today.

For the past 10 years now controversy has surrounded this airplane. There has been a recurring line of congressional inquiries as to which bombardment profile would be the most effective in the 1980's and the 1990's.

One of the things that entered into that argument for a long time was the highly questionable and controversial B–70. That plane cost us $1.4 billion to develop a prototype version. It is now on display in the Air Force Museum at Dayton, Ohio. And when we add that to the very short life of the B–58 fleet that was built at great cost that already, after 10 years of combat readiness, has passed into history, I think that considerations of that kind ought to give the Senate pause in proceeding to the construction of yet another heavy bomber.

I want to make it clear to the Senate that what I am proposing today does not kill the B–1 bomber. It allows $20 million for continued research in an effort to answer the questions about this plane and give us a little more time to make a judgment.

We ought to keep in mind, too, that the arms limitation talks are now proceeding—or, at least, we hope they are proceeding—in Vienna in an effort to try to define the relationship of armaments between the great powers.

That is still another reason to postpone another major expenditure of funds today. We are hopeful that there will be some success in the SALT discussions. In that event, all of the money that has been expended on this bomber will have been for naught.

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

Mr. McGOVERN. I yield.

Mr. PROXMIRE. Mr. President, I am glad that the Senator has offered his amendment. I intend to support it. I would like to point out to the Senate that more detailed, careful, meticulous work went into a study of the B–1 program this year by the Senator from South Dakota than has ever been done before. Several weeks ago he and Congressman SEIBERLING filed a detailed report on this program.

As he and I know, staff members of the Members of Congress for Peace Through Law have done a great deal of work on this study.

The amendment is not an amendment that has been offered impromptu on the floor, because a few Senators think that we have been overemphasizing bombers. The justification for this amendment has been carefully and fully developed.

There is an alternative way of accomplishing the only mission of the B–1 which makes sense—the strategic retaliatory mission—and the alternative is far more economical and efficient.

I intend to speak for about 45 minutes or an hour in support of his position and point out that the B–52, improved, modernized, and brought up to date, can do the B–1 job and do it for less than one-tenth the cost of the B–1.

Mr. McGOVERN. Mr. President, I appreciate the Senator's comments and especially the remarks he made about the study that has gone into this. Of course, the Senator from Wisconsin led the way in this effort to reduce needless military expenditures.

Mr. President, I ask unanimous consent that there be printed at this point in the RECORD the report on the B–1 bomber prepared by Representative SEIBERLING and me as part of the continuing study by the Members of Congress for Peace Through Law, a letter on this subject written by Edward J. Sullivan under date of September 14, 1971, with a carbon copy to Brig. Gen. C. J. Adams, and the statement by General Holloway that I referred to earlier in my colloquy.

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

REPORT ON THE B–1 BOMBER

(Prepared by Senator George S. McGovern and Congressman John F. Seiberling)

SUMMARY

As the existing and planned ICBM and SLBM arsenals of the United States and the Soviet Union becomes more clearly defined and the enormity of the combined destructive power of the opposing nuclear forces is understood, the continued maintenance of a manned bomber fleet by the U.S. as a tertiary threat suggests redundancy in depth. The wisdom of retaining this optional deterrent is yearly becoming more and more questionable.

Aside from the doubtful penetration capability any future manned bomber would have in a heavily defended SAM environment, the cost of a new generation of manned strategic bombers and supporting fleet of tankers is so staggering as to make the question of continuing any strategic bomber program one of great national concern.

This issue need not be decided, however, in order to deal with the fiscal 1972 B–1 funding request. The B–52 useful life assures ample time to hold the project in abeyance while considering other alternatives, including a system designed exclusively for the standoff role, or further modifications of the B–52 to further extend its life and improve its capabilities.

B–1 costs threaten to reach astronomical levels, well beyond those estimated by the Air Force. Large increases have in fact occurred in the past year, even though the project still exists only on paper. The almost certain need for a new tanker pushes the price tag up beyond $20 billion even if doubtful Air Force cost estimates are used. One more credible estimate sets the total at $47.2 billion. Predictable added costs go a long way to nullify claims that the B–1 would have cost-effectiveness advantages over the B–52/FB–111 combination, and even those claims have no foundation unless the system has an assured expected useful life of more than seventeen years.

The B–70 experience confirms that the supersonic capability has little relation to the basic nuclear war missions which can be foreseen for the B–1. On the contrary, elaborate design features required for supersonic flight could easily detract from the aircraft's ability to penetrate at low altitudes. Useful only in conventional roles which are, at best, a spinoff purpose for the B–1, the supersonic capability will account for as much as 50 percent of the system's ten-year cost.

RECOMMENDATIONS

(1) The supersonic capability should be dropped regardless of what other decisions are made.

(2) The funding requested for fiscal 1972 should be reduced to the amount required to terminate contracts awarded thus far and to preserve the advanced research and development option for possible renewal at a later time. The aircraft should be redesigned to eliminate the supersonic capability and associated costs. Amounts required for these purposes should not exceed $20 million in fiscal 1972.

(3) Funds should be added for basic research and development on an alternative subsonic strategic aircraft designed exclusively for operation as a standoff platform and on a new air to ground missile with the range and flight characteristics required to penetrate from beyond enemy defenses in a fashion which achieves the greatest possible variation from the nature of SLBM and ICBM penetration.

INTRODUCTION TO THE B–1

The B–1 is a proposed intercontinental strategic bomber. The U.S. Air Force plans to phase it into the existing strategic arsenal as a replacement for the currently operational B–52's and FB–111's, starting in the 1978–1979 time frame.

The B–1 is to be powered by turbofan jet-engines. It will be capable of supersonic cruise at high altitude (mach 2.5), but will be restricted to subsonic speeds (approximately mach 0.85), at low altitude. It will have a maximum takeoff gross weight of 350,000 to 400,000 pounds and an estimated payload of 80,000 pounds. It carries a crew of four. Its estimated range with one aerial refueling is 10,000 miles. It will carry standoff missiles (SRAM) and armed decoys (SCAD) in addition to gravity bombs.

The Air Force is planning on a basis of 200-plus units, and 240 is the current target. It has reduced its prototype requirements from five flight-test aircraft to three and the number of static test models from two to one. The original estimated cost per copy was $25–$30 million but in the past year has been revised upward to $30.8 million.

After annual expenditures at an annual rate of some $25 million in prior years, requests jumped to $100 million for each of fiscal 1970 and 1971. Last year contracts were awarded for airframe and engine development. The fiscal 1972 B–1 funding request has moved up to $370 million.

During the past nine years of controversy surrounding the need for an AMSA or the B–1 manned bomber, there has been a recurring line of Congressional inquiry as to which bombardment mission profile would be the most effective in the 1980 to 1990 time frame. The recent and lamentable passing of the XB–70 "Valkyrie" into a questionable Valhalla at the Air Force Museum in Dayton at a cost of $1.4 billion, coupled with the un-

timely demise of the B–58 fleet after less than ten years of combat readiness and the repeated groundings of the current FB–111 fleet suggests that past DOD and USAF decisions with respect to mission profiles have been in error to a point where more intense Congressional scrutiny is mandatory.

DISCUSSION

B–1 operating environment

The advanced capabilities of ballistics missiles, both land and sea based, raise real doubts about whether a manned bomber force will be either necessary or useful in the 1980's and beyond. Each of the several nuclear mission profiles assigned to the B–1 is open to serious question in light of one simple fact—that while the aircraft is taking four hours to fly 6,000 miles, there could be eight successive nuclear missile salvos, four on each side and each answering the one before.

That question can be best resolved in the context of an overview of strategic forces, such as included in the 1970 Military Spending Report. While it is of obviously decisive importance here, therefore, the primary focus now will be on whether the specific bomber under consideration is an appropriate approach, given what we can predict about the environment in which it must operate.

Such predictions are extremely difficult to make. The Strategic Arms Limitations Talks could and hopefully will produce major alterations in the nuclear strategies of the United States and the Soviet Union. Beyond that, the impossibility of predicting the nature of opposing forces a decade hence is made abundantly clear by simple reference to the rapid growth of arms technology in the past. There was good reason for the assessment made last year by General Glasser, Air Force Deputy Chief of Staff for Development Plans:

"It simply is not possible to specify with clarity what a weapon system such as the B–1 will be actually used for ten or fifteen years from now."

It is possible, however, to foresee the direction of future developments, on the basis of arms capabilities now in being or within reach.

First, as to the role of bombers, it is undisputed that any justification for relying mainly on bombers for deterrence has long since disappeared. Especially with the deployment of MIRV warheads, delivery of nuclear weapons by ballistic missile costs far less than their delivery by manned aircraft. If there is still a need for the bomber, therefore, it must be grounded in the fear that ICBM's and SLBM's may be so severely degraded by the adversary that they can no longer be counted on to deter nuclear attack. The bomber's role is to supply insurance. It is one of a number of methods which might be used to complicate the task of an enemy determined to "win" a nuclear battle with the United States.

Effective defenses against airborne bombers differ substantially from those which might be used to counter missiles after launch. There is, moreover, a unique kind of protection afforded by the combination of ICBM's and manned bombers, even though both are conceded to be increasingly vulnerable by themselves. An adversary who seeks to knock out both may, for example, decide to strike simultaneously with low-trajectory SLBM's against the bombers and ICBM's against the missiles. But his ICBM's, because of their longer flight times, would have to be launched first, and as soon as they were detected by our radar the bombers could be launched and placed beyond danger. If, on the other hand, he launched both his SLBM's and ICBM's at the same time, the early arrival of the SLBM's at U.S. airfields would give notice of the attack in ample time for our ICBM's to be launched. This "box phenomenon" renders a first strike against both bombers and land based missiles virtually impossible.

The Polaris fleet has enormous destructive force on its own, and it is still considered invulnerable to degradation prior to launch. An adversary bent on simultaneously neutralizing both U.S. ICBM's and SLBM's, plus planned and possible internal improvements in those systems, faces a superhuman task. Hence it is clearly questionable whether such a mix is necessary. But assuming, for present purposes, that it is a desirable goal, we are left to discuss the capabilities which are essential if the bomber is to insure effectively. Basically there are two.

First, the bomber must be able to avoid destruction prior to launch. In this respect the B–1 would be a marginal improvement over the B–52, although not over the FB–111, because it can be launched more quickly and dispersed more widely—if similar attributes can be extended to the tanker fleet. Because of the "box phenomenon" noted above, however, it does not appear that pre-launch survivability will be a major problem in any case, so long as we have bombers which can become airborne with reasonable speed, coupled with a land-based missile force capable of penetrating enemy defenses in significant numbers.

Second, the bomber must have a credible ability to penetrate enemy defenses and deliver enough warheads on target to inflict unacceptable damage. And this is the point where the case for the B–1 becomes most precariously unhinged, as a result of prospects similar to those which ended in abandonment of the B–70 high-altitude supersonic bomber several years ago.

That aircraft was developed because we saw that the Soviet Union could deploy defenses for which the B–52 was considered to be too slow. After we initiated work on the B–70, however, they deployed large numbers of high altitude SA–2 bomber interceptor missiles with nuclear warheads. Since detection of high flying aircraft is no longer a serious problem, it appeared that the B–70 would be performing in a hostile environment indeed. As it turned out, in fact, our 225 B–52 G's and H's have been superior to the B–70, because they have been built to penetrate at low altitudes, thereby avoiding detection and interception.

But the SA–2 is far from the last word in air defenses. If such work has not already been initiated, the Soviet Union can take their cue from bomber defenses which are already in the advanced planning stages in the United States, centered around AWACS, or the airborne warning and control system, designed to detect low-flying aircraft.

The fiscal 1972 military posture statement submitted March 9 by Joint Chiefs of Staff Chairman Admiral Thomas Moorer is instructive on this point. Discussing Soviet strategic defenses, Admiral Moorer stated that,

"It is possible that they may deploy, later in this decade, an airborne warning and control aircraft with a true over-land, look-down capability and equip an advanced interceptor with a look-down, shoot-down radar/missile system. If they do so, they could have a greatly improved area defense system in the late 1970's."

If that assesment of Soviet capabilities is correct, then it is entirely reasonable to expect that when the B–1 enters the force in the late 1970's, a new defense capable of nullifying it will arrive at about the same time.

Look-down and over-the-horizon radars and advanced infra-red detection devices are several methods which threaten to deplete the B–1's ability to penetrate at low altitudes. Others may be in the offing, including means of tracing aircraft through the air turbulence which follows in their wake. And, once detected, any manned aircraft is burdened by inherent disadvantage in hostile airspace populated by surface-to-air and/or air-to-missiles which it can never hope to outrun.

It must be noted that these are prospects which would face the B–1 bomber at the very beginning of its operational time frame. Still more sophisticated defenses could be developed later on; doubtless Soviet planners, if they elect to defend against bombers at all, will undertake intensive work along such lines as soon as the B–1 design is finalized.

With abandonment of the on-the-deck supersonic capability, the B–1 has little to recommend it over the B–52 for low altitude penetration. Its radar cross-section would be smaller, but, since radar sensitivity varies inversely as the fourth power of distance, the B–1 could get only 16 percent closer than the B–52 before its radar signature became the same, even if its radar cross-section were reduced by a factor of two. What is more, as to both speed and radar cross-section, the B–1 is distinctly inferior to the FB–111.

The Soviet Union may, of course, decide not to pursue the advanced bomber defenses described here. In that case the B–1 would not be required; the B–52 could penetrate. If, on the other hand, they do go ahead with such defenses, we could not place much confidence in any aircraft to carry out a gravity bombing mission. As a consequence, the value of a mixed deterrent would be lost. Moreover, the unique protection of the box phenomenon would also be eliminated, because there would be no need for the Soviet strategists to attempt an attack on the bomber force on the ground—they could simply launch against ICBM's, and depend on their air defenses to counter U.S. bombers.

There is no intention here to suggest that B–1 advocates have neglected the possibility that low-level penetration may prove to be a fruitless strategy. They have not. Unfortunately, they have, instead, alluded to that prospect as a reason for giving the B–1 a high-altitude, supersonic capability as well, and the result is still unsatisfactory. Certainly the creation of a deadly environment at low altitudes will not make the high altitude environment—considered too dangerous for the B–70 nearly a decade ago—any more hospitable.

The supersonic flight capability will not make the B–1 a better delivery system for nuclear weapons. If anything it will be a negative factor. It calls for complex design features which may make low altitude penetration more difficult; surely the sharp, supersonic wing must, for example, detract from stability on the deck.

The answer is not to build the B–70 into the B–1. We should instead undertake a search for more promising alternatives.

Conventional warfare utility

One of the most frequently cited rationales for the further development and production of the B–1 is that "strategic bombers, unlike strategic missiles, can be used conventionally." The argument usually references the B–52 "ARC LIGHT" missions flown in support of tactical ground and interdiction operations in Southeast Asia. The contribution of the B–52, judging from military opinion, has been substantial, and quite clearly could not have been duplicated by missiles fired from remote launch sites.

Before such employment of a strategic weapons system in a tactical, "iron bomb" environment can be accepted as part of a valid case for a follow-on bomber, it must be recognized that no B–52, except possibly through navigational error, has ever flown over North Vietnam. In testimony before the Senate Armed Services Committee in 1969, Air Force Officials stated that on a bombing run in a SAM-protected environment such as North Vietnam, possibly 50 percent of all the B–52's on any given raid would be lost, and one expert said, "It would probably be more." As early as January, 1966, former Secretary of Defense, Robert S. McNamara,

writing in Air Force magazine stated, "The fact of the matter is that no U.S. bomber has had to face the kind of defenses that exist today."

Yet the SAM-2's which the Soviets have given the North Vietnamese are relatively obsolescent and Soviet ground-to-air missilry of the late 1970's and early 1980's will undoubtedly relegate today's SAM-2's to the Model-T class.

In this same context, it is noteworthy that during the Korean Conflict, the high altitude tactical bombing regime was so hostile due to an abundance of Soviet-manufactured conventional anti-aircraft weapons and the presence of MIG fighter aircraft that neither our then first-line strategic bomber, the B-47, nor its predecessor, the B-36, were employed in a tactical role and our aging B-50's were restricted to night missions when daylight losses became prohibitive.

Tactical situations obviously do vary from war to war and from location to location. To suppose that in any future conventional conflict there will be a justifiable role or even individual target complexes where, as in Southeast Asia, hundreds of conventional bombs have been dropped at minimum interval to saturate a "target box" with near total destruction, is to ignore even the basic tenets and tactics of conventional warfare targeting.

Should such a rare combat circumstance recur wherein a strategic bomber would have any possible utility in a conventional war, a far less expensive aircraft than the B-1 could be substituted to perform the same mission.

In this vein, the Air Force, within its present inventory of tactical aircraft, has an enormous bombing capability and is developing a new generation of follow-on aircraft that promises to further enhance it. These factors should be considered in weighing the use of the B-1 in a tactical environment and in force mix with fighter-bombers, tactical bombers and attack aircraft. First, that Vietnam-type target complexes as described above are isolated cases; second, that by proper application of alternative tactical weapons delivery systems, inter-theatre close-support and interdiction targets can be effectively bombed by far less expensive airplanes; third, aircraft losses and airframe wear incurred while using the strategic bomber fleet in a tactical role is not only extremely costly on a per sortie basis but permanently subtracts from the nation's overall strategic capability.

Systems cost considerations

A persuasive case can be made for purchase of a given weapons system regardless of cost, *if* it can be shown that that system will have a decisive influence on the ability of the United States to deter nuclear war. As is developed elsewhere in this report, however, the value of the B-1 bomber in this respect is both speculative and marginal, and questions of cost therefore assume much greater importance. Clearly the B-1 must compete on a cost-effectiveness scale with other options, including new land and sea-based missile technology, for preserving the U.S. nuclear deterrent through its contemplated operational time frame. Such competition requires the best possible estimates of the total outlays that will be needed to include the B-1 in the U.S. strategic arsenal.

In light of painful experiences with such aircraft as the F-111 (originally proposed at $2.8 million per copy, escalating to over $8 million) and the C-5 (from $16.5 million to more than $54 million), it is difficult to place much confidence in Air Force estimates of probable B-1 expenditures. Even if the accuracy of those predictions could be assumed it is clear that the B-1 would be among the most expensive military systems ever proposed to the Congress, with a price tag of over $11 billion, exclusive of such major costs as operation and maintenance, armaments, and a follow-on-tanker.

But experience to date suggests that the B-1 will by no means be an exception to the pattern of cost escalation. Enormous cost overruns have, in fact, already occurred, even though the program is still fairly early in the research, development, test and evaluation stage, several years away from production.

In 1969 Defense Secretary Laird advised the Congress that the total cost per copy of the B-1 would be between $25 and $30 million. Early last year the figure was set more precisely at the top of the range, at $29.2 million, and by June 30th it was up to $30.8.

However, this figure followed several design modifications which should have brought substantial cost reductions. They included a 25 percent drop in the number of Short Range Attack Missiles (SRAMs) and Subsonic Cruise Armed Decoys (SCADs) to be carried internally, elimination of the low-altitude supersonic capability, and a significant reduction in the size of the initial avionics package. Senator McIntyre, who chairs the Senate Armed Services Sub-committee on Research and Development, estimated last August that the avionics change alone should have produced savings of between $5 million and $6 million per copy, placing unit estimates somewhere between $19 and $25 million. They did not materialize.

Based on a middle-range buy of 200 aircraft, therefore, the Air Force's own calculations show the cost of the system planned now mounting by between $1 billion and $1.2 billion in a single year.

More recently we have seen a similar kind of escalation in the RDT&E stage. Last year the estimate for this phase had climbed to $2.33 billion; now up to $2.63 billion in "escalating dollars." But last year's figure included five flight test aircraft, one static test airframe and one fatigue test airframe, to be constructed by North American Rockwell Corporation. Since then two of the flying prototypes and one static airframe have been dropped. Yet current estimates place the price reduction to be realized by that decision at only about $110 million—a savings of less than 9.2 percent of total RDT&E costs.

Another cost-factor of serious concern is the likelihood that at some point during the B-1's lifespan, and probably early in that period, a new compatible refueling tanker will be required, to replace the KC-135.

The Air Force maintains that the B-1 will be fully compatible with the KC-135, which now refuels the B-52's, and that only minor modifications in the tanker fleet will be needed. But the new tanker issue remains very much unsettled. It is also very much confused as a consequence of contradictory signals coming from the Air Force—exemplified by the fiscal 1971 budget request for $500,000 to initiate studies on a KC-135 replacement, followed by assertions that no new tanker is contemplated, read in the context of SAC Commander General Bruce K. Holloway's statement to the Armed Forces Journal last June that,

"We need a new tanker no matter what kind of bombers we have. The problem is not so much the life of the tanker, but we need an aircraft that can offload more fuel."

It is axiomatic that any strategic bomber is of little value if it cannot escape destruction on the ground, prior to takeoff. To avoid attack by low-trajectory submarine launched missiles, the B-1 will have a quicker reaction time than the B-52, and it will be capable of taking off from shorter runways so the force can be widely dispersed.

But the B-1 will be unable to complete its mission without refueling, and under present plans it must depend for refueling upon aircraft which do not have those capabilities. The KC-135 needs in excess of 9,000 feet for takeoff, a distance comparable to that required by B-52, so it cannot be dispersed any more widely than the existing force. Its take-off time is also roughly the same as that of the B-52. By targeting its SLBM's on the tanker fleet, therefore, the adversary could render the B-1/KC-135 combination just as vulnerable as the B-52/KC-135 combination might be.

In response to this reasoning the Air Force will argue that the tankers can be modified to achieve reaction time which more closely approximates that of the B-1. The nature of such modifications has not yet been revealed, but the answer is deficient in any event. A fundamental point in the case for a new bomber has been the premise that the B-52, last produced in 1962, is aging and will soon be too old to be dependable. But the last KC-135 was produced in 1964, just two years later. If the B-52 cannot last physically past the early 1980's, as the Air Force contends, then it is hard to imagine how the KC-135 can last some 15 to 20 years longer.

If costs are of any concern at all, then certainly the tanker issue is a critical factor. One possibility under consideration for the tanker role is a modified C-5. Based on Air Force price estimates submitted to Senator McIntyre's Subcommittee last year, a fleet sufficient to serve 200 B-1's would cost, conservatively, some $8.25 billion, thus pushing the total system cost well over the $20 billion mark even accepting Air Force price estimates.

The foregoing examples of cost growth to date, along with additional expenditures, for armaments and O&M, which will inevitably be associated with the B-1 system although not included in official estimates, indicate how hazardous it is to place any faith in Air Force projections.

The authors of this study admit to less technical expertise than the military in making detailed cost estimates. We therefore embrace no specific alternative calculations of total cost. It is, however, instructive to consider projections from other sources, ranging as high as $75 billion for the complete B-1 system. Several such estimates are set forth in the appendix.

Another question which deserves attention in connection with cost projections grows out of the contention that over its useful life the B-1 will be less costly than the alternative of relying upon the B-52/FB-111 combination, with continuing modifications to extend the life of the B-52.

Writing for the P.I.C. News, the newsletter of the Public Information Center, last August, Representative William Moorhead calculated that the cost of modernizing and extending the B-52 force for ten years beyond 1978 would be $7.36 billion, compared to his "conservative" estimate of $20.27 billion for the B-1 during the same period.

In fact, the Air Force has not denied the existence of such a cost advantage for the existing force during the first ten years. Their calculations were laid down as follows by Secretary of the Air Force Harold Brown in 1968 testimony to the Senate Armed Services Preparedness Investigating Subcommittee:

"Over the first ten-year period, the program cost of an AMSA (B-1) bomber force would be considerably higher than that of the B-52 and FB-111 force because with selective modifications to the structure and avionics, the lifetime of many B-52's can be economically extended to the late 1970's. Over a period of about 17 years the costs of a bomber program phasing to (deleted) AMSA's, compared with a program continuing the 255 B-52's and 210 FB-111's would be the same, $22 to $23 billion."

The buy of FB-111's has since been reduced to four squadrons, a figure which should still

be sufficient to require the mixing of defenses claimed as a main attribute of the manned bomber. That change should give the B–52/FB–111 combination an even greater cost advantage.

But what is important to note here is that acceptance of the premise that the B–1 might eventually have a cost advantage over the B–52/FB–111 combination requires acceptance of a much more ambitious assumption—that the manned bomber, moreover a specific manned bomber with capabilities which will be locked very soon, will be playing a vital role in the U.S. nuclear arsenal some seventeen years from now, in a vastly changed environment. Those who find that assumption unpalatable will find continued reliance on the B–52 and FB–111 infinitely more attractive from the cost standpoint.

Finally, a cost-conscious evaluation of the B–1 as now planned requires careful attention to the additional expenditures demanded as a consequence of the decision to make the aircraft supersonic at high altitudes, even though the low-altitude supersonic capability has been scrapped. Put bluntly, the high-altitude supersonic capability makes hardly any sense in the nuclear warfare missions contemplated for the B–1 since, as is pointed out elsewhere, the B–70 bomber was dropped precisely because the Soviet Union had the clear capability to destroy high-flying supersonic aircraft.

The supersonic capability of the B–1, which will almost certainly be used only in conventional warfare roles, will according to Air Force sources, increase its ten-year systems costs between twenty and thirty percent. Senator McIntyre estimated last year that it could be "closer to fifty percent," and there are sound reasons for preferring his figure. If the aircraft were entirely subsonic it could be made fixed wing instead of swing-wing, thereby cutting weight, reducing maintenance problems, and increasing range. The supersonic capability requires much thinner wings to lessen drag, another cost escalating factor. Supersonic flight with the B–1 engines will be accomplished by afterburning, which drastically multiplies fuel consumption.

Startling results are yielded by application of the incremental supersonic costs ratios suggested above to the low and middle-range estimates of ten-year B–1 systems costs. The decision to go supersonic calls for additional outlays of from $2.2 billion (20 percent of $13.4 billion) to $10 billion (50 percent of the $20 billion high estimate for procurement and R & D only), over what would be required by an entirely subsonic plane.

Alternatives to the B–1

One obvious and much less expensive alternative to moving ahead with the B–1 bomber would be to plan for the retirement of the manned bomber from any nuclear war role, and certainly that approach does deserve careful consideration. There is, however, no need to make such a determination in order to reach the conclusion that the B–1 is ill suited to the tasks it has been assigned.

There is ample time to consider other alternatives as well. Contrary to the impression created in recent years, there is little hard evidence to support the conclusion that the latest B–52 models are about to collapse from old age. The Air Force has pitched its case for the B–1 less on this concern than on its assertion that the B–1 will, over a period of years, be a less expensive option than preservation of the B–52. But the B–52 can remain a tremendously formidable delivery system well into the 1980's, and probably beyond, especially with the addition of SRAM and other penetration aids. There is no need to buy the B–1 quickly because of a fear that there may come a time when the United States will be without a strong strategic bomber.

Another option, therefore, would be to simply continue relying upon the existing combination of 255 B–52 B's and H's and 75 FB–111's, for as long as they can be retained in service through appropriate modifications or until such time as they can no longer penetrate Soviet defenses. If that time does come the B–1 could probably not penetrate either, particularly in light of recent decisions to downgrade its performance.

In some respects this course is much more attractive than choosing the B–1. As noted in the section on systems costs, economic considerations will favor the B–52/FB–111 combination for as long as seventeen years and possibly more. And if the objective of the manned bomber is to force the adversary to mix his defenses, to counter both bombers and missiles, there is some reason to believe that the combination of older aircraft could perform more satisfactorily than the B–1. Since the FB–111 does have a supersonic capability at low altitudes, and since it can reach significant numbers of SAC targets within the Soviet Union, these two aircraft could give the adversary a more complicated defensive problem than that posed by the B–1 alone. Since the weaknesses of one could not be exploited against the other, he would have to defend against the best features of both, at least for those targets which the FB–111 could reach at supersonic speeds.

It is possible to foresee viability for still other alternatives. If the B–52/FB–111 combination is not satisfactory, it is nonetheless still shortsighted to consider the B–1 as the single new configuration available.

A more desirable design might, for example, completely forego gravity bombing and concentrate instead on a meaningful long-range standoff capability, including both a new strategic aircraft and a new air to ground missile with longer range and a greater payload than is contemplated for SRAM. Such an aircraft need not be supersonic. It could be designed for rapid takeoff to preserve prelaunch survivability and the benefits of the "box phenomenon." The avionics could be much less elaborate than the B–1 package, because there would be no need to attempt penetration of enemy defenses. Research and development efforts could focus intensively on an air to ground missile approach aiming for maximum differences between the nature of this airborne attack and the threat posed by U.S. ICBM's and SLBM's, to continue the "mixed defenses" problem confronting the adversary.

Such a system would, of course, be far less glamorous than the B–1. But it could also avoid the weaknesses, exploit the strengths, and add new values to the use of manned aircraft in nuclear war situations.

Appendix

(Selected B–1 System Cost Estimates)

(1) The current Air Force estimate of B–1 costs, calculated now in "escalating dollars" with inflation factored in, is $2.628 billion for development and $8.496 for production, or a total of $11.124 billion exclusive of operation and maintenance and armaments including SRAM and SCAD.

(2) In August of 1970, Representative William Moorhead published two estimates based on an extrapolation from Air Force figures. He described the first, a total of $20.27 billion, by saying that, "if it errs it probably does so on the conservative side." His high estimate, following generally applicable rules on operation and maintenance and trade journal estimates on procurement costs, totalled $33.47 billion. His calculations were as follows:

Estimate:	Billion
Sunk Research and Development	$0.25
Prototype Procurement	2.33
Procurement of ca. 250 planes, including AGE, initial spares, training aids, and technical data	9.30
Operation and Maintenance for ten years	3.75
SRAM R.T.D. & E. (short range attack missile)	.42
SRAM procurement (for 2,800)	$0.80
SRAM aerospace ground equipment	.19
SRAM warheads	.50
SRAM O&M for ten years	.40
Estimate with USAF figures	17.94
13 percent overrun allowance (average for recent major systems)	2.33
Total Estimate	20.27
Addenda:	
Addition to O&M to reflect general overhead by raising the figure to $13.95 billion, following a rule of thumb of 150 percent of aircraft procurement cost for ten years of operation	10.20
Addition to procurement-cost figure to match trade journal estimates of $12 to $13 billion	3.00
High Total Estimate	33.47

(NOTE.—Representative Moorhead's analysis does not include the possibility that a new tanker fleet will be required. Using a three to two tanker-to-bomber ratio for a 255 aircraft B–1 fleet, taking the estimated $27.5 per copy cost for a C–5 tanker supplied to Senator McIntyre by the Air Force last year, and adding the same 13 percent overrun allowance employed above, the new tanker could add another $13.73 billion to the systems cost, bringing the High Total Estimate to $47.2 billion.)

(3) In December of 1969 the Defense Market Survey Market Intelligence Report cited then-current USAF estimates for a "200 plus" fleet of $1.7 to $1.9 billion for R&D, $6.8 to $7.2 billion for aircraft with spares and support, and $3.3 to $3.5 billion for ten-year operation, in 1968 dollars. It then noted the failure of DOD to discuss the tanker problem, plus the requirement for additional command and control aircraft for the strategic fleet. From that it deducted that, "The inescapable conclusion is that the price tag for the total system could well soar above the $25 billion mark."

(4) Using an analysis similar to that of Representative Moorhead but with slightly higher figures, Bruce W. MacDonald of Princeton University, coordinator of a detailed study of the B–1 system, foresees a total systems cost of "anywhere from fifty to seventy-five billion dollars." His method:

Estimate:	Billion
Sunk into research and development	$0.25
Prototype procurement	5.00
Procurement of ca. 250 planes at $60,000,000 per copy	15.00
Operations and maintenance	4.00
SRAM-R.D.T. & E	.42
SRAM procurement (for 2,800)	.80
SRAM aerospace ground equipment	.19
SRAM warheads	.50
SRAM O. & M. for 10 years	.40
Total	26.56
13-percent overrun allowance of all but prototype procurement plus unit costs, reflecting experience on recent major systems	27.41
Addition to O. & M. to reflect general overhead by adding 150 percent of aircraft procurement cost for 10 years' operation	22.50
255 new tankers	12.70
Tankers R.D.T. & E	2.00
Tanker maintenance for 10 years	2.00
Total	66.61
Plus eventual addition of the avionics originally planned but deleted last year with room left for later incorporation	8.39
Total ultimate systems cost	75.00

SEPTEMBER 14, 1971.

Hon. GEORGE MCGOVERN,
U.S. Senate,
Washington, D.C.

DEAR SIR: I wish to thank you for your letter of inquiry dated 18 August 1971. Your expressed interest in B–52G/H improvement modifications and in maintaining an effective posture of our nation's strategic forces is indeed gratifying.

Since delivery of the last B–52H airplane in 1962, The Boeing Company, Wichita Division, has been devoting company research funds to the task of identifying and evaluating feasible B–52 improvements. These improvements are options to be considered by the Air Force to maintain the B–52 weapon system as a credible strategic deterrent. The resultant option type improvement data have been provided to the Air Force periodically to support their long range B–52 improvement program planning/implementation. Through this type of effort and others, the B–52 has been maintained as an effective weapon system against new threats and changing mission requirements.

The B–52 was originally designed as a long range, high altitude bomber. During the late 1950's the need was established for high speed, low level flight to meet new operational requirements. In 1960, a design study was initiated to define changes necessary to provide an improved fatigue resistant wing for the B–52G/H fleet. Study results plus the result of the B–52G cyclic tests and fleet experience led to the ECP 1050 wing modification for both the B–52G/H fleet. This wing had a safe operational life of 12,000 flight hours based on a specified usage and using a scatter factor of 4 (design life objective is four times the operational life objective). Cyclic testing of this wing was conducted to an equivalent of four life times without developing detectable cracks in the primary structure. Testing was then continued up to six life times without developing life limiting fatigue cracks. Subsequent structural improvement modifications were also incorporated to the body, fin and stabilizer. A cyclic test of the body and empennage structure with these modifications installed was completed in 1969. Testing was conducted to an equivalent of six life times for the ECP 1050 wing usage without developing any life limiting cracks. Based on the above testing and fleet support experience, we have high confidence in the M–52G/H fleet structural integrity and its capability to provide many years of safe service life under continuing present usage conditions.

The number and the capability of threat systems has steadily increased during the past several years. For survivability reasons this has caused the low level penetration to be started sooner. Since the fuel consumption of a jet engine increases with decreased altitude, a longer low level penetration distance will decrease the total B–52's strike distance capability. Although a requirement for improved B–52 range capability does not exist, we have directed a portion of our in-house research activity during the last few years to the task of identifying effective performance improvement options.

As you indicated, one of those options was the replacement of the existing eight engines with four high bypass modern technology engines, such as those presently used on the Air Force C–5 or Boeing 747. The replacement of the B–52G/H powerplants not only will increase the strike distance capability of the fleet, but it will also provide for improved take-off performance, increased mission planning flexibility, a loiter capability at the mission go-low point (presidential decision time), deep target coverage, enhanced probability of force recovery, reduced tanker dependency and reduced fleet operational/maintenance costs. All of the data developed has been provided to the various Air Force agencies for their analysis and use in fulfillment of their long range B–52G/H improvement program planning/evaluation responsibilities.

During June of this year, the Air Force initiated an inhouse study of the four-engine B–52G/H airplane. This feasibility/evaluation study is being supported by Boeing Wichita to the extent requested by the Air Force.

In summary, Boeing Wichita is dedicated to support of the B–52 weapon system. Our industry role is to maintain close coordination with the Air Force, understand the mission, anticipate requirement changes, and provide improvement option data which will permit the B–52 to be retained as a credible manner weapon system. These data support the Air Force in the performance of their responsibility for B–52 improvement program planning and required modification implementation. Since all of the B–52 improvement data which would be of interest to you is available within the Air Force, it is my recommendation that these data be obtained from them. This would eliminate any misinterpretation of the data and would afford the Air Force the opportunity to provide B–52 modification improvement and service life data in context with other weapon system improvement planning. To assist you in this effort, I am sending a copy of this letter to Brigadier General C. J. Adams (AFRDQS) for his information.

Again, I wish to express my sincere appreciation for your deep interest in maintaining the B–52G/H as a credible manned weapon system, and to assure you of our dedication to the continued support of the B–52 as long as the airplane is retained in the Air Force inventory.

Sincerely,

EDWARD J. SULLIVAN.

STATEMENT OF GENERAL HOLLOWAY

The proposed size of the FB–111 and B–1 forces will total only (deleted) airframes. We need more than that to do the SIOP task. Therefore, we should not plan on phasing out the B–52 when the B–1 comes into the inventory with the exception of the older models. The minimum aircraft force that SAC needs is 255 B–52 Gs and Hs, 66 FB–111s, and the proposed (deleted) B–1 force.

Mr. FULBRIGHT. Mr. President, the distinguished senior Senator from Missouri, a member of the Committee on Foreign Relations, as well as the Armed Services Committee, and the Joint Atomic Energy Committee, has on several occasions raised the question about the deployment of nuclear weapons on Taiwan and elsewhere. This is a matter of great importance today.

I have an editorial from the St. Louis Post Dispatch of September 9, 1971, entitled "No Development on Taiwan" which comments on this question and alludes to the past action of the Senator from Missouri.

I ask unanimous consent that this editorial to which I have referred be printed in the RECORD.

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

[From the St. Louis Post Dispatch, Sept. 9, 1971]

NO DEPLOYMENT ON TAIWAN

Senator Stuart Symington's request that the White House disclose whether it plans to shift American nuclear weapons from Okinawa to Taiwan deserves a prompt response from the Nixon Administration. Such a plan reportedly was dropped earlier this summer and to revive it now would be the utmost folly both from the standpoint of military strategy and, perhaps even more important, international diplomacy.

As a member of the Foreign Relations, Armed Services and the Joint Atomic Energy Committees, the last of which receives more secret information on nuclear deployment than any other congressional panel, Mr. Symington may well be the most knowledgeable member of the Senate on the subject of where American missiles and warheads are hidden abroad. This fact and his persistent and commendable efforts to persuade the Administration to inform Congress of the nation's stockpiling of nuclear weapons on foreign soil give his request unusual importance.

Under the terms of the recently concluded treaty between the United States and Japan, nuclear weapons must be withdrawn from Okinawa and cannot be redeployed there without Tokyo's consent. The treaty is expected to be sent to the Foreign Relations Committee this month and presumably will be ratified later in the session by the Senate. So the question of what is to become of the nuclear weapons now on Okinawa is urgent.

With the nuclear umbrella provided by Minuteman missiles in the United States and by Polaris submarines and the tactical nuclear weapons aboard aircraft carriers, there is little case to be made for redeploying the weapons on Okinawa anywhere in the Pacific—Guam, South Korea or the Philippines. There is a special case, however, to be made for not placing them on Taiwan, whose regime's diplomatic status grows more uncertain almost by the day. Such a move could only be interpreted by Peking as evidence that the U.S. is insincere about winding down the hostility that exists between the People's Republic of China and America or reducing its commitment to Taipei. It almost certainly would damage severely the chances for better relations which Mr. Nixon hopes to achieve on his projected trip to the mainland.

Even if the new American policy toward the People's Republic were not of such paramount importance, there is every reason for the Administration to abandon its policy of secrecy about the deployment of nuclear weapons overseas. The Soviet Union and most certainly the governments of nations which contain American nuclear bases know perfectly well where these weapons are located and it is outrageous that this information is denied the American people, let alone Congress.

Congress has the constitutional authority to investigate any matter within its legislative competence and the deployment of nuclear arms, which may have a direct relation to acts of war or treaty fulfillments, is well within its purview. By denying Congress such information, the White House for too long has exercised improper discretionary powers. A response to Mr. Symington's question would be a constructive beginning toward a reversal of this most unhealthy practice.

Mr. FULBRIGHT. Mr. President, while I am on my feet—and it will not be long because I know the Senator from Wisconsin is going to speak—I only wish to say that I, too, shall support the amendment of the Senator from South Dakota.

He is one of the few men in Congress who had active experience in wartime as a bomber pilot. Aside from that experience he has probably given more attention to this question of the feasibility and the usefulness of continuing a big bomber force than any other man in Congress.

I am very pleased he has brought up this matter. I do hope the Senate will give serious attention to what he has had to say and that we will at least begin to

adapt our Military Establishment to what I hope to be our foreign policy.

The President of the United States, particularly with regard to China, has taken a new initiative, which I believe most Members of this body approve of; I certainly do.

The President is also pursuing in the SALT talks a similar policy with regard to Russia.

It seems to me very ill-timed that in view of these initiatives we should proceed with an all-out program of all kinds of major weapons based on the assumption of a war with Russia.

That does not mean, as the Senator from South Dakota said, an abandonment of this project or of an adequate Military Establishment. It simply means to adjust it in accordance with other developments that are taking place in the international scene and with the initiatives which the President is taking.

I have a feeling that these programs achieve a momentum of their own and they are continued without regard to what is taking place in other aspects of our policies; that they are proceeding on assumptions that were valid 25 years ago. There seems to be no way within the bureaucracy itself to take note of developments outside a particular jurisdiction. That is so in the case of the Pentagon.

It is the function of Congress to take note of all these developments and to try to reconcile the programs of the Pentagon in this case with the overall policy of the Government as a whole, and it is the only body that can do it. If we do not take that responsibility, no one is going to take it, and they will proceed under this momentum with programs which have long since lost any reasonable relation to present conditions.

I do hope the Senate will take seriously the amendment of the Senator from South Dakota. It is a very good amendment and certainly I shall support it.

Mr. McINTYRE. Mr. President, I rise in opposition to the amendment offered by the distinguished Senator from South Dakota. At the outset I want to say that none of us on the Committee on Armed Services challenge the sincerity of those who feel that the B–1, the new bomber, should be scrapped. I think that serving on the Research and Development Subcommittee of the Committee on Armed Services—and since the total request from the Air Force for some $370.3 million falls in the R. & D. area—that we have looked at it carefully and we have tried to weigh the very difficult issue it presents.

We, too, have been concerned, as we said in the report, about the rising costs of some of these weapons systems.

Perhaps last year we devoted more time to the B–1, and I can say in all honesty that after looking at this program I come down on the side that I just feel we must continue in this planning stage and go forward to a new bomber. I cannot bring myself to the position of the Senator from South Dakota, or the Senator from Wisconsin, or, I assume, the Senator from Arkansas.

One thing we want to make crystal clear is that this is still an R. & D. item. We are not anywhere near the procurement, the question of procuring these bombers. As I said, I find myself on the side that we must continue to plan for this B–1.

THE ROLE OF THE B–1 IN OUR DEFENSE STRATEGY

There has been considerable discussion in the recent past, and there will be continuing questions in the future, on the role of the manned bomber in our national defense strategy. Should we have a diversified strategic force? Should bombers be a part of that force? Why do we need a new bomber when we have missiles at sea and buried in silos to respond to an attack on this country? With the shift in national priorities wouldn't it be cheaper and just as effective to modify and update the aircraft presently in the inventory?

These questions require thoughtful answers and my purpose today is to endeavor to provide these answers. I would like to discuss some of the characteristics of the B–1 bomber, the purpose that this new aircraft is designed to fulfill, and the role of the manned bomber—and specifically the B–1—in the overall scheme of our national defense strategy.

The B–1 is a long range intercontinental jet bomber intended as the eventual replacement for the B–52 heavy bombers now in the force. The earliest B–52's have already been phased out. Some later models—the D and F models—were originally planned to be phased out as the FB–111 entered the Air Force inventory. However, they have been retained because of the requirement for this aircraft for Southeast Asia missions, and to offset the earlier than planned phaseout of the B–58 in fiscal year 1970 and the reduction in the planned buy of the FB–111 from 14 to four squadrons. The current program retains 255 of the latest models—the B–52 G and H—as well as approximately 142 of the D and F models.

The B–1 development plan calls for an aircraft in the 360,000 pound gross weight class compared with 488,000 pounds for the B–52 G/H and about 123,000 pounds for the FB–111. The new bomber is specifically designed to have a much smaller frontal radar cross section than the B–52 G/H. It will carry a crew of four compared with six for the B–52 G/H and two for the FB–111.

The B–1 will be powered by four large turbo fan engines in the 30,000 pound thrust class and will be able to achieve a supersonic speed at high altitude and a high subsonic speed for penetration at low altitude. The speed characteristics of the B–1 are about the same as the FB–111 but considerably greater than the B–52.

The basic design goal for the B–1 is an aircraft which, when refueled by a single KC–135 tanker and flown subsonically, can carry a large internal payload over an intercontinental mission range, including a substantal distance at low altitude.

The B–1 can carry the same basic types of ordnance as the B–52 and FB–111, but in greater quantities. For example, the B–1 can carry about twice the number of short range attack missiles—SRAM—and/or subsonic cruise armed decoys—SCAD—internally as the B–52 G/H and several times that of the FB–111. In the conventional bombing role, the B–1 on a long range refueled mission could carry considerably more payload than the B–52 and several times more payload than the FB–111.

The principal payload of the B–1 in a nuclear role would be gravity bombs plus the SRAM and/or SCAD. SCAD would be used principally for defense dilution. SRAM would be used for direct attack on objective targets which have sophisticated terminal defenses, and for suppression of such defenses. The B–1 would also use gravity bombs against targets where defense suppression or internally carried penetration aids—such as electronic countermeasures—or low altitude flight afford adequate protection against terminal defenses. Supported by existing tanker aircraft, and operating at very low altitudes during penetration of defenses, the B–1 could be programed from present U.S. bases against any suitable target within the Soviet Union or China.

While the primary mission of the B–1 will be to serve the nuclear deterence objective, the bomber will also have significant capabilities for alternate missions, uniquely extending its potential utility beyond that of the missile components of the strategic deterrent. In a conventional role, the B–1 can be variously configured to lay mines, bomb land forces in the field, or attack other selected military targets. In this latter capacity, the B–1 will be able to deliver all of our standard conventional weapons, plus our newer conventional bombs which employ advanced terminal guidance techniques.

Any assessment of the B–1 issue must be framed in the context of the total problem of nuclear deterrence. One must have a clear understanding of the answers to four basic questions, which, in turn, will encompass answers to most of the specific B–1 questions.

In considering the need for a new bomber, four basic questions must be posed:

Should there be a diversified strategic force for nuclear deterrent?

Should bombers be a part of this force?

When should a new bomber be developed and procured, and

What should be the characteristics of future bombers?

The first question which needs to be answered is: Should there be a diversified strategic force? As President Nixon stated in his budget message for fiscal year 1972—

> Our strategic forces are the cornerstone of the Free World's deterrent against nuclear attack and must always be sufficient for this crucial role.

We seek to achieve that objective of deterrence by maintaining strategic force of sufficient size and diversity to meet the following criteria:

Maintain an adequate second-strike capability to deter an all-out surprise attack on our strategic forces.

Maintain forces to insure that the Soviet Union would have no incentive to strike the United States first in a crisis.

Maintain the capability to deny to the Soviets the ability to cause significantly greater urban-industrial destruction than the United States could inflict on the Soviets in a nuclear war.

Maintain the capability to defend against damage from small attacks or accidental launches.

To meet these objectives, we strive to maintain a credible retaliatory force, placing primary emphasis on measures that both reduce vulnerability to attack and assure penetration of projected defenses. Accordingly, we must insure, to the fullest extend humanly possible, that there is never any question as to the ability of our forces to survive a surprise attack and still respond with devastating effectiveness. Uncertainties in any one element of the forces, which are bound to arise from time to time as technology advances and the threat changes, must be offset by capabilities provided in other elements.

Given the long leadtimes involved in the development, production, and deployment of major new weapon systems, we must project our thinking at least 10 to 15 years into the future.

By that time, new and totally unanticipated vulnerabilities may appear in one element or another of our strategic forces, just as they have in the past. The only way in which we can insure that these unanticipated vulnerabilities—both prelaunch and postlaunch—will not fatally weaken our deterrent before we can act to offset them is to maintain at all times well diversified forces in which each element has distinctly different survival and penetration characteristics.

We now have such forces. They consist of three primary elements—bombers, land-based missiles, and submarine-launched missiles.

Each element depends on a different mode for prelaunch survival. Bombers depend upon tactical warning coupled with quick reaction. Land-based missiles depend upon dispersion and hardness. Sea-based missiles depend upon uncertainty as to location. Consequently, even if the Soviets deploy SLBM's with depressed trajectories close to our shores, they could threaten the prelaunch survivability only of our bombers. Similarly, even if the Soviets deploy many ICBM's with single reentry vehicles—or large ICBM's with several reentry vehicles—and these reentry vehicles are quite accurate, the survivability only of our ICBM's could be threatened. Or, even if the Soviets can reduce the uncertainty of location of our submarines at sea, the survivability only of our SLBM's could be threatened. Thus, a diversified force has the strong redeeming feature that a major breakthrough in Soviet capability in any one of these areas affects only that particular area, and not our overall deterrent.

Further, and this is most important, by having a diversified force, one can tolerate a temporary vulnerability in any one element. We can counter the vulnerability with deliberate, well thought-out actions because we have confidence that the other elements of our forces will still work. On the other hand, if we put all of our deterrent in a single force element, then we would have to be absolutely certain that there would never be any gap in the survivability of that force, however temporary.

As I noted, the prelaunch survivability of our alert bombers could be threatened if the Soviets deploy submarines very close to our shores with missiles that can be fired on greatly depressed trajectories; for example, fired at full thrust but at a lower elevation angle than normal so as to impact at reduced range in a shorter time. Although we have absolutely no evidence that the Soviets are developing depressed trajectory SLBM's, or that they would risk stationing their ballistic missile submarines close to our shores, we must take these possibilities into account in our forward planning.

There are a number of actions that could, and are, being taken to counter more extreme Soviet SLMB threats should they actually develop. For example, a new early warning system will soon be available to provide prompt tactical warning for our bombers. Also, proposals have been made to reduce bomber force reaction time by modifying the B–52's and KC–135's for a quick engine start, and by placing the crews closer to the aircraft and the aircraft closer to the end of the runways. In addition, the force could be dispersed over a greater number of air bases.

Finally, it should be borne in mind that bombers and land-based missiles tend to reinforce each other's survivability—both in the pre-launch and penetrating phases.

In the pre-launch phase for example, the Soviets cannot launch a confident and effective attack upon both our land-based missiles and bombers, even if each element were assessed to be vulnerable on an individual basis. Should an attack be timed to simultaneously launch ICBM's at U.S. missiles and low-trajectory SLBM's at our bombers, then the SLBM's would arrive on U.S. airfields long before ICBM's reached our missiles—providing time for U.S. missiles to be safely launched after U.S. sovereign territory is struck. Conversely, should the attack be timed for simultaneous arrival, then enemy ICBM's would have to be launched first and our bombers would have ample time to fly to safety.

Thus, the presence of bombers and land-based missiles in the force greatly enhances the credibility of the retaliatory capability of both, and thereby strengthens our overall strategic deterrent posture by confronting the Soviet leaders with two mutually exclusive alternatives, each of which would be highly risky from their point of view.

In the penetration phase, a mixed force of bombers and missiles complicates the Soviet defensive problem, both from the standpoint of planning and, perhaps of equal importance, from the standpoint of resource allocation. While an anti-ballistic missile defense would be equally effective against sea-based missiles and land-based missiles, it would be of little value against low-flying bombers. Conversely, a good defense against low-flying bombers would be of little value against land or sea-based ballistic missiles. Missile defenses and bomber defenses require different sets of equipment and technologies. Moreover, it is not enough to defend some targets against bombers and others against missiles—all must be defended against both if the defenses are to be of value. Otherwise, one could use his bombers to attack targets defended against missiles, and his missiles to attack targets defended against bombers.

Granting that a well diversified strategic offensive force is essential to our deterrent, the next question which must be answered is, Should bombers be a part of that diversified force?

Some of these reasons why bombers should be retained in our strategic forces have already been discussed in answer to the first question, for example, how their presence in the force complicates Soviet "first strike" planning and their strategic defense problem. But there are many other ways in which bombers make a unique and important contribution to our national security.

First, bombers provide the essential insurance against presently unanticipated, but possible, gross failures in our missile systems—for example, disruption of communications with our ballistic missile submarines at sea, or damage to our Minuteman missiles from unforeseen effects of nuclear explosives before or after launch. Extensive operational testing has given us considerable confidence in the reliability and dependability of our strategic missile systems—but neither the United States nor any other nation has ever used them in combat or in a nuclear environment.

While bombers, too, have never been used in a nuclear environment, we do have a great deal of combat experience with them. We know what they can do and cannot do.

Second, bombers make a unique contribution to the flexibliility of our strategic forces.

Inherent in the purpose of our strategic forces is a capability to conduct a limited, controlled nuclear exchange, which, hopefully, could be terminated before it escalates to an allout exchange. This type of capability can best be provided by bombers. Missiles, once launched, are essentially committed and they impose on the opponent a very compressed reaction time—both of which serve to invite uncontrolled escalation. Bombers, in contrast, can be launched, redirected, or recalled over a period of hours, always remaining fairly unambiguous with respect to the area they are threatening. Thus, they provide the opponent with much more time to consider his response, or to react in a deliberate, carefully controlled manner.

Third, bombers are particularly useful in third area conflicts—that is, the Chinese People's Republic—both in a nuclear and conventional bombing role. In contrast to missiles, bombers can be recycled repeatedly, and because air defenses in those areas are far less formidable than in the Soviet Union bombers could be employed in sustained campaigns—at least in selected areas—with the expectation that losses can be kept to acceptable levels.

Fourth, in contrast to missiles, bombers can also be used in non-nuclear wars. In this respect, they are unique among our strategic weapon system. They, alone have the flexibility and capability to support our national objectives across a wide range of possible conflicts—from a quick show of force, to small scale conventional wars, to global nuclear wars. Strategic bombers operating from bases within the continental United States and a few selected bases on remote islands could provide the initial support for an overseas ally under attack while our tactical aircraft, either land or carrier based, are being deployed to the combat theater.

Fifth, strategic aircraft with their large payload capacity and long endurance have also been used for a wide variety of other tasks over the years, many of which are unrelated to their nuclear role. For example, B–52's are being equipped to do aerial mining. There is every reason to believe that we will continue to use our strategic aircraft for a variety of national security purposes in the future as we have in the past.

Finally, a mixed force of bombers and missiles provides the United States with a greater degree of flexibility in any disarmament negotiations. SALT is still in an early stage—except for ABM's, no specific weapon system proposals have as yet been presented by the Soviet delegation. Until agreement is reached on the limitation of specific weapon systems, which may take some time to negotiate, it would be highly imprudent for us to prejudge the outcome. Nevertheless, it is reasonable to speculate that, because bombers are not very good "first strike" weapons, their retention by both sides would be a logical provision to include in any agreement designed to enhance stability.

Manned bombers will continue to be an indispensable element of our strategic deterrent for as far into the future as we can discern the threat. In combination with land and seabased missiles, they provide a hedge against future technological developments which might severely degrade the capabilities of any one of the major elements of our strategic offensive forces. They provide insurance against an unlikely, but possible, gross failure in our strategic missile systems. Together with strategic missiles, they compound and frustrate Soviet "first strike" attack planning, and make the Soviet defensive task much more difficult and costly. They are more appropriate and useful than strategic missiles for less than all-out nuclear wars, and they comprise the only major element of our strategic offensive forces which can be used in conventional wars. Finally, their presence in the force provides the U.S. with a greater degree of flexibility in arms negotiations.

These points provide a strong case for having bombers in the strategic force. The next question to be answered is: When should we undertake to develop and procure a new bomber?

First of all, it is perfectly obvious that the B–52's cannot last forever; they will eventually have to be replaced. As noted previously, the earliest models have already been phased out of the force. The latest models, B–52 G/H's, were delivered to the Strategic Air Command between December 1958 and October 1962. Thus, the youngest of these is already more than 8 years old and the oldest more than 12. The Air Force believes that the B–52 G/H's can be maintained in a safe and operable condition at least through 1980. By that time the oldest aircraft would be about 22 years old and the youngest about 18 years.

How much beyond 1980 these aircraft can be kept safe and serviceable is a matter of conjecture. It should be recalled that the B–52's were not designed for low-level operations. Very extensive structural modifications were required over the years to keep them flying in that mode. Furthermore, new avionics equipment had to be installed to maintain their effectiveness against the steadily improving Soviet air defenses. In total, about $3 billion had to be invested in the B–52 force over the years for structural modifications, capability improvements, and depot maintenance, to insure its operational safety and effectiveness.

Even so, the B–52 is not an optimum aircraft for low-altitude operations. It is still quite sensitive to the effects of low-altitude turbulence, in terms of loss of aircraft control and airframe damage from fatigue. Consequently, after another decade of operation at low altitude, we can confidently anticipate the need for additional structural modifications, as well as the replacement of many major components.

Furthermore, the B–52's incorporate an aircraft technology dating back to the early 1950's. Although the engines and the avionics in the later B–52's have been updated, the airframe is basically the same as the early B–52's. Aircraft technology has advanced enormously since that time, and a much more efficient and effective bomber can now be built.

Given the long leadtime involved in the development, production, and deployment of a new intercontinental bomber—about 8 to 10 years—it is not too early, now, to pursue an orderly and deliberately paced development program for the possible replacement of the B–52's in the late 1970's or early 1980's. Accordingly, it was decided last year to start the development of the B–1.

Having decided that the time was right to begin the development of a new bomber, the final basic question is: What should be the characteristics of a future bomber?

As noted earlier, the potential problems facing the strategic bomber in the future fall into two general categories—prelaunch survivability and penetration effectiveness.

With regard to prelaunch survivability, it is clear from what has been said earlier that any new bomber should have a significantly shorter "safe escape time" than the B–52. The B–1, through a combination of appropriate airframe, engine, and subsystem design, will have these essential characteristics. Thus, from normal day-to-day alert, the B–1 will be able to reach a safe escape distance from its base in significantly less time than the improved escape time of the B–52.

Moreover, because of its more compact design, the B–1 will be able to take off with a space interval between aircraft of one-half that of the B–52. Taken together with the shorter safe escape time this means that a sizable number of B–1's could take off from a single runway and reach a safe distance from the base in the same time it would take the first B–52 to take off and escape. Even though we do not expect to place large numbers of alert B–1's on a single runway, the great importance of a shorter safe escape time to the prelaunch survivability of our bomber force is readily apparent from this single comparison.

Finally, the shorter takeoff distance required by the B–1 will permit that aircraft to be operated from about 150 more existing runways than are now available to the B–52. Consequently, the bomber/tanker force could be dispersed over a greater number of bases, with fewer aircraft per runway, thus further improving the reaction time of the alert force as a whole.

In short, a force of B–1's would have a considerably higher degree of prelaunch survivability than the B–52's against even the most severe Soviet SLBM threats postulated for the future.

With regard to penetration, the B–1 design approved for development encompasses all of the characteristics deemed essential for a future penetrating bomber which may be expected to remain in the force until perhaps the year 2000. It will have the capability to fly at very low altitude at high subsonic speed, significantly lower and faster than the B–52. Because of its much smaller nose-on radar cross section and lower infrared emissions, the range at which a Soviet airborne warning and control system could detect a B–1 at low altitude would be half that of the B–52. Perhaps of greater importance, the reduced radar cross section of the B–1 permits a manifold reduction, as compared with the B–52, in the radiated power required by the ECM equipment to screen the bomber at the same range from the Soviet radars. The reduction in the infrared signature of the B–1 versus the B–52 places a more stringent requirement on those Soviet defenses where heat emission is used to locate the bomber and guide the defense missiles to an intercept.

The penetration aids planned for the B–1 are similar to those currently planned for the B–52. However, because of its far more advanced design, the B–1 will be less dependent on electronic countermeasures, decoys, and other aids for penetration than the B–52. For example, the B–1 without penetration aids could successfully penetrate at low altitude against current Soviet fighters—which do not have a "look-down, shoot-down" capability. The B–52, against the same threat, would still need penetration aids.

Against a more advanced threat—where the Soviets have large numbers of FOXBAT's with an over-land "look-down, shoot-down" capability—both the B–1 and B–52 will need Subsonic Cruise Armed Decoys—SCADS—but the B–1 will require a lesser number to achieve the same probability of success. Or, alternatively, using the same number of

SCAD's, the probability of success for the B–1 would be about 1½ times as great as the B–52. This means that even ignoring the other advantages a B–1 force could deliver to the same targets up to 50 percent more SRAM's than a B–52 force of equal size, where both forces start from a common penetration point with the same number of SRAM's and fly at low altitude over the same routes.

In this connection, it should be borne in mind that refitting the B–52's with new and more efficient engines would increase their low altitude range, but would not otherwise improve their penetration capabilities. And even so, we would still be left with a very old aircraft which might well require very extensive structural modifications in the 1980's and thereafter to keep it in a safe operable condition.

In summary; I believe it is clear that:

First, diversified strategic forces will continue to be essential to the maintenance of our deterrent as far as we can see into the future.

Second, bombers will continue to be an indispensable element of those deterrent forces.

Third, given the age of the B–52 force and the Soviet air defenses postulated for the late 1970's, it is not too early now to proceed with the development of a new bomber on an orderly and deliberately paced schedule.

Fourth. In view of the many critical uncertainties inherent in planning a force with a useful operational life of up to 20 years—perhaps up to the year 2000—the basic characteristics of the new bomber should provide for a high degree of flexibility and versatility.

Accordingly, it is important that this Nation proceed with the development of the B–1—the aircraft designed to meet our needs in the years ahead of an effective element of our strategic deterrent forces.

Mr. President (Mr. TUNNEY), termination of the B–1 program, which would result from the amendment, would strike a crippling blow to the future strategic deterrent capability of this Nation. I strongly urge my colleagues to join me in defeating this amendment. A vote for it would be tantamount to a vote against our national security.

Also, to answer in a short way the question that has interested the Research and Development Subcommittee, the question of attempting to try to get this bomber into some sort of reasonable figure, I should like to say that those who have been responsible for the B–1 have been doing their homework.

In the case of the B–1, the USAF has long recognized the cost sensitive environment. Soon after contract award, the Secretary of the Air Force ordered that performance tradeoff studies be conducted to reduce unit production costs. The project, known as FOCUS, analyzed tradeoffs between costs and various performance aspects of the B–1 system, such as supersonic speed, range, payload, refuel altitude, avionics concept, and titanium content. Project FOCUS was successful in reducing the production unit costs primarily in the areas of avionics and reduced titanium content. In conjunction with Project FOCUS, it was further directed that the fiscal year 1972 funds requirement of the B–1 program be reduced from $569 million—that is what they were projecting last year that they were going to need this year—to a maximum of $400 million. The Air Force subsequently reduced the requirement to $370.3 million. To offset an obvious program slip, the SPO Director took action to replan the R.D.T. & E. program to absorb the reduced early funding levels while still maintaining the scheduled critical milestones. The results of this study, known as innovations were implemented to provide new and innovative management approaches to the B–1 program.

The objectives of the innovated B–1 R.D.T. & E. program are to achieve overall lower development costs, while still maintaining the requirement to develop an efficient, supportable weapon system, and to minimize the Government's investment up to the point—and I stress this—of production decision. The latter was accomplished by deferring the production decision until 1 year after first flight, thus greatly reducing concurrency—the Research and Development Subcommittee has been quite concerned with currency—between the development and production program under the fly-before-buy concept.

Program plan	Fiscal year 1972 funding (millions)	Total R.D.T. & E. program (billions)	First flight (months)
Original contract	$569	$2.682	45
"175 Plan" (reduce early year funding)	[1] $400	$2.768	52
Innovations plan	$370.3	$2.283	47

[1] Maximum.

In summary, the B–1 program has been optimized to the fiscal year 1972 $370.3 million funding level through SECAF direction and has continued to be viable through the cost reduction actions of "Innovations." Further reductions in funding levels would increase R.D.T. & E. costs, cause a serious contraction of a growing subcontractor and supplier network, delay first flight and IOC, and consequently, a substantially weaker deterrent posture.

The B–1 program has made its 1972 compromise. Further reduction in funding would be "penny wise and dollar foolish."

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

Mr. McINTYRE. I am happy to yield.

Mr. CANNON. Is it not a fact that an added factor there, if the reduction were made, would be that very substantial numbers of people now involved in the aerospace program, in the B–1 project, would have to be laid off at this time?

Mr. McINTYRE. Yes.

Mr. CANNON. So that it would contribute to the very difficult situation of unemployment we find in the aerospace industry today.

Mr. McINTYRE. The Senator is correct. As I indicated, $340 million to $370 million is already obligated under continuing authority and it would be disastrous to the contract obligations now underway.

Mr. CANNON. Is it not also a fact that there will be substantial termination costs involved as well as the impact on the employees if the reductions were made at this point in time?

Mr. McINTYRE. Absolutely.

Mr. CANNON. I thank the Senator from New Hampshire very much for yielding to me.

Mr. McINTYRE. I thank the Senator from Nevada.

LOW ALTITUDE PENETRATION

Mr. CANNON. Mr. President, the B–1 is designed for high survivability during penetration to sustain its credibility as a lethal retaliatory weapon and, therefore, as a deterrent to nuclear warfare. The primary design features contributing to penetration survival are the propulsion, variable geometry wing, and the unique low level ride control systems which permit deep penetrations flown entirely at very low altitudes at a speed 55 percent faster than the B–52. This low-altitude high-speed penetration capability reduces exposure time to the defense.

For example, even the advanced Soviet fighters such as Foxbat will not be able to make multiple turnaround attacks against the B–1, while these are possible against the slower moving B–52's. Also of extreme importance, the superior B–1 penetration speed at low altitude precludes a tail chase intercept by Soviet manned interceptors—eliminating a major portion of the Soviet interceptor threat. Further, the low altitude precludes Soviet fighters from making an attack from below the bomber. Therefore, only fighters with a look-down, shoot-down capability can make an effective attack. This capability postulates very advanced and expensive radar and missile performance which is not anticipated to be achievable for many years, and even then will be vulnerable to countermeasures which the B–1 will incorporate.

At the time of the B–70 development, higher and faster was the only option available in the propulsion state-of-the-art to enhance bomber penetration survival against the manned interceptor defense systems. It has taken several years of aerodynamic and propulsion development to open the additional option of low level penetration at intercontinental ranges. The B–1 is being designed to exercise that option, and still retain the high altitude, supersonic capability to increase its versatility as an effective deterrent in the ever broadening spectrum of conflict environment.

All defensive functions are degraded in some degree when faced with a low-level, high-speed penetrator. Defense surveillance radars, if they can track at all, can only provide intermittent, brief flashes of data so that the defense commander cannot form a coherent picture of battle progress to coordinate his defenses. During low altitude penetrations over western Russia, the most heavily defended area in the world, the ground-to-air defense surveillance system would be unable to detect the B–1 during 80 percent of its time in hostile airspace. A pro-

jected 73 percent of all Soviet SAM's were designed to combat high altitude penetrations and will be completely ineffective against the low altitude penetrator. Only 9 percent of Soviet interceptors and fighters will have search radars designed to have any look-down, shoot-down capability against low altitude penetrators. For the foreseeable future, systems designed to have a capability at low altitude must rely on clever, intricate data processing tricks which simply preclude a high kill probability against a modern penetrator.

A further constraint is imposed on the defense by the low-level penetrator: the liberal use of medium- or high-yield nuclear warheads in defense, conceivable against high altitude penetrators, must be constrained in degree if used at all defending the homeland against low altitude penetrators.

Another significant primary design feature of the B–1 contributing to its superior penetration capability is the reduced detection cross section seen by radar trying to detect or track the B–1. The design goal is a detection cross section less than one one-hundredth that of the B–52. Picture a sweep of interceptors hunting with radar for low-flying penetrators; it will take three times the number of interceptors to close the net on the B–1 as for the B–52.

A selection of subsystems collectively known as penetration aids will be included in any B–1 production aircraft which will enable the crew to detect, monitor, and identify hostile electromagnetic emissions and selectively evade, jam, confuse, or saturate them with ECM, decoys, flares, and chaff. The subsonic cruise advanced decoy—SCAD—that is planned as a replacement for the B–25's Quail decoy can also be used with the B–1 as a penetration aid. If the SCAD is armed with a nuclear warhead, it, too, must be attacked, further straining the defenses.

The B–1's primary nuclear weapon is the short range attack missile—SRAM—being developed for the B–52 and FB–111. This weapon gives the B–1 an offset kill capability so that defenses may be avoided or attacked. Raid timing and planning will allow later waves of B–1's to attack their targets safely after the defenses have been "rolled back."

In summary, the suggestion of impregnable defenses against strategic aircraft simply cannot be realized in the foreseeable future. Goering assured Hitler of the impenetrable defense of Berlin, yet 93 percent of Allied bomber strikes reached their targets. A truly modern and flexible strategic aircraft, as the B–1 is, cannot be negated.

Mr. President, I fully support the authorization of the $370.3 million which has been requested by the Air Force for the continued development of the B–1 strategic bomber during fiscal year 1972. I strongly endorse action within the Senate for authorization of the full amount, rather than some arbitrary reduction of this amount, as recently proposed and subsequently defeated within the House of Representatives. My support for the B–1 stems from due consideration of two pertinent issues: First of all, the amount requested is the result of the Air Force conscientiously paring the B–1 development effort for fiscal year 1972 to the minimum level consistent with a viable program; and second, a reduced funding during fiscal year 1972 would cause significant increases in the eventual total R.D.T. & E. costs and have a severe impact upon the ability of the contractor to meet specific milestones in the current development program.

With respect to the actions already taken by the Air Force to reduce the amount of funding during the early years of the development program, one must remember that the original program called for funding of $569 million for fiscal year 1972. Similarly, the initial estimate for the total R.D.T. & E. program was $2.685 billion. When contracts for the B–1 were signed, the Secretary of the Air Force, aware of the expected budgetary constraints, directed that the R.D.T. & E. program be restructured so that the funds requested for fiscal year 1972 would not exceed $400 million.

Accordingly, the Air Force reduced the request for fiscal year 1972 to $370.3 million, after restructuring the development program to minimize the total amount of funding to be committed prior to a production decision. In this process, all activities which would not contribute directly to a logical production decision were deferred until such a decision could be made. Because this replanning was done so carefully, the first flight of the B–1 has slipped only 2 months from the initial contract schedule, and total R.D.T. & E. funding is estimated to be about $55 million less than the $2.686 billion anticipated initially.

Specific actions taken by the Air Force include the following: a reduction in the number of flight test aircraft from five to three and the replacement of the static test airframe, as normally envisioned, with a procedure wherein verification testing of major airframe components can be essentially completed by the time of first flight. Typically, the static testing of these major components is done concurrently with the early stages of production testing. Also, the number of engines for R.D.T. & E. purposes has been reduced from 40 to 27. The contractor and the Air Force, by combining their flight test programs will be able to accomplish the test objectives with a sizable reduction in the number of test hours to be flown. The net result of these innovations in the program is a development effort which should produce an effective weapon system in an efficient, orderly manner.

The degree of efficiency and orderliness that can be sustained in the B–1 development program from this point on will be keyed, to a large extent, to a minimum number of disruptions to the program as currently planned. This is not to say that the program director will not accept changes in some performance specifications if it is determined that such changes are useful on a cost-benefit basis. The system program director is fully aware of other development programs which experienced inordinate cost growth because of governmental insistence on specifications which could have been relaxed without undue influence upon performance. There is a limit, of course, to the number and the magnitude of the trade-offs which can logically be made. One influence upon this limit is the necessity to reach a sustaining rate of obligation as early in the development effort as possible, if total development costs are to be kept at a minimum.

Mr. President, the Committee on Armed Services has heard extensive testimony on the B–1 development program. The distinguished Senator from New Hampshire and the members of the Ad Hoc Subcommittee on Research and Development have probed deeply into various facets of this program to provide evidence to the Senate that the funding requested for the B–1 for fiscal year 1972 is the minimum level consistent with an orderly and efficient program. I endorse these findings and I also submit that the Senate should not cause an arbitrary disruption in the scheme of development activities, but instead should accept the bill as voted out of committee and authorize the entire $370.3 million for the B–1 during fiscal year 1972.

Mr. President, the other issue which contributes to my position on the B–1 development program is full realization of the impact which arbitrary reductions in the funding level could have upon the costs of the program and upon the schedule of development activities. For fiscal year 1971 and prior years, $319 million have been appropriated for the AMSA/B–1 project. During the 13-month period from the start of full-scale development in June 1970 through June 30, 1971, some $180.2 million will be expended. Of this total, $75 million is from the fiscal year 1971 appropriation and the remainder is from prior year funds. During the last quarter of fiscal year 1971, funds are being expended and committed at an annual rate of about $270 million. The normal expansion of activities scheduled for fiscal year 1972 necessitates the funding of $370.3 million for that period.

The importance of the scheduled activities for fiscal year 1972 to the efficient progression of the development program is apparent. For example, the critical components of the airframe and the engine will undergo extensive testing and the fabrication and assembly of components for the first of the three test aircraft will be initiated. Static test subassemblies will be designed, developed and tested and airframe components will be subjected to fatigue testing. The prototypes of the engines will receive about 400 hours of operation in preparation for a preliminary flight rating. The crew module will be tested via sled runs as well as aerial drops and the airframes and engine will both be subjected to extensive wind tunnel tests.

Arbitrary reduction in the fiscal year 1972 funding level for the B–1 would of necessity disrupt the harmonization of these scheduled activities. The total effect of a reduced funding cannot be predicted with precision. However, it has been estimated that as much as 50 percent of the work force assigned to the B–1 project at North American and General Electric would be subject to imme-

diate release if sizable cuts are made to the funds for fiscal year 1972. This would, of course, mean that a sizable proportion of the funds authorized for fiscal year 1972 would have to be used for termination costs and unemployment benefits, neither of which would be productive for the program.

Furthermore, the compounding effect of such actions on the funding levels required for fiscal year 1973 and subsequent years would be catastrophic indeed. Unquestionably, total costs for R.D.T. & E. would exceed the level currently estimated. In view of this fact and the other undesirable side effects which I have just mentioned, the prudent course of action is to authorize funding for the B–1 at the requested level of $370.3 million.

Mr. President, in short I have given the question of appropriate levels of funding for the B–1 development program a good deal of scrutiny. I have been impressed with the steps taken by the Air Force to reduce the level of concurrency in development and production activities and the related efforts to minimize the expenditures prior to a production decision. I am also struck with the singularly unfavorable impact which arbitrary reductions to the requested level of funding could have upon the future of the program. I urge that my colleagues support the full level of fiscal year 1972 funding for the B–1, as voted out of the Committee on Armed Services.

THE B–52 CAN DO THE B–1'S JOB

Mr. PROXMIRE. Mr. President, I support the pending amendment offered by the Senator from South Dakota. I think I can establish the fact that the B–52 with a far smaller investment can do the same job as the B–1 and do it far more efficiently.

Mr. President, earlier this year I charged that the Air Force was concealing from Congress a proposal by the Boeing Co., to reengine our late-model B–52 bombers with high bypass ratio turbofan engines such as those now used on the C–5A.

This reengining proposal, I argued, could extend the life and improve the effectiveness of the B–52 G's and H's now in our active inventory. It offered improved prelaunch survivability, increased range, and increased payload potentials. And it might pay for itself by reduced fuel and tanker costs over a number of years.

At about the same time, I called on the Air Force to stop stalling and move out on the SCAD program. SCAD, I suggested, could do far more to enhance bomber penetration effectiveness than the limited number of design features which could be incorporated in a brand-new bomber.

SCAD and a reengined B–52 together, I concluded, could give us a relatively low cost yet effective alternative to the B–1 in preserving our bomber deterrent.

It should not come as any surprise that my suggestions were not warmly received by the Air Force. There were limits, I was told, to what could be done to an aging aircraft, and modifications of the magnitude I had suggested were sure to decrease rather than increase the B–52 service life remaining. As for SCAD, it was certainly needed. But we needed the B–1 too.

Mr. President, I would like to do two things today. First, I would like to reply to the Air Force on the merits of reengined B–52's with SCAD's. Then I would like to talk about some of the implications of the B–1 program, with emphasis on the latest B–1 cost fiasco.

Before doing so, however, I ask unanimous consent to have printed in the RECORD at this point a letter from Deputy Defense Secretary Packard on the B–52 reengining issue.

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

THE DEPUTY SECRETARY OF DEFENSE,
Washington, D.C., June 24, 1971.

Hon. WILLIAM PROXMIRE,
Chairman, Joint Economic Committee, Congress of the United States, Washington, D.C.

DEAR MR. CHAIRMAN: Your letter of May 24, 1971, concerning the possible usefulness of reengining the B–52 G&H fleet. Initially, I would like to point out that Air Force witnesses have previously responded to questions on this subject during their testimony before the Congress on the Fiscal Year 1972 Authorization Bill.

The Boeing Company's idea for reengining the B–52 G&H fleet with TF–39 engines was briefed to the Air Force in January 1969 and represented the results of preliminary work which the company had done in studying ways to increase the B–52's range capability. The Boeing classified briefing material, some preliminary brochures on the reengining concept, and data on an attendant prototype program were furnished to the Air Force. The initial Boeing prototype program involved simply bolting C–5 engines and nacelles to a B–52 and running a series of tests to demonstrate the feasibility of the reengining concept. Boeing first estimated such a prototype program would take about 20 months and cost $6–10M. At that time, their rough estimate of total B–52 G&H equippage was $1.25B. The Air Force considered the merits of the Boeing idea, particularly with respect to the technical problems involved and the relative increase in low altitude range. The technical problems, including loss of aircraft control during asymetrical thrust conditions and insufficient ground clearance on outboard engine pods, caused Boeing to reconsider their design. Boeing's latest concept of reengining involves a dual-podded configuration for the engines. This program is estimated by the contractor to cost approximately $40 million for a 24-month prototype effort and an additional $1.7 billion to modify the B–52 G&H fleet. We presently cannot validate the accuracy of these cost estimates. It is interesting to note, however, that in recognition of possibly serious technical problems remaining even in the current design concept, Boeing has recommended a contracted engineering study before pursuit of the prototype program. The Air Force has initiated a study of potential costs and many technical unknowns in such a modification to have a clearer understanding of it as a bomber improvement option. These technical unknowns include wing and fuselage structural implications, sonic fatigue factors, nacelle design considerations, and effects on service life.

In any event, there are limitations to what can and should be done to an aircraft built with the technology of the '50s, and the Air Force carefully selects those modifications most urgently needed to maintain the B–52's combat capability in the face of a growing Soviet threat. Toward this end, we have two major areas for improvement: (1) pre-launch survivability and (2) capability to penetrate defenses.

With respect to the first objective, reengining the B–52 would not, as you suggest, significantly enhance pre-launch survivability since the B–52 nuclear effects hardness and maximum allowable escape speed would be unchanged. A lower technical risk—and considerably less expensive—approach to improving the B–52's pre-launch survival is to provide the present engines with a quick starting capability which, in conjunction with our present basing plans, is expected to effectively counter possible depressed trajectory SLBM attacks.

Our second objective is an improved capability to penetrate. The ability to fly greater distances at low altitude contributes to penetration survivability and, as I mentioned earlier, reengining the B–52 would increase low altitude range and be desirable if it could be done in a reasonable time, at low technical risk, and was not too expensive. However—and this is the important point—reengining would not alter those performance characteristics which collectively contribute most to penetration survivability. Penetration speed would not be increased, radar cross section would not be decreased (if anything, it would increase), the airplane could not be flown any lower, and the infrared (IR) signature would not be significantly reduced. It is for these reasons that we have chosen to support those programs which contribute most to improving B–52 penetration capabilities; i.e., the Short Range Attack Missile (SRAM), the Subsonic Cruise Armed Decoy (SCAD), Electro-Optical Viewing System (EVS), and continuing improvements in Electronic Countermeasures (ECM). It might be noted that we would much prefer securing funds for continuing the development of SOAD (which you recently endorsed) than to spend $40 million for a 24-month prototype program which could at best only demonstrate the "feasibility" of re-engining.

With respect to your comments on a possible reduction in tanker forces, it is true that some tanker O&M savings might result from a reengining modification to the B-52 G&H fleet. However, our calculations indicate that the heavy investment costs associated with the modification would not be amortized in a reasonable time.

Based on the classified performance data provided by Boeing and the aircraft and mission characteristics of the mid-to-late 70s, it would appear that a reengined B–52 G/H force could do the same job as the original force with less tankers. If the theoretical O&M savings of this reduction are compared to the costs of a B–52 reengining program from 1974–78 (both in 1970 constant dollars), economic crossover does not occur until about 13 years after go-ahead. However, it has been the intent of Congress, and a specific OSD Directive that dollars discounted by a factor of 10% be used in examining proposed future investments. If these calculations take into account this discounting factor, economic crossover will not occur until the 28th year. At that time the youngest B–52 would be about 40 years old.

Moreover, the suggestion that such a modification would result in a surplus of KC–135 tankers is not necessarily true. Our best option in this case would probably be to retain the existing tankers for use in conjunction with the improved performance of the reengined B–52 to enhance the probability of survival of bombers to the recovery base by increasing the distance flown at low altitude after the last target. Furthermore, KC–135s are also committed to support tactical forces in contingency operations. Any future prospects of reducing the tanker force would have to take into account our tactical support requirements at that time.

In response to your question concerning accumulated fleet flying hours, the B–52 Gs and Hs now average 5400 and 4600 flying hours, respectively, and are currently adding flying hours at an annual rate of 440 hours. Our lead-the-fleet B–52 aircraft have flown as follows: B–52D—10,400 hours; B–52G—9700; B–52H—8900. Boeing's data on reengining the B–52 included some structural modifications designed to support the engine installation and also to increase the airplane's maximum takeoff gross weight. Boeing did not identify how or to what degree the wing modification could be expected to affect the service life of the aircraft. A decrease in the service life remaining is always a possibility in any configuration change where extension of service life is not specifically addressed.

Finally, in regard to your desire for an unclassified response to your letter, both the Boeing brochures and the detailed calculations on possible tanker reductions are classified. These documents are available and will be forwarded to your office if you desire.

Sincerely,

DAVID PACKARD.

Mr. PROXMIRE. Mr. President, while Mr. Packard's letter is cast in the kind of negative tones befitting a supporter of the B–1 program, it does state that reengining would "be desirable if it could be done in a reasonable time, at low technical risk, and was not too expensive" and also that the Air Force is still studying the idea. I will refer further to Mr. Packard's letter during the course of my remarks.

I. THE B–52/SCAD ALTERNATIVE

Our bomber force today faces two problems which threaten its effectiveness. First, there is the problem of prelaunch survivability—the danger that our bombers might be wiped out on the ground by a Soviet submarine missile attack. Second, there is the problem of penetrating increasingly more sophisticated Soviet air defenses. What I hope to show is that reengined B–52's with SCAD's can effectively meet these problems.

The key to prelaunch survivability is being able to get our alert bomber force into the air before the enemy missiles arrive. As Mr. Packard's letter indicates, we might not even need to reengine the B–52's to solve this problem. He says:

A lower technical risk—and considerably less expensive-approach to improving the B–52's pre-launch survival is to provide the present engines with a quick starting capability, which, in conjunction with our present basing plans, is expected to effectively counter possible depressed trajectory SLBM attacks.

And there are other steps short of reengining which we could take, too—such as positioning our alert crews nearer the bombers or the bombers themselves nearer the runway. In fact, such steps are contemplated for B–1 operations, and a good deal of the B–1's postulated survivability advantage over the B–52 is due to changes in operational tactics, changes which have nothing to do with the B–1 itself.

But if we also reengined our B–52's, we would get two additional advantages still, both due to the almost 50 percent greater thrust which the new engines would provide. First, we would get a significant reduction in the amount of runway the B–52 needed to take off, thus increasing the number of different military and commercial airfields to which it could be dispersed. Second, the B–52 would be able to get down the runway and into the air faster.

Accordingly, Mr. Packard's suggestion that reengining would not change either the B–52's nuclear effects hardness or its maximum allowable escape speed may be true, but reengining would have these other benefits which he neglects to mention.

QUICK ENGINE STARTS

Two other points on prelaunch survivability. It has been suggested that the new engines could not be given the same quick starting capability as the old. This is true, but quite misleading. They cannot use the same cartridge starters available for the B–52's present engines, but they can use jet fuel starters to accomplish the same objective, according to Boeing Co. sources and they are in a position to know what they are talking about. Second, to get at the nuclear-effects hardness issue, Boeing has proposed modifications designed to increase the degree of pressure the B–52 could withstand in a nuclear-effects environment. These modifications are not needed now but could be undertaken later, if needed, to bring B–52 prelaunch survivability that much closer to the B–1's.

To sum up the discussion thus far, prelaunch survivability is not too difficult a problem today. There are a large number of improvements we can make in the present situation, some by changes unrelated to our bombers themselves, others by modifications to the B–52's. There is very, very little which the B–1 could give us in terms of prelaunch survivability which we cannot also get without it.

PENETRATING SOVIET DEFENSES

The penetration problem is a bit more serious. Air Force studies show a marked degradation in the effectiveness of our present bomber force when pitted against Soviet defenses of the future. But here, too, reengining—and, above all, SCAD—contribute all the help we are likely to need.

Let us look at reengining first. What it would give us, in effect, is a bomber which could fly about 40-percent farther than the B–52G and 25-percent farther than the B–52H, according to reliable aerospace experts.

Mr. Packard mentions one important advantage of this increased range—an ability to fly greater distances at the low altitudes where detection is most difficult. This will be critical as Soviet air defenses expand outward in the years ahead.

And this longer range would do more than just minimize the chance of detection. It would enable our bombers to reach targets they otherwise could not—at least without additional refueling. And it would afford us a greater choice of penetration routes, so we could more easily avoid heavily defended corridors.

This longer range would also enhance the recall capability which is one of the advantages of bombers over missiles. Just how long a bomber could loiter at its "fail safe" point subject to recall is obviously dependent on the amount of range it has.

The fact of the matter is that a reengined B–52 would have a longer range than the B–1. It would thus have an advantage over the B–1 for all the purposes just discussed.

B–52 NEEDS LESS TANKERS

All of this is closely related to the tanker needs of the Air Force. The Air Force has vacillated in the last 2 years about the question of when a new tanker might be needed. But some things are clear in this regard. First, the Air Force has included in its new prototype package—which includes the light fighter prototype—work on the adaptability of the Boeing 747 as a new tanker. This underlines the urgency with which the Air Force views the need for a new tanker. Second, the urgency of this requirement is clearly due not to the lifetime of the KC–135 tankers, which still have many years of service life remaining, but to the inability of the KC–135's to offload sufficient fuel to meet our overall refueling needs. If we reengined our B–52's, we might not want our bomber force to do the same job with less tankers, which Mr. Packard admits they would be able to do. We might want to retain our present tanker support. But at least we would not need any new tankers as soon—or quite as many later—as our present B–1 path entails.

So reengining would increase B–52 range, which is quite important. But it would not, Mr. Packard says, increase penetration speed, decrease radar cross section, significantly reduce IR signature, or lower the altitude at which the plane could fly.

On the question of penetration altitude, Mr. Packard is quite correct, but whether the B–1 will fly as low as expected has yet to be shown. As for penetration speed, reengining might produce a slight increase, but this would remain a clear B–1 advantage.

I would like to say a bit more, though, about radar cross section and IR signature, two characteristics designed to reduce a plane's susceptibility to detection.

First, some of the same reduction in detection can be achieved by flying longer at lower altitudes.

Second, new engines would give the B–52 a sizable reduction in its IR signature which some might regard as significant. And the B–1's IR signature will be better than that of the B–52 only when it is flying subsonically; when the B–1 goes supersonic, it will light up like a Christmas tree.

Third, the subject of radar cross section has been somewhat misconstrued by the Air Force. When I first urged reengining of the B–52's, the Air Force responded that this would give it a much bigger radar cross section, which would make it much easier to detect. Mr. Packard does not go so far; he says that reengining would not decrease the B–52's radar cross section and that it might increase it. This is a more accurate statement of the facts. And it is also true that Boeing has proposed additional modifications which would reduce the B–52's radar cross section several times below its present level by the use of radar absorptive materials. The B–1 would still have an advantage, I recognize, but nothing like the advantage it has now.

Finally, the ability of a plane's radar

cross section to minimize detection is relevant only to the extent that other things do not give its position away. And the B–1 is expected to have on board a lot of sophisticated avionics equipment which could do just that if it is not turned on and off at precisely the right moment.

OTHER B–52 IMPROVEMENTS

Mr. Packard also cites other programs which he suggests would do more to improve B–52 penetration performance than reengining, programs which are now being pursued, such as an Electro-Optical Viewing System—EVS—Electronic Countermeasures—ECM—improvements, and also SRAM and SCAD. I do not want to argue the relative merits of these programs vis-a-vis reengining. But they all show the variety of things we can do to solve the penetration problem without going to the B–1.

And the most important of these programs is SCAD, which can function either as an armed decoy, an unarmed decoy, or a long-range attack missile. What makes it so effective is its ability to effectively saturate potential Soviet air defenses. The Soviets in the future are expected to deploy an improved AWACS system to alert improved interceptors of the arrival of our bomber force. But both their AWACS planes and their interceptors are available in limited numbers. So if we fire enough SCAD missiles from our bombers, their defenses simply would not be able to cope with all the targets presented. The point was expressed well earlier this year by the distinguished Senator from Arizona (Mr. GOLDWATER):

> The basic source of SCAD's value, in all three cases, is in presenting the defense with a large number of objects, be they decoys or missiles, to try to find and shoot down. Now that clearly puts the defense at a disadvantage. I can understand that, you can understand that, and the Russians can understand that.

What I cannot understand, however, is why we have to spend up to $20 billion for a new bomber at this time when for $1 to $2 billion we can get this large number of lethal objects which can saturate Soviet defenses when launched from any bomber we have. Air Force studies of the penetration problem show that a naked B–1 will have a certain fixed advantage over a naked B–52 against any postulated set of Soviet air defenses. But these studies show, too, that SCAD will do far more to improve penetration effectiveness than all the characteristics of the new bomber combined. A B–52 with SCAD could beat a B–1 without SCAD at any time.

ARMED SERVICES COMMITTEE SCAD POSITION

While on the subject of SCAD, I would like to commend the Armed Services Committee for the language it inserted in its committee report relative to the SCAD program. The committee said two things about SCAD.

First, it echoed my own sentiments that we should stop stalling and move out on the SCAD program. Second, it directed the Air Force to change the direction in which it is now proceeding—away from a two-step program which envisaged moderately accurate unarmed SCAD's for use on the B–52 and an upgraded version for use on the B–1, and toward a one-step program pointed toward a highly capable SCAD system at the earliest possible date. I congratulate the committee on this step, which if implemented would insure the availability of SCAD as an effective attack missile if we decide to employ it in this mode.

I wonder if I could ask the distinguished Senator from New Hampshire two questions about this committee action relative to SCAD:

First, has the Senator from New Hampshire or have other members of the committee discussed this committee language with the Air Force? Are they in agreement with it?

Mr. McINTYRE. Mr. President, to answer my distinguished friend from Wisconsin, we have discussed with the Air Force the possibility that they could do more with the SCAD. It is our feeling that, both as to accuracy and range, they were not pushing the development of SCAD sufficiently. So we placed in the report the feelings of the full committee on the SCAD program. We have some assurance; I cannot say that they buy everything we say in the report, but at least we directed their attention to SCAD and its potentiality, and hopefully they will be doing more with it than they have in the past.

Mr. PROXMIRE. Have members of the committee had a discussion with the Secretary of the Air Force about that program? Has he given the committee any assurances?

Mr. McINTYRE. Not with the Secretary of the Air Force, but we have discussed this matter with leading project officers of the B–1 program. In the committee hearing we were critical of their lack of activity because they had downgraded the SCAD.

Mr. PROXMIRE. Has the committee assurance that they will follow the directions in the report?

Mr. McINTYRE. No, we do not have assurances; we only have the feeling that they will take a hard look at our recommendation. Perhaps in the future we can discuss this with the Secretary of the Air Force and see what is the overall attitude and report it to the Senator.

Mr. PROXMIRE. What specific changes in the program would the committee language require?

Mr. McINTYRE. The SCAD program?

Mr. PROXMIRE. Yes.

Mr. McINTYRE. If I remember correctly, they would have to turn away from the development of the SCAD program as an unarmed decoy in conjunction with the B–52 and start looking at the SCAD as a future complement to the B–1 and a more effective armed missile. As it is now, its accuracy and lethality does not give it any effectiveness or any destructive capability. It is a most difficult part of their program; it is used as a decoy. We want them to look at it with more versatile options.

Mr. PROXMIRE. That makes sense. Would this be an expensive departure which would require additional funds to go into?

Mr. McINTYRE. I believe so. It is my thought, if we could go on this tack, that it would cost from $5 to $10 million not only to try to develop a decoy but an armed missile that would have sufficient range and accuracy to really be a versatile weapon.

Mr. PROXMIRE. That is not very much compared to B–1 costs. Does the Senator have any indication as to whether they are developing sufficient range for SCAD so it could be used from entirely outside Soviet air defenses?

Mr. McINTYRE. No. That is one of its deficiencies. They are not developing sufficient range. They are not concerned much with its accuracy. It is to this that we speak in the report. We hoped to be able to turn them around and get their attention on this matter.

Mr. PROXMIRE. I very much appreciate the response of the Senator from New Hampshire. I do hope that the committee, which has the obvious support of the Senate and has the respect of everyone, will do its best to work with the Air Force to see that this is carried out. It is such a sensible recommendation.

Mr. McINTYRE. Mr. President, I might say to the distinguished Senator from Wisconsin that, as one member of the subcommittee, I have felt that not only SCAD, but some sort of low-level operation, should be going on so that we would have a sort of hedge for the B–1. The thing that is bothering the Senator from New Hampshire is the projected cost of this weapon. As I said when I started out today, even when I weigh all these facts, I do not come to the same conclusion as the Senator from Wisconsin and say we just do not need it. I conclude that the probabilities are that we do need it. But I have been critical and worried about the high cost, which is estimated to be around $30 million, and which could possibly, with inflation and other factors, go as high as $40 million. So it remains a very difficult program. On the basis of our feeling today, we on the Armed Services Committee do not feel we are ready to say, "No."

Mr. PROXMIRE. I want to be clear on this so they do not come back later and say that SCAD really is not suitable for use as a long-range attack missile. Now is the time to make sure they develop it so it will be usable in this manner.

Mr. McINTYRE. I think the Senator is right in his thinking, but I think there are some problems as to whether it can be done.

Mr. PROXMIRE. I thank the Senator. I fear that the problems are mainly that the Air Force will drag their part on SCAD to strengthen their pitch for the B–1.

Mr. President, I have been trying to make one simple point that a reengined B–52 with SCAD would give us all the capability we need to solve both the prelaunch survivability and penetration problems facing our bomber force. We just do not need the B–1 at the present time.

B–52 PROJECTED LIFE

My next point is that we will very probably need it. Let us look first at the life remaining in our B–52's today. Mr. Packard's letter makes two points in this regard:

First. He shows that our lead-the-fleet G's and H's have already flown about

4,300 hours more than the average G's and H's with no evidence of structural harm. At the now projected annual utilization rate of 440 hours, this means we have a 10-year leadtime in terms of actual flying hour experience in which to see problems coming and to take actions required to correct them.

Second. His reference to this 440-hour utilization rate is worth noting in itself. It is a significant reduction—better than 30 percent—from the peak utilization rate of more than 600 hours annually on which our bomber force operated during parts of the 1960's.

Mr. Packard's information must be viewed, moreover, against the background of Air Force predictions of the ultimate service life for the G's and H's, as derived from cyclic fatigue studies at Boeing a couple of years ago. I quote here from Air Force testimony to the Senate Armed Services Committee last year:

As a result of cyclic fatigue tests, the newer model B–52 G's and H's have an expected service life of *at least* 12,000 flying hours. If we continue to fly them in the current flight regime, we have confidence that these aircraft can continue to fly into the 1980's *without* any major structural modifications.

B–52 HAS 15 YEARS LEFT

Since the average B–52 has now accumulated 5,400 flight hours and the average B–52 H 4,600 flight hours, this means that both our G's and H's have yet to reach the half way point in their projected flying lifetimes. In fact, a continuation of the new 440 hour utilization rate means at least 15 more years for the G's and about 17 more years for the H's, without life extension action being taken. This would carry the G's and H's past 1985 and 1987, respectively.

And as I indicated when I first raised the issue, modifications undertaken in conjunction with reengining could well extend this service life. The Air Force disputed this point when I raised it, saying that reengining would decrease service life. Mr. Packard's letter is again more accurate:

Boeing did not identify how or to what degree the wing modification could be expected to affect the service life of the aircraft. A decrease in the service life remaining is always a possibility in any configuration change where extension of service life is not specifically addressed.

Extension of service life is being specifically addressed at the present time, both at Boeing and by the Air Force in its recently initiated study of Boeing's proposal. Boeing believes that its new dual engine pod configuration will have much better service life implications than its earlier proposed configuration, because of its better wing loading characteristics.

Looking beyond the 1985 time frame, it is impossible to tell just what international political climate and what Soviet air defense systems we are likely to face. We just do not know whether we will need a follow-on bomber at that time or whether such a bomber could penetrate defenses of that period. Under the circumstances, we would do well not to initiate full-scale development just yet of any follow-on bombers, for fear that our entire investment might be washed down the drain by changing times.

A STANDOFF BOMBER

And if we ever do buy a follow-on bomber, I think that it will be a standoff missile-launching type, not a low-level penetrator like the B–1. I say that for several reasons. First, the key to penetration will always be a saturation of enemy air defenses, which can be accomplished more effectively for a given dollar investment by launching a large number of SCAD's from a limited number of bombers than by building highly complex new bombers which have to get through themselves. Second, we could always maintain some low-level-penetration capability even without building a new penetrating bomber. Many of our tactical aircraft, plus the FB–111, could easily make one-way strikes on the Soviet Union from bases in the United States. This possibility—and a possible Chinese bomber threat—would certainly force the Soviets to retain their present air defenses against both high-altitude and low-altitude penetrating bombers. They could not channel all their resources into defense against standoff missiles only.

B–52 REENGINING COSTS

Finally, let me say just a few words about the costs of reengining the B–52's, as set forth in Mr. Packard's letter. The actual modification work would cost about $1.7 billion, or roughly $6 million per plane. It may be true, as Mr. Packard suggests, that he cannot validate the accuracy of these estimates. But it is also true that they are probably more accurate than the current Air Force estimates for the B–1, which is a much higher risk project, both from a cost and technical standpoint.

I recognize that any modification work would have to be preceded by a 2-year prototype program. The cost of this program was originally estimated by Boeing to cost $6 to $10 million. Its cost has now been raised to $40 million. I do not doubt that some of the increased cost is necessary to do a thorough job. I do not doubt either, however, that part of the increased cost is due to a conscious attempt on the part of the Air Force to make the cost of reengining prototype work as high as possible, in an attempt to discourage its being done. They want that B–1. But even at $40 million, the cost for a reengining prototype is less than 2 percent the cost of the $2.7 billion Air Force projection for B–1 prototype efforts.

To sum up, then, a reengined B–52 force with SCAD would give us a significant improvement in both the prelaunch survivability and penetration capability of our bomber force. The B–1 would cost about 10 times as much, for only marginal superiority, at least for the next 15 years.

II. IMPLICATIONS OF THE B–1

For more than a decade, a debate has raged about the future of bombers as a strategic nuclear deterrent. It has been argued, on one side, that our present triad of strategic systems is inviolate. And it has been argued on the other side that continuing developments in land-based and sea-based missile technology have made bombers—once our sole nuclear deterrent—obsolete in a "missile age."

I have chosen not to enter into this debate here. I have accepted as a premise today that we do want to retain strategic bombers in our inventory for the foreseeable future. But I would like to make a few basic observations on the role of bombers to put in context the B–52 versus B–1 comparisons which I have just made.

First, bombers are no longer our primary deterrent system. That role has gone instead to our sea-based missile force. And if our Polaris-Poseidon force becomes vulnerable at any time in the future, we have ULMS or an expanded range version of the Poseidon in the wings. Accordingly, we should retain land-based systems only to the extent that they provide a sufficient supplement to our sea-based deterrent strength to justify their cost.

Second, bombers constitute a terribly expensive supplemental deterrent by their inherent nature. According to the Air Force itself, it now costs $1.3 billion per year just to operate and maintain our present B–52 and FB–111 bomber force. The costs of FB–111 and SRAM procurement, B–1 and SCAD research and development, and the incremental costs of B–52 operations in Southeast Asia are all additional. Yet the $1.3 billion figure alone makes bombers more expensive to retain than our primary sea-based force and much more expensive than land-based missiles. These inherently high bomber costs have to be seriously considered in evaluating our bomber options, if only to prevent the bomber tail from wagging the sea-based missile dog.

And the B–1 threatens to be expensive enough—for its marginal benefits—to wag the entire defense budget. Let us look at what is happening to B–1 cost projections in the past 2 years.

ESTIMATED PRODUCTION COSTS

Two years ago unit production costs for the B–1 were estimated at $25 to $30 million. Last year they were pegged at $29.2 million. And now they are up to $35.2 million.

And it is not as if they were redesigning it and making it better. Each year additional specifications have been dropped. Last year the size of the avionics pack was cut in half—from over 10,000 pounds to 5,400 pounds—the requirement of supersonic speed on the deck was eliminated, and the plane's internal SRAM payload was reduced 25 percent. As the distinguished Senator from New Hampshire (Mr. McINTYRE) suggested last year, the reduction in the size of the avionics pack alone should have resulted in savings of $5 to $6 million per copy.

This year the process has continued. To cite just two examples, the amount of titanium planned for the air frame has been cut in half, and the avionics pack has been cut still further, to 3,900 pounds. But again the cost has gone up, not down.

I am not objecting to the performance changes themselves. Except for the

avionics changes—where the intention is to expand the size of the package later after Congress has been hooked on the plane—the performance changes make sense. What does not make sense is the price trend accompanying these changes. What this trend shows is the ridiculous nature of official B–1 unit cost projections, which are going to rise more in the future. If it is ever built as a production airplane, the B–1 will cost at least $50 to $60 million per plane.

ESTIMATED DEVELOPMENT COSTS

The unrealistic nature of B–1 development costs is even more apparent. Since these costs are nearer term, their magnitude is harder for the Air Force to hide.

Two years ago, in the June 1969, B–1 selected acquisition report—SAR—development costs were estimated at $1.8 billion. They are now estimated at $2.7 billion, an increase of 50 percent. And in the same period, we have lost about half of the originally scheduled development work. The number of B–1 prototypes has shrunk over the past few years from 7 to 3, one of the static test vehicles has been eliminated, and the number of engines has been cut from 40 to 27 in the past year alone. The work to be done has gone down 50 percent and the cost of the program has gone up 50 percent.

The Air Force said:

But don't be alarmed. No production commitment will be required for the B–1 for another four years. All we are asking for now is a three prototype "Fly Before Buy" development program. We are going to build the B–1, test it, and see how much it costs before we decide to buy it.

Mr. President, do not believe it. This argument is a blatant fraud which the Air Force hopes to perpetrate on the Congress.

First of all, the prototypes the Air Force intends to fly will bear little resemblance to the production planes it later hopes to buy.

NO AVIONICS SYSTEM

The heart of the problem here is the avionics system. I mentioned earlier that the Air Force is planning on an initial avionics package of only 3,900 pounds for the first production model B–1's, while retaining the option of expanding the system late into a 10,000-pound package "if the threat warrants." And I suggested that the reason for the Air Force doing this was its desire to keep down the estimated unit production cost of the plane. As the Armed Services Committee noted in its report on this bill, avionics costs today are running well over $1,000 per pound, or roughly twice the cost of gold. By the time the B–1 comes along, they will be running at least $1,500 per pound. By cutting out 6,000 pounds of avionics for short-term planning and estimating purposes the Air Force can "save"—if you want to put it that way—almost $10 million per copy in its estimates of B–1 unit costs.

An even more extreme tactic is being used with respect to the B–1 development program. In order to hold down development costs, the Air Force has decided that there will be no avionics systems at all in the test planes it plans to fly before a B–1 production decision is made.

Let us look more closely at the facts surrounding the avionics portion of the B–1 development program. The $2.7 billion development program contains $175 million for avionics works. What we will get for this money is two complete avionics systems—one of which will be sent to a laboratory for integration work—putting the system together as a whole—and the other of which will be used for environmental tests.

There is no money provided in the B–1 development program for an avionics system which will be flight tested in a prototype airplane before a production decision is made.

There is no money for an avionics flight test itself.

And the ground-based work, too, will be woefully inadequate. There are no funds included for SCAD interface or control—the avionics needed to control the SCAD's which the B–1 will launch to improve its penetration capability. And there is no money to harden the avionics systems to withstand the effects of flying through a nuclear type environment, for example, the effects of gamma and neutron radiation. All this work will come later.

It is being deferred now not through any inability on the part of the Air Force to recognize its necessity or calculate its costs, but in a conscious desire to minimize those costs, until a B–1 production decision has been made.

FOUR MORE PROTOTYPES

But this treatment by the Air Force of avionics development work is only one example of the fraudulent nature of its "fly before buy" B–1 program. I mentioned earlier that in the past few years the number of prototypes planned for the B–1 program has shrunk from seven to three. One would assume, given a three prototype program, that if the B–1 ever goes into production, the fourth airplane built would become the first production model delivered.

Not so, Mr. President. Under the current Air Force schedule, the eighth airplane built would be the first production model delivered. After the three prototype "fly before buy" programs are concluded, the Air Force plans to build four more planes which will be used for essentially R. & D. purposes. But these planes would be funded with production money and built concurrent with production work, and eventually they would enter the active inventory.

Mr. President (Mr. ROTH), this is not "fly before buy." It is the same concurrency of development and production which we have followed in all major weapons system developments for the past 10 years or more. The Air Force has just juggled their schedule a little bit to "save" R. & D. costs by deferring them, while applying a false "fly before buy" label. True B–1 R. & D. costs will likely exceed $4 billion.

WORDS AND ACTION

Mr. President, the Armed Services Committee report contained some welcome language about the need for changes in our weapons procurement policies. I would like to quote from that report:

If the geometric cost increase for weapons systems is not sharply reversed, then even significant increases in the defense budget may not insure the force levels required for our national security. (p. 17)

Weapons programs involving a large degree of concurrency, or overlap between development and production, have resulted in commitments to production while great technological uncertainties remained to be solved. . . . When changes must finally be made in weapon design during the later stages of development, concurrency has maximized the cost of those changes. (p. 17)

In a surprisingly large number of cases, DOD policies over the last several years have emphasized the development of platforms for weapons without sufficient emphasis on the weapons themselves. (p. 18)

I would like to ask the distinguished Senator from New Hampshire some questions about those passages.

Why, if the committee is so concerned about geometric increases in cost of weapons systems, is it committed to the B–1 program, when a reengined B–52 with SCADS could produce almost as much improvement at about 10 percent of the cost?

Mr. McINTYRE. I think the R. & D. Subcommittee and the Tactical Air Committee and the whole Armed Services Committee are becoming increasingly alarmed at the escalating costs of this weapons system. I think we make that very well known, and it is a matter of concern. We see some Pentagon reaction, too.

We can go back to early this year, when the Secretary of Defense indicated that we were now going to try to fly before we buy.

Just recently, Secretary Packard, who I find to be a very able administrator and one who is very helpful in these problems, came before the full committee to discuss with us the possibility of adding some $63 million to this year's budget request. He is now intent upon trying to use a prototype scheme, where the military say, "Here is the broad boundary of a bomber or fighter we would like to have," and give it to a small group of aerospace builders and take away the oversight and continual paper shuffling that seems to be going on, and perhaps we can get around the extreme high costs.

Those are our reactions, and the Pentagon is having the same reaction. That is why we mention it in the report. You ask why are we supporting the B–1?

Mr. PROXMIRE. Why, when there is an alternative which is far cheaper, which seems to provide most of the capability?

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

Mr. McINTYRE. I just want to say that while I was partial to that alternative, as the Senator suggests, which is the B–52 fitted to the C–5 engines—at least, as a hedge or as a dual track approach—the full committee and the subcommittee were not. We just do not get from the Air Force the sort of response we would like to have, saying, "We think this makes sense." They say, "No. This would be overly expensive. We would spend a lot of money looking at the 707 and the standoff missile, and it would be throwing money down the drain."

Mr. PROXMIRE. There is a more enormous cost to the B–1 program.

Mr. McINTYRE. There comes a point

when I cannot take my intuition and jump.

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

Mr. PROXMIRE. I yield.

Mr. CANNON. It is not solely a matter of cost. If we are going to buy the cheapest thing, we can spend less and buy nothing.

Mr. PROXMIRE. I am not saying that. What I am saying is that we can get a tremendous improvement by the route I am suggesting.

Mr. CANNON. I want to point out why we cannot get what the Senator contends by spending money in this route.

It is true that you could get an increased range out of the B–52, and it is questionable whether we need much increased range more than the B–52 has at the present time. Second, you would be able to operate off shorter runways. That is a plus. The Senator from Wisconsin has pointed that out.

These are the things you would not get: First, you would not get a prelaunch survivability. If anything, you would have less survivability, because the start time of those bigger engines would be longer and you have no increased speed. So it would take the B–52 longer to start up and fly out of a zone of attack than it does the present B–52. This would be a minus rather than a plus

Second, you do not get any improvement on the age of the airframe. You cannot shorten the life——

Mr. PROXMIRE. Let us get back to the first point. Would the Senator argue that with these new engines—which could be given a quick-start capability of their own—there would not be an advantage in being able to get off faster?

Mr. CANNON. You could get off in shorter distance, but you could not get off faster.

You get off in a shorter distance and therefore use less runway, but you do not get off faster, and you do not get out of a zone of attack faster, because the airplane does not fly any faster with those engines, particularly at the low altitudes.

As to the age of the airframe, you have the same age of the airframe, and you cannot increase the age of the airframe without beefing it up in some way. We beefed up the early B–52's already once, so their life would be extended, because of problems in flying at low altitude. It was never designed for flying at low altitude. So you have that factor.

Regardless of how long that life is, whether the Senator says it is 15 years from now or I say it is not to exceed 10, the life of the airframe is not going to be increased by putting on the new engines.

As to the cost, the Senator from Wisconsin has already pointed out——

Mr. PROXMIRE. The remaining life of the plane, according to the Air Force, is still about 15 years.

Mr. CANNON. That is why I said whether the Senator from Wisconsin says 15 years——

Mr. PROXMIRE. It gives us a substantial period for——

Mr. CANNON. But that is based on the presumption that they are not flown too heavily in the meantime.

Mr. PROXMIRE. It is on the presumption that we continue at the rate at which they are being flown—taking the Air Force's own figures.

Mr. CANNON. These are two of the biggest factors I see in this argument: One is the radar cross-section, and there is no question that the cross-section of the B–1 is at least one-fiftieth and probably one one-hundredth of the B–52. This is important because in an aircraft environment, we do not fly on the "see and be seen" method that they used to use in World Wars I and II.

Mr. PROXMIRE. Has the Senator seen the Boeing projections of what they can do with the radar cross section?

Mr. CANNON. I have seen a classified report on the projections but I have not seen specifically the projections as such.

Mr. PROXMIRE. They are quite different from the figures the Senator gave.

Mr. CANNON. That may be. I have never seen a contractor yet that did not have more optimistic figures as to what he could do than what the technical analysis turned out to be.

Mr. PROXMIRE. That applies to the B–1. The B–52 is an old established plane so that, it seems to me, the estimate should be more reliable. The contractor for the B–1 is giving us his figures, which the Senator from Nevada is using.

Mr. CANNON. The estimates are that they can reduce the cost of the radar cross section. On the B–1, by reason of size alone, it is such that it is one one-hundredth of the cross section of the B–52.

Mr. PROXMIRE. That is in dispute.

Mr. CANNON. I do not think that is in dispute.

Mr. PROXMIRE. It is in dispute by Boeing.

Mr. CANNON. The dispute is over how much they can reduce——

Mr. PROXMIRE. That is right.

Mr. CANNON. The cross section, not what the present B–52 is.

Mr. PROXMIRE. That is right.

Mr. CANNON. One of the most important things on this is that the penetration speed at low altitude is not increased one whit. That is the key to the whole operation. They can get up and hit it with every fighter that the Soviets have in their inventory today because they can fly that fighter on deck but for example they cannot put it up against our F–111. They cannot do that. It would pull the wings off any fighter existing today at the speed that a F–111 or B–1 could fly on the deck. That is a very important factor because the vulnerability from attack at that airplane speed a low-level penetration will not be increased. That is a very important factor. Thus, it seems to me, the big part of the Senator's argument, that for $6 million more we can put bigger engines on and get the airplane off the runway a little quicker, that I will buy.

Mr. PROXMIRE. The fundamental argument by many is that if we have the SCAD mounted on the renovated B–52's some of the missiles and some of the bombers will get through. We would be in a position to saturate the defenses of the Soviet Union. That is the fundamental argument.

Mr. CANNON. All right. The problem there is different. SCAD has a limited range, as the Senator well knows. If we are using the B–52 as a standoff bomber, we could not attack a substantial amount of Soviet territory. Those figures are well documented. Thus, it creates great difficulty, because we cannot attack the places we want to attack.

Mr. PROXMIRE. If one makes the assumption that the range of SCAD cannot be improved, that it is static, fixed, then one can make a strong argument; but part of the thrust of the report by your committee was to urge the Air Force to work on this. Every indication is that they can. There is a great potential for increasing the range of SCAD.

Mr. CANNON. So then, assuming that it could be increased some, it would still be limited. We know the range of SCAD and what it can be used at now, but it would make it very difficult to use it as a weapon on a standoff bomber rather than use it on something that can penetrate, use it as a decoy or on suppression ground attack activities.

Mr. PROXMIRE. It seems to me that the Air Force is justifying the new bomber by eliminating the kind of work it should do in order to make a new bomber unnecessary. If they did the kind of job they should do on SCAD they would not need the B–1. However, I can understand why they do want it. After all, as the Senator from South Dakota (Mr. McGOVERN) just said, they want to have a supersonic bomber.

Mr. CANNON. When the Senator talks in terms of a supersonic bomber, the B–1 is not proposed to be a supersonic bomber on the deck but to have a high supersonic speed which is, of course, useful. But when the Senator talks about increasing the range of SCAD, I have in the back of my mind a recollection about another standoff weapon episode that we had a few years ago, known as Skybolt, that we were going to extend its range, and after we had spent a great deal of money on it, it all went down the drain.

Mr. PROXMIRE. The Skybolt was a ballistic missile. SCAD is a cruise missile, which is much simpler. And technology has advanced in the few years since Skybolt.

Mr. CANNON. That is right. To extend the range of SCAD, the first immediate thought is that we want to fire it or put it in flight at a higher altitude because then we get a greater range but we get back to the basic problem, if we are going to have something that flies fast and is able to penetrate, it has to be done at a low altitude in order to confuse or to get past the bulk of the defenses that are programed in Russia today.

My whole argument against the Senator's position—although I certainly believe we should do everything we can to improve the effectiveness of the weapons we have today—is that I do not believe we are achieving the thing that is important if we go about the B–52 modifications the Senator is talking about.

One, we are not going to extend the life of the B–52. I do not buy that. If we put a new wing on, all right, but if we put a new wing on, we are designing a whole new airplane, designing a subsonic airplane that is not so good as the B–1.

Thus, we have not increased the subsonic low level speed.

Mr. PROXMIRE. Let me go back to the question of B–52 service life. I would not accept the Senator's statement and I want the record to be clear on this. The Boeing people say that, with minor wing modifications, they probably could extend the life. That is in dispute. The Senator may be right, but his assertion is not an established fact.

Mr. CANNON. I think that the Senator will find that it would not be minor modifications which would be necessary in order to extend the life, but they would be major modifications, plus the fact that we would have some redesign features as a result of the new engines in an attempt to extend the life. But when we do all that, then we still have an aircraft that, by virtue of its size alone, will have a large radar cross section, a much greater radar cross section and, therefore, will be more vulnerable to the enemy than any design that can take into consideration all these features. Second, and most important, we have not increased the speed at low level for penetration.

Mr. PROXMIRE. I thank the Senator from Nevada very much. He has been very helpful.

Now, Mr. President, I should like to ask the distinguished Senator from New Hampshire (Mr. McINTYRE) a couple of more questions.

If the committee is so concerned about concurrency, as I know the committee is, why does it seem to swallow the Air Force suggestion that this is a "fly before you buy" B–1 program?

As I said, they will have no real avionics system in the planes they test before a production decision is made. How can this be accepted as a "fly before you buy" B–1 program?

Mr. McINTYRE. The Senator from Wisconsin realizes that the B–1 has been a program that has been ongoing for a number of years and the modifications that I described in my principal statement, in an attempt to bring the costs down, have made this a program that probably does not entirely fulfill the unique qualifications of what a "fly before you buy" program is. However, I am sure that the Air Force considers that the prototypes to be flown will have proved to be worth while before recommending approval to begin production. Then the procurement is consistent with a "fly before you buy" program. Our own concept is what is going on in the AX, where we have two companies building a plane—the close-support plane fly-off contest to pick one and go ahead with it.

So the reason this does not seem to fit the idea of what a "fly before you buy" program is that it has been an ongoing program for years.

Mr. PROXMIRE. It may be ongoing, but it has changed for the worse. They originally said they wanted seven R. & D. prototypes. Now it is three. But the next four planes that they build will not go directly into the inventory, but will be test planes which will be constructed after the decision has been made to go into production.

Then, how about the avionics system, which in other planes has been so expensive and has often failed to perform adequately? Apparently, they are going to have only 3,900 pounds of avionics, instead of the 10,000-pound package, in the initial production planes. And they are not even going to fly with the 3,900-pound avionic system in their test planes.

Mr. McINTYRE. My feeling about this program is that the Air Force has been very worried about the size of the equipment and the cost per unit. I, too, well understand the Senator's feeling, as I think I said last year. After they had reduced the size of the avionics, it was strange that we did not get a reduction in cost.

Mr. PROXMIRE. In fact, we got an increase. The cost did not go down. It went up.

The only way I can interpret it is that when we get through with the B–1, the cost will be fantastic.

Mr. McINTYRE. Mr. President, in response to the Senator from Wisconsin, the response of the Air Force with respect to the avionics system states:

> The Air Force, in testimony to the Senate and House Armed Services and Appropriations Committees, explained that complete mission avionics would not be installed in the B–1 test aircraft, and that only safety of flight items and off-the-shelf mission and traffic control avionics necessary to test the aircraft and engine performance combination would be used. Our experience has shown that we should not make a premature commitment to an avionics suit, particularly to the defensive subsystem. The mission avionics will have the characteristics of flexibility and growth to respond to a changing and expanding threat. Under the present program, we plan to include the production avionics in the first production aircraft for the maximum amount of flight testing prior to introduction of the B–1 into the SAC inventory.

In addition the program includes an option for flight testing the avionics in one of the three test aircraft.

That is their position.

Mr. PROXMIRE. They are not proposing funds in their program to cover that option.

Mr. McINTYRE. It is my understanding that would not be required; that there would be no necessity for funds for this purpose in fiscal 1972.

Mr. PROXMIRE. But they would be required later. That is the problem. That is why we cannot get an idea of the ultimate cost.

Mr. President, I think the Senator from New Hampshire has been very helpful to me and to the Senate. He is alert with respect to the cost of the program and insists that we try to hold it down and make a judgment on what route promises the most for the least cost. But the Air Force is not telling us what the costs will be because they are not putting the funds in the budget that would be required to cover it.

Mr. McINTYRE. Mr. President, the Senator from New Hampshire feels that there has been some areas in which they have tried to protect this very valuable aircraft which they want. However, on the whole, I have had to yield to the force of the argument that we will probably need the new B–1. I suggest to the Senator from Wisconsin that I am awfully concerned. I can foresee a potential $40 million cost per copy. I do not know what the President in 1977 will say if he has to buy 241 of these. It will be a tremendous price.

Mr. PROXMIRE. I think that it will go to $60 million per copy. With tankers and missile systems, the investment cost of the whole new fleet could be $20 billion.

Mr. McINTYRE. Mr. President, if the Senator would yield at that point, I will state for the record so that we have a running account year by year, the current estimated costs for the R. & D. for the B–1. The current estimated cost for R. & D. is $2,628,300,000. In the procurement area, it is $8,495,800,000. The total estimated cost for buying 241 B–1 aircraft is $11,124,100,000.

I share the same fears as the Senator from Wisconsin, that this is just the beginning. However, as the Senator from Nevada has said, when it gets to the security of this country and we need this triad system, then I have to yield and go along and say, "Let us do it, but let us keep the price down. Let us continue in the research and development area."

I suggest that the time is coming when the Senator from Wisconsin will have a full opportunity to say, "We will buy the 241 planes." That is when the Senator from Wisconsin should be ready with his facts.

Mr. PROXMIRE. As a matter of fact, the research and development cost has gone up 50 percent in the last 2 years, and the actual research and development work has gone down 50 percent.

Does the Senator challenge those figures? We get half of the prototypes and less than half of the avionics and pay twice as much.

Mr. McINTYRE. This is not peculiar to the B–1 program.

Mr. PROXMIRE. It is one of the most conspicuous examples of unrealistic cost estimates that I have seen.

Mr. McINTYRE. Mr. President, as I say, the committee is concerned about the cost. We try to do our best to watch it and to try to give the up-to-date figures.

The committee as a whole is advocating this to the entire Senate, that we continue, that we appropriate the funds and say that this should be done with the SCAD. We are concerned about that time period from 1976 to 1980, where we might suddenly find ourselves, from a security standpoint, without the weapons as the B–52's approach the point of beginning to be phased out.

When the Senator from Wisconsin talks about the solutions and alternatives, the B–52, the 707, and trying to modify them, and the standoff missile, all of these are highly speculative. We do not know if they will work. That is not a pat answer.

Mr. PROXMIRE. The B–1 itself is highly speculative, of course.

The one thing that persuades me is that our primary deterrent is our sea-based force. This force is more reliable and certainly furnishes more mobility and invisibility. It has great advantages. Yet, it will cost far less than this air deterrent which is a subsidiary and marginal program.

I am not suggesting abandoning the air factor. We should keep it, but we should do it in the most efficient and ef-

fective way we can. We should have a better bomber force than the Soviet Union. The Soviet Union, as I have stated, is far behind us in bomber capability. Their new prototype, the Backfire, is way behind our FB–111 which is now in inventory.

With respect to long-range bombers, they have about one-quarter as many as we have, and they are at least 5 years older than our early B–52's.

I am suggesting that we do something that is greatly superior to what they do. We should recognize that it is a secondary backup for our principal deterrent, which is our sea-based operation.

Mr. McINTYRE. Mr. President, I hope the Senator from Wisconsin is accurate when he contrasts the expense of our sea deterrent. In this year's budget, we are going for about $100 million in the program ULMS which is a forward looking program.

Mr. PROXMIRE. That is a fine program. I enthusiastically support it. However, I am talking specifically about the operating costs of bombers and our sea-based deterrent.

Mr. McINTYRE. Today the Polaris would cost in the neighborhood of several hundred million.

Overall, I think that is what is scaring the committee, the cost of these things that are so vital to our security. However, despite the agonizing that the Senate has done on the B–1 and that we on the committee have done, we have come in and said that we should go ahead.

Mr. PROXMIRE. Mr. President, I thank the Senator from New Hampshire very much.

Mr. President, I yield the floor.

Mr. BENTSEN. Mr. President, I have listened with considerable interest to this very stimulating debate. It seems to me that it adds up to the fact that in accepting this amendment we would be asking our fliers to fly in an aircraft that is 20 years old in its technology.

All of us tend to relate these issues to our personal experience. I know of the distinguished war record of the Senator from South Dakota. I flew my 50 missions over there as a pilot and as a squadron commander and had some experience in that regard.

Mr. President, I have continued to pay attention to flying and bombers. Relating back to my experience, and I am sure they should be the experiences of the Senator from South Dakota, if in World War II we had arrived in Europe and had been told we were to man some Flying Jennys and aircraft 20 years old in technology and take that aircraft against ME–109's, and the best the Germans had to offer at that time, I think the Senator would have joined me in telling the Air Force what they could have done with their bomber. I do not believe that we, as flyers, would have bought the argument that some Senators back in Washington decided we were to fly outmoded aircraft against the best in technology the enemy had to offer.

In industry today, when it comes to transportation—trucks and cars—we know there is a time of obsolescence. There is a time of obsolescence when it costs more to keep that truck or that car in operation than it would cost us to buy a new vehicle. I think that time of obsolescence is coming about with the B–52 and that is why I believe it is necessary for us to have the B–1.

Mr. President, I was not an early convert to the B–1, because I kept thinking that the missile was the answer, and that perhaps the day of the aircraft and the bomber was past. But after listening to the testimony in the Committee on Armed Services I have made a 180-degree turn. I think the key argument and the telling argument for me was the fact that if we have a confrontation with an enemy country, we can provide a show of force with the B–1, with the manned bomber, just as we have done with the 6th Fleet on many occasions and just as we did in the Cuban missile crisis, when we alerted the Strategic Air Command, and had our bombers in flight. This is the type thing that can be done with the B–1. This is the show of force that can be made; and this cannot be done with the missile.

The second major point for me, that made me a convert to the B–1, is the fact that we have had many false alerts in this country, when we have thought this country was facing an imminent attack, when our radar screens gave us false alerts.

For example, we remember the wild geese in the Arctic that gave us a false alert in Washington. Mr. President, can you imagine the position of the President of the United States as he tries to filter this information to decide if we should retaliate, and if the missiles are really on the way? How does he protect his country? He has an option left, if there is a manned bomber, a B–1, he can launch. If it were a false alert, as we all hope it would be, he could call back the bomber, but once he pushes the button to launch the missile, the die is cast, and we are committed to nuclear war. That is the second major point that converted me to the B–1.

The Committee on Armed Services debated this matter at length. The Committee on Armed Services is not a monolithic committee; it is a committee of diverse views; strong willed men who discussed the matter from one end of the spectrum to the other, and it has the support of that committee.

But let us look at the potential enemy we might have. Let us look at the Russians. They have clearly decided that this is one of the options they want to keep in their arsenal. They have developed a prototype. They have developed the Backfire bomber. This is about two-thirds the size of the B–1; it is a swept-wing, and it is the latest in technology.

When we talk about the various forms of transportation in this country today, certainly the one in which technology changes the fastest and in which there are the greatest advances in the state of the art is the aircraft. To tell our men they should be saddled with the responsibility, the job of flying a bomber that is over 20 years old in its technology is a travesty and it is something we should not call on our men to try to do.

Let me now compare the B–52—including the planned modifications outlined above—with the B–1. I find the B–1 to be much better. For example, the payload-to-gross-weight ratio of the B–1 would be twice as large as that for the latest B–52. The B–1, with better inherent stability, better terrain avoidance equipment, better control systems for low altitude flight, and a high tolerance for low altitude turbulence, could operate safely at significantly lower altitudes than the B–52. The normal speed of the B–1 at low altitude would be significantly greater than the B–52, an important factor in penetrating interceptor defenses. The B–1 would have a far better navigational precision and, therefore, much better accuracy with SRAM, than the B–52.

Perhaps more importantly, the B–1 would have a much better penetration capability than the B–52—with planned modifications against a possible new Soviet "look-down, shoot-down" air defense system involving the use of airborne warning and control aircraft and very high performance interceptors. The B–1, by virtue of its greater speed, much smaller radar cross section, and much lower infrared emission, would have a significantly greater probability of penetrating at least the leading edge of Soviet air defenses undetected. The effective radar range of a Soviet AWACS would be considerably shorter against a B–1 than against a B–52.

Perhaps of greater importance, the reduced radar cross section permits a sizable reduction—when compared to that of the B–52—in the radiated jamming power required to screen the B–1 from Soviet radars.

Let us talk about the low profile on the radar screen of the enemy. When you try to modify the B–52 and hang all the needed hardware on the outside of it, if it were to fly across Russia it would be like trying to fly a barn across Russia with the barn doors wide open. That is the way it would look to the enemy.

The great advantage is the low profile and the fact that the B–1 does not show up to that degree on the radar of the enemy. The great advantage is all of the counterelectronic gear that can be placed in the B–1 and not in the B–52.

Also, the B–1 could move through the extended defenses expected to be deployed by the Soviets during the 1980's considerably faster than a B–52, at high or low altitude. This latter feature would be particularly important if the Soviets deploy a large force of improved manned interceptors such as the Foxbat.

In fact, if the Soviet air defenses continue to be improved, our bombers may have to be equipped with air-to-air missiles for self defense. The B–1, because of its greater volume and weight carrying capacity, would lend itself more readily than the B–52 to the provision of such a self-defense capability. If we are to make these large new investments in avionics and other equipment, it would seem far more prudent to install them in a new aircraft which would have a much longer and more certain life expectancy.

It is also useful to compare the capabilities of the B–1 versus the B–52 with regard to prelaunch survivability. Again, I am using the B–52 with planned modifications in the comparison. From a physical point of view the B–1 excels in having a shorter take-off distance, a faster ac-

celeration to escape speed, a higher escape speed, and a greater degree of hardness to nuclear effects. As a result, the B–1 can be based safely over an area about twice as large and on more than twice as many existing runways as the B–52. These conclusions relate to the threat of a single SLBM targeted against each base. But as the number of Soviet missile launching submarines increase, there is the potential threat of a large number of SLBM warheads being targeted in a pattern around an air base. For typical inland bases the number of warheads needed in such a pattern to insure destruction of modified B–52's is substantial. Even so, the number of warheads that the Soviets would need to insure destruction of B–1's is at least four times as great.

In conclusion, I trust it is clear that the B–52, with planned modifications, will serve as well through the 1970's—for a total service life of almost 20 years. For the 20 years starting in the early 1980's we need a new aircraft with improved characteristics. The B–1, as currently designed, shows great promise of fulfilling that need. It shows a good margin of improvement over the B–52—with all the useful modifications it can accommodate. Furthermore, the B–1 has the inherent flexibility to meet a wide variety of potential threats.

Finally, I remind you that the Department of Defense is proposing only development of three flying prototypes. Only after these aircraft have been flying for a year will the decision to produce be made. That gives us ample opportunity to insure that the claims of performance and cost, and our concerns for the threat, are well-founded. We are being asked to proceed in an orderly way to meet a real need. Let us not be diverted into a wait now—and hurry, expensively, later plan. We need modified B–52's for the 1970's and B–1's for the 1980's and 1990's.

The preponderance of the evidence is quite clear and I see no logical support other than support for the B–1.

Mr. President, I ask unanimous consent to have printed in the RECORD information developed by the Air Force concerning the B–1.

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

AIR FORCE COMMENTS IN RESPONSE TO SENATOR PROXMIRE'S PRESS RELEASE OF SEPTEMBER 18, 1971

COMMENT. The Air Force is resorting to a deceptive public relations gimmick when it suggests that its B–1 bomber development program is a "Fly Before You Buy" project which will cost only $2.7 billion to complete. In reality, B–1 development will cost more than $4 billion.

RESPONSE. The Air Force is unable to identify the $4 billion cost estimate mentioned for B–1 development. Our current estimate is $2628.3 million.

COMMENT. The Air Force intends to buy the plane long before development work and flight tests have been finished.

RESPONSE. Under present programming, and if a decision is made to buy the B–1, flight tests and development work will be required through 1978. Due to the time involved to complete this effort it would be prohibitively expensive (about $1.6 billion additional program cost) to delay the production decision point until completion of *all* development testing.

Secretary Seamans announced on February 11, 1971 that a flight test emphasizing *airframe* and *engine* performance will precede the B–1 production decision point. This basic test program will require a full year of ground and flight testing. "Full systems performance demonstrations of a completely integrated aircraft will be deferred until after the production decision." A reduction of total flight test hours which is possible through combined contractor and government flight testing will result in a significant cost avoidance, yet allow the Air Force to confidently make a timely and logical decision on production.

COMMENT. What the Air Force neglects to mention is that there will be no avionics systems or weapons on these planes when they are tested, and that after the tests are completed, it will be necessary to build four more planes for use in development tests.

RESPONSE. The Air Force, in testimony to the Senate and House Armed Services and Appropriations Committees, explained that complete mission avionics would not be installed in the B–1 test aircraft, and that only safety of flight items and off-the-shelf mission and traffic control avionics necessary to test the aircraft and engine performance combination would be used. Our experience has shown that we should not make a premature commitment to an avionics suit, particularly to the defensive subsystem. The mission avionics will have the characteristics of flexibility and growth to respond to a changing and expanding threat. Under the present program, we plan to include the production avionics in the first production aircraft for the maximum amount of flight testing prior to introduction of the B–1 into the SAC inventory. In addition, the program includes an option for flight testing the avionics in one of the three test aircraft.

COMMENT. The Air Force is resorting to its present tactics in an *attempt to conceal* the mounting cost problems of the B–1 development program. In the past few years, the estimated cost of B–1 development has gone up 50 percent, while the work to be performed in the official B–1 R&D program has gone *down* 50 percent.

Two years ago the cost of developing the B–1 was officially estimated at $1.8 billion in the June, 1969 B–1 Selected Acquisition Report (SAR). It is now estimated by the Air Force at $2.7 billion.

RESPONSE. The Air Force has kept the Congress and the public fully informed on the B–1 development program including the program revision from five to three test aircraft.

The program estimate in the June 1969 SAR of $1.8 billion—expressed in 1968 dollars—was a preliminary government estimate developed prior to the issuance of the Request For Proposal to industry for the development contract. As the source selection was completed and contract values became available, the estimates were revised.

These subsequent revisions include prior year funding for AMSA, other costs attributable to SRAM interface, testing and support costs and to account for the effect of inflation. A cost track of these changes is reflected below:

Planning estimate based upon 1968 dollars	$1,800.0
Adjustment due to rounding	28.0
Prior funding for AMSA	143.8
Conversion to then year dollars	411.5
Estimating changes: Avionics changes, initial spares estimating method change, planned design changes	171.9
Other costs: SRAM/B–1 interface, testing and support costs	129.8
June 30, 1971, SAR development estimate	2,685.0
June 30, 1971 SAR development estimate	2,628.3

COMMENT. Meanwhile, the number of research and development prototypes to be built has shrunk from seven to three, a static test vehicle has been dropped, and the number of engines have been sharply cut back.

RESPONSE. The original B–1 contract called for the fabrication of five flight test aircraft, plus one static and one fatigue ground test airframes. Due to new, closer Air Force/contractor management arrangements and a decision to provide a full year of combined Air Force contractor flight testing prior to a production decision, the number of flight test aircraft was reduced from five to three. The number of test engines needed was reduced accordingly. Adopting recently proven practices of the aircraft industry for the structural testing of commercial airliners, it was also possible to eliminate the static test airframe by conducting extensive static test of major structural subassemblies. This change will provide test results earlier and will thus contribute to structural integrity and avoid costly later modification.

COMMENT. The avionics work involved has been virtually eliminated. The present $2.7 billion estimate contains less than $200 million for avionics. And what we will get for this money is two complete avionics systems—both of which will be used for ground-based testing only.

RESPONSE. The Air Force began extensive work on and has continually refined and optimized an avionics development plan from the time the airframe development was approved. This development plan and the associated system have been continually reviewed, and we believe that it is a most realistic and orderly approach to B–1 avionics development. This avionics system will provide the required penetration and weapon delivery capability against the threat projected during the early years of B–1 usage.

The current development program includes $175M for avionics development. This will provide two sets of avionics systems (and necessary spares) and we intend to utilize these two systems in ground test facilities effectively. An option to procure a third avionics subsystem has been included in Air Force planning to support flight testing as required.

COMMENT. There is no money provided in the B–1 development program for an avionics system which will be flight tested in a prototype airplane before a B–1 production decision is made. Even the ground-based avionics work will be woefully inadequate.

RESPONSE. The majority of equipments which make up the B–1 avionics system are "off-the-shelf"—i.e., equipment in being from some other program (F–111, C–5, SR–71, etc.). Because of this, extensive development is not anticipated—the predominant task is the integration or melding of all the equipments into a single operating entity. In complex avionics development efforts, experience has shown that ground test facilities enabling the close control of the test environment, is a very efficient first step and a necessary prerequisite to flight test.

The Air Force believes that sufficient data can be obtained from a ground "hot-mock-up" and environmental test facility to provide adequate information on which to base an avionics production decision and benefit subsequent flight testing. If a production decision is positive, verification and operational suitability type testing can then be subsequently accomplished as required. If the decision is negative, these flight test funds can be saved.

COMMENT. There are no funds included for the equipment which will be needed to control the SCAD missiles which the B–1 would launch in penetrating enemy air defenses.

RESPONSE. The B–1 is being specifically designed to carry weapons available from current inventory or under development for the current bomber force. It is fully intended that the B–1 will inherit advanced weapons

such as the SCAD from the current bomber force. When SCAD is fully developed and becomes operational, software for controlling the SCAD can easily be included within the B–1 computer capability. In the prototype/test program, no funds are needed to include SCAD control since the B–1 is basically designed to include SCAD in its arsenal of weapons.

COMMENT. And there is no money for work on hardening the avionics to withstand the effects of gamma and neutron radiation in a nuclear environment.

RESPONSE. The B–1 airframe will be the first aircraft ever designed to include nuclear survivability criteria. These criteria are part of the airframe specifications, and the same criteria will be included in the design specifications, for the avionics equipment to be developed. Also, the off-the-shelf avionics equipment will be analyzed and should the production decision follow, engineered to meet these same criteria.

COMMENT. All this would come later, after a decision is made to buy a largely untested airplane. In fact, a lot of R&D work would come after a production decision is made, including 800 of the 900 hours of airframe flight tests presently planned.

RESPONSE. The Air Force believes that the decision to buy the B–1 can logically be based upon the adequate amount of testing provided for under the current development plan. It is true that much of the testing would be done after the production decision. The rationale for this approach is summarized in the next issue addressed below.

COMMENT. One would assume, with a three prototype program, that if the B–1 ever went into production, the fourth airplane built would become the first production model delivered.

Actually, under the current Air Force schedule, the eighth airplane built would be the first production model delivered to the active inventory.

After its three prototype 'Fly Before You Buy' program is concluded, the Air Force plans to build four more planes which would be used extensively for R&D purposes (and a limited amount of flight training). It rationalizes funding these planes with production funds on grounds that they would eventually be reconfigured and enter the active B–1 inventory.

Thus, the Air Force is 'saving' on R&D costs by deferring $1.5–$2.0 billion of R&D work. And it is throwing in a "Fly Before You Buy" label as an added sweetener for the Congress.

RESPONSE. One primary development objective is to provide sufficient information upon which to base a logical production decision. Another is to minimize the development funds expended at that decision point in the event the decision is not to produce.

In order to meet these objectives, many facets of former development approaches not needed to support a production decision are deferred either in total or in part, e.g.—ancillary equipment design, hard tooling commitments, verification testing and some flight testing. We believe that the three prototype "fly-before-buy" program, which provides one full year of engines and airframe flight testing prior to production decision, adequately accomplishes the above objectives. However; those essential efforts which have been deferred must ultimately be accomplished, after the decision to produce, to achieve optimum production and operational effectivity.

The deferred flight testing would be accomplished in air vehicles 4, 5, 6 and 7, and it is planned that those aircraft would be production funded. This seems to be a very cost-effective approach since we intend to place those four aircraft in the operational inventory upon completion of the necessary follow-on test effort.

The allegation that, "the Air Force is saving on R&D costs by deferring $1.5–$2.0 billion of R&D work" is not founded in fact. The current Air Force development cost of $2.6 billion includes the additional development funds which would be required to complete the development effort if the decision is made to produce. At the time of a production decision, considerably less than the $2.6 billion will have been expended.

The criticism on this issue infers that the Air Force is trying to mislead the Congress. That is not the case. The B–1 program has been openly explained in detailed briefings and in documented reports to the Congress. The Air Force and OSD believe that this particular approach to weapon system acquisition will provide the best possible information for a production decision at minimum cost and on a timely basis.

COMMENT. This funding of R&D work in the production budget is in direct conflict with the expressed intent of Congress. When the Navy attempted to do the same thing in recent years with the F–14 and S–3A programs, it was told to fund all prototypes used for development work in the R&D budget, even if they would be added later to the inventory.

RESPONSE. Unlike the F–14 and S–3A programs, which are concurrent programs having production options, the B–1 approved program is for development only and has been structured to support a timely and logical production decision. The additional four aircraft to complete flight testing will not be required unless a production decision is made. The Air Force believes this philosophy is not in conflict with the expressed intent of Congress.

COMMENT. And this testing of planes without avionics or weapons systems is the same emphasis on "the development of platforms for weapons themselves" which the Senate Armed Services Committee criticized in its recent procurement bill report. It is the old "Buy Before You Fly" policy, as usual.

RESPONSE. Apart from its nuclear gravity bombs, the primary weapon contemplated for the B–1 is the SRAM, which has been fully flight tested and is to be produced for the B–52 and the FB–111. The B–1/SRAM interface specifications and integration are presently being defined, and the SRAM will be incorporated in the B–1 if a production go-ahead is approved. The B–1 is being designed so that, as new weapons are developed, they can be easily accommodated by the inherent growth capability of the total weapon platform. As for actual B–1/SRAM flight testing, the Air Force believes such testing is not required prior to production. The SRAM has been fully flight tested. Since the SRAM has self-contained guidance there is no requirement to flight test the B–1/SRAM in combination prior to a B–1 production decision.

COMMENT. The Congress should see through this latest bit of Air Force chicanery, recognize the incredible costs just to develop the B–1, and end the program now.

RESPONSE. The Air Force has always provided Congress with its best estimate of the total B–1 program cost in the Selected Acquisition Report (SAR) which is submitted quarterly to Congress. We have also periodically provided briefings on the content and objectives of the program to individual members of the Congress and have made no attempt to conceal any aspect of the program. In fact, the OSD and the Air Force have fully informed the Congressional committees and, in response to inquiries, fully explained all aspects of this innovative approach to acquisition of a major weapon system.

We believe that this development approach will provide the information necessary to make an objective B–1 production decision. It will do so on a schedule which should permit that production decision and accompanying operational deployment on a timely basis in response to anticipated threat development. It will provide us these options and, at the same time, minimize the development costs expended at the first point of major acquisition cost commitment—production decision.

COMMENT. Re-engined B–52's with SCAD missiles aboard would give us all the improvement in our bomber capability needed until 1985. And we would be able to finance this alternative for less than the cost of the first three B–1 prototypes.

RESPONSE. Air Force witnesses, in testimony before Congress on the FY 72 Authorization Bill, have responded to statements similar to the one above, which resulted from an unsolicited Boeing suggestion. There are limitations to what can and should be done to an aircraft built with the technology of the 1950's, and the Air Force carefully selects those modifications most urgently needed to maintain the B–52's combat capability in the face of a growing Soviet threat. Toward this end, we have concentrated on two major areas for improvement: (1) pre-launch survivability and (2) capability to penetrate defenses.

With respect to the first objective, re-engining the B–52 would not significantly enhance pre-launch survivability. The B–52 nuclear effects hardness and maximum allowable escape speed would be unchanged. A lower technical risk—and considerably less expensive—approach to improving the B–52's pre-launch survival is to provide the present engines with a quick starting capability which, in conjunction with our present basing plans, is expected to effectively counter possible depressed trajectory SLBM attacks.

Our second objective is an improved capability to penetrate. The ability to fly greater distances at low altitude contributes to penetration survivability. Re-engining the B–52 would increase low altitude range and be desirable if it could be done in a reasonable time, at low technical risk, and was not too expensive. However, re-engining would not alter those performance characteristics which collectively contribute most to penetration survivability: penetration speed would not be increased, radar cross section would not be decreased (if anything, it would increase), the airplane could not be flown any lower, and the infrared (IR) signature would not be significantly reduced. To date, the Air Force is supporting those programs which contribute more than the re-engining proposal to improving B–52 penetration capabilities, i.e., the Short Range Attack Missile (SRAM), the Subsonic Cruise Armed Decoy (SCAD), Electro-optical Viewing System (EVS), and continuing improvements in Electronic Countermeasures (ECM). Boeing's proposal, however, is being studied.

Boeing's first preliminary estimate (brochure) for their re-engining proposal was $6 to 10 million for the prototyping and $1.25 billion investment for the entire B–52G/H fleet. This estimate has been subsequently revised (brochure) to about $40 million for the prototyping and approximately $1.7 billion for re-engining the B–52 G/H fleet. At present, these figures cannot be validated. The Air Force has undertaken a study of the concept to gain visibility on the costs and problems which are associated with re-engining and to better understand re-engining as a bomber force improvement option.

Mr. BENTSEN. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I call to the attention of our valued and assistant majority leader that I am going to ask unanimous consent for the presence of certain staff members of the Committee on Armed Services during the debate on this bill. I wish to point out that I am not asking that all of these gentlemen be here at the same time; they will not all

be here at one time unless it is by chance. These are the men who take care of the general work of the committee and this bill covers the waterfront, more or less, in all kinds of weaponry. Other matters may come up besides weapons. I am asking for staff members who helped the subcommittee chairmen, particularly, and they would be available for anyone else who might want them, pro or con, and also the vice counsel and director.

We are permitted four committee staff members under the rules. I am going to ask for a total of 10, but that would include the four. They will not be here unless they are needed.

Mr. President, I ask unanimous consent that the following regular members of our committee staff be permitted to be present on the floor of the Senate when in the discharge of official duties and not to be here all at the same time unless it is merely by chance:

T. Edward Braswell, Jr., chief counsel and staff director, and the following members of the staff: James Woolsey, John Goldsmith, LaBre Garcia, Edward Kenney, Hyman Fein, Don Lynch, Ben Gilleas, Charles Cromwell, and Charles Conneely.

Mr. BYRD of West Virginia. Mr. President, I thank the distinguished Senator, the manager of the bill, for his cooperation, consideration, and understanding; and I have no objection.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. STENNIS. Mr. President, further on the bill—and I shall not speak at length at all—I am supporting the committee's recommendation. I am a party to that recommendation in the committee's consideration, and I urge the Senate to approve the committee's recommendation that $370.3 million be authorized for research and development on the planned, new strategic bomber, B–1.

Last year, Senators will recall that the Senate, on recommendation of our committee, cut the recommended B–1 budget in half, from $100 million to $50 million. In the conference process, a compromise was reached and the outlay was finally reduced to $75 million. This year, I believe the full request should be authorized, and our committee has so recommended.

May I stress that this item, among others, was very carefully reviewed by our Research and Development Subcommittee, headed by the distinguished Senator from New Hampshire, Senator McIntyre. It was then approved as a part of the R. & D. authorization by the full Armed Services Committee. I urge the Senate to follow suit.

I need not remind the Senate that our manned bomber force is one part of a three-part strategic force. It is one part of a triad for strategic defense, the others being the land-based ICBM force and the sea-based Polaris-Poseidon missile system.

Of all of the vast military programs of our services, here is one where we must absolutely be the best. We must be on the beam. We must have the first, second, and third chance. That is what triad is. In other words, this is where the real point of all the arguments centers. Unless our strategic forces function, this country will be laid bare to the will of any adversary who has the capacity to attack us in the nuclear field.

In this bill, as in earlier military procurement authorizations, modernization of other parts of the triad is going forward. Polaris submarines are being converted to the more effective, longer range Poseidon missile with its improved warheads. Similar multitarget warheads are being provided for the Minuteman ICBM forces.

The manned bomber force, however, is not being materially modernized, and the B–52's, which are the keystone of that force, are aging rapidly in comparison to other modern weapon systems. I believe, Mr. President, that the United States must be in a position to modernize this force when and if it desires to do so.

Senators know, I am sure, of the continuing buildup of strategic weapons inside of the Soviet Union. I know many Senators hope that an agreement can be reached in the SALT talks which will bring an end to strategic weapons escalation by all parties. No such agreement has yet been reached, however.

I remind the Senate that the $370.3 million recommended for research and development is not a commitment to production of this new aircraft. If the development program moves ahead on schedule, a yes or no decision on production will be required about April 1975. That decision will probably come when the Senate considers the military procurement bill in that year.

April 1975. So the research is rather expensive. It will always be expensive in this field, Mr. President. There is no use to hope or wait for the day when it will not be expensive.

So we have plenty of time to have this exhaustive research, and then we will have plenty of time to make the decision whether we will move forward into procurement. As I have said, this is one department, in all our military preparedness, where we cannot be and we must not be deficient. There will be chances to overcome deficiencies in other departments, but not in this one. It is all or nothing at the first.

So I urge the Senate not to take action now which would preclude a decision for production in 4 years if, at that time, it appears that the proposed forces should be modernized with a supersonic cruise aircraft capable of launching an attack missile.

It is suggested, in all good faith, that we ought to wait to see what the SALT talks can do. Well, we are all hopeful about the SALT talks. I am not skeptical about them, but I know the amount of money, relatively speaking, that this program will cost during the period of another year, to find out what chances there are for hope and achievement coming out of the SALT talks, will be a mere pittance in value compared to what the time element could prove to be if things should go the wrong way at the SALT talks and thereafter.

So this is one program in which we can have a lot of time in the development program, and a lot of time to make a decision on procurement.

In the last year, the management of the B–1 program by the Air Force has been under close scrutiny from our committee among others. The committee will continue to insist upon improved management procedures so as to hold down anticipated program costs.

I hope the Senate will permit the continued, orderly development of this proposed new manned bomber until, through agreement or otherwise, it becomes quite apparent that such a weapon will not be needed. I hope the Senate will approve the committee's full recommendation.

Mr. President, I am glad to yield the floor to the Senator from South Carolina (Mr. Thurmond).

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise in opposition to the McGovern amendment.

Mr. President, if America is to survive, it must remain strong—strong militarily, strong economically, strong spiritually. The vote today on the B–1 may be one of the most crucial votes that will determine the future of our Nation. We cannot depend upon planes alone. We cannot depend upon missiles alone. We must have both. We must have intercontinental ballistic missiles, and we must have submarine-launched missiles, and we must have modern planes that can travel several times the speed of sound. These three forces—planes, ICBM's, and subs—make up the triad. Together they will deter a nuclear attack on the United States because no attack could destroy all three simultaneously. Thus, any attacker knows we can destroy him with a devastating counterblow.

We must remember that the Soviets are developing all of these weapons. The Soviets have the fastest fighter in the world, the Foxbat. We are lagging behind in this field. The Soviets are going ahead building modern bombers. We are lagging in this field. The Soviets have twice as many submarines as we have. We are lagging in this field.

Approval of this amendment would seriously weaken the Nation's ability to turn aside a nuclear threat or respond to a nuclear attack. We must replace our aging B–52's bomber force which was built in the early 1950's.

Another key point about manned bombers is that they can respond to a nuclear threat and be recalled if necessary. Missiles cannot be recalled.

Mr. President, I shall not take more time on this matter, but simply wish to say that this is a critical issue. It is essential that we go forward without delay in order to maintain the security of our Nation. I hope the Senate will refuse the McGovern amendment.

Mr. STENNIS. Mr. President, a question.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from South Dakota.

The amendment was rejected.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was voted down.

Mr. THURMOND. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MESSAGE FROM THE HOUSE— ENROLLED BILLS SIGNED

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills:

S. 415. An act for the relief of Mr. and Mrs. Arvel Glinz;

S. 504. An act for the relief of John Borbridge, Jr.;

H.R. 6531. An act to amend the Military Selective Service Act of 1967; to increase military pay; to authorize military active duty strengths for fiscal year 1972; and for other purposes; and

H.R. 7048. An act to amend the Communications Act of 1934, as amended, to establish a Federal-State Joint Board to recommend uniform procedures for determining what part of the property and expenses of communication common carriers shall be considered as used in interstate or foreign communication toll service, and what part of such property and expenses shall be considered as used in intrastate and exchange service; and for other purposes.

The President pro tempore subsequently signed the enrolled bills.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. ROTH). The Chair, on behalf of the Vice President, under the provisions of Public Law 81–754, appoints the Senator from Rhode Island (Mr. PELL) to the National Historical Publications Commission.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 10090) making appropriations for public works for water and power development, including the Corps of Engineers—Civil, the Bureau of Reclamation, the Bonneville Power Administration and other power agencies of the Department of the Interior, the Appalachian Regional Commission, the Federal Power Commission, the Tennessee Valley Authority, the Atomic Energy Commission, and related independent agencies and commissions for the fiscal year ending June 30, 1972, and for other purposes."; and that the House receded from its disagreement to the amendment of the Senate numbered 3 to the bill and concurred therein.

The message also announced that the House insisted upon its amendments to the concurrent resolution (S. Con. Res. 6) to express the sense of Congress relative to certain activities of Public Health Service hospitals and outpatient clinics, disagreed to by the Senate; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. STAGGERS, Mr. ROGERS, Mr. SATTERFIELD, Mr. SPRINGER, and Mr. NELSEN were appointed managers on the part of the House at the conference.

PUBLIC WORKS-AEC APPROPRIATIONS, 1972—CONFERENCE REPORT

Mr. STENNIS. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 10090) making appropriations for public works for water and power development, including the Corps of Engineers—Civil, the Bureau of Reclamation, the Bonneville Power Administration, and other power agencies of the Department of the Interior, the Appalachian Regional Commission, the Federal Power Commission, the Tennessee Valley Authority, the Atomic Energy Commission, and related independent agencies and commissions for the fiscal year ending June 30, 1972, and for other purposes. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER (Mr. ROTH). Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD of September 14, 1971, at pp. 31828–31829.

Mr. STENNIS. Mr. President, I regret the Senate conferees were unable to sustain all of the programs we proposed, but I believe that all in all we came out very well.

The House committee placed in the bill 18 new planning starts, and 13 new construction starts. The Senate provided 15 new planning starts and 11 new construction starts. In conference we ironed out the differences so that it is my belief the Senate came out of the encounter as well as did the House.

Mr. President, I would like to take a moment to commend Representative JOE L. EVINS, chairman of the conference committee and chairman of the Subcommittee on Public Works Appropriations of the House of Representatives for the efficient manner in which he conducted the work of the conference committee. Also, I commend the members of the conference committee for the very careful and fair consideration given to all matters in disagreement. I have only the highest praise for all concerned.

The conference bill provides $4,675,125,000 in new obligational authority, which is $41,797,000 below the amount approved by the Senate; $98,952,000 over the House; $59,043,000 above the budget; and $210,140,000 above the appropriation for fiscal year 1971.

Mr. President, there is a growing awareness of the need to reverse the trend of migration to the already overcrowded urban areas. The wise and orderly development of our water resources can and should be one of our major efforts to provide the opportunities for employment and the amenities of good living which will encourage the dispersement of a portion of our people and business into the less developed areas of the country. This is recognized as a national objective, and water resource development is a major consideration in making these areas more attractive to both business and the labor market.

Mr. President, I ask unanimous consent to have printed in the RECORD a summary table explaining the action of the conferees on the various items in the bill.

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

Item	New budget (obligational) authority, fiscal year 1971 (enacted to date) (excludes anticipated pay supplemental, 1971)	Budget estimates of new (obligational) authority, fiscal year 1972	New budget (obligational) authority in House bill	New budget (obligational) authority in Senate bill	New budget (obligational) authority in conference allowance	Conference allowance compared with— Budget estimates fiscal year 1972	House allowance	Senate allowance
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
TITLE I—ATOMIC ENERGY COMMISSION								
Operating expenses	$1,929,160,000	$1,966,751,000	$1,926,000,000	$1,963,720,000	$1,950,130,000	−$16,621,000	+$24,130,000	−$13,590,000
Plant and capital equipment	[1] 379,100,000	371,451,000	344,000,000	345,000,000	344,250,000	−27,201,000	+250,000	−750,000
Total, title I, new budget (obligational) authority, Atomic Energy Commission	2,308,260,000	2,338,202,000	2,270,000,000	2,308,720,000	2,294,380,000	−43,822,000	+24,380,000	−14,340,000
TITLE II—DEPARTMENT OF DEFENSE—CIVIL								
Department of the Army, Corps of Engineers—Civil:								
General investigations	[2] 39,897,000	50,169,000	49,364,000	52,049,000	50,714,000	+545,000	+1,350,000	−1,380,000
Construction, general	851,256,000	[3] 859,179,000	889,088,000	937,118,000	927,926,000	+68,747,000	+38,838,000	−9,192,000
Flood control, Mississippi River and tributaries	84,000,000	80,966,000	80,966,000	91,501,000	86,000,000	+5,034,000	+5,034,000	−5,501,000
Operation and maintenance, general	[3] 303,331,000	[4] 393,966,000	376,000,000	390,000,000	384,000,000	−9,966,000	+8,000,000	−6,000,000
Flood control and coastal emergencies	3,000,000	7,000,000	5,000,000	5,000,000	5,000,000	−2,000,000		
General expenses	27,601,000	[5] 29,205,000	28,900,000	29,138,000	29,000,000	−205,000	+100,000	−138,000
Total, Corps of Engineers—Civil	1,309,085,000	1,420,485,000	1,429,318,000	1,504,851,000	1,482,640,000	+62,155,000	+53,322,000	−22,211,000

Footnotes at end of table.

Item	New budget (obligational) authority, fiscal year 1971 (enacted to date) (excludes anticipated pay supplemental, 1971)	Budget estimates of new (obligational) authority, fiscal year 1972	New budget (obligational) authority in House bill	New budget (obligational) authority in Senate bill	New budget (obligational) authority in conference allowance	Conference allowance compared with— Budget estimates fiscal year 1972	House allowance	Senate allowance
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Cemeterial expenses: Salaries and expenses	$18,830,000	$22,588,000	$22,588,000	$22,588,000	$22,588,000			
Total, title II, new budget (obligational) authority, Department of Defense—Civil	1,327,915,000	1,443,073,000	1,451,906,000	1,527,439,000	1,505,228,000	+$62,155,000	+$53,322,000	−$22,211,000
TITLE III—DEPARTMENT OF THE INTERIOR								
Bureau of Reclamation:								
General investigations	20,097,000	22,025,000	21,975,000	22,650,000	22,400,000	+375,000	+425,000	−250,000
Construction and rehabilitation	186,793,000	190,500,000	208,845,000	206,956,000	208,845,000	+18,345,000		+1,889,000
Upper Colorado River storage project	25,375,000	19,756,000	20,589,000	21,219,000	21,089,000	+1,333,000	+500,000	−130,000
Colorado River Basin project	2,013,000	1,575,000	1,775,000	1,775,000	1,775,000	+200,000		
Colorado River Basin project (appropriation to liquidate contract authorization)	(5,748,000)	(31,500,000)	(31,500,000)	(31,500,000)	(31,500,000)			
Operation and maintenance	59,289,000	72,884,000	70,000,000	72,000,000	71,500,000	−1,384,000	+1,500,000	−500,000
Loan program	8,550,000	9,975,000	10,795,000	10,795,000	10,795,000	+820,000		
Emergency fund		1,000,000	1,000,000	1,000,000	1,000,000			
General administrative expenses	14,753,000	15,525,000	15,525,000	15,525,000	15,525,000			
Total, Bureau of Reclamation	316,870,000	333,240,000	350,504,000	351,920,000	352,929,000	+19,689,000	+2,425,000	+1,009,000
Alaska Power Administration:								
General investigations	600,000	618,000	500,000	500,000	500,000	−118,000		
Operation and maintenance	400,000	457,000	457,000	457,000	457,000			
Total, Alaska Power Administration	1,000,000	1,075,000	957,000	957,000	957,000	−118,000		
Bonneville Power Administration:								
Construction	91,600,000	94,000,000	90,000,000	91,630,000	91,000,000	−3,000,000	+1,000,000	−640,000
Operation and maintenance	25,220,000	27,825,000	27,825,000	27,825,000	27,825,000			
Total, Bonneville Power Administration	116,820,000	121,825,000	117,825,000	119,455,000	118,825,000	−3,000,000	+1,000,000	−630,000
Southeastern Power Administration: Operation and maintenance	836,000	908,000	870,000	870,000	870,000	−38,000		
Southwestern Power Administration:								
Construction	950,000	1,891,000	1,050,000	1,050,000	1,050,000	−841,000		
Operation and maintenance	5,294,000	5,513,000	4,500,000	5,000,000	5,000,000	−513,000	+500,000	
Total, Southwestern Power Administration	6,244,000	7,404,000	5,550,000	6,050,000	6,050,000	−1,354,000	+500,000	
Office of the Secretary: Underground electric power transmission research	750,000	1,000,000	750,000	1,000,000	875,000	−125,000	+125,000	−125,000
Total, title III, new budget (obligational) authority, Department of the Interior	442,520,000	465,452,000	476,456,000	480,252,000	480,506,000	+15,054,000	+4,050,000	+254,000
TITLE IV—INDEPENDENT OFFICES (EXCLUDING AEC)								
Appalachian Regional Commission: Salaries and expenses	968,000	1,113,000	1,113,000	1,113,000	1,113,000			
Appalachian regional development programs (funds appropriated to the President)	[4] 302,000,000	282,000,000	282,000,000	302,000,000	297,000,000	+15,000,000	+15,000,000	−5,000,000
Delaware River Basin Commission:								
Salaries and expenses	62,000	64,000	64,000	64,000	64,900			
Contribution to the Delaware River Basin Commission	175,000	179,000	179,000	179,000	179,000			
Total, Delaware River Basin Commission	237,000	243,000	243,000	243,000	243,000			
Federal Power Commission: Salaries and expenses	19,910,000	22,582,000	22,200,000	22,200,000	22,200,000	−382,000		
Interstate Commission on the Potomac River Basin: Contribution to Interstate Commission on the Potomac River Basin	5,000	20,000	20,000	20,000	20,000			
National Water Commission: Salaries and expenses	1,840,000	1,200,000	1,200,000	1,200,000	1,200,000			
Tennessee Valley Authority: Payment to Tennessee Valley Authority Fund	56,180,000	56,600,000	64,950,000	67,650,000	67,150,000	+10,550,000	+2,200,000	−500,000
Water Resources Council: Water resources planning	5,150,000	5,460,000	5,960,000	5,960,000	5,960,000	+500,000		
Susquehanna River Basin Commission:								
Salaries and expenses		62,000	50,000	50,000	50,000	−12,000		
Contributions to Susquehanna River Basin Commission		75,000	75,000	75,000	75,000			
Total Susquehanna River Basin Commission		137,000	125,000	125,000	125,000	−12,000		
Total, title IV, new budget (obligational) authority, independent offices	386,290,000	369,355,000	377,811,000	400,511,000	395,011,000	+25,656,000	+17,200,000	−5,500,000
Total, new budget (obligational) authority, titles II, III, and IV (excluding AEC)	2,156,725,000	2,277,880,000	2,306,173,000	2,408,202,000	2,380,745,000	+102,865,000	+74,572,000	−27,457,000
Total, new budget (obligational) authority, titles I, II, III, and IV	4,464,985,000	4,616,082,000	4,576,173,000	4,716,922,000	4,675,125,000	+59,043,000	+98,952,000	−41,797,000
Memoranda:								
Appropriations to liquidate contract authorizations	(5,748,000)	(31,500,000)	(31,500,000)	(31,500,000)	(31,500,000)			
Total appropriations, including appropriations to liquidate contract authorizations	(4,470,733,000)	(4,647,582,000)	(4,607,673,000)	(4,748,422,000)	(4,706,625,000)	(+59,043,000)	(+98,952,000)	(−41,797,000)

[1] Includes $25,500,000 appropriated in Supplemental Appropriation Act, 1971.
[2] Includes $300,000 appropriated in Supplemental Appropriation Act, 1971.
[3] Includes $1,000,000 appropriated in Supplemental Appropriation Act, 1971.
[4] Includes $8,500,000 appropriated in Supplemental Appropriation Act, 1971.
[5] Includes $2,250,000 in H. Doc. 92-93; and $10,000,000 in S. Doc. 92-32, not considered by the House.
[6] Includes $4,966,000 in H. Doc. 92-93; and a decrease of $10,000,000 in S. Doc. 92-32.
[7] Includes $1,460,000 in H. Doc. 92-93.

TITLE I, ATOMIC ENERGY COMMISSION

Mr. STENNIS. Mr. President, in addition to the consideration of appropriations for water resource development, the committee considered the appropriations for the Atomic Energy Commission.

The conferees agreed on $1,950,130,000 for operating expenses of the Atomic Energy Commission. This is $24 million above the House allowance, and $13.6 million below the amount allowed by the Senate.

For plant and capital equipment, the conferees agreed on $344,250,000. This is $250,000 above the House and $750,000 below the Senate. The increase provides funds for obtaining necessary leasehold interests, including options to purchase, in connection with the National Radioactive Waste Repository site at Lyons, Kans.

TITLE II, DEPARTMENT OF DEFENSE—CIVIL

Mr. President, in title II, for general investigations, Corps of Engineers, the bill provides $50,714,000 which is $1,380,000 below the amount approved by the Senate, and $1,350,000 above the amount allowed by the House. The conference allowance is $545,000 above the budget estimate.

The major Senate increase disallowed by the House was an item of $850,000 for the Long Island survey. The House agreed to the full capability of the Corps of Engineers on this study, but would not allow funds in the public works appropriation bill which are required by other Federal agencies for their input into the comprehensive study.

Mr. President, for construction, general, Corps of Engineers, the conference agreement provides $927,926,000 which is $9,192,000 below the amount approved by the Senate; $38,838,000 above the House; $68,747,000 above the budget estimate; and $76,670,000 above the 1971 appropriation. In this connection, it should be noted that the Senate and conference allowance includes a budget estimated of $10 million which was not considered by the House.

Mr. President, the committee is deeply concerned over the administration's action of impounding all of the unbudgeted planning and construction items added by the Congress last year. Perhaps one reason for that action was the erroneous information furnished the President at the time he signed the Public Works Appropriation Act concerning the congressional add-ons. At that time it was stated that the future commitments totaled $4.5 billion, but, actually, the future commitment of the new starts added by Congress was $1.4 billion. To arrive at the higher figure it would be necessary to consider the total cost of all new planning, all new land acquisition, and all new construction as a future commitment. The most realistic point at which we should consider a commitment has been made is at the time the first construction funds are appropriated. I believe it is appropriate, therefore, to set forth the future commitment on all new construction projects for the corps contained in the conference agreement.

CONSTRUCTION—CORPS OF ENGINEERS

The fiscal year 1972 budget included $33,731,000 for the completion of 27 projects; $819,843,000 for the continuation of 207 projects; and $3,844,000 for seven new projects.

The conference agreement provides $9,666,000 for the initiation of construction on 21 new projects, including approval of five of the seven requested in the budget. The 21 new projects have a total future commitment of $192,539,000, which represents 2.5 months of construction at the present rate of appropriations. Without the additional new starts included by the Congress, 185 projects would remain in the continuing construction program for fiscal year 1973.

Mr. President, the amount allowed on a number of the projects currently under construction exceeds the budget estimate. The House and Senate committees believed that in these cases the budget estimate was inadequate for efficient operations during the current year. As a matter of fact, in at least three of these cases the agencies have already notified the contractors that in 30 days they will have exhausted the funds available for the entire fiscal year.

There is no question but that the Congress has the prerogative to make adjustments in the budget requests and establish its own priorities to the extent it believes necessary.

Obviously, last year the Office of Management and Budget failed to ascertain the reasons for the congressional actions.

The committee believes that the funds agreed to in conference are necessary and well justified. It is expected, therefore, that the allocations to projects and activities agreed upon for fiscal year 1972 will be adhered to and the funds apportioned for obligation during the current fiscal year.

Mr. President, I ask unanimous consent to insert at this point in the RECORD the tabulation showing the details of the amount allowed under "Construction, general."

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

CONSTRUCTION, GENERAL, FISCAL YEAR 1972

	Construction, general, State and project	Approved budget estimate for fiscal year 1972		House allowance		Senate allowance		Conference allowance	
		Construction	Planning	Construction	Planning	Construction	Planning	Construction	Planning
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	Alabama:								
(N)	Alabama River channel improvement	$700,000		$700,000		$700,000		$700,000	
(R)	John Hollis Bankhead lock and dam	**3,252,000		3,252,000		3,252,000		3,252,000	
(MP)	Jones Bluff lock and dam	2,710,000		2,710,000		3,600,000		3,200,000	
(N)	Mobile Harbor, Theodore Ship Channel						$50,000		
(FC)	Montgomery				$25,000		25,000		$25,000
(N)	Tennessee-Tombigbee Waterway, Ala. and Miss	6,000,000		6,000,000		6,000,000		6,000,000	
	Tombigbee River and tributaries, Mississippi and Alabama. (See Mississippi.)								
	West Point Lake, Ala. and Ga. (See Georgia.)								
	Alaska:								
(FC)	Chena River Lakes, Fairbanks		$1,300,000		1,300,000		1,300,000		1,300,000
(N)	Humboldt Harbor		50,000		50,000		50,000		50,000
(N)	Kake Harbor		45,000		45,000		45,000		45,000
(N)	King Cove Harbor			590,000		590,000		590,000	
(N)	Myers Chuck Harbor	148,000				148,000			
(N)	Sergius and Whitestone Narrows	900,000		900,000		900,000		900,000	
(MP)	Snettisham power project	17,000,000		17,000,000		21,200,000		21,200,000	
	Arizona:								
(FC)	Indian Bend Wash		250,000		250,000		250,000		250,000
(FC)	Phoenix and vicinity including New River (Stage I)	1,200,000		1,200,000		1,200,000		1,200,000	
(FC)	Santa Rosa Wash (Tat Momolikot Dam)	1,000,000		1,000,000		1,000,000		1,000,000	
	Arkansas:								
(FC)	Bayou Bartholomew and tributaries (1950 and 1966 acts), Ark. and La		145,000		145,000		145,000		145,000
(FC)	Bell Foley Lake		175,000		175,000		270,000		270,000
(MP)	De Gray Lake	975,000		975,000		1,200,000		1,100,000	
(FC)	De Queen Lake	2,600,000		2,600,000		2,600,000		2,600,000	
(FC)	Dierks Lake	3,200,000		3,200,000		3,200,000		3,200,000	
(FC)	Gillham Lake	2,380,000		2,380,000		2,380,000		2,380,000	
(N)	McClellan-Kerr Arkansas River Navigation System, Arkansas and Oklahoma:								
	(a) Navigation locks and dams	16,225,000		16,225,000		16,225,000		16,225,000	
(N)	Ouachita and Black Rivers, Ark. and La	1,803,000		3,803,000		4,603,000		4,603,000	
(MP)	Ozark lock and dam	8,800,000		8,800,000		8,800,000		8,800,000	
(FC)	Pine Mountain Lake		95,000		95,000		95,000		95,000
(FC)	Red River levees and bank stabilization below Denison Dam, Ark., La., and Tex	1,550,000		1,550,000		1,550,000		1,550,000	

Footnotes at end of table.

CONSTRUCTION, GENERAL, FISCAL YEAR 1972—Continued

	Construction, general, State and project	Approved budget estimate for fiscal year 1972		House allowance		Senate allowance		Conference allowance	
		Construction	Planning	Construction	Planning	Construction	Planning	Construction	Planning
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	California:								
(FC)	Alameda Creek, Del Valle Reservoir	$1,215,000		$1,215,000		$1,215,000		$1,215,000	
(FC)	Buchanan Lake			400,000		400,000		400,000	
(FC)	Butler Valley Dam-Blue Lake		$1,200,000		$1,200,000		$1,200,000		$1,200,000
(FC)	Chester, North Fork of Feather River				40,000				
(BE)	Coast of California, Pt. Mugu to San Pedro (reimbursement)	160,000		160,000		160,000		160,000	
(FC)	Corte Madera Creek	800,000		800,000		800,000		800,000	
(N)	Crescent City Harbor			350,000		350,000		350,000	
(FC)	Cucamonga Creek		410,000		410,000		410,000		410,000
(FC)	Dry Creek (Warm Springs) Lake and Channel	5,300,000		7,150,000		7,150,000		7,150,000	
(FC)	Hidden Lake			1,250,000		1,250,000		1,250,000	
(FC)	Klamath River	2,875,000		2,875,000		2,875,000		2,875,000	
(FC)	Lakeport Lake				500,000		500,000		500,000
(FC)	Los Angeles County drainage area	200,000		200,000		200,000		200,000	
(FC)	Lytle and Warm Creeks			1,000,000				500,000	
	Martis Creek Lake, Calif. and Nev. (See Nevada.)								
(FC)	Mojave River Dam	1,232,000		1,232,000		1,232,000		1,232,000	
(N)	Napa River	950,000		950,000		950,000		950,000	
(FC)	New Don Pedro Reservoir (reimbursement)	995,000		995,000		995,000		995,000	
(MP)	New Melones Lake	16,650,000		18,350,000		18,350,000		18,350,000	
(FC)	Pajaro River (1966 act)		206,000		206,000		206,000		206,000
(N)	Port Hueneme Harbor		90,000		90,000		90,000		90,000
(FC)	Russian River Basin Coyote Valley Dam and Russian River Channel	300,000		300,000		300,000		300,000	
(FC)	Sacramento River and major and minor tributaries	100,000		100,000		100,000		100,000	
(FC)	Sacramento River bank protection	1,710,000		1,710,000		2,500,000		2,200,000	
(N)	San Diego Harbor			500,000		500,000		500,000	
(BE)	San Diego, Sunset Cliffs (reimbursement)	160,000		160,000		160,000		160,000	
(N)	San Francisco Bay to Stockton (John F. Baldwin and Stockton ship channels)	1,000,000		1,000,000		1,000,000		1,000,000	
(FC)	Santa Paula Creek channel	600,000		1,400,000		1,400,000		1,400,000	
(FC)	Sonoma Creek		220,000		220,000		220,000		220,000
(BE)	Surfside-Sunset and Newport Beach	500,000		500,000		500,000		500,000	
(FC)	Sweetwater River			200,000		200,000		200,000	
(FC)	Tahquitz Creek	950,000		950,000		950,000		950,000	
(N)	Ventura Marina (reimbursement)	1,000,000		1,000,000		1,000,000		1,000,000	
(FC)	Walnut Creek	1,480,000		1,480,000		1,480,000		1,480,000	
	Colorado:								
(FC)	Bear Creek Lake (land acquisition)			890,000		890,000		890,000	
(FC)	Boulder				150,000		150,000		150,000
(FC)	Chatfield Lake	10,700,000		10,700,000		10,700,000		10,700,000	
(FC)	Trinidad Lake	1,800,000		1,800,000		1,800,000		1,800,000	
	Connecticut:								
(FC)	Ansonia-Derby	4,700,000		4,700,000		4,700,000		4,700,000	
(FC)	Danbury		164,000		50,000		50,000		50,000
(FC)	Derby	3,000,000		3,000,000		3,000,000		3,000,000	
(FC)	New London Barrier	**300,000		300,000		300,000		300,000	
(FC)	Park River				200,000		200,000		200,000
(FC)	Stratford		150,000		150,000		150,000		150,000
(FC)	Trumbull Lake	1,200,000		1,200,000		1,200,000		1,200,000	
	Delaware:								
(N)	Delaware Bay-Chesapeake Bay Waterway, Del., Md., and Va						65,000		65,000
(FC)	Delaware coast protection		150,000		150,000		150,000		150,000
(N)	Inland waterway, Delaware River to Cheaspeake Bay (Cheaspeake and Delaware Canal), pt. II, Delaware and Maryland	4,624,000		4,624,000		4,624,000		4,624,000	
	Florida:								
(BE)	Brevard County		70,000		70,000		70,000		70,000
(BE)	Broward County Hillsboro Inlet (Reimbursement)	1,000,000		1,000,000		1,000,000		1,000,000	
(N)	Canaveral Harbor	200,000		200,000		200,000		200,000	
(FC)	Central and Southern Florida	8,261,000		8,261,000		10,000,000		8,761,000	
(N)	Cross-Florida Barge Canal	* 3,750,000		3,750,000		3,750,000		3,750,000	
(BE)	Duval County						75,000		
(BE)	Fort Pierce (Reimbursement)	361,000		361,000		361,000		361,000	
(FC)	Four Rivers basins	3,280,000		3,280,000		3,280,000		3,280,000	
(N)	Hudson River (Restudy)		10,000		10,000		10,000		10,000
(N)	Jacksonville Harbor (1965 act)	4,250,000		4,875,000		4,875,000		4,875,000	
(N)	Miami Harbor					400,000		200,000	
(BE)	Pinnellas County	100,000		100,000		100,000		100,000	
(N)	Tampa Harbor (Speical study)				200,000		200,000		200,000
(BE)	Virginia Key and Key Biscayne	450,000		450,000		450,000		450,000	
	Georgia:								
(MP)	Carters Lake	8,950,000		9,450,000		9,450,000		9,450,000	
(MP)	Lazer Creek Lake		350,000		350,000		350,000		350,000
(N)	Savannah Harbor, 40 feet (widening and deepening)	200,000		200,000		400,000		400,000	
(N)	Savannah Harbor (sediment basin)	1,800,000		1,800,000		1,800,000		1,800,000	
(MP)	Spewrell Bluff Lake	1,000,000		1,500,000		1,500,000		1,500,000	
(MP)	Trotter Shoals Lake, Georgia and South Carolina			250,000		500,000		500,000	
(MP)	West Point Lake, Ala. and Ga	13,300,000		13,300,000		13,300,000		13,300,000	
	Hawaii:								
(N)	Ala Wai Harbor						54,000		54,000
(FC)	Kaneohe-Kailua Area				160,000		160,000		160,000
(N)	Lahaina Harbor					200,000			
(BE)	Waikiki Beach	100,000		100,000		100,000		100,000	
	Idaho:								
(MP)	Dworshak Dam and Reservoir	54,900,000		54,900,000		54,900,000		54,900,000	
(FC)	Ririe Lake	1,000,000		1,000,000		1,500,000		1,500,000	
(FC)	Stuart Gulch Dam		26,000		26,000		50,000		50,000
	Illinois:								
(N)	Calumet River and Harbor, Ill. and Ind	200,000		200,000		200,000		200,000	
(FC)	Carlyle Lake, Kaskaskia River	580,000		580,000		580,000		580,000	
(N)	Chicago River North Branch			200,000		200,000		200,000	
(FC)	East Moline		100,000		100,000		100,000		100,000
(FC)	East St. Louis and vicinity (Cahorkia Dam)	500,000		500,000		500,000		500,000	
(FC)	East St. Louis and vicinity (interior flood control)		250,000		250,000		250,000		250,000
(FC)	Freeport	200,000		200,000		200,000		200,000	
(FC)	Fulton		120,000		120,000		120,000		120,000
(N)	Illinois Waterway, Calumet-Sag modification, pt. I, Illinois and Indiana	5,100,000		5,100,000		5,100,000		5,100,000	
(N)	Illinois Waterway, Calumet-Sag modification, pt. II, Illinois and Indiana		150,000		150,000		150,000		150,000

Footnotes at end of table.

CONSTRUCTION, GENERAL, FISCAL YEAR 1972—Continued

	Construction, general, State and project	Approved budget estimate for fiscal year 1972		House allowance		Senate allowance		Conference allowance	
		Construction	Planning	Construction	Planning	Construction	Planning	Construction	Planning
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	Illinois—Continued								
(N)	Illinois Waterway Duplicate Locks		$400,000		$400,000		$400,000		$400,000
	Island Levee, Ill. and Ind. (see Indiana.)								
(N)	Kaskaskia River navigation	$14,900,000		$18,400,000		$14,900,000		$16,650,000	
(FC)	Lake Shelbyville	286,000		686,000		686,000		686,000	
(FC)	Levee District 23 (Dively), Kaskaskia River			60,000		60,000		60,000	
(FC)	Lincoln Lake	800,000		800,000		800,000		800,000	
(N)	Lock and dam 26, Mississippi River, Alton, Ill., and Mo		1,449,000		1,700,000		1,700,000		1,700,000
(FC)	Louisville Lake		200,000		250,000		250,000		250,000
(FC)	McGee Creek drainage and Levee district					200,000			
(FC)	Milan		80,000		80,000		80,000		80,000
(N)	Mississippi River between Ohio and Missouri Rivers, Ill. and Mo.:								
	Chain of rocks	200,000		200,000		200,000		200,000	
(N)	Mound City lock and dam, Illinois and Kentucky (land acquisition)			(7)		(7)		(7)	
(FC)	Oakley Lake and channel improvement (land acquisition)	200,000		200,000		200,000		200,000	
(FC)	Peoria		100,000		50,000		50,000		50,000
(FC)	Rend Lake	2,316,000		2,316,000		2,316,000		2,316,000	
(FC)	Rock Island	620,000		800,000		800,000		800,000	
(FC)	Saline River and tributaries	1,500,000		1,800,000		1,800,000		1,800,000	
(N)	Smithland locks and dam, Illinois and Kentucky	6,000,000		6,000,000		6,000,000		6,000,000	
	Indiana:								
(FC)	Brookville Lake	4,470,000		4,470,000		4,470,000		4,470,000	
	Calumet River and Harbor, Ill. and Ind. (See Illinois.)								
(N)	Cannelton locks and dam, Indiana and Kentucky	7,500,000		7,500,000		7,500,000		7,500,000	
(FC)	Clifty Creek Lake (land acquisition)			100,000		100,000		100,000	
(FC)	Evansville	700,000		700,000		700,000		700,000	
	Illinois Waterway, Calumet-Sag modification, pts. I and II, Illinois and Indiana. (See Illinois.)								
(FC)	Island levee, Indiana and Illinois	200,000		200,000		200,000		200,000	
(FC)	Levee Unit No. 5	74,000		74,000		74,000		74,000	
(FC)	Mason J. Niblack Levee (pumping facilities)		60,000		60,000		60,000		60,000
(N)	Newburgh locks and dam, Indiana and Kentucky	22,000,000		22,000,000		22,000,000		22,000,000	
(FC)	Patoka Lake (land acquisition)	500,000		1,200,000		1,200,000		1,200,000	
(N)	Uniontown locks and dam, Indiana and Kentucky	15,000,000		15,000,000		15,000,000		15,000,000	
(FC)	West Terre Haute	420,000		420,000		420,000		420,000	
	Iowa:								
(FC)	Ames Lake	100,000		100,000		100,000		100,000	
(FC)	Bettendorf		110,000		110,000		110,000		110,000
(FC)	Big Sioux River at Sioux City, Iowa and S. Dak		20,000		20,000		20,000		20,000
(FC)	Clinton		200,000		200,000		200,000		200,000
(FC)	Davenport				30,000		30,000		30,000
(FC)	Davids Creek Lake		80,000		80,000		80,000		80,000
(FC)	Des Moines	1,150,000		1,150,000		1,150,000		1,150,000	
(FC)	Dubuque	1,500,000		1,500,000		1,500,000		1,500,000	
(N)	Fort Madison Harbor	745,000		745,000		745,000		745,000	
(FC)	Guttenberg	800,000		1,100,000		1,100,000		1,100,000	
(FC)	Marshalltown	400,000		400,000		400,000		400,000	
(FC)	Missouri River levee system, Iowa, Kansas, Missouri, and Nebraska	1,975,000		1,975,000		2,250,000		2,250,000	
(N)	Missouri River, Sioux City to mouth, Iowa, Kansas Missouri, and Nebraska	2,395,000		2,395,000		3,500,000		2,900,000	
(FC)	Red Rock Dam and Lake Red Rock	2,403,000		2,403,000		2,403,000		2,403,000	
(FC)	Saylorville Lake	4,648,000		4,648,000		4,648,000		4,648,000	
(FC)	Waterloo	800,000		1,000,000		1,000,000		1,000,000	
	Kansas:								
	Arkansas—Red River chloride control, Texas, Oklahoma, and Kansas (see Texas).								
(FC)	Big Hill Lake			500,000		500,000		500,000	
(FC)	Cedar Point Lake		125,000		225,000		225,000		225,000
(FC)	Clinton Lake	1,800,000		1,800,000		1,800,000		1,800,000	
(FC)	Dodge City			150,000		150,000		150,000	
(FC)	El Dorado Lake	100,000		100,000		100,000		100,000	
(FC)	Great Bend				200,000		200,000		200,000
(FC)	Grove Lake		100,000		225,000		225,000		225,000
(FC)	Hays, Big Creek	400,000		400,000		400,000		400,000	
(FC)	Hillsdale Lake		306,000		306,000		306,000		306,000
(FC)	Indian Lake						100,000		
(FC)	Kansas City (1962 mod)	2,650,000		2,650,000		2,650,000		2,650,000	
(FC)	Lawrence	539,000		539,000		539,000		539,000	
(FC)	Marion				50,000		50,000		50,000
(FC)	Melvern Lake	5,295,000		5,295,000		5,295,000		5,295,000	
	Missouri River levee system, Iowa, Kansas, Missouri, and Nebraska. (See Iowa.)								
	Missouri River, Sioux City to mouth, Iowa, Kansas, Missouri, and Nebraska. (See Iowa.)								
(FC)	Onaga Lake		223,000		223,000		223,000		223,000
(FC)	Tomahawk Lake						150,000		
(FC)	Topeka	505,000		505,000		505,000		505,000	
(FC)	Wolf-Coffee Lake						100,000		100,000
	Kentucky:								
(FC)	Booneville Lake		245,000		245,000		245,000		245,000
	Cannelton locks and dam, Indiana and Kentucky. (See Indiana.)								
(FC)	Carr Fork Lake	3,585,000		3,585,000		3,585,000		3,585,000	
(FC)	Cave Run Lake	7,167,000		7,167,000		7,167,000		7,167,000	
(MP)	Celina (restudy)				170,000		170,000		170,000
(FC)	Eagle Creek Lake		120,000		120,000		120,000		120,000
(FC)	Falmouth Lake		100,000		100,000		100,000		100,000
(FC)	Kehoe Lake		175,000		175,000		175,000		175,000
(MP)	Laurel River Lake	6,000,000		6,000,000		6,000,000		6,000,000	
(FC)	Martin	850,000		850,000		850,000		850,000	
(FC)	Martins Fork Lake	400,000			(8)	400,000	(8)	400,000	(8)
	Mound City lock and dam, Ill. and Ky. (See Illinois.)								
	Newburgh locks and dam, Indiana and Kentucky. (See Indiana.)								
(FC)	Paintsville Lake			250,000		250,000		250,000	
(FC)	Red River Lake	300,000		300,000		300,000		300,000	
	Smithland lock and dam, Illinois and Kentucky. (See Illinois.)								
(FC)	Southwestern Jefferson County		280,000		280,000		280,000		280,000
(FC)	Taylorsville Lake			150,000		150,000		150,000	

Footnotes at end of table.

CONSTRUCTION, GENERAL, FISCAL YEAR 1972—Continued

	Construction, general, State and project	Approved budget estimate for fiscal year 1972		House allowance		Senate allowance		Conference allowance	
		Construction	Planning	Construction	Planning	Construction	Planning	Construction	Planning
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	Kentucky—Continued								
	Uniontown locks and dam, Indiana and Kentucky. (See Indiana.)								
(FC)	Yatesville Lake		$75,000		$75,000		$75,000		$75,000
	Louisiana:								
(N)	Atchafalaya River, Bayous Chene, Boeuf and Black		90,000		90,000	$840,000	90,000	$840,000	90,000
	Bayou Bartholomew, Ark. and La. (See Arkansas.)								
(FC)	Bayou Bodcau and tributaries	$400,000		$400,000		400,000		400,000	
(N)	Calcasieu River at Devils Elbow						20,000		20,000
(FC)	Grand Isle and vicinity					100,000		100,000	
(FC)	Lake Pontchartrain, and vicinity	**5,555,000		7,755,000		7,755,000		7,755,000	
(N)	Mermentau River (Lake Arthur Bridge replacement)					1,000,000		1,000,000	
(N)	Michoud Canal			100,000		100,000		100,000	
(N)	Mississippi River, gulf outlet	925,000		925,000		1,200,000		925,000	
(N)	Mississippi River Outlets Venice		100,000		100,000		100,000		100,000
(FC)	Monroe Floodwall			100,000		100,000		100,000	
(FC)	Morgan City and vicinity	500,000		500,000		500,000		500,000	
(FC)	New Orleans to Venice hurricane protection	998,000		1,800,000		2,600,000		2,600,000	
	Ouachita and Black Rivers, Ark. and La. (See Arkansas.)								
(FC)	Ouachita River Levees			80,000		80,000		80,000	
(N)	Overton-Red River Waterway (lower 31 miles only)	700,000		700,000		1,500,000		1,500,000	
(N)	Red River Emergency Bank Protection					1,000,000		1,000,000	
	Red River levees and bank stabilization below Denison Dam, Ark., La. and Tex. (See Arkansas.)								
(N)	Red River Waterway (Mississippi River to Shreveport), La., Ark., Okla., and Tex.				300,000		300,000		300,000
(N)	Vermilion lock (replacement)		100,000		100,000		100,000		100,000
	Maine:								
(MP)	Dickey-Lincoln School Lakes						800,000		
	Maryland:								
(N)	Baltimore Harbor and Channels (1958 Act)	50,000		50,000		50,000		50,000	
(FC)	Bloomington Lake, Md. and W. Va.	6,220,000		6,220,000		6,220,000		6,220,000	
	Delaware Bay-Chesapeake Bay Waterway Del., Md., and Va. (see Delaware.)								
	Inland waterway, Delaware River to Chesapeake Bay, Del. and Md. (C. & D. Canal), pt. II. (See Delaware.)								
	Massachusetts:								
(FC)	Charles River Dam		225,000		225,000		225,000		225,000
(N)	Fall River Harbor, Mass. and R.I.			600,000		600,000		600,000	
(FC)	Nookagee Lake		193,000		193,000		193,000		193,000
(N)	Provincetown Harbor	2,380,000		2,380,000		2,380,000		2,380,000	
(FC)	Quincy (Review report)				20,000		20,000		20,000
(FC)	Saxonville				100,000		100,000		100,000
(N)	Weymouth Fore and Town Rivers	5,000,000		5,000,000		5,000,000		5,000,000	
	Michigan:								
(N)	Detroit River—Trenton Channel						75,000		
(N)	Great Lakes Connecting Channels	1,200,000		1,200,000		1,200,000		1,200,000	
(FC)	Kalamazoo	150,000		150,000		150,000		150,000	
(N)	Ludington Harbor		40,000		40,000		40,000		40,000
(N)	Point Lookout Harbor Au Gres River	1,118,000		1,118,000		1,118,000		1,118,000	
(FC)	River Rouge	4,500,000		4,500,000		4,500,000		4,500,000	
(FC)	Saginaw River (flood control)	855,000		855,000		855,000		855,000	
	Minnesota:								
(FC)	Big Stone Lake-Whetstone River, Minn. and S. Dak.	1,870,000		1,870,000		1,870,000		1,870,000	
(FC)	Mankato and North Mankato	1,500,000		1,500,000		1,500,000		1,500,000	
(FC)	Twin Valley Lake				50,000		50,000		50,000
(FC)	Wild Rice River-South Branch and Felton Ditch		40,000				40,000		40,000
	Mississippi:								
(FC)	Tallahala Creek Lake		230,000		300,000		300,000		300,000
	Tennessee-Tombigbee Waterway, Ala. and Miss. (See Alabama.)								
(FC)	Tombigbee and tributaries, Mississippi and Alabama	1,300,000		1,300,000		1,300,000		1,300,000	
	Missouri:								
(FC)	Brookfield Lake		41,000		200,000		200,000		200,000
(FC)	Chariton-Little Chariton Basins (1965 act)			350,000		350,000		350,000	
(FC)	Chariton River (1944 act)	583,000		538,000		583,000		583,000	
(MP)	Clarence Cannon Dam and Reservoir	5,200,000		5,200,000		5,200,000		5,200,000	
(MP)	Harry S. Truman Dam and Reservoir (formerly Kaysinger Bluff Reservoir).	17,400,000		18,000,000		18,000,000		18,000,000	
(FC)	Little Blue River Channel		135,000		135,000		135,000		135,000
(FC)	Little Blue River Lakes (land acquisition)	1,280,000		2,280,000		2,280,000		2,280,000	
	Lock and Dam 26, Alton Ill. and Mo. (See Illinois.)								
(FC)	Long Branch Lake			500,000		500,000		500,000	
(FC)	Meramec Park Lake (land acquisition)	1,500,000		2,500,000		2,500,000		2,500,000	
(FC)	Mercer Lake				60,000		60,000		60,000
	Mississippi River between Ohio and Missouri Rivers, Ill. and Mo. (See Illinois.)								
	Missouri River levee system, Iowa, Kansas, Missouri, and Nebraska. (See Iowa.)								
	Missouri River, Sioux City to mouth, Iowa, Kansas, Missouri, and Nebraska. (See Iowa.)								
(FC)	Pattonsburg Lake—Highway I-35 Crossing	§ 500,000				500,000		500,000	
(FC)	Pattonsburg Lake (town relocation only)						50,000		50,000
(FC)	St. Louis	2,206,000		2,206,000		2,206,000		2,206,000	
(FC)	Smithville Lake			300,000		300,000		300,000	
(MP)	Stockton Lake	4,066,000		4,066,000		4,066,000		4,066,000	
(FC)	Union Lake		275,000		275,000		275,000		275,000
(FC)	Union Lake (State highway 185 relocation) (advance participation.)	1,000,000		1,000,000		1,000,000		1,000,000	
	Montana:								
(FC)	Great Falls	50,000		50,000		50,000		50,000	
(MP)	Libby Dam—Lake Koocanusa	53,200,000		53,200,000		60,000,000		57,200,000	
(FC)	Miles City (restudy)		40,000		40,000		40,000		40,000
	Nebraska:								
(MP)	Gavins Point Dam—Lewis and Clark Lake (relocation of Niobrara, Nebr.), Nebr. and S. Dak.					1,000,000		750,000	
	Missouri River levee system, Iowa, Kansas, Missouri, and Nebraska. (See Iowa.)								
	Missouri River, Sioux City to mouth, Iowa, Kansas, Missouri and Nebraska. (See Iowa.)								
(FC)	Papillion Creek and Tributaries (land acquisition)			2,000,000		2,000,000		2,000,000	
	Nevada:								
(FC)	Martis Creek Lake, Calif. and Nev	2,470,000		2,470,000		2,470,000		2,470,000	

Footnotes at end of table.

CONSTRUCTION, GENERAL, FISCAL YEAR 1972—Continued

	Construction, general, State and project	Approved budget estimate for fiscal year 1972		House allowance		Senate allowance		Conference allowance	
		Construction	Planning	Construction	Planning	Construction	Planning	Construction	Planning
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	New Hampshire:								
(FC)	Beaver Brook Lake	$300,000				$300,000		$300,000	
	New Jersey:								
(BE)	Atlantic City (reimbursement)	300,000		$300,000		300,000		300,000	
(FC)	Elizabeth	1,670,000		1,670,000		1,670,000		1,670,000	
(N)	Newark Bay, Hackensack and Passaic Rivers	2,750,000		4,250,000		4,250,000		4,250,000	
(FC)	Raritan and Sandy Hook Bays	2,096,000		2,096,000		2,096,000		2,096,000	
(FC)	South Orange, Rahway River	880,000		880,000		880,000		880,000	
	Tocks Island Lake, Pa., N.J., and N.Y. (See Pennsylvania.)								
	Rahway River, South Branch Rahway (Sec. 205)					(800,000)		(800,000)	
	New Mexico:								
(FC)	Albuquerque diversion channels	1,222,000		1,222,000		1,222,000		1,222,000	
(FC)	Cochiti Lake	12,000,000		12,000,000		12,000,000		12,000,000	
(FC)	Las Cruces	500,000		500,000		500,000		500,000	
(FC)	Los Esteros Lake and modification of Alamogordo Dam	1,200,000		1,200,000		1,200,000		1,200,000	
(FC)	Rio Grande Floodway (Espanola Valley)	346,000		346,000		346,000		346,000	
	New York:								
(N)	East River (Spur Channel to Astoria Waterfront)				$60,000		$60,000		$60,000
(FC)	East Rockaway Inlet to Rockaway Inlet and Jamaica Bay		$190,000		190,000		190,000		190,000
(FC)	Ellicott Creek (Plan Formulation Study)				150,000		150,000		150,000
(BE)	Fire Island Inlet to Jones Inlet	600,000		600,000		600,000		600,000	
(FC)	Fire Island Inlet to Montauk Point	800,000		800,000		800,000		800,000	
(N)	Hamlin Beach Harbor		50,000		50,000		50,000		50,000
(N)	Irondequoit Bay								
(N)	New York Harbor (anchorages)	1,620,000		4,620,000		4,620,000		4,620,000	
(N)	New York Harbor collection and removal of drift				80,000		80,000		80,000
(FC)	Nichols	315,000		315,000		315,000		315,000	
(FC)	North Ellenville	50,000		50,000		50,000		50,000	
(N)	Port Jefferson Harbor (Restudy)				50,000		50,000		50,000
(FC)	South Ellenville	50,000		50,000		50,000		50,000	
	Tocks Island Lake, Pa., N.J., and N.Y. (See Pennsylvania.)								
(FC)	Yonkers		15,000		15,000		15,000		15,000
	North Carolina:								
(FC)	Falls Lake	1,820,000		2,805,000		3,790,000		3,300,000	
(FC)	Howards Mill Lake				92,000		92,000		92,000
(N)	Morehead City Harbor (1970 act)						60,000		60,000
(FC)	New Hope Lake	9,100,000		9,100,000		10,100,000		9,600,000	
(FC)	Ocracoke Island		80,000		80,000		80,000		80,000
(FC)	Randleman Lake		122,000		364,000		364,000		364,000
(FC)	Reddies River Lake		100,000		100,000		100,000		100,000
	North Dakota:								
(FC)	Burlington Dam						50,000		50,000
(R)	Garrison Dam-Lake Sakakawea (embankment repair)	900,000		900,000		900,000		900,000	
(MP)	Garrison Dam-Lake Sakakawea (Eagle Bay and Ft. Yates highway bridges)				350,000		350,000		350,000
	Oahe Dam-Lake Oahe, S. Dak. and N. Dak. (See South Dakota).								
	Lower Branch Rush River (sec. 205)			(200,000)		(200,000)		(200,000)	
(FC)	Minot	**650,000		200,000		650,000		650,000	
(FC)	Missouri River, Garrison Dam to Lake Oahe	660,000		660,000		660,000		660,000	
(FC)	Pipestem Lake	1,350,000		1,350,000		1,350,000		1,350,000	
	Ohio:								
(FC)	Alum Creek Lake	10,130,000		10,855,000		10,855,000		10,855,000	
(FC)	Caesar Creek Lake	2,100,000		2,100,000		2,100,000		2,100,000	
(FC)	Clarence J. Brown Dam and Reservoir	4,505,000		4,505,000		4,505,000		4,505,000	
(FC)	East Fork Lake	3,715,000		3,715,000		3,715,000		3,715,000	
(FC)	Fremont	5,635,000		5,635,000		5,635,000		5,635,000	
(N)	Hannibal locks and dam, Ohio and West Virginia	12,105,000		12,105,000		12,105,000		12,105,000	
(BE)	Lakeview Park, Lorain				40,000		40,000		40,000
(N)	Lorain Harbor	1,600,000		1,600,000		1,600,000		1,600,000	
(FC)	Mill Creek				100,000		100,000		100,000
(FC)	Newark		80,000		80,000		80,000		80,000
(FC)	North Branch of Kokosing River Lake	1,675,000		1,675,000		1,675,000		1,675,000	
(FC)	Paint Creek Lake	4,440,000		4,440,000		4,440,000		4,440,000	
(FC)	Salt Creek Lake (land acquisition)			100,000		100,000		100,000	
	Shenango River Lake, Pa. and Ohio. (See Pennsylvania.)								
(FC)	Utica Lake		270,000		270,000		270,000		270,000
(N)	Vermilion Harbor			200,000		200,000		200,000	
(N)	Willow Island locks and dam, Ohio and West Virginia	2,900,000		2,900,000		3,500,000		3,200,000	
(FC)	Youngstown, Crab Creek	1,650,000		1,650,000		1,650,000		1,650,000	
	Oklahoma:								
	Arkansas Red River chloride control, Texas, Oklahoma, and Kansas. (See Texas.)								
(FC)	Arcadia Lake				150,000		150,000		150,000
(FC)	Clayton Lake		316,000		316,000		316,000		316,000
(FC)	Copan Lake	100,000		600,000		600,000		600,000	
(FC)	Crutcho Creek	100,000		100,000		100,000		100,000	
(FC)	Hugo Lake	5,800,000		5,800,000		5,800,000		5,800,000	
(FC)	Kaw Lake	13,300,000		13,300,000		13,300,000		13,300,000	
	McClellan-Kerr Arkansas River navigation system, Arkansas and Oklahoma. (See Arkansas.)								
(FC)	Oologah Lake	500,000		500,000		500,000		500,000	
(FC)	Optima Lake	1,400,000		1,400,000		1,400,000		1,400,000	
(FC)	Sand Lake						100,000		
(FC)	Waurika Lake	500,000		500,000		500,000		500,000	
(MP)	Webbers Falls lock and dam	5,300,000		5,300,000		5,300,000		5,300,000	
	Oregon:								
(MP)	Bonneville lock and dam (2d power unit), Oregon and Washington		470,000		470,000		470,000		470,000
(MP)	Bonneville lock and dam (mod. for peaking), Oregon and Washington	5,800,000		5,800,000		5,800,000		5,800,000	
(FC)	Cascadia Lake	600,000							
(N)	Columbia River and lower Willamette River, 35- and 40-foot projects, Oregon and Washington	650,000		650,000		650,000		650,000	
(FC)	Elk Creek Lake	1,200,000		1,200,000		1,200,000		1,200,000	
(MP)	John Day lock and dam (Lake Umatilla), Oregon and Washington	9,394,000		9,394,000		9,394,000		9,394,000	
(MP)	Lost Creek Lake	7,260,000		7,260,000		7,260,000		7,260,000	
(FC)	Lower Columbia River bank protection, Oregon and Washington	400,000		400,000		400,000		400,000	

Footnotes at end of table.

CONSTRUCTION, GENERAL, FISCAL YEAR 1972—Continued

	Construction, general, State and project	Approved budget estimate for fiscal year 1972		House allowance		Senate allowance		Conference allowance	
		Construction	Planning	Construction	Planning	Construction	Planning	Construction	Planning
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	Oregon—Continued								
	The Dalles lock and dam, Washington and Oregon (additional power units). (See Washington.)								
(N)	Tillamook Bay and Bar (south jetty)	$800,000		$800,000		$1,500,000		$1,500,000	
(FC)	Willow Creek Lake				$300,000		$300,000		$300,000
(N)	Yaquina Bay and Harbor	2,400,000		2,400,000		2,400,000		2,400,000	
	Pennsylvania:								
(FC)	Beltzville Lake	419,000		419,000		419,000		419,000	
(FC)	Blue Marsh Lake (land acquisition)	800,000		800,000		800,000		800,000	
(FC)	Chartiers Creek	2,915,000		2,915,000		2,915,000		2,915,000	
(FC)	DuBois	400,000		400,000		400,000		400,000	
(FC)	Foster Joseph Sayers Dam	575,000		575,000		575,000		575,000	
(FC)	Muddy Creek Dam		$35,000		35,000		35,000		35,000
(FC)	Raystown Lake	14,000,000		14,000,000		14,000,000		14,000,000	
(FC)	Shenango River Lake, Pa. and Ohio	1,750,000		1,750,000		1,750,000		1,750,000	
(FC)	Tioga-Hammond Lakes	2,465,000		2,465,000		2,465,000		2,465,000	
(MP)	Tocks Island Lake, Pa., N.J., and N.Y	8,550,000		8,550,000		9,550,000		9,550,000	
(FC)	Trexler Lake		160,000		160,000		160,000		160,000
(FC)	Tyrone					500,000		500,000	
(FC)	Union City Dam	1,640,000		1,640,000		1,640,000		1,640,000	
(FC)	Woodcock Creek Lake	4,900,000		4,900,000		4,900,000		4,900,000	
	Puerto Rico:								
(FC)	Portuguese and Bucana Rivers (Ponce)				400,000		400,000		400,000
	Rhode Island:								
(BE)	Cliff Walk, Newport	60,000		60,000		60,000		60,000	
	Fall River Harbor, Mass. and R.I. (See Mass.)								
(N)	Providence River and Harbor	1,830,000		1,830,000		1,830,000		1,830,000	
	South Carolina:								
(N)	Cooper River-Charleston Harbor		150,000		150,000		450,000		300,000
	Trotters Shoals Lake, Georgia and South Carolina. (See Georgia.)								
	South Dakota:								
(MP)	Big Bend Dam-Lake Sharpe	2,239,000		2,239,000		2,239,000		2,239,000	
	Big Sioux River at Sioux City, Iowa and S. Dak. (See Iowa.)								
	Big Stone Lake-Whitstone River, Minn. and S. Dak. (See Minnesota.)								
	Gavins Point Dam-Lewis and Clark Lake (relocation of Niobrara Nebraska) Nebr. and S. Dak. (See Nebraska.)								
(MP)	Oahe Dam-Lake Oahe, S. Da . and N. Dak	2,100,000		2,100,000		2,100,000		2,100,000	
	Tennessee:								
(MP)	Cordell Hull Dam and Reservoir	8,000,000		8,000,000		8,000,000		8,000,000	
	Texas:								
(FC)	Aquilla Lake				100,000		100,000		100,000
(FC)	Arkansas-Red River chloride control (pt. I), Texas, Oklahoma, and Kansas		300,000		300,000		300,000		300,000
(FC)	Aubrey Lake		135,000		285,000		285,000		285,000
(FC)	Belton Lake (raise water supply pool)	688,000		688,000		688,000		688,000	
(FC)	Big Pine Lake				100,000		100,000		100,000
(FC)	Buffalo Bayou and tributaries	508,000		508,000		508,000		508,000	
(FC)	Cedar Bayou			430,000		430,000		430,000	
(FC)	Clear Creek				100,000		100,000		100,000
(FC)	Cooper Lake and channels	1,150,000		1,150,000		1,150,000		1,150,000	
(N)	Corpus Christi ship channel			500,000		500,000		500,000	
(FC)	Duck Creek channel improvement			500,000		500,000		500,000	
(FC)	Elm Fork Floodway		225,000		225,000		225,000		225,000
(FC)	El Paso	1,200,000		1,200,000		1,200,000		1,200,000	
(FC)	Freeport and vicinity, hurricane flood protection			500,000		500,000		500,000	
(FC)	Greenville Channel improvement				12,000		12,000		12,000
(N)	Guadalupe River (remove log jam)				25,000		25,000		25,000
(FC)	Highland Bayou	100,000		100,000		100,000		100,000	
(FC)	Lake Kemp	3,500,000		3,500,000		3,500,000		3,500,000	
(FC)	Lavon Lake modification and East Fork channel improvement	12,260,000		12,260,000		12,260,000		12,260,000	
(FC)	Millican Lake, Navasota River		150,000		150,000		150,000		150,000
(N)	Mouth of Colorado River		130,000		130,000		130,000		130,000
(FC)	Navarro Mills Lake (road relocation)				50,000		50,000		50,000
(FC)	Port Arthur and vicinity, hurricane flood protection	**5,230,000		4,700,000		5,230,000		5,230,000	
	Red River levees and bank stabilization, below Denison Dam, Ark., La., and Tex. (See Arkansas.)								
(N)	Sabine-Neches Waterway 40 feet and channel to Echo	3,530,000		3,530,000		3,530,000		3,530,000	
(FC)	San Antonio Channel improvement	1,037,000		1,037,000		1,037,000		1,037,000	
(FC)	San Gabriel River	1,000,000		2,000,000		2,000,000		2,000,000	
(FC)	Taylors Bayou	900,000		900,000		900,000		900,000	
(FC)	Texas City and vicinity, hurricane flood protection	1,960,000		1,960,000		1,960,000		1,960,000	
(N)	Trinity River and tributaries advance participation on high level bridges	2,302,000		2,302,000		2,302,000		2,302,000	
(N)	Trinity River project		1,000,000		1,000,000		1,000,000		1,000,000
(N)	Wallisville Lake	4,200,000		4,200,000		4,200,000		4,200,000	
(MP)	Whitney Lake (raise power pool)	350,000		350,000		350,000		350,000	
	Utah:								
(FC)	Little Dell Lake		309,000		309,000		309,000		309,000
(FC)	Weber River and tributaries		25,000		25,000		25,000		25,000
	Virginia:								
	Delaware Bay-Chesapeake Bay Waterway Del., Md., and Va. (see Delaware.)								
(FC)	Four Mile Run City of Alexandria, and Arlington County		**245,000		245,000		245,000		245,000
(FC)	Gathright Lake	4,780,000		4,780,000		4,780,000		4,780,000	
(N)	Hampton Roads	1,397,000		1,397,000		1,397,000		1,397,000	
(N)	James River		30,000		30,000		30,000		30,000
(MP)	Salem Church Lake		500,000		500,000		500,000		500,000
(BE)	Virginia Beach (reimbursement)	100,000		100,000		100,000		100,000	
	Washington:								
	Bonneville lock and dam (2d power unit), Oregon and Washington. (See Oregon.)								
	Columbia River and lower Willamette River, 35- and 40-foot projects, Oregon and Washington. (See Oregon.)								
(MP)	Ice Harbor lock and dam (Lake Sacajawea), additional generating units	**4,400,000		1,000,000		4,400,000		4,400,000	
	John Day lock and dam (Lake Umatilla), Oregon and Washington. (See Oregon.)								
(MP)	Little Goose lock and dam—Lake Bryan	**4,360,000				4,360,000		4,360,000	

Footnotes at end of table.

CONSTRUCTION, GENERAL, FISCAL YEAR 1972—Continued

	Construction, general, State and project	Approved budget estimate for fiscal year 1972		House allowance		Senate allowance		Conference allowance	
		Construction	Planning	Construction	Planning	Construction	Planning	Construction	Planning
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	Washington—Continued								
(MP)	Little Goose lock and dam—Lake Bryan (additional units)				$170,000		$170,000		170,000
	Lower Columbia River bank protection, Oregon and Washington. (See Oregon.)								
(MP)	Lower Granite lock and dam	$55,000,000		$55,000,000		$55,000,000		$55,000,000	
(MP)	Lower Monumental lock and dam	**6,915,000		2,500,000		6,915,000		6,915,000	
(MP)	The Dalles lock and dam (Lake Celilo) Wash., and Oreg. (additional power units)	13,000,000		13,000,000		13,000,000		13,000,000	
(FC)	Vancouver Lake area		$15,000		210,000		210,000		210,000
(FC)	Wahkaikum County Consolidated Diking District No. 1		60,000		100,000		100,000		100,000
(FC)	Wenatchee Canyons 1 and 2		50,000		50,000		50,000		50,000
(FC)	Wynoochee Lake	5,600,000		5,600,000		5,600,000		5,600,000	
(FC)	Zintel Canyon Dam				160,000		160,000		160,000
	West Virginia:								
(FC)	Beech Fork Lake	1,295,000		1,295,000		1,295,000		1,295,000	
	Bloomington Lake, Md. and W. Va. (See Maryland.)								
(FC)	Burnsville Lake	500,000		500,000		880,000		880,000	
(FC)	Coal River				75,000		75,000		75,000
(FC)	East Lynn Lake	3,515,000		3,515,000		3,515,000		3,515,000	
	Hannibal locks and dam, Ohio and West Virginia. (See Ohio.)								
(FC)	R. D. Bailey (Justice) Lake	15,550,000		15,550,000		17,850,000		17,850,000	(9)
(FC)	Rowlesburg Lake	650,000				650,000			100,000
(FC)	Stonewall Jackson Lake	3,350,000		3,350,000		3,350,000		3,350,000	
(FC)	West Fork Lake		135,000		135,000		135,000		135,000
	Willow Island lock and dam, Ohio and West Virginia. (See Ohio.)								
	Wisconsin:								
(N)	Green Bay Harbor (1962 act)	1,281,000		1,281,000		1,281,000		1,281,000	
(FC)	La Farge Lake and Channel Improvement	1,730,000		1,730,000		1,730,000		1,730,000	
(R)	Racine Harbor	510,000		510,000		510,000		510,000	
	Miscellaneous:								
(N)	Small navigation projects not requiring specific legislation costing up to $1,000,000 (sec. 107)	2,910,000		2,910,000		2,910,000		2,910,000	
(FC)	Small projects for flood control and related purposes not requiring specific legislation costing up to $1,000,000 (sec. 205)	9,250,000		9,450,000		10,500,000		10,250,000	
(FC)	Emergency bank protection	500,000		500,000		1,000,000		1,000,000	
(FC)	Snagging and clearing	500,000		500,000		500,000		500,000	
	Recreation facilities, completed projects	6,000,000		7,135,000		8,000,000		7,600,000	
	Fish and Wildlife Coordination Act studies (U.S. Fish and Wildlife Service)	625,000		625,000		625,000		625,000	
	Aquatic plant control (1965 act)	900,000		900,000		1,275,000		1,100,000	
	Employees compensation	1,190,000		1,190,000		1,190,000		1,190,000	
	Reduction for anticipated savings and slippages	−36,650,000		−36,650,000		−36,650,000		−36,650,000	
	Committee reallocation of carryover balances			−1,637,000		−1,072,000		−1,637,000	
	Grand total, construction, general	842,149,000	17,030,000	866,061,000	23,027,000	911,923,000	25,195,000	904,131,000	23,795,000
		(859,079,000)		(889,088,000)		(937,118,000)		(927,926,000)	

[6] Reflects changes made by the revised approved budget submitted in House Document No. 92–93 dated April 19, 1971, as follows: Cross-Florida Barge Canal from zero to $3,750,000 and Pattonsburg Highway Crossing from $2,000,000 to $500,000.
[7] Provides $118,000 of carryover Planning Funds.
[8] $60,000 carryover available to continue planning only.
[9] In addition, carryover balances of $325,000 are available for planning.

Project	Budget estimate construction	Revised budget estimate construction
Alabama: John Hollis Bankhead lock and dam	$6,752,000	$3,252,000
Connecticut: New London barrier	1,400,000	300,000
Louisiana: Lake Pontchartrain and vicinity	4,555,000	5,555,000
North Dakota: Minot		650,000
Texas: Port Arthur and vicinity, hurricane flood protection	4,700,000	5,230,000
Virginia: Four Mile Run, City of Alexandria and Arlington County		245,000
Washington:		
Ice Harbor lock and dam, additional units	1,000,000	4,400,000
Little Goose lock and dam—Lake Bryan		4,360,000
Lower Monumental lock and dam	2,500,000	6,915,000
Total	20,907,000	30,907,000
Net increase		+10,000,000

**—Reflects budget amendment in S. Doc. 92–32:

Mr. STENNIS. Mr. President, for Mississippi River and tributaries, the conference bill provides $86 million, which is $5,034,000 above the House allowance and the budget estimate, and $5,501,000 below the amount allowed by the Senate.

This is an extremely important project affording protection to parts of seven States. Because of budgetary impoundment last year, there was a total of $5,967,000 of carryover and reserve funds. The funds available for this project in fiscal year 1972, therefore, will total $91,967,000.

Mr. President, I ask unanimous consent to insert at this point in the RECORD the tabulation showing the details of the amount allowed for the Mississippi River and tributaries program.

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

FLOOD CONTROL, MISSISSIPPI RIVER AND TRIBUTARIES, FISCAL YEAR 1972

Project	Approved budget estimate for fiscal year 1972		House allowance		Senate allowance		Conference agreement	
	Construction	Planning	Construction	Planning	Construction	Planning	Construction	Planning
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1. General investigations:								
(a) Examinations and surveys	$1,048,000		$1,063,000		$1,250,000		$1,132,000	
(b) Collection and study of basic data	120,000		120,000		120,000		120,000	
Subtotal, general investigations	1,168,000		1,183,000		1,370,000		1,252,000	
2. Construction and planning:								
Mississippi River levee	$5,400,000		$5,400,000		$6,000,000		$5,700,000	
Mud Lake Pumping Plant								
Channel improvement	31,558,000		31,558,000		35,000,000		33,078,000	
Old River	100,000		100,000		100,000		100,000	
St. Francis Basin	4,589,000		4,589,000		7,000,000		5,789,000	
Lower White River:								
Big Creek and tributaries		$70,000		$70,000		$70,000		$70,000
Clarendon levee	100,000		100,000		100,000		100,000	
Cache Basin	200,000		370,000		370,000		370,000	
West Tennessee tributaries	400,000		400,000		400,000		400,000	
Tensas Basin:								
Boeuf and Tensas Rivers, etc	720,000		720,000		900,000		900,000	
Red River backwater	650,000		650,000		650,000		650,000	
Yazoo Basin:								
Sardis Lake	25,000		25,000		25,000		25,000	
Enid Lake	12,000		12,000		12,000		12,000	
Arkabutla Lake	50,000		50,000		50,000		50,000	
Grenada Lake	13,000		13,000		13,000		13,000	
Greenwood	410,000		410,000		460,000		460,000	
Tributaries	720,000		720,000		720,000		720,000	
Ascalmore—Tippo and Opossum Bayous (tributaries)	100,000		100,000		100,000		100,000	
Bank Stabilization (tributaries)								
Big Sunflower River, etc	350,000		350,000		350,000		350,000	
Steele Bayou Basin (Big Sunflower River)				30,000		30,000		30,000
Yazoo backwater	1,820,000		1,820,000		2,385,000		2,385,000	
Muddy Bayou, control structure (Yazoo backwater)	65,000		65,000		65,000		65,000	
Lower Red River, south bank	250,000		250,000		250,000		250,000	
Atchafalaya Basin	2,300,000		2,300,000		4,300,000		3,050,000	
Upper Point Coupee Loop Area (Atchafalaya Basin)	150,000		150,000		150,000		150,000	
Mississippi Delta region (salinity control structures)		5,000		5,000		5,000		
Tech Vermilion Basin		150,000		150,000		150,000		150,000
Eastern Rapides and South Central Avoyelles Parishes, Louisiana						100,000		100,000
Subtotal, construction and planning	49,982,000	225,000	50,152,000	255,000	59,400,000	355,000	54,717,000	
Reduction for anticipated savings and slippages	−1,409,000		−1,624,000		−1,624,000		−1,624,000	
Total, construction and planning	48,573,000	225,000	48,528,000	255,000	57,776,000	355,000	53,093,000	
3. Maintenance	31,000,000		31,000,000		32,000,000		31,300,000	
Grand total			79,528,000	255,000	89,776,000	355,000	84,393,000	355,000
	(80,966,000)		(80,966,000)		(91,501,000)		(86,000,000)	

TITLE III, DEPARTMENT OF THE INTERIOR

Mr. STENNIS. Mr. President, for title III the conference bill provides $480,506,000, which is $254,000 above the amount approved by the Senate; $4,050,000 above the House allowance; $15,054,000 above the budget; and $37,986,000 above the appropriation for fiscal year 1971.

For the Bureau of Reclamation, the conferees agreed on an increase of $425,000 for general investigations; and agreed to the House amount of $208,845,000 for construction and rehabilitation. This is $1,889,000 above the amount allowed by the Senate.

Mr. President, there is a clerical error in the joint explanatory statement of the Committee of Conference. In connection with the explanation of Amendment No. 11, on page 31 it is indicated that the allowance for the Narrows Unit, Colo., is $250,000 for planning. The figure should be $150,000.

The conferees allowed $500,000 of the $630,000 Senate increase for the upper Colorado River storage project.

I ask unanimous consent that tabulations showing the details of the conference agreement for construction and rehabilitation, and for the upper Colorado River storage project, be printed in the RECORD at this point.

There being no objection, the tables were ordered to be printed in the RECORD, as follows:

BUREAU OF RECLAMATION, FISCAL YEAR 1972
CONSTRUCTION AND REHABILITATION

Construction, general, State and project	Approved budget estimate for fiscal year 1972		House allowance		Senate allowance		Conference allowance	
	Construction	Planning	Construction	Planning	Construction	Planning	Construction	Planning
(1)	(2)	(3)	(4)	(5)	(5)	(6)	(8)	(9)
Arizona:								
Colorado River front work and levee system			$1,500,000		$1,500,000		$1,500,000	
Pacific Northwest-Pacific Southwest intertie	$270,000		270,000		270,000		270,000	
California:								
Central Valley project:								
Trinity division	49,000		49,000		49,000		49,000	
Sacramento River division	1,225,000		1,225,000		1,225,000		1,225,000	
Tehama-Colusa Canal	97,000		1,297,000		1,297,000		1,297,000	
San Luis unit	7,437,000		16,637,000		12,000,000		14,957,000	
Westlands distribution and drainage system	(1,500,000)		(9,500,000)				(7,820,000)	
San Luis drain	(4,621,000)		(4,621,000)				(4,621,000)	
All other San Luis unit facilities	(1,247,000)		(1,247,000)				(1,247,000)	
Pleasant Valley Canal (Coalinga)	(69,000)		(1,269,000)				(1,269,000)	
Auburn-Folsom South unit	32,150,000		32,150,000		32,450,000		32,450,000	
Folsom South Canal	(16,053,000)		(16,053,000)		(16,353,000)		(16,353,000)	
All other Auburn area facilities	(16,097,000)		(16,097,000)		(16,097,000)		(16,097,000)	
All other project facilities	2,080,000		2,080,000		2,080,000		2,080,000	
San Felipe division		$300,000		$300,000		$300,000		$300,000
Total Central Valley project	43,038,000	300,000	53,438,000	300,000	49,101,000	300,000	53,828,000	300,000

Footnotes at end of table.

CONSTRUCTION AND REHABILITATION—Continued

Construction, general, State and project	Approved budget estimate for fiscal year 1972		House allowance		Senate allowance		Conference allowance	
	Construction	Planning	Construction	Planning	Construction	Planning	Construction	Planning
(1)	(2)	(3)	(4)	(5)	(5)	(6)	(8)	(9)
Colorado River front work and levee system (see Arizona).								
Pacific Northwest-Pacific Southwest intertie (see Arizona).								
Colorado: Fryingpan-Arkansas project	$18,897,000		$19,917,000		$20,917,000		$20,247,000	
Idaho:								
Irrigation facilities, Corps of Engineers		$8,000		$8,000		$8,000		$8,000
Rathdrum Prairie project, East Greenacres unit			400,000		400,000		400,000	
Teton Basin project, lower Teton division	10,655,000		10,655,000		10,655,000		10,655,000	
Nevada:								
Pacific Northwest-Pacific Southwest intertie (see Arizona).								
Southern Nevada water project	720,000		720,000		720,000		720,000	
Oklahoma: Mountain Park project	2,200,000		2,200,000		2,200,000		2,200,000	
Oregon:								
Irrigation facilities, Corps of Engineers projects (see Idaho).								
Tualatin project	1,100,000		2,300,000		2,300,000		2,300,000	
Texas: Palmetto Bend project	1,400,000		1,400,000		1,400,000		1,400,000	
Washington:								
Chief Joseph Dam project, Manson unit	1,200,000		1,200,000		1,200,000		1,200,000	
Columbia Basin project	102,739,000		105,199,000		104,199,000		104,199,000	
Irrigation and other	(11,689,000)		(12,149,000)		(12,149,000)		(13,149,000)	
3d powerplant	(91,050,000)		(91,050,000)		(91,050,000)		(91,050,000)	
Various:								
Drainage and minor construction program:								
All-American Canal system, California	2,000		2,000		2,000		2,000	
Boulder Canyon project, Arizona-Nevada	131,000		131,000		131,000		131,000	
Buffalo Rapids project, Montana	30,000		30,000		30,000		30,000	
Chief Joseph Dam project, Foster Creek division, Washington	300,000		300,000		300,000		300,000	
Eden project, Wyoming	400,000		400,000		400,000		400,000	
Gila project, Arizona	1,036,000		1,036,000		1,036,000		1,036,000	
Kendrick project, Wyoming	100,000		100,000		100,000		100,000	
Klamath project, Oregon-California	44,000		44,000		44,000		44,000	
Michaud Flats project, Idaho	33,000		33,000		33,000		33,000	
Parker-Davis project, Arizona-California-Nevada	955,000		955,000		955,000		955,000	
Pecos River Basin Water Salvage project, New Mexico-Texas	119,000		119,000		119,000		119,000	
Recreation facilities at existing reservoirs, various States	209,000		209,000		209,000		209,000	
San Angelo project, Texas	30,000		30,000		30,000		30,000	
Technical records and as-built drawings, Colorado	7,000		7,000		7,000		7,000	
Washita Basin project, Oklahoma	52,000		52,000		52,000		52,000	
Total, drainage and minor construction	3,448,000		3,448,000		3,448,000		3,448,000	
Rehabilitation and betterment of existing projects:								
Carlsbad project, New Mexico	500,000		500,000		500,000		500,000	
Cascade Canal, Talent division				15,000		15,000		15,000
Cascade Irrigation District, Washington			150,000		150,000		150,000	
El Paso County water improvement district No. 1			500,000		500,000		500,000	
Dickinson unit, Mann's Dam					48,000			
Klamath project, Shasta View Irrigation District, Oregon-California	260,000		260,000		260,000		260,000	
Solano project—California	800,000		800,000		800,000		800,000	
Salt River project, Arizona	775,000		775,000		775,000		775,000	
Shoshone project, Garland division, Wyoming								
Sun River, Mont.	200,000		200,000		200,000		200,000	
Tucumcari project, New Mexico	160,000		160,000		160,000		160,000	
Total rehabilitation and betterment of existing projects	2,695,000		3,345,000	15,000	3,393,000	15,000	3,345,000	15,000
Subtotal, exclusive of Pick-Sloan Missouri Basin program	188,362,000	308,000	204,992,000	323,000	201,703,000	323,000	203,942,000	323,000
PICK-SLOAN MISSOURI BASIN PROGRAM (MKBP)								
Colorado: Narrows unit						250,000		150,000
Montana: Canyon Ferry project			350,000		350,000		350,000	
Nebraska: Mid-State division		200,000		400,000		400,000		400,000
North Dakota:								
Garrison diversion unit	9,640,000		10,640,000		11,640,000		11,390,000	
Garrison diversion unit, Minot extension								
South Dakota:								
Garrison diversion unit (see North Dakota.)								
Garrison diversion unit, Minot extension (see North Dakota.)								
Oahe unit (land acquisition)		550,000	150,000	550,000	300,000	550,000	300,000	550,000
Various:								
Transmission division	5,591,000		5,591,000		5,591,000		5,591,000	
Drainage and minor construction program:								
Ainsworth unit, Nebraska	5,000		5,000		5,000		5,000	
Bostwick division, Nebraska-Kansas	892,000		892,000		892,000		892,000	
Cedar Bluff unit, Kansas	75,000		75,000		75,000		75,000	
East Bench unit, Montana	352,000		352,000		352,000		352,000	
Farwell unit, Nebraska	252,000		252,000		252,000		252,000	
Frenchman Cambridge division, Nebraska	500,000		500,000		500,000		500,000	
Glen Elder unit, Kansas	15,000		15,000		15,000		15,000	
Hanover Bluff unit, Wyoming	47,000		47,000		47,000		47,000	
Helena Valley unit, Montana	321,000		321,000		321,000		321,000	
Owl Creek unit, Wyoming	50,000		50,000		50,000		50,000	
Technical records and as-built drawings, Colorado	2,000		2,000		2,000		2,000	
Yellowtail unit, Montana-Wyoming	498,000		498,000		498,000		498,000	
Total, drainage and minor construction	3,009,000		3,009,000		3,009,000		3,009,000	
Total, Pick-Sloan Missouri Basin program	18,240,000	750,000	19,740,000	950,000	20,890,000	1,200,000	20,640,000	1,100,000
Subtotal, construction and rehabilitation	207,660,000		226,005,000		224,116,000		226,005,000	
Undistributed reduction based on anticipated delays	−17,160,000		−17,160,000		−17,160,000		−17,160,000	
Total, construction and rehabilitation	190,500,000		208,845,000		206,956,000		208,845,000	

BUREAU OF RECLAMATION, FISCAL YEAR 1972

UPPER COLORADO RIVER STORAGE PROJECT—UPPER COLORADO RIVER BASIN FUND

Construction, general, State and project	Approved budget estimate for fiscal year 1972		House allowance		Senate allowance		Conference allowance	
	Construction	Planning	Construction	Planning	Construction	Planning	Construction	Planning
(1)	(2)	(3)	(4)	(5)	(5)	(6)	(8)	(9)
COLORADO RIVER STORAGE PROJECT								
Colorado: Curecanti unit	$6,463,000		$3,963,000		$3,963,000		$3,963,000	
Various: Transmission division	3,000,000		3,000,000		3,000,000		3,000,000	
PARTICIPATING PROJECTS								
Colorado:								
Dallas Creek project				$150,000		$150,000		$150,000
Dolores Creek project				160,000		160,000		160,000
San Juan-Chama project	369,000		1,069,000		1,069,000		1,069,000	
San Miguel project				100,000		100,000		100,000
New Mexico:								
Animas-LaPlata project. (See Colorado.)								
San Juan-Chama project. (See Colorado.)								
Utah:								
Central Utah project, Bonneville unit	8,199,000		10,222,000		10,222,000		10,222,000	
Central Utah project, Jensen unit	200,000		200,000		200,000		200,000	
Lyman project. (See Wyoming.)								
Wyoming:								
Lyman project	[1] 550,000		550,000		550,000		550,000	
Savery-Pot Hook project. (See Colorado.)								
Various:								
Drainage and minor construction program:								
Colorado River storage project:								
Glen Canyon unit, Arizona-Utah	700,000		700,000		700,000		700,000	
Navajo unit, New Mexico	206,000		206,000		206,000		206,000	
Participating projects:								
Bostwick Park project, Colorado	38,000		38,000		38,000		38,000	
Central Utah project, Vernal unit, Utah	290,000		290,000		290,000		290,000	
Emery County project, Utah	204,000		204,000		204,000		204,000	
Fruitland Mesa project, Colorado			200,000		830,000		200,000	500,000
Hammond project, New Mexico	367,000		367,000		367,000		367,000	
Seedskadee project, Wyoming	305,000		305,000		305,000		305,000	
Silt project, Colorado	10,000		10,000		10,000		10,000	
Construction revenues	[2] −50,000		−50,000		−50,000		−50,000	
Total, drainage and minor construction program	2,070,000		2,270,000		2,900,000		2,270,000	500,000
Subtotal	20,851,000		21,274,000	410,000	21,904,000	410,000	21,274,000	910,000
Undistributed reduction based on anticipated delays	−1,700,000		−1,700,000		−1,700,000		−1,700,000	
Total, Upper Colorado River Basin fund	19,151,000		19,984,000		20,614,000		20,484,000	
RECREATIONAL AND FISH AND WILDLIFE FACILITIES								
National Park Service	435,000		435,000		435,000		435,000	
Bureau of Sport Fisheries and Wildlife	170,000		170,000		170,000		170,000	
Total, recreational and fish and wildlife facilities	605,000		605,000		605,000		605,000	
Total, Upper Colorado River storage project	19,756,000		20,589,100		21,219,000		21,089,000	

[1] Includes $500,000 on budget amendment, H. Doc. 92-128.

[2] Construction revenues included in the Glen Canyon unit program.

TITLE IV, INDEPENDENT OFFICES

Mr. STENNIS. Mr. President, for title IV, the conference bill provides $395,011,000, which is $17,200,000 above the amount allowed by the House and $5,500,000 below the Senate-approved bill; $25,655,000 above the budget; and $8,721,000 above the appropriations for fiscal year 1971.

For the Appalachian regional development programs the conference allowance is $297 million, which is $15 million above the House allowance and budget request and $5 million below the amount approved by the Senate. The increase over the House amount provides $5 million for the health demonstration program, $5 million for vocational education facilities, and $5 million for supplemental grants for rural waterworks and sewerage systems.

Mr. President, the increase allowed by the conferees for the Tennessee Valley Authority provides $1,700,000 for the Mills River Reservoir in North Carolina, and $500,000 additional for the fertilizer program.

I am very glad that we were able to agree on retaining funds for the Mills River Reservoir.

Mr. President, if no other Senator wishes to speak on the subject, I move that the conference report be agreed to.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Mississippi.

The motion was agreed to.

Mr. STENNIS. Mr. President, I ask unanimous consent that the requirement that the conference report on the public works for water and power development and Atomic Energy Commission appropriation bill be printed as a Senate report be waived, inasmuch as under the Rules of the House of Representatives it has been printed as a report of the House of Representatives. The reports are identical.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STENNIS. Mr. President, I am advised that the Senator from North Dakota (Mr. YOUNG) is engaged at a hearing. He is the ranking minority member of the conference and fully approves this report.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, September 22, 1971, he presented to the President of the United States the following enrolled bills:

S. 415. An act for the relief of Mr. and Mrs. Arvel Glinz; and

S. 504. An act for the relief of John Borbridge, Jr.

MILITARY PROCUREMENT AUTHORIZATIONS, 1972

The Senate resumed the consideration of the bill (H.R. 8687) to authorize appropriations during the fiscal year 1972 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of Armed Forces, and for other purposes.

AMENDMENT NO. 426

The PRESIDING OFFICER (Mr. ROTH). Pursuant to the previous order, Amendment No. 426, offered by the Senator from Wisconsin (Mr. NELSON), now becomes the pending business. The clerk will state the amendment.

The assistant legislative clerk read as follows:

(c) Notwithstanding any other provision of law, none of the funds authorized to be appropriated by this Act may be obligated or

expended in connection with the Navy's Project Sanguine until after (1) a final environmental impact statement has been made with respect to such project pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 and such statement has been reviewed by the President's Council on Environmental Quality, and (2) a technical feasibility review of such project has been completed by the National Academy of Sciences and the National Academy of Engineering. The foregoing condition shall not apply to the obligation or expenditure of such funds for carrying out environmental compatability research and biological and ecological effects research in connection with such project.

The PRESIDING OFFICER. Who yields time?

Mr. BYRD of West Virginia. Mr. President, I believe the Senator from Wisconsin wishes to ask for the yeas and nays on the amendment. If he does, would he do so now?

Mr. NELSON. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Chair wishes to point out that there are 2 hours of debate, to be equally divided between and controlled by the Senator from Wisconsin (Mr. NELSON) and the Senator from Mississippi (Mr. STENNIS).

The Senator from Wisconsin is recognized.

Mr. NELSON. Mr. President, this amendment affects the appropriations for Project Sanguine, which is a proposed communications system in an area in northern Wisconsin. It involves only the State of Wisconsin.

The amendment provides that:

Notwithstanding any other provision of law, none of the funds authorized to be appropriated by this Act may be obligated or expended in connection with the Navy's Project Sanguine until after (1) a final environmental impact statement has been made with respect to such project pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 and such statement has been reviewed by the President's Council on Environmental Quality, and (2) a technical feasibility review of such project has been completed by the National Academy of Sciences and the National Academy of Engineering. The foregoing condition shall not apply to the obligation or expenditure of such funds for carrying out environmental compatability research and biological and ecological effects research in connection with such project.

I yield myself 10 minutes

Mr. President, do I understand correctly that there is a consent agreement of 2 hours on this amendment, 1 hour per side?

The PRESIDING OFFICER. The Senator is correct.

Mr. NELSON. Mr. President, this amendment is consistent with several other amendments that I have introduced earlier to require Federal agencies to comply with the National Environmental Policy Act of 1970. Under the act, Federal agencies are directed to file environmental impact statements with their legislative proposals and other proposed actions, in order that the public, the Congress and the President's Council on Environmental Quality can consider the environmental implications of these proposals before they are advanced.

In section 102(2)(c), the National Environmental Policy Act says the agencies shall "include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official" on the environmental impact of the proposed action, possible alternatives, irretrievable commitments of resources and other environmental concerns.

Further, prior to finalizing these statements, the responsible Federal official is directed by the act to "consult with and obtain comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved."

The military procurement authorization bill before the Senate includes $5.557 million for the proposed Project Sanguine communications system in my own State of Wisconsin. A total of $5.107 million in the budget request would go to advance development of the system's technology and to prepare the project for validating a contract for full-scale deployment. The Navy has indicated several times in the past few months that it desires to advance the project to the contract validation phase in the next fiscal year.

The remaining $450,000 in the budget request is for continuing studies on the impact of the project, when in operation, on the environment of northern Wisconsin and the 6,000 square miles that would be involved.

Under this amendment only the $450,000 for environmental studies would be funded. There are compelling reasons for withholding further Sanguine financing at this time:

First. The detailed environmental impact statement required by the National Environmental Policy Act has not been completed by the Navy, and much research still has to be undertaken before the Navy will be in a position to complete such a statement. The research areas for these studies have been defined. All that is needed is the commitment to complete the research and seek the consultation of other Federal agencies as required by NEPA.

Second. There is a serious question whether the technology proposed by the Navy for communicating via Project Sanguine will even work. Involved here is not the adequacy of research and development that has been carried out to date or contemplated for the immediate future. Rather, the question is whether the basic technology for Sanguine is correct. Questions that have been raised in this regard have been considered serious enough—first by independent scientists and then by the Navy—to warrant a comprehensive study by the National Academy of Sciences and the National Academy of Engineering. This review, initiated at my request, was started only recently, and indications are that it will be some time before the work is completed.

And herein lies a major distinction between the subject of the amendment before the Senate today and the subjects of the amendment to the pending bill that I offered earlier. In the previous amendment, I asked that funds be withheld on several projects until the provisions of NEPA were fulfilled.

In the present case, not only are the provisions of NEPA being ignored, but also, the basic technology proposed to be utilized by Sanguine has been challenged to such a degree that even the Navy has agreed to seek an independent review of that technology. It is very difficult for me to reconcile the Navy's acknowledgement, on the one hand, that a comprehensive technological review was needed and, on the other hand, its persistence in pushing ahead with development of the project.

The people of Wisconsin—and a good many others throughout the country—want some answers to these important technological and environmental questions before another dime is spent on the development of Project Sanguine. They do not want to have a military boondoggle in their backyard.

Some background on this project would be useful at this point in the RECORD.

Project Sanguine is a proposal by the Navy to communicate with submerged submarines armed with nuclear missiles and other military forces throughout the world.

To accomplish this aim, the Navy has proposed that a huge antenna network be installed in northern Wisconsin to transmit extremely low frequency radio waves around the globe. This system would serve as an emergency backup to existing land-based communications networks that are in operation today throughout the world.

The land area requirement for the antenna would be extremely large. Taking the Navy's latest estimates, about 6,400 square miles of northern Wisconsin would be covered by an antenna grid, consisting of a series of criss-crossing cables—each cable covering 80 miles end to end. Between 800 and 1,000 miles of cables would be laid 6 feet underground, requiring the clearing of substantial acreages of forest lands to enable bulldozers and other heavy machinery necessary to lay the cables in place.

At one time, the Navy said that 21,000 square miles of land would be covered by the antenna grid, but that staggering land area since has been scaled down to 6,400.

We are not sure what the cost of construction would be. At one point the Navy indicated the cost at around $2 billion. The Navy has progressively lowered its estimate to $1.5 billion, $1 billion, and finally to around $750 million. Some scientists have even questioned whether such a project can be built at the latest cost suggested by the Navy because, they say, the power input to the system will have to be greatly increased to enable operation.

We are not sure, either, how much electricity would be required to operate the system. The latest estimate by the Navy is that 30 megawatts—half the electrical power consumption of the Madison, Wis., metropolitan area—would have to be generated continuously

for Sanguine. This latest estimate, which is disputed by independent scientists, also has been scaled down by the Navy from the first estimates of around 500 megawatts.

These uncertainties surrounding the environmental and scientific aspects of the Sanguine project, plus the Navy's continued vagueness about the scope of the project, are deeply disturbing to many of the people—including myself—who have been expressing reservations about Project Sanguine since 1968.

There are a good many other unresolved Sanguine concerns. One of them is the military value of the project, something that as yet has not been thoroughly reviewed by Congress. The Navy stresses only the need to communicate with submarines and other military forces. As I indicated earlier, this communication already can be carried out.

Communication via Sanguine, however, would be a departure from the usual modes of transmitting radio signals. The frequency output would be so low that only code could be transmitted. And the receiver could not return the signal to Sanguine because of the technological impossibility of, for example, equipping a submarine with the massive antenna and power generators necessary to send extremely low frequency signals over long distances.

Questions over the military value of Sanguine aside, my concern at this time is primarily about the many unresolved questions surrounding the environmental impact of the project, and about the vital questions of whether the system will even work.

Indeed, this concern is shared by the Navy. In December of 1969, Navy Capt. F. L. Brand addressed a meeting at Park Falls, Wis.—on the question of Project Sanguine.

Captain Brand said at that meeting:

> We will not build Sanguine, one further iota of it, unless we can demonstrate there are no problems.

The Navy should live up to that commitment, even if it takes congressional action as I am proposing today to assure that this is done.

It is obvious that the Navy has some distance to go before the environmental impact questions are resolved. And only now a review has begun over whether the project is technologically feasible.

Research on communications with extremely low frequency was started in 1958. Each year since then the Congress has been funding such research, which eventually was code-named Project Sanguine. But it was not until 1968—10 full years after the initial research was started—that the public was told of the project.

In early 1969, the Navy requested permission from the Secretary of Defense to move the project to the contract validation phase. At that time, very little if anything was known of the potential environmental impact not only of building the Sanguine system but of operating the project with massive amounts of electricity running through the very large antenna grid. The request to proceed with contract validation was rejected by the Defense Secretary and the House Appropriations Committee. And after urgings by myself and others that environmental studies be undertaken, the Navy finally started such studies.

The Navy entered into a contract with the Hazleton Laboratories of Falls Church, Va., for investigation of the biological effects of Sanguine.

The Hazleton Laboratories issued its report last November. And the conclusions were rather disturbing.

The report—Page 3, Project Sanguine Biological Effects Test Program Pilot Studies by Hazleton Laboratories, Inc., November 1970—said the effects in some of the laboratory studies showed:

Possible but inconsistent blood pressure and rectal temperature elevations in dogs exposed to the laboratory electrical field.

Possible increase in the dominate lethal mutation rate in the fruit fly—normally used for mutation-rate studies.

Possible growth inhibition in one of three plant species used in the studies.

Some avoidance reaction to electrical fields by turtles and fish in experiments.

Declines in populations of four major classifications of soil arthropods at both test and control sites.

And the report recommended—Page M–1.

Additional studies to determine safety limits for the extremely low frequency electrical and magnetic fields. These studies should include, the report said, investigations of effects on other species of plant seeds, and the effects on several other aquatic animals.

The fruit fly mutagenisis study be expanded and carried out immediately. The report said:

> The implications of these results are too important to be neglected.

Careful studies on how the blood pressure and body temperature of dogs exposed to electrical fields is affected.

And, quoting directly from the report:

> Finally, because aquatic organisms are so intimately in contact with a voltage gradient appearing in water, it would be important to investigate possible reproductive effects in the aquatic animal.

The Hazleton report and its recommendations demonstrate the critical importance of additional studies on the environmental effects of Sanguine before proceeding any further with this project.

But here I want to emphasize my earlier point that the research study areas are known. All that is needed is the commitment by the Navy to complete this work—and fulfill the requirements of NEPA as passed by the Congress more than 20 months ago. Until these vital studies are completed, we should withhold further funding of the project.

Furthermore, in view of previous Navy statements there is cause for serious concern whether the Department even understands the serious environmental questions that have already been raised about Sanguine.

In December of 1970, 1 month after the Hazleton report was prepared, the Navy issued a report entitled "The Environmental Compatibility Assurance Program for Sanguine—ECAP."

The report concluded its abstract with these words:

> The results of research presented in this report show that a Sanguine system compatible with the environment can be designed. Research will continue to provide further documentation and to assure that a system can be installed and operated without affecting the present environment.

There is no documented support for this conclusion, and the Navy knows it.

As I have noted earlier, the conclusions and recommendations of the Hazleton report very clearly establish that several outstanding questions about the environmental impact of Sanguine are apparent and must be resolved.

In March, of this year, the Navy submitted a draft environmental impact statement. This statement was not widely circulated—and the Navy has emphasized that it is only a draft.

Last Friday a subcommittee of the Wisconsin Governor's ad hoc committee on Sanguine published a critique of the Navy's draft environmental impact statement.

The ad hoc committee on Sanguine was appointed in December of 1969. The committee, which is chaired by Dr. Robert Bock of the University of Wisconsin's Graduate School, is widely recognized as being highly objective and impartial in its review of the many facets of the project Sanguine controversy.

I would like to read directly from the summary statement of the Environmental Standards Subcommittee of the ad hoc committee:

> Initially it is necessary to make very clear our strongest reservation. Throughout the DEIS (Draft Environmental Impact Statement) and the ECAP Status Report (Annex A), statements are made to the effect that a Project Sanguine design can be developed which would result in an operable system that would have no significant adverse environmental effects. In different contexts and at every opportunity this statement is reiterated. We, in turn, have repeatedly stated that this assertion has neither been proven nor disproven. The Navy has neither recognized nor publicly recorded our position. Repetition is not a substitute for verification. The latter will be required before an Environmental Impact Statement will be acceptable to the scientific community.
>
> To the present, the pilot biological studies and ecological surveys have been aimed solely at acute effects. *Results in virtually none of these experiments have been at all convincing.* (Italics added) Our subcommittee is, thus, not at all assured, even concerning such short-term acute effects, at any EM (electro-magnetic) level. We have, however, repeatedly stressed the need for long-term study of possible subtle effects, particularly concerning multiple or cross stresses, factors which are critical to survival in a free-living organism in the natural environment. The sooner such studies are initiated, the sooner it will be possible to realistically discuss the environmental impact of Project Sanguine. Without the inclusion of results from such studies, a final Environmental Impact Statement would be unacceptable to our subcommittee.
>
> Sweeping statements are made throughout the DEIS that no adverse "impacts" have been found—a statement with which we have disagreed—but it must be made clear that these references deal primarily with volts per meter gradients at the antenna sites. Biotic effects at the ground terminals—10 to 14 volts per meter—have been virtually neglected. Even if the grounding sites occupy a relatively small area, the prob-

lems of adverse biotic effects must be identified and investigated.

The effort to assure that natural resources would be protected in the event that Project Sanguine is installed is commendable. It is also necessary, however, to give assurances that if the system were constructed, provisions would be made through federal funding to facilitate appropriate state action for detecting and preventing specification violations.

The subcommittee's report consists of 9 pages of detailed critique of the Navy's draft environmental impact statement.

Of particular interest is section 3 of the Navy's report in which there is a discussion of "adverse environmental effects which cannot be avoided should the proposal—Project Sanguine—be implemented." This is contained on page 34 of the Navy's report, and the first paragraph reads:

During the approximately four years of environmental research that has been conducted under the Project Sanguine ECAP Program, and the recently completed Sanguine System Design Studies as well, no permanent or long-term adverse environmental effects which cannot be avoided have been identified.

That is what the Navy says. Now here is the subcommittee's comment:

We take strong exception to the intent and wording of this entire section, most especially to the first paragraph, page 34 (just quoted above). How could long-term adverse environmental effects be identified or deemed non-existent when no such studies were conducted? There have not been "four years of environmental research" having to do with biological or ecological compatibility. There are virtually no studies which have been reported to us in written form which provide biological or ecological assurance even on a short-term basis. There are certainly none which provide long-term assurance.

. . . Section 3 in its entirety is a glossover of non-existent or shoddy investigation of biological and ecological problems and cannot be allowed to stand unchallenged.

The Navy impact statement does not comply with the spirit or letter of the Environmental Policy Act.

The Department has not attempted to evaluate the issues raised in an objective manner.

However, it is not only in the environmental impact area that grave questions remain with regard to Project Sanguine.

The Navy has stated categorically on numerous occasions that extremely low frequency will work in the case of Sanguine and, accordingly, virtually all of its development efforts has made the assumption that ELF is the best technology for the job.

There is considerable doubt, however, that ELF is the best technology.

Earlier this year, the Defense Marketing Survey—DMS—a private organization which monitors defense programs and contracts, issued a short report on the status of Project Sanguine. It concluded with these remarks:

A year ago DMS forecast that LF (low frequency) and VLF (very low frequency) would eventually replace ELF (extremely low frequency, which is Project Sanguine) in the survivable communications concept. We see no reason to change that projection.

The Navy apparently has studied alternatives to extremely low frequency for Sanguine, although the document that discusses these alternatives has been classified by the Department of Defense and therefore not available for scrutiny by the public. However, the major thrust of the Sanguine effort has been in the development of extremely low frequency. And because the Navy already has sought to advance the project to contract validation in 1968 and, from every indication, will be seeking to advance it to that point again for the next fiscal year, there is little doubt that the Navy has concluded that extremely low frequency, with power input levels, of 30 megawatts, is the best technology.

A short time after the Defense Marketing Survey issued its report, two other reports were published, one by the Wisconsin Committee for Environmental Information—made up largely of scientists at the University of Wisconsin—and another by an antenna expert at the University of Kansas at Lawrence. These reports, prepared independently of each other, concluded that with extremely low frequency at power input levels suggested by the Navy it would take so long to send messages via Sanguine that, as the Wisconsin report said, the system would be susceptible to jamming by another nation at considerably less effort than that required to send the messages in the first place.

The Wisconsin report calculated that with the stated power input to Sanguine it would take 1.7 hours to transmit a simple 12-letter message via the proposed system.

Dr. Albert Biggs at the University of Kansas calculated a "worse case analysis" of Sanguine, and concluded it could take up to 15 hours to send a similar message. Both reports said the sending time could be improved only by substantially increasing the power input to the system. If this is true, then obviously there would have to be a new series of environmental studies to determine the effect on plants, animals and humans from the greatly increased power of the electrical field surrounding the massive antenna grid and the impact of building and operating the scores of generators necessary to supply the power.

If this should happen, then the Congress would find itself in the awkward and embarrassing position of facing a greatly increased Navy budget to allow the additional construction necessary to make Sanguine work after the huge antenna grid already is in place.

Because of the seriousness of the questions raised by the two scientific reports, I asked the Navy to seek an independent review of the technology chosen for Sanguine. In a letter to me dated May 14, 1971, Assistant Navy Secretary Robert Frosch agreed and said the National Academy of Sciences and the National Academy of Engineering has been asked to conduct a joint review. NAS/NAE only recently has begun to assemble their review panel to undertake the analysis that was requested by the Navy.

A short time later, I wrote a letter to Assistant Secretary Frosch and asked why development work on Sanguine should not be suspended until the technical review is completed.

In response Dr. Frosch stated that the Navy believed there were errors committed by the scientists who prepared the two reports questioning the feasibility of Sanguine—I should add parenthetically that the Wisconsin report had been widely circulated among several prominent persons in the scientific community before the final draft was published.

Then Dr. Frosch said:

. . . in our opinion, there has not been any valid evidence presented which would warrant the conclusion that the feasibility of Sanguine as an effective communication system is in doubt.

This letter was sent, after the National Academy of Sciences and the National Academy of Engineering had been asked to conduct the technical review.

It seems to me that the prudent course in this matter would be to postpone action on the Navy's Sanguine budget request until both the technical review and the environmental impact studies have been completed, and the latter reviewed by the President's Council on Environmental Quality.

It should be emphasized that the pending amendment would not permanently stop development of Project Sanguine. Rather, it would temporarily suspend development work until the Navy has fulfilled the statutory requirements of NEPA and until the technical review has been completed so we will know whether Sanguine will even work. To date, nearly $50 million have been spent on Project Sanguine and some 13 years have been devoted to the overall effort. The Navy already has sought permission to advance Sanguine to the contract validation phase, and there is little doubt that the Navy currently is gearing its efforts toward another attempt to secure the once-denied permission to enter the contract validation phase of development. Indeed, the Navy's testimony before the Armed Services Committee several months ago said that certain systems concept for Sanguine are ready, in the Navy's words, "for proceeding into the formal development and acquisition process."

This amendment would simply withhold further funds for the development of Sanguine to allow the environmental impact studies to be completed and serve as a guide to any further development, and to allow the technical review committee to ascertain whether the correct technology has been selected.

Should the technical committee conclude that the best technology has not been selected, then continuing to fund Sanguine at this point would result in a colossal waste of money and time.

There is another subject relating to Sanguine that is germane here. That is the curious activity by the Navy on September 10 in revising its budget request for Sanguine. This revising took place after the House had voted on the military procurement authorization bill, long after hearings on the bill in both the Senate and the House had been completed and after the Senate Armed Services Committee had prepared its report and sent the bill to the Senate floor.

Before us today is a Sanguine request for $5.557 million. Until September 10,

this request included $2.4 million to investigate the possibility of burying Sanguine several thousand feet deep in a network of tunnels.

I objected to that elaborate scheme because it, like the shallow Sanguine system relied on extremely low frequency. Since there is a serious question whether the shallow system is feasible why spend money on a deep tunnel system until the feasibility of a shallow system is proved.

On September 10, I was notified by the Navy that it had all but abandoned research on a deep underground Sanguine system. In a last minute Navy decision following my stated objections, the budget request for Sanguine was revised to reduce the deep underground effort by $1.94 million because of unexplained "technical problems."

However, rather than remove that amount entirely from the budget, the Navy simply used it to increase the overall development effort for the shallow Sanguine system. The only exception was $100,000 added to the environmental impact study effort.

The effect of the arbitrary and hasty reassignment of budget figures is to increase the surface Sanguine system effort by nearly $2 million—or an increase of about 45 percent over a very short time frame—without the appropriate congressional committees even having the opportunity to consider in public hearings how these additional funds would be used.

Mr. President, while we debate whether or not we are going to insist on compliance with the National Environmental Policy Act, in a ruling just yesterday, a Federal district court in Washington, D.C., dramatically reaffirmed that the act requires Federal agencies to fully consider all aspects of the environment and to file comprehensive, detailed, final environmental impact studies before, not after they go ahead with projects posing significant effects on the environment.

The Federal judge granted the Environmental Defense Fund's request for a preliminary injunction holding up the Corps of Engineers work on the $346 million Tennessee-Tombigbee Waterway in Alabama and Mississippi pending a full determination of the project's effects on the environment. The vital environmental issues involved in the project will be finally settled at a later trial before the court, although a date has not yet been set.

The order by Judge John Lewis Smith said:

> Plaintiffs have made a substantial showing of a likelihood that in the planning, design and development of, and in making the decision to construct, the Tennessee-Tombigbee Waterway, defendants have not fully complied with the requirements of the National Environmental Policy Act of 1969, and the Fish and Wildlife Coordination Act of 1934, as amended.

Without the preliminary injunction, the judge concluded, "plaintiffs will suffer irreparable injury for which there is no adequate remedy at law." I ask unanimous consent that the judge's order, and the stories in the New York Times, the Washington Post, the Evening Star, and the Wall Street Journal reporting the decision as one of the most important national news stories of the day be printed in the RECORD at the end of these remarks.

We debated and had a rollcall vote on the Tennessee-Tombigbee question on July 31, on an amendment I introduced to the Public Works Appropriations bill to hold up work on the Tennessee-Tombigbee and four other projects until they were brought into compliance with the National Environmental Policy Act. At that time, the very same issues in the court case were raised and thoroughly discussed.

In the debate, I read into the RECORD sections from the letter to the corps from the Southeastern Regional Office of the Environmental Protection Agency urging that the entire Tennessee-Tombigbee Waterway project be thoroughly reevaluated before the corps went any further. The EPA letter argued that the project—

> May not bring the commercial and industrial development to the area originally anticipated, particularly northeast Mississippi, and a scenic and natural area will be irreversibly damaged for all time.

Further, the regional EPA office said that—

> It is the considered opinion of the EPA that the cumulative long-term overall effect of the project on the environment will be one of overall degradation of water quality values in spite of the presently known techniques which can be applied to help maintain water quality.

And as pointed out in news reports, conservation witnesses at the Tennessee-Tombigbee trial also pointed out the project also poses other serious ecological problems such as possible destruction of the fish food chain there and would preclude archeological exploration of a region important in the history of many native American groups.

The corps response to the grave environmental questions raised by the regional EPA letter was to say that it would do further environmental studies, but was going to start construction on the project regardless.

This EPA document, which I ask unanimous consent to have printed in the RECORD in its entirety at the end of these remarks, was one of the key documents cited by Judge Smith in his decision yesterday.

When I offered my amendment to hold up the funds on the Tennessee-Tombigbee and the other four projects, I said that on the Tennessee-Tombigbee—

> It appears that as has happened so often in the past, the Federal Government is rushing headlong into a massive project whose environmental damages could outweigh any possible benefits.

Yet, I pointed out—

> Despite the overwhelming environmental concerns that have not even begun to be settled, Congress is being asked to appropriate millions of dollars to boost this project along.

Quoting further from my remarks in that debate, I said—

> The EPA report says the environmental hazards are serious and that adequate studies have not been made. Nevertheless Congress is going to appropriate the money and authorize full speed ahead. Then the Corps, which is committed to the project is going to make a study as the project proceeds. How is the study going to come out? Everyone knows the answer. I can give it to them. No matter what the evidence is, the Corps of Engineers is not coming back to the Congress of the United States, after spending millions of dollars on Tombigbee, and say, "We have now made studies and found out that the project is a big blunder and that the regional EPA office was right in the first place. We know they are not going to come back with anything but an affirmative report no matter what the studies disclose.
>
> If Senators want to support this kind of project, go ahead. It is another tragic and foolish commitment on the part of Congress. When in Heaven's name will we wake up?

As I have with two similar amendments since then—one for the military construction authorization bill and one earlier one to the Military Procurement bill—I urged the Senate then to—

> Firmly establish now the principle that Congress will require completed environmental impact studies before it will authorize or appropriate moneys for Federal projects with significant environmental impact. It is here, at this key decisionmaking point, that environmental review is so important.

What was the Senate's answer on the Tennessee-Tombigbee amendment? On the roll call, we had 17 yeas, and 56 nays, and I ask unanimous consent that that vote be printed in the RECORD again at this point in my remarks.

Yet 2 years ago, we passed the National Environmental Policy Act, and, to quote from it again, it directed all Federal officials to—

> Include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—
>
> (i) the environmental impact of the proposed action,
>
> (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
>
> (iii) alternatives to the proposed action,
>
> (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
>
> (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

The directive is indisputably clear. Federal agencies are to file final, detailed environmental impact statements on all proposed actions and on all legislative proposals which pose a significant impact to the environment.

The question is whether we are going to permit Federal agencies to continue making a mockery of this act, eroding it into so many meaningless words. Are we going to duck every time the question comes up—which it will, time after time, in bills coming to the Senate floor—and hope that the courts will require compliance with our own statute?

When I offered the Tennessee-Tombigbee amendment, I announced my intention to offer such an amendment and request a rollcall vote every time a bill comes to the Senate floor with projects not in compliance with the Environmental Policy Act. Today's amendment is the fourth such proposal and the fourth such vote. It is time we started required Fed-

eral agencies to complying with a position which Congress has made totally clear by statute and which the courts have recognized and firmly upheld.

Mr. NELSON subsequently said: Mr. President, at the conclusion of my remarks when I previously had the floor, I neglected to ask unanimous consent to have printed in the RECORD a letter from the regional EPA office to the corps on the Tennessee-Tombigbee project, dated February 12, 1971. I ask unanimous consent that it be printed at that point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The letter ordered to be printed in the RECORD is as follows:

ENVIRONMENTAL PROTECTION AGENCY,
February 12, 1971.

DISTRICT ENGINEER,
U.S. Army, Corps of Engineers,
Mobile, Ala.

DEAR SIR: This is in reply to your letter of January 15, 1971, requesting our views on the preliminary environmental statement covering the proposed Tennessee-Tombigbee waterway project. Our reply is given in compliance with the requirements of the National Environmental Policy Act of 1969 (Public Law 91–100), Section 102(c).

The 253 mile long Tennessee-Tombigbee waterway which extends from Pickwick pool on the Tennessee River to Demopolis on the Tombigbee River in the upper portion of a 470 mile long waterway which connects Mobile Bay on the Gulf of Mexico with the Tennessee River.

Present ecological values are well documented in the environmental statement but insufficient acknowledgment is given to the adverse effect that the project will have on future ecological and water quality values.

The channelization, the dams and impoundments, the introduction of Tennessee River water into the Tombigbee River system, the increased population and new industries and the construction operations necessary for completing the waterway will all have a profound and lasting effect on the water quality values and the ecology of the entire area through which the waterway passes.

The channelization and cut off of river bends will cause a loss of the natural shallow water areas, flood plains, pools, sand bars and riffles with their associated aquatic vegetation conducive to stream purification and a balanced water quality. The assimilative capacity of the streams will be lessened and the pollution will be carried further down stream and over a greater reach of the stream before becoming stabilized.

The impoundments created by the locks and dams will increase the overall water temperature and decrease the waters capacity for absorption of oxygen. The change from a free flowing stream to a semiquiescent reservoir environment will alter the dominant fish species and organisms in the fish food chain. Studies on other similar streams indicate that although some pick up of oxygen can be realized in the spillway discharges, the assimilative capacity of the stream and its overall oxygen content after being converted to a waterway by the use of impoundments will be less than that for the free flowing stream.

The East Fork, Mackeys Creek and Yellow Creek are presently free flowing streams with excellent water quality. Most of Mackeys Creek and Yellow Creek and its tributaries will be inundated by the Bay Springs Lock and Dam impoundment.

Pickwick Pool on the Tennessee River, which will supply water to the proposed waterway, is presently closed for fishing because of mercury contamination. Because of the heavy industrialization of the Tennessee River Valley above Pickwick Dam, these waters also have more than the normal background of nutrients, heavy metals and toxicants including DDT. Because of the dilution by heavy stream flows, water use classifications and water quality standards are generally not violated on the Tennessee except near some of the large communities and industrial complexes and the feeder streams into which they discharge. Some of the sludges generated by these discharges contain damaging pollutants. The continual dredging operations taking place on the Tennessee River and tributaries keep these materials in suspension.

Because of the height of the Bay Springs Dam, stratification will probably occur in the impoundment and there may be a deficiency in oxygen in the waters received by the canal section through lockages. Barge traffic will keep the canal waters relatively turbid and oil slicks can be expected. The discharge of these turbid canal waters with low oxygen content, dangerous mercury levels and higher temperature into the relatively pure and free flowing East Fork represents a definite degradation in water quality.

The construction of the waterway will take a minimum of 9 years to complete and during this time portions of the river systems will be subjected to extensive turbidity and silting. Most severely affected will be the river bend and oxbow sections cut off from normal flow by newly constructed channels. These sections will be subjected to extensive silting during construction and more or less continuous silting from normal flows because of the reduced velocity in these sections. Because of the colloidal nature of many of the fine sandy clay silts which are to be dredged, it can be expected that considerable quantities of the suspended material will be carried all the way to Mobile Bay. Much of the material which does settle out in the impoundments will be released by lockages and carried along with flood flows.

The waterway will bring with it new industries, boat traffic, an increase in the popplation and a resultant increase in the pollutional load for the entire river system. No effective methods have yet been devised to control boat pollution and the secondary treatment requirements for municipal and industrial wastes still leaves a heavy waste load and most of the nutrients to be assimilated by the stream.

The Environmental Protection Agency is concerned with the resulting cumulative long-term effects of the increased future residential, commercial and industrial development on water quality values of the stream involved. The waste assimilative capacity of the existing free flowing streams will be considerably reduced when replaced by deep navigation pools. The additional water derived from maximum lockages (24 per day) may be adequate to offset this reduced assimilative capacity but on days with low barge traffic an insufficient amont of water will probably be released. There should be definite assurances that sufficient water releases will be made, regardless of the number of lockages, so that present assimilative capacity is maintained.

In view of these facts, it is strongly recommended that a study be initiated to determine the quantity of water required and the method of furnishing the additional stream flow necessary for water quality management over that supplied by the actual navigational lockages.

A method should also be devised to insure an adequate supply of oxygen in the releases from Bay Springs Lock and Dam impoundment.

It is further recommended that an efficient abatement plan for pollution control be developed in full coordination with the appropriate non-federal agencies to insure implementation of the water quality management plan.

The project was conceived to provide a more direct connecting waterway from the Central Gulf Coast to mid-continental United States and to improve the economics of a now depressed area. However, the depressed area which it is supposed to help (northeastern Mississippi) is near the most highly industrialized section of southeastern United States stretching along the Tennessee River from Pickwick Pool to Kingsport in northern Tennessee. The area from the Tombigbee River along the East Fork, Mackeys Creek and over the divide to the Yellow River is one of the most picturesque and unspoiled areas still remaining in Mississippi. The value of the area of students of paleontology, geology and archaeology is well known throughout the southeastern United States. Since it is also near to a heavily industrialized area, its value as a recreational, hunting, fishing and scenic area is of immeasurable importance. In view of the rapidly changing public opinion with regard to such areas and the questionable economic value of the project, the EPA believes that a revaluation of the project should be made taking into consideration the fact that the project may not bring the commercial and industrial development to the area originally anticipated, particularly northeast Mississippi, and a scenic and natural area will be irreversibly damaged for all time.

It is the considered opinion of the EPA that the cumulative long-term overall effect of the project on the environment will be one of overall degradation of water quality values in spite of the presently known techniques which can be applied to help maintain water quality. Water for lockages at Bay Springs can be drawn from surface waters; all municipalities and industries in the drainage area will be given a minimum of secondary treatment; extensive erosion control measures can and should be provided; anti-pollution laws can be rigidly enforced but, in spite of these measures, it is felt by the EPA that there would be a general degradation in water quality values resulting from the project.

With these facts in mind, it is recommended that the environmental statement be revised to include conditions as they will exist with minimum lockages, minimum river flows and maximum anticipated population and industrial development. With these conditions, the system should still be designed to maintain present water use classification.

The project should also be designed to fit into the landscape with the minimum damage to the natural beauty and the paleontologic, geologic and archeologic sites in the area. It should also give prime consideration to hunting, fishing and recreational values and the forests should be left undamaged wherever possible.

The comments offered your agency in this letter are based on the Environmental Protechnical assistance. If you desire a formal EPA response in your proposed action, it is suggested that a request be directed to the Agency, 1626 K Street, N.W., Washington, D.C. 20460.

Your cooperation in the matter of water pollution control is appreciated.

Sincerely yours,

JOHN C. WHITE,
Acting Regional Director.

Mr. NELSON. Now, Mr. President, I should like to comment on this whole question of Congress—the Senate in particular—dealing with the Environmental Protection Act and the provision in that act which requires agencies of the Federal Government to submit with their proposals, projections, and plans, an environmental impact statement.

On the floor of the Senate, a few weeks ago, I offered an amendment to withhold the spending of moneys on a number of projects. One included the building of a large dam in my own State of Wisconsin. Another included the Tennessee-Tombigbee Canal project.

There was a rollcall vote on my amendment at that time, when I pointed out that section 102 of the Environmental Protection Act was not being complied with, because final impact statements had not been filed on any of those projects, including the one in my State. The rollcall vote on that issue received 17 aye votes.

Thus, Mr. President, the Senate is proceeding, as it has been doing, to honor the Environmental Protection Act in the breach. The Senate has declined to insist upon compliance with the very laws it debated and passed on the floor of the Senate, on the floor of the House of Representatives—bills which were then passed by both Houses and signed by the President.

The PRESIDING OFFICER (Mr. ROTH). The time of the Senator from Wisconsin has expired.

Mr. NELSON. Mr. President, I yield myself 10 additional minutes.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for 10 minutes.

Mr. NELSON. Mr. President, let me advise the Senate that we will have a rollcall vote on every single proposal that comes to this floor that has not complied with the act.

Henceforth, I serve notice that I will not agree to any time limitation when I call up an amendment and we will spend 2 or 3 days on it, and we will debate it and discuss it until it does come to the attention of the Members of this body that they are voting contrary to the laws they passed in Congress.

Yesterday, those who bothered to read the front page of the New York Times, the front page of the Washington Post, or the front page of the Washington Evening Star, found out that whereas this body refused to require compliance with the Environmental Protection Act on the Tennessee-Tombigbee project, a Federal judge in the District of Columbia issued a temporary injunction, on petition of the Environmental Defense fund, on the exact ground that was the basis of my amendment in the Senate a few weeks ago.

The Tombigbee project will have a mammouth environmental impact. On that project, they will excavate more land, by twice, than the total excavation of the Panama Canal.

Mr. President, the Corps of Engineers, who wish to start it tomorrow, do not know what they are going to do with the dredging soil they will dig out in order to create the canal.

I will tell you, Mr. President, what they will do with it, if we let this thing go. They will pile it on the shoreline all the length of that canal, so that for the next two decades it will wash down into the Tombigbee River and from there all the way into the Gulf of Mexico.

Thus, we have now come to the position where the Senate will not insist on compliance with the legislation it passed and a Federal court has to protect the environmental interests of the country, not the Congress which passed the legislation.

Let me read from the news story on the Tennessee-Tombigbee project, which is an irrational waste of the taxpayers' money; $387 million is proposed to be spent on connecting the beautiful Tombigbee River in Tennessee with the Tennessee River which runs into the Mississippi River, and the Tombigbee into the Gulf of Mexico.

Thus, the canal will join these two rivers in order to provide for barge traffic from the Gulf of Mexico up past Mobile all the way up to the Tennessee River.

Furthermore, all the pollutants in the river up in the Tennessee along, with the mercury and the industrial wastes, will come down into the Tombigbee and, therefore, the canal, with all of its pollutants, will destroy one of the loveliest rivers in this country.

That is what Congress has done in authorizing $387 million for this project, which will be a total waste of the taxpayers' money.

Thank heavens we have a Federal judge with the courage to stand up and say, I am going to enforce the laws, even if the Senate and the House of Representatives are not going to require the agencies of the Federal Government to comply with the laws that these two bodies passed.

In the news story yesterday, let me read it to you, Mr. President. It is headed "Federal Judge Rules Against Southern Waterway Project."

The article reads in part:

> A federal judge ruled yesterday that the Army Corps of Engineers must halt work on the massive Tennessee-Tombigbee Waterway in Mississippi pending a full determination of its effects on the environment.

That is what the Senate should have done 4 or 5 or 6 weeks ago when we had an amendment before us to require compliance with the law.

Mr. President, continuing with the story:

> Granting a preliminary injunction against the project at the request of the Environmental Defense Fund, U.S. District Court Judge John Lewis Smith Jr. declared the Corps had not complied with the National Environmental Policy Act of 1969.

Again, that is exactly the debate we had on the floor of the Senate. And that is exactly what the vote was about. And we could only get 17 Senators in the U.S. Senate to vote that the corps must comply with the law we passed.

Mr. President, I continue with the quotation from the story in the Washington Post:

> Smith's ruling after a two-day trial last week caused an immediate furor among congressional backers of the project, first authorized in 1946 and praised by President Nixon at groundbreaking ceremonies last May.

And that, I might say, occurred, I am sure, unbeknownst to the President, that the day he was down there at the dedication and the groundbreaking ceremonies, his own office, the regional office of the Environmental Protection Agency, had already issued a strong statement against building the canal to connect these two rivers.

Mr. President, continuing to read from the article:

> Environmentalists were elated, however, at their success in halting the $387 million project, intended as a virtual second lane of the Mississippi River for North-South water shipments.

Mr. President, let me read an excerpt from the article which appeared in the Evening Star of last night. The article in part reads:

> The project is expected to cost about $400 million and construction would take 9 years.

So, a project that was authorized in 1946, a project which has not yet started, a project which would cost somewhere around $400 million does not yet have filed in compliance with the law an environmental impact statement.

I just ask the Members of the Senate if it is going to take 9 years and if 25 years have passed since the authorization and it has not started yet why in heaven's name can we not wait until there is a final environmental impact statement filed so that the Senators, the Members of the Congress and the public can be afforded the opportunity to evaluate the impact statement and decide whether it is worth spending $400 million on this project in view of the potential for disaster for one of the great river basins in this country.

Mr. President, continuing with the Evening Star article, it reads:

> Earlier this year, Nixon attended groundbreaking ceremonies for it.
>
> Today's ruling is expected to set a precedent for future works projects by requiring that complete studies of environmental impact be submitted before work is begun.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. NELSON. Mr. President, how much time does the Senator from Wisconsin have remaining?

The PRESIDING OFFICER. The Senator from Wisconsin has 36 minutes remaining.

Mr. NELSON. Mr. President, I yield myself 6 additional minutes.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for 6 additional minutes.

Mr. NELSON. Mr. President, I would hope that that would be the consequence of this decision. However, I suspect that it will not be because the U.S. Senate or the House of Representatives requires the Federal agencies to comply with the law. I suspect that it will be because sensible judges with courage will force the Federal agencies to comply, even though we do not do so.

Mr. President, continuing to read from the article in the Evening Star:

> The suit against the Tenn-Tom project contends that the impact study submitted by the Corps of Engineers in January is misleading and incomplete. It asks that a full study be made before work on the project—scheduled to begin in three weeks—starts.

That is exactly what the debate was about on the floor of the Senate 3 weeks ago when only 17 Senators voted to re-

quire the Corps of Engineers to comply with the law.

Mr. President, I read further from the article:

It is the second time this year that a federal court has stopped construction of a major public works project for environmental reasons. In January, the U.S. Court of Appeals here halted construction of a proposed barge canal to connect the east and west coasts of Florida.

That was after tens of millions of dollars had been spent. A year ago, the Senator from South Dakota (Mr. McGOVERN) and I had an amendment up for consideration on the floor to stop the construction of the cross Florida barge canal. We debated the issue and decided not to call for a rollcall vote because we knew we would not get more than 10 or 12 votes. We hoped that we could work up some support for the amendment the next time the appropriation came along.

In the meantime, the environmental defense fund came to the defense of the people of this country and their environment and started a suit in the district court on the grounds that irreparable damage would be done if the construction of that canal were continued. The Federal court, again, but with a different judge, decided that it would require compliance with the law even though the Members of the Senate and the House of Representatives would not do so.

Mr. President, quoting further from the Evening Star article:

The 245-mile Tenn-Tom waterway would allow ship and barge traffic from the Gulf of Mexico at Mobile, Ala., to the Central United States, via the Ohio and Missouri Rivers.

Environmental groups have made the project a prime target.

Included as evidence in the suit is a letter to the Army Corps district engineer in Mobile from the Environmental Protection Agency, which was set up by Nixon as a watchdog on pollution.

The article continues:

The letter concludes that the waterway would have a severe adverse effect on the environment and recommends that the whole project be reconsidered.

That is the Environmental Protection Agency of this administration saying this.

I continue to read from the article:

The original proposal for the canal was made nearly 175 years ago but nothing was done until 1946 when Congress approved the idea. The plan was to bring commerce to the then-economically depressed "mid-continental" states.

Of course they were economically depressed 175 years ago.

Mr. President, I continue to read from the article:

The Environmental Defense Fund's successful arguments against the Florida project are similar to those used against the Tenn-Tom project.

But the Nixon administration, which finally scrapped the Florida Canal after the Court of Appeals here upheld an injunction against it, has pushed hard for the Tenn-Tom link. In May, the President shared the speaking platform in Mobile with Alabama Gov. George Wallace at the groundbreaking ceremonies.

Judge Smith said the Environmental Defense Fund, in bringing the suit against the corps, had made a "substantial showing" that the corps had not fully complied with the requirements of the Environmental Protection Act of 1969 and the Fish and Wildlife Coordination Act of 1934. He said failure to issue a preliminary injunction would cost the fund to suffer irreparable injury without adequate remedy at law.

Mr. President, I ask unanimous consent that the article which was published in the Evening Star be printed in the RECORD.

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

[From the Evening Star, Sept. 21, 1971]

COURT HALTS TENN-TOM SHIP CANAL

(By Winston Groom)

A federal judge here today halted construction of a controversial barge and ship canal that would connect the Central United States with the Gulf of Mexico via the Tennessee and Tombigbee rivers in Alabama and Mississippi.

Citing potential hazards to the environment, U.S. District Court Judge John Lewis Smith granted a preliminary injunction against the so-called "Tenn-Tom" project requested by the Environment Defense Fund, a group with headquarters in New York.

Although the proposed waterway has been supported strongly by President Nixon, Smith said the Army Corps of Engineers, which is responsible for building the project, has failed to comply with federal environmental policy.

The project is expected to cost about $400 million and construction would take nine years.

Earlier this year, Nixon attended groundbreaking ceremonies for it.

Today's ruling is expected to set a precedent for future works projects by requiring that complete studies of environmental impact be submitted before work is begun.

The suit against the Tenn-Tom project contends that the impact study submitted by the Corps of Engineers in January is misleading and incomplete. It asks that a full study be made before work on the project—scheduled to begin in three weeks—starts.

It is the second time this year that a federal court has stopped construction of a major public works project for environmental reasons. In January, the U.S. Court of Appeals here halted construction of a proposed barge canal to connect the east and west coasts of Florida.

The 245-mile Tenn-Tom waterway would allow ship and barge traffic from the Gulf of Mexico at Mobile, Ala., to the Central United States, via the Ohio and Missouri Rivers.

Environmental groups have made the project a prime target.

Included as evidence in the suit is a letter to the Army Corps district engineer in Mobile from the Environmental Protection Agency, which was set up by Nixon as a watchdog on pollution.

The letter concludes that the waterway would have a severe adverse effect on the environment and recommends that the whole project be reconsidered.

The original proposal for the canal was made nearly 175 years ago but nothing was done until 1946 when Congress approved the idea. The plan was to bring commerce to the then-economically depressed "midcontinental" states.

The Environmental Defense Fund's successful arguments against the Florida project are similar to those used against the Tenn-Tom project.

But the Nixon administration, which finally scrapped the Florida Canal after the Court of Appeals here upheld an injunction against it, has pushed hard for the Tenn-Tom link. In May, the President shared the speaking platform in Mobile with Alabama Gov. George Wallace at the groundbreaking ceremonies.

Judge Smith said the Environmental Defense Fund, in bringing the suit against the corps, had made a "substantial showing" that the corps had not fully complied with the requirements of the Environmental Protection Act of 1969 and the Fish and Wildlife Coordination Act of 1934. He said failure to issue a preliminary injunction would cost the fund to suffer irreparable injury without adequate remedy at law.

The environmentalists' suit attacked the project on a variety of points.

Chief among them is the argument that the waterway is no longer needed. In the 25 years since Congress authorized the project, the suit says, the areas that were to be affected by it have industrialized themselves to the point where the canal is not necessary.

The fund's objections to the project follow very closely the objections raised in the EPA letter to the Corps of Engineers—principally that it will result in unacceptable water pollution and that it will damage the natural environment—particularly several historic scenic and scientific excavation sites.

The pollution problem, according to EPA, will be severely aggravated when the Tennessee River, which is heavily ladened with industrial wastes and a "dangerous mercury level," is allowed to flow into the Tombigbee across Mississippi and Alabama to the Gulf. Several other Alabama Rivers were closed to fishing last year because of high mercury content.

In addition, the letter concludes that the exchange of waters will create a stratified oxygen situation which will "alter the dominant fish species and fish food."

Some 24,000 acres of wildlife habitat will be inundated by the project, the suit says, and an additional 46,000 acres will be partially submerged.

The letter also objects to the waterway's effect on scenic forestlands along the river which it says are "among the most picturesque and unspoiled areas still remaining," in the country.

The suit complains that the engineers have not explained how they will dispose of the 260 million cubic yards of dirt—almost twice the amount excavated for the Panama Canal—that will be left over when the project is complete.

The engineers have stated that "the method for final disposition of this matter (the dirt) has not yet been determined."

The EPA letter concluded: "The Environmental Protection Agency recommends that a reevaluation of the whole project be made, taking into consideration the fact that the project might not bring the commercial and industrial development to the area originally anticipated and a scenic and natural area will be irreversibily damaged for all time."

Mr. NELSON. Mr. President, I point out, incidentally, that the article states:

The pollution problem, according to EPA, will be severely aggravated when the Tennessee River, which is heavily ladened with industrial wastes and a "dangerous mercury level," is allowed to flow into the Tombigbee across Mississippi and Alabama to the Gulf. Several other Alabama Rivers were closed to fishing last year because of high mercury content.

Mr. President, I ask unanimous consent that the article from the Washington Post on the Tennessee-Tombigbee project be printed in the RECORD.

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

[From the Washington Post, Sept. 22, 1971]

U.S. JUDGE HALTS WORK ON WATERWAY

A federal judge ruled yesterday that the Army Corps of Engineers must halt work on the massive Tennessee-Tombigbee Waterway in Mississippi pending a full determination of its effects on the environment.

Granting a preliminary injunction against the project at the request of the Environmental Defense Fund, U.S. District Court Judge John Lewis Smith Jr. declared the Corps had not complied with the National Environmental Act of 1969.

Smith's ruling after a two-day trial last week caused an immediate furor among congressional backers of the project, first authorized in 1946 and praised by President Nixon at groundbreaking ceremonies last May.

Sen. James O. Eastland (D-Miss.) denounced the decision as "judicial tyranny."

Environmentalists were elated, however, at their success in halting the $387 million project, intended as a virtual second lane of the Mississippi River for North-South water shipments.

Justice Department attorney Irwin Goldbloom, who represented the Corps before Smith, said the government may either appeal the ruling to the U.S. Court of Appeals here or press for a speedy hearing on EDF's request for a permanent injunction.

It was the third time in less than a year that the environmental group had blocked ambitious public works projects of the Corps of Engineers.

Earlier, the EDF obtained federal court injunctions against the Cross-Florida Barge Canal and the Gillham Dam Project in Arkansas.

Joining the EDF as plaintiffs in the case decided yesterday was a new group called the "Committee for Leaving the Environment of America Natural" and John D. Williams, a Mississippi resident who said he wanted to "derive benefits from the Tombigbee River as it exists in its natural state."

The plaintiffs cited a report made in March by the Corps of Engineers that acknowledged there might be environmental difficulties in the Tennessee-Tombigbee project but promised to study them at a later date.

The plaintiff's case was buttressed by a second report from the Southeast regional office of the Environmental Protection Agency, saying that the waterway was of "questionable economic value" and would "irreversibly" damage a scenic and natural area of northeast Mississippi.

Witnesses at the trial before Judge Smith told the court that the project, among other problems, would destroy the fish food chain there and preclude archeological exploration of a region that served as a "crossroads" for many early native American groups.

Judge Smith's decision came before construction of the waterway had begun, but just as the Corps of Engineers was about to award contracts next month for the first sections of the waterway.

The initial work, the judge found, "will irreparably alter the environment in its natural state."

He enjoined the Corps, its "agents, officers, servants, employees and attorneys" from proceeding with construction until the EDF suit has been completely resolved.

Judge Smith required the environmental organization to post a cash bond of only one dollar against the eventuality that the project fight later be permitted to proceed.

Once begun, construction of the waterway would be expected to take about nine years to complete. Through creation of a 253-mile-long man-made channel, it would link the Ohio River region with the Gulf of Mexico.

Its key element would be a 27-mile-long "deep cut" through the natural divide between the north-flowing Tennessee River and the south-flowing Tombigbee River.

Considered a boon to the Southern states, the project was once described by Rep. Jack Edwards (R.-Ala.) as uniting "the Heartland of America with the Southland, making possible a shorter and less expensive water route from the Middle States to the Gulf of Mexico."

When critics said that the Mississippi River already performed that job adequately, one congressional proponent observed that it would also "bolster our national security" by providing an alternate water route to the strategically important Mississippi.

One congressional critic, Rep. Henry Reuss (D-Wis.), described the Corps of Engineers attitude as "dig now, study later."

Under Judge Smith's ruling yesterday, the study must be completed first before any digging can get under way.

Mr. NELSON. Mr. President, I ask unanimous consent that an article published in the New York Times on September 22, 1971, written by William M. Blair on the decision of the judge in this matter be printed in the RECORD.

Mr. STENNIS. Mr. President, reserving the right to object and I shall not object, with respect to these matters going into the RECORD, as a courtesy to fellow Senators I have never objected except on one occasion.

The PRESIDING OFFICER. If the Senator will suspend, the time of the Senator from Wisconsin has expired.

Mr. STENNIS. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. STENNIS. Mr. President, I have never objected since I have been here, except on one occasion. However, I do know as a matter of fact, from glancing at the article last night, that a great deal of this news item is the opinion of the writer and someone else. There may be some quotations. I am not a renowned lawyer, but I know this is merely a ruling on a motion for a preliminary injunction. That motion was sustained, I understand, without any presentation of the facts. No testimony was taken, as I understand. I am interested in this matter. It affects my State, as well as 10, 12, or 15 other States of the Union. As I understand, no testimony was heard by the judge. There might have been a few agreed-upon statements of fact, together with the pleadings before the court. There has been no testimony taken.

With respect to the talk about the environment there, I do not think the judge knows a thing in the world about it. There has been no proof about it. I do not think this has a proper place in the RECORD as meaning anything more than the opinion of these people who wrote the articles and the news items and the opinion of the judge.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. STENNIS. Mr. President, I yield myself 1 additional minute.

There might have been some kind of agreement on some small set of facts in order to get the matter before the court. The question before the court was whether to issue a preliminary injunction. They went before the court on how broad the meaning of the statute was.

The next step, if an appeal were allowed, would be either to appeal or to come in and present the facts of the case.

I wanted to explain my interpretation of it. I do not know what I am agreeing to with respect to this material being printed in the RECORD. I am not objecting; I just wanted to have my explanation in the RECORD.

The PRESIDING OFFICER. Without objection, the article will be printed in the RECORD.

The article, ordered to be printed in the RECORD, is as follows:

[From the New York Times, Wednesday, Sept. 22, 1971]

JUDGE ENJOINS TENNESSEE CANAL PLAN

(By William M. Blair)

WASHINGTON, Sept. 21.—A Federal judge ordered the Army Corps of Engineers today to stop construction of the $386.6-million Tennessee-Tombigbee Waterway until he could rule on whether the Administration-supported project would damage the environment.

The preliminary injunction by Judge John Lewis Smith Jr. of the United States District Court here sharpened the conflict within the Administration over the project.

President Nixon's antipollution enforcement arm, the Environmental Protection Agency, opposed the project, which it contends would "irreversibly" damage the natural environment of northeastern Mississippi.

But Mr. Nixon has ignored the objection of the E.P.A. and conservationists. Last May he traveled to Mobile, Ala., to praise the project, saying that it could open new economic opportunities for the region.

The 253-mile man-made canal would open ship and barge traffic from the Gulf of Mexico at Mobile all the way to the Tennessee River at the juncture of Tennessee, Mississippi and Alabama. The Tombigbee River would be made navigable with a series of locks.

The 300-foot-wide channel would provide a water link from the Ohio River to the Gulf of Mexico.

Construction of the project is scheduled to take nine years. The first part, the Gainesville Lock and approach canal, is scheduled to be started in October. It includes five dams and 10 locks.

Judge Smith's ruling drew immediate resentment from Southern supporters of the project. Senator James O. Eastland, Democrat of Mississippi, accused Judge Smith of "meddling" and charged him with "judicial tyranny."

"It is deplorable that a Federal judge, with one stroke of his pen, has thrown a road block in the way" of the project, the Senator said in a statement.

Representative Thomas G. Abernethy, Democrat of Mississippi, said the ruling was no surprise and that it meant only a "slight delay."

"There is no merit to the lawsuit, and it will fail," he said. "The whole purpose of the rulings is to afford an opportunity to hear the case on its merits."

The Tennessee-Tombigbee case is another in a growing list of major environmental lawsuits. Others still in litigation are the Cross-Florida Barge Canal, which Mr. Nixon ordered halted; and the Trans-Alaska oil pipeline.

Florida is seeking to have the President's order on the Florida barge canal declared unconstitutional because it was authorized by Congress.

The Environmental Defense Fund and conservation organizations joined in fighting these projects. The United States Court here enjoined the Secretary of the Interior last year from issuing a permit for the Alaska pipeline, which is designed to tap the rich oil reserves of Prudhoe Bay, until a final determination could be made on a final injunction.

Secretary of the Interior Rogers C. B. Morton said today that he might be ready to decide the pipeline case before the "first bad frost in November." The court order also requires him to give conservationists 14 days notice before he issues the permit.

Mr. Rogers also said he believed that he could make a decision without waiting for Congress to adopt legislation to settle the century-old claims of native Indians, Eskimos and Aleuts as required by the Alaskan Statehood Act.

Asked whether his ruling yesterday against further drilling platforms in the Santa Barbara Channel off the coast of California would govern future leasing offshore elsewhere, Mr. Morton replied that each case would be decided on its merits.

The Interior Department has announced bidding will be held later this year of offshore leases in the Gulf of Mexico.

The PRESIDING OFFICER. Who yields time?

Mr. NELSON. Mr. President, the reason these stories and the findings of fact and conclusions of law and the order are relevant to the debate that is going on here now involving my amendment to hold up further funds for this Sanguine project until the final impact statement is filed, is that this same project was on the floor of the Senate and voted on by the Senate a short time before we went into recess, and the exact argument and the same issue is before the Senate today.

The court found that an adequate case had been made by the Environmental Defense Fund in order to issue a preliminary injunction. The debate to which I referred on the Tennessee-Tombigbee project was July 31. It involved the same issue, the same debate, and the same problem. Therefore, I bring it before the Senate today, pointing out that a Federal judge did what the Senate should have done. He was satisfied based on the presentation that the statute had not been complied with.

I will read excerpts from the decision of the Federal judge in the U.S. District Court for the District of Columbia in the civil action entitled "Environmental Defense Fund, Inc., et al., Plaintiffs, Against Corps of Engineers of the United States Army, et al., Defendants." These are the findings of fact, conclusions of law, and order.

[U.S. District Court for the District of Columbia—Civil Action No. 1395–71]

ENVIRONMENTAL DEFENSE FUND, INC., ET AL., PLAINTIFFS, *v.* CORPS OF ENGINEERS OF THE UNITED STATES ARMY, ET AL., DEFENDANTS

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This cause having come on for hearing on plaintiffs' Motion for Preliminary Injunction on September 15 and 16, 1971, and upon consideration of the motion, defendants' opposition thereto, evidence adduced at the hearing and arguments of counsel, the Court, in accordance with Rules 52 and 65 of the Federal Rules of Civil Procedure, makes the following findings of fact and conclusions of law:

Mr. President, I ask unanimous consent to have printed in the RECORD the findings of fact, conclusions of law, and the order of the U.S. district judge for the District of Columbia.

The PRESIDING OFFICER. Is there objection?

Mr. STENNIS. I do not object.

The PRESIDING OFFICER. Without objection, it is so ordered.

The material, ordered to be printed in the RECORD, is as follows:

[U.S. District Court for the District of Columbia—Civil Action No. 1395–71]

ENVIRONMENTAL DEFENSE FUND, INC., ET AL., PLAINTIFFS *v.* CORPS OF ENGINEERS OF THE UNITED STATES ARMY, ET AL., DEFENDANTS

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This cause having come on for hearing on plaintiffs' Motion for Preliminary Injunction on September 15 and 16, 1971, and upon consideration of the motion, defendants' opposition thereto, evidence adduced at the hearing and arguments of counsel, the Court, in accordance with Rules 52 and 65 of the Federal Rules of Civil Procedure, makes the following findings of fact and conclusions of law:

Finding of fact

1. Plaintiffs are the Environmental Defense Fund, Inc., the Committee for Leaving the Environment of America Natural; and John D. Williams, a resident of Mississippi who desires to continue to derive benefits from the Tombigbee River as it exists in its natural state.

2. Defendants are the Corps of Engineers of the United States Army, an agency of the United States; the Chief of Engineers; and the Secretary of the Army.

3. The Corps of Engineers of the United States Army is responsible for the design, planning and construction of a public works project known as the Tennessee-Tombigbee Waterway.

4. The Act of July 24, 1946 entitled "An Act Authorizing the Construction, Repair, and Preservation of Certain Public Works on Rivers and Harbors, and for Other Purposes," (Rivers and Harbors—Public Works Act), 60 Stat. 634 (1946), authorized the Corps of Engineers of the United States Army to construct a waterway connecting the north-flowing Tennessee River with the south-flowing Tombigbee River, so as to provide a continuous barge waterway between the upper Mississippi and Ohio valleys and Mobile, Alabama, on the Gulf of Mexico.

5. The general design of the Tennessee-Tombigbee Waterway project, as authorized by Congress and as revised in Design Memorandum No. 1, General Design, was approved by the Chief of Engineers of the United States Army on April 12, 1962.

6. The Tennessee-Tombigbee Waterway project, as set forth in Design Memorandum No. 1, General Design, and as presently proposed, extends from Demopolis, Alabama, upstream via the Tombigbee River, the East Fork of the Tombigbee, Mackeys Creek, through a deep cut, 27 miles in length, to be made through the presently-existing natural divide between the Tennessee and Tombigbee systems, into Yellow Creek and via Yellow Creek to mile 215 on the sailing line of the Tennessee River in Pickwick Pool near the common boundary of Alabama, Mississippi, and Tennessee. The overall length of the project from Demopolis to the Tennessee River is 253 miles and the overall difference in elevation is 341 feet, to be overcome by ten locks.

7. The project will convert the presently free-flowing Upper Tombigbee to a channelized, slack-water system, through impoundments, and will result in approximately 40,000 acres of water surface.

8. Actual construction of the Tennessee-Tombigbee Waterway has not yet begun. However, defendants are actively preparing to award contracts for the Gainesville lock and approach canal portion of the project, with construction on this initial phase due to begin during October, 1971.

9. A document entitled "Environmental Statement, Tennessee-Tombigbee Waterway, Alabama and Mississippi Navigation," dated March, 1971, was prepared by the United States Army Engineer District, Mobile, Alabama, and filed with the Council on Environmental Quality on April 20, 1971 and is the final "impact statement" for the project.

10. The General Plan and Profile, which illustrates the waterway route and locations of locks, dams and navigational pools, set forth in the Environmental Statement dated March, 1971, is the same as the General Plan and Profile set forth in Design Memorandum No. 1, General Design, which was approved by the Chief of Engineers of the United States Army on April 12, 1962.

11. On April 20, 1971, the Corps of Engineers of the United States Army was conducting or proposing extensive studies to determine the environmental effects of the Tennessee-Tombigbee Waterway project and did plan to continue such studies during the nine-year period required for construction.

12. The Environmental Statement, dated March, 1971, indicates that subsequent study will consist of a detailed evaluation of the environmental impacts identified.

13. The contracts to be awarded in October 1971, for the Gainesville lock and approach canal portion of the project will involve clearing and grubbing, construction of a cofferdike, excavation, foundation preparation and fill, concrete work and lock equipment installation and will irreparably alter the environment in its natural state.

14. Plaintiffs would suffer irreparable injury for which there is no adequate remedy at law by the award of contracts and the commencement of construction of the Gainesville lock and approach canal portion of the project at this time.

Conclusions of law

1. Planning, development and construction of the Tennessee-Tombigbee Waterway is a major federal action significantly affecting the quality of the human environment.

2. Plaintiffs have made a substantial showing of a likelihood that in the planning, design and development of, and in making the decision to construct the Tennessee-Tombigbee Waterway, defendants have not fully complied with the requirements of the National Envrionmental Policy Act of 1969, 42 U.S.C. §§ 4321, et seq., and the Fish and Wildlife Coordination Act of 1934, as amended, 16 U.S.C. §§ 661, et seq.

3. If a preliminary injunction does not issue, plaintiffs will suffer irreparable injury for which there is no adequate remedy at law.

Accordingly, it is this 21st day of September, 1971,

Ordered, that the defendants, their agents, officers, servants, employees and attorneys, and any person in active concert or participation with them, be and they hereby are enjoined and restrained, pending the final disposition of this suit, from initiating or continuing in any way with the construction of the Tennessee-Tombigbee Waterway project, and it is further

Ordered that plaintiffs file a bond for the payment of costs and damages as may be suffered by any party who is found to have been wrongfully or unlawfully restrained herein in the amount of, or security equivalent to, One ($1.00) Dollar, and it is further

Ordered that the United States Marshal shall serve a copy of this Order forthwith upon the defendants.

_____, *U. S. District Judge.*

Mr. STENNIS. Mr. President, will the Senator yield briefly to me on my time for a question?

Mr. NELSON. I yield.

Mr. STENNIS. Mr. President, does the Senator agree the testimony, what we

ordinarily call the testimony in the case, was not presented to this judge; but this was a matter on which there was no testimony?

Mr. NELSON. The Senator is correct.

Mr. STENNIS. The Senator agrees that a preliminary injunction is just what its terms state. It is preliminary. It is not an adjudication of the case on the merits.

Mr. NELSON. That is correct.

Mr. STENNIS. The Senator used the word "likelihood," as I understood it. The judge said the likelihood is that they have not fully complied. It is just a likelihood, not a conclusion of fact. Is that not correct?

Mr. NELSON. I do not recall the exact language.

Mr. STENNIS. The Senator quoted the word "likelihood" from the decree, and I state that as the way I heard it, anyway.

I thank the Senator for yielding to me. He has agreed, I think, on a vital part of the matter. I do not have any more questions now.

The PRESIDING OFFICER. Who yields the time?

Mr. NELSON. Mr. President, how much time does the Senator from Wisconsin have left?

The PRESIDING OFFICER. The Senator has 25 minutes.

Mr. NELSON. Mr. President, I yield myself 4 minutes.

I have gone into some detail about the Tennessee-Tombigbee project because of the fact that this was an issue before us and we had a vote on it a few weeks back. The identical proposition is again before us, excepting, in many ways, there is a more complete case against Project Sanguine.

When the Sanguine project first came into public discussion in 1968, I asked the Navy to conduct environmental studies to see what the impact would be. That was prior to the passage of the Environmental Protection Act. They started a contract with the Hazelton Laboratories, in which they contracted for studies in the amount of $125,000. I said that $125,000 would not begin to provide the studies necessary to evaluate the environmental implications of putting 1,000 miles of cable, covering 6,000 square miles, 6 feet under the ground, with the continuous emission of long wavelength electricity into that soil and into the environment.

So subsequently, when the Hazelton Laboratories began the studies, they found there were grave implications in the continuing emission of electricity into the ground, and the Navy authorized further studies.

Finally, they came out, last November, or early December, with a 550-odd page study. Now they are asking for another $350,000 to continue the environmental study. So the more they study and the more they learn, the worse it gets from an environmental standpoint. We should not continue funds, therefore, when the environmental studies are not completed.

The same rules apply to the funds sought for the project on the Tennessee-Tombigbee Waterway. There is a further reason here. The Navy itself has been concerned about the environmental question, so when the budget came into the House of Representatives earlier, they had $2 million in that budget for the purpose of boring holes 1 mile deep into the solid rock of the Laurentian shield in northern Wisconsin to find out whether they might be able to build a grid in solid rock 1 mile underground, to remove the environmental implications. I raised the point, why start to get into a program of boring holes in the Laurentian shield to see whether they can put that system a mile underground when we do not know whether one 6 feet underground will work from a technological standpoint and we do not have the environmental questions answered?

When I raised the question, the Navy backed off 2 weeks ago, and took the $2 million out, but what did it do? It added it to the $3 million they were going to spend on research and development for the 6 feet underground project.

Furthermore, as I mentioned in my former remarks, a team of scientists at the University of Wisconsin and Dr. Biggs of the University of Kansas, both of which have independently evaluated this system from a technological standpoint, have concluded that it would not work. A number of scientists have reviewed the studies made by the University of Wisconsin group and Dr. Biggs and agree with them.

So I asked the Navy:

Will you have the National Academy of Sciences and the National Academy of Engineering do an independent evaluation of the criticism of this system that has been made by Dr. Biggs and by the University of Wisconsin groups?

The Navy agreed to it. The National Academy of Sciences and the National Academy of Engineering have the project before them, with the evaluation of the criticism of Dr. Biggs and the University of Wisconsin group. Why not wait until we get the answers on the technological questions at least by the National Academy of Sciences and the National Academy of Engineering?

There is absolutely no rationale to proceeding with it further until that technological question is answered and until the environmental question is researched. It would be a good idea for the environmental defense fund to start a court proceeding against the Project Sanguine.

Mr. President, I ask unanimous consent that "Notes and Commentary on the Sanguine System Design Study, Environmental Compatability Assurance Project, Status Report," prepared by the Environmental Standards Subcommittee, Wisconsin Project Sanguine Committee, May 1971, and notes and commentary on "Project Sanguine, Draft Environmental Impact Statement," prepared by the Environmental Standards Subcommittee, Wisconsin Project Sanguine Committee, of August 1971, be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NELSON. Mr. President, I yield the floor.

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

NOTES AND COMMENTARY ON SANGUINE SYSTEM DESIGN STUDY, ENVIRONMENTAL COMPATABILITY ASSURANCE PROGRAM (ECAP) STATUS REPORT, DECEMBER 1970

(Prepared by the Environmental Standards Subcommittee, Wisconsin Project Sanguine Committee May, 1971)

GENERAL COMMENTS

The ECAP Status Report, covering Project Sanguine studies performed between 1967 and November, 1970, was published as a single summary volume. Partial background for it is included in a set of four Appendices published separately but distributed at about the same time. The Appendices are entitled: A—The ELF Communications Concept; B—Biological and Ecological Assurance; C—Facilities Construction and Operation Assurance; and D—Interference Mitigation. Of these Appendices, our subcommittee has reviewed B and C. Appendix A consists of a very general introduction to ELF communication theory for the rapid instruction of the layman. It does not include experimental data which in any way suggest final design parameters for the Sanguine System. Appendix D, we presume, will be evaluated for the Governor's Committee by the Interference Mitigation Subcommittee.

It should be noted that the Final Report of the Project Sanguine Biological Effects Test Program Pilot Studies (Hazleton Report) was published in November, 1970. The results of these tests (reviewed in our report of January, 1971, "An Analysis of Biological and Related Research on Project Sanguine") were included as a portion of the background relating to the conclusions expressed in the ECAP report. Certain of our reservations concerning these conclusions were briefly mentioned in the January report.

The following comments constitute a "highlight" appraisal of the ECAP Status Report and Appendices B and C. They include our objections, questions, and emphasis of statements we believe have significant bearing on the evaluation of Project Sanguine.

THE ECAP STATUS REPORT

Page iii: We again take strong exception to the last paragraph of the Abstract which states that the "results described in this report show an environmentally compatible ELF communications system can be designed, constructed and operated." Such statement is supported neither by experiment nor by documented review of previous research of other organizations. The question of biological compatability, especially with chronic exposure to Sanguine fields, is still completely open.

Page v: The summary of ECAP results includes the assertion that "Significant biological or ecological effects are not expected from these fields." This statement in no way follows from data presented. A binding definition of the term "significant" has never been presented. Safety standards for chronic exposure to Sanguine fields have not been established.

Page 1–1; item 1.1: The frailty of the above generality is emphasized in this introductory statement which affirms that "Continuing research and development will provide the basic guideline and technology to ensure that any future installation and operation of a Sanguine System is compatible with the existing environment."

Page 1–1; item 1.2a: To this time, the identification of potential ELF effects on the existing environment has involved limited research with a small number of biological functions. Decision on whether or not these experiments have been correctly chosen, as well as direction of future choices for acute and chronic experimentation, should be made the responsibility of an independent committee of knowledgeable biologists.

Page 1–1; item 1.2d: It is presumed that a

report will be forthcoming which will describe the methods and guidelines which have been selected to assure environmental compatibility. Perhaps Appendix C represents an early stage in such establishment of guidelines.

Page 1–2; item 1.2; paragraph 1: The statement that "Electromagnetic field limits ensure that no biological reactions occur." suggests the chosen levels meet known safety limits, whereas, in reality, these tests have yet to be made.

Page 1–6; paragraph 2: To this time we have seen evidence of but limited attempts to obtain and utilize ecological information in planning and development.

Page 1–19; Item 2.5: Environmental compatibility in North Carolina and Wisconsin can be asserted to be likely, but cannot be demonstrated as a certainty, since no control observations or quantitative sampling of biota were undertaken before applying power to the system. Failure to detect change after the fact is not suitable assurance.

Page 1–23; 3.1: The statement that "Pilot biological and biochemical research programs have shown that electromagnetic field levels can be specified which satisfy ELF communications requirements and assure biological compatibility" is not valid for the reasons elaborated in the January 1971 report on the Hazleton Studies. Further, the statement that "Ecological studies conducted near the Sanguine Test Facilities showed that low-level ELF radiation is an unlikely environmental stress" cannot be supported. Sanguine radiation has never been considered in a valid test of multiple stress common to organisms in Northern Wisconsin.

Pages 1–23, 1–24; item 3.2: In this section are summarized the Hazleton studies (see January 1970 report).

Pages 1–24, 1–25; items 3.3–3.4: See comments on appendices.

Page 1–27; item 4.2: We agree with this statement. It is, however, inconsistent with the sweeping conclusion that an environmentally compatible installation can be designed and operated.

Page 1–28; item 4.3: "Additional ecological studies are planned"—We have seen no evidence of any planned additional ecological studies. We have heard indirectly through the news media that some studies may be planned for the Biotron. UW–Madison. There is also a possibility of ecological studies having been proposed in response to the *BioScience* article of Libber, but not as of December, 1970.

Page 2–1; par. 3: We take exception to "Furthermore, the scientific community has not regarded the question of ELF biological reactions as warranting considerable research." The statement may, perhaps, be true at the acute, but not the subtle and chronic levels.

Page 2–2; item 1.2: The literature review showed that most of the studies on electrical effects have been at the microwave frequency region. It is stated that such results are not helpful in assessing ELF biological effects potential.

Last par.: No known biological reactions occur near radio stations. Have any detailed and controlled studies been made?

Page 2–3; par. 1: Radio transmitting antenna (215 gauss and 8,000 volts per meter) caused irreversible changes in the blood forming system.

Page 2–3; item par. 2: Electronarcosis apparently requires direct electrostimulation and has not been achieved with electric fields; the effective frequency is about 10 Hz. Electrosleep as an anesthetic has been unsuccessful.

Page 2.4: It is a well established fact that an electric field in air and an electric field in a conducting medium are coupled to an object placed in the field in very different ways. To make a comparison of such fields without some acknowledgement of this difference is misleading.

Page 2–4; item par. 4: High intensity ELF (Takeshima) as high as 300 volts across a radiation cell at 10–100 Hz produced no structural changes in DNA. He also contends that nonthermal effects cannot occur at relatively low radio frequencies because radio wave energy is too low to dissociate the weakest chemical bonds in living organisms.

Page 2–4; item par. 4: "These frequencies, 10 Hz or less, are the natural rates of variation of many body functions and brain activity. The scientific community regards these very lowest frequencies as critical, since electrical energy may evoke either physiological or behavioral responses." What would happen if, for any reason, the Sanguine antenna were to be operated at 10 Hz? Would this be a means of affecting large numbers of persons in a deleterious manner?

Page 2–5; item top: DC effects are cited; author states these references to have no direct bearing on Sanguine question.

Page 2–5; item 1.3: We doubt whether very many M.D.'s (or engineers) would agree with the sentence, "The medical profession is the appropriate community to establish electrical safety standards." Certainly it would require joint effort and this has been the path up to now.

Page 2–6; item par. 2: Safe current levels are cited; the Navy adopted the 0.5 mA perception criterion as the mitigation current level.

Pages 2–6 to 2–17; item general: This section concerns summaries of biological research, the results of which we have commented on in the January 1971 report, or elsewhere in this one.

Pages 2–18 to 2–19; item general: Reference is made to the Wisconsin test facility epidemiological study. We have not yet submitted a critique of this ongoing study. Following this, reference is made to other ongoing studies and cooperation received from the scientific community. At the top of page 2–19, in lines 5 and 6, the statement is made that "a formal discussion group may be formed along workshop lines." How far the Navy has really gone in this respect, other than making mention of communications with the scientific community, should be clearly documented.

Page 2–21; item Sec. 2.: This section develops, very generally, criteria utilized in routing of an antenna. Our committee has not yet considered the gross changes to be incurred in construction of the potential antenna.

Page 2–27; item Sec. 3: It is assumed that the Mitigation Subcommitte will react to this section.

Pages 3–1 to 3–13; item general: This section gives general information on the organization of the Navy's Sanguine Division, contributing organizations, and the ECAP Advisory Groups, and a section on so-called program milestones. Section 4 provides an historical summary termed "Program Milestones."

APPENDIX A

No commentary is submitted by this committee, as the communication engineering is not within the competence of the biologists among us. Professor Novotny has made his own evaluation of these aspects of Sanguine; his opinions have been expressed to the full committee verbally.

APPENDIX B

This paper summarizes all biological and ecological studies carried out for the Navy through November, 1970. We have commented on the Hazelton studies in our previous report. The following comments concern biological and ecological assurance studies on which we have not recorded criticism to date.

Page B–1; item par. 1: "A detailed description of the Sanguine ECAP effort concerning biological and ecological assurance is given in this appendix. It supports the information presented in the ECAP report."—This is a confusing statement. We presumed all of the reports were ECAP productions. This is an example of the confusing nature of the reports. There remains the question—"Who wrote the reports—personnel of the Navy, ECAP, or both?

Page 3–6; item general: All comments made in our previous report on the Hazleton studies pertain here. In fact, the treatment here is subject to additional criticism because of the brevity and the sweeping and unwarranted conclusions. For example we tentatively concur with the conclusion in the first paragraph under 2.4, page B–6, concerning forests species composition, but the conclusion that ELF has had no effect on pine but development must be qualified.

Page 5–6; item 2.3: The statement made here that the "Experiments involving NEP have not been completed" isn't sustained by the results presented on page 74. "The experimental results suggest a reduction of uptake at 0° C, but not at the higher temperatures upon exposure to the magnetic fields."—Note—There is nothing said about the studies being incomplete on pages 74–75.

Page 6; item 2.5: The first sentence in this paragraph does not appear to represent the more detailed study described later in the report (B–103, B–104).

Page 7–19; item general: While there seemed to be some references pertinent to Project Sanguine in the literature cited and abstracted in these pages, the authors occasional deductions confused our attempted interpretations. For example, several references on the types of EM studies published were presented on page 7–9 to show their limited application or inapplicability to Project Sanguine. Then, in the fourth paragraph on page 8–9, appears the conclusive statement that "The lack of effects at frequencies slimlar to SANGUINE provided significant factual information." This statement appears contradictory and incorrect. The author also referred to five papers as the most definitive and presented four results pertinent to Project Sanguine at the top of page 9. These appear to concern studies of the effects of electrical fields on man and mice suspended in air. Such results are applicable to Project Sanguine only after making allowance for the difference between air-borne electric fields and direct contact with an electric field in a conducting medium. In general air-borne electric fields must be many orders of magnitude higher to produce internal fields comparable to those produced by contact with electric fields in a conductor. Four publications seem to have relevance to Project Sanguine; these are: Takeshima (1966); Vibert (1967); Gavalas, Walter, Hamer and Adey (1970) and Schram (1970). The paper "The Effects of Magnetic Fields upon Rabbit Brains (no author cited, see page B–17) may also perhaps be pertinent, but EM treatments are not clear in the abstract.

While we are not fully familiar with the literature on ELF impacts, we do have some knowledge of the literature on ecology. If the only noteworthy reference on ecology the reviewer could find is the one on the bottom of page B–15, then the quality of the whole literature review must be viewed as sadly deficient. If the literature cited contains support for the Navy's position that "an environmentally compatible ELF communication system can be designed, constructed and operated" (main report, page iii), this has not been convincingly done on pages 7–19. In their concern with the search for gross effects at extremely high field voltages, the literature searchers seem to have avoided work reported for extremely low fields! While we have not gone to the original papers, Pressman (1970) cites experiments in which biological effects are induced simply by shielding living and chemi-

cal materials from ambient EMFs. Some examples: the egg-laying rate of hymenopteran insects increased as a result of screening (Maw, M. 1961). Suppression of oviposition rate of *Scambus bidianae* (Hymenoptera, Ichneumonidae) in fluctuating electric fields (Can. Journ. of Entomology 93: 602). Similar screening has induced a change in the precipitation rate of bismuth chloride; polymerization of acrylonitrile; clotting of blood; sedimentation of rabbit erythrocytes and others (Pressman 1970, p. 226).*

Page B–9; item par. b: In this experiment the progency of the treated males exhibited less body growth than the progency of the controls. The interpreter of the experiment reports on page B–3 that "no significant effects were reported." In regard to this unusual conclusion, the abstract indicates that the reason for the differential in progency growth was not evident. We take this to mean it was unknown. The experiment does not reveal that the EM field influenced growth, but neither does it reveal that it does not influence growth. One can only conclude that effects were reported in the course of these experiments but that the cause or causes of the effects was undetermined. If statistical treatment of the results in experiment b. did in fact show a "less than significant difference," we shall have to withdraw the above criticism. The original document is not available at present for review and we are reacting to the ECAP statement as it is.

It might also be noted that the currents involved in experiment b. were only one one-hundredth of those applied to the rats in the HLI learning experiment and one two-hundredths of the current in the HLI canine physiology experiments. We do not have sufficient information to express the differences in terms of current densities in the animal tissue.

Page 21–72; item general: This section, containing the results of HLI studies which our subcommittee has already treated, apparently represents the Navy's final interpretation of the HLI studies. The conclusions are slightly different than those drawn by HLI in their final report. We shall not respond again to this section; our former comments (January, 1971) still pertain.

Page 73–75; item Sec. 5; general: Biochemical research.—We do not feel able to appraise these studies which are, at present only partially presented. However, study suggests that, in the presence of a second stressor (temperature, varying in magnitude) added to that of the magnetic field treatment, different rates of uptake and decay of tritium-labeled norepinephrine are observed. The levels of 50 and 100 gauss were, of course, many times those suggested for Project Sanguine. When the final reports of these experiments become available, we shall make every effort to obtain expert consultation in their interpretaton.

Page 77–80; item Ecol. Surveys; general: A final report of this research has now been published and is being separately evaluated. As presented here, the text is impossible to follow in places. A few comments, however, are germane. We (D. R. Thompson and C. Kabat agree with the conclusion of the author (6th paragraph on page B–79) that there appeared to be no effect of the proximity of a power distribution line and ELF antenna at the North Carolina and Bravo sites respectively on forest species composition. However, the data on pine bud mortality at these sites does not provide the basis for acceptance or rejection of the hypothesis that there was no difference between pine bud mortality at the roadside and power line sites (Page B–98, Table B–29), since no study was made of the other alleged differences in environmental factors (last paragraph on page B–80). Also, the mean percentage of dead buds was calculated incorrectly at all distances (Table B–29).

The author neglected to include the numbers of dead buds along with the number alive to get the total which was then to be divided into the number of dead buds to get the percentage. It was also impossible to determine from the text whether or not the power line was operative (Table 29, Page 98). If the power line was inoperative, then the two sites would have been similar; that is, they were adjacent to an opening with no EM effects. If the power line was operative, then the sites would have been different and the mean percentage difference in pine bud mortality could have been due to the EM fields.

Page B–103; item Sec. 7: The heart pacer work is not primarily environmental and, in a sense, is not a biological question. Rather, it seems more akin to the mitigation work, *i.e.* the fields affecting the appliance and only indirectly the heart pace. Multiple biostresses, cumulative and chronic effects and the like would perhaps not be as likely to enter into consideration of permissible levels of Sanguine, as they would in consideration of the biota. It is conceivable, however, that a Sanguine field might be imposed on a pre-existing field in a household or industrial environment, in which instance a complex reaction, potentially additive, might be noted.

In addition to induced voltage caused by the magnetic field, the conduction current caused by direct contact with the electric field in the earth could also interfere with a heart pacer. This possibility should also be investigated.

APPENDIX C

This appendix concerns general precautionary construction measures that will be taken to prevent gross mechanical environmental damage. The brief statement is sufficient as an indication of intent, but a much more detailed outline of procedures and contractual demands will be expected. As further design specifications and proposals become more specific, our comments likewise may be more helpful.

Pages C–1, C–2; item general: The same conclusion appears here that has become so objectionable in other parts of the report; *i.e.* that research to date "has provided no evidence to conclude that operation of an ELF system would have any environmental impact of significance."

The technique of reiteration has been used in these reports; since the statements cannot be upheld as yet by widely confirmatory evidence, we shall continue to call attention to the inconsistency of the conclusion.

Further, the Navy says it can't be specific on measures since the system has not yet been designed; we certainly agree that there has been lack of specificity.

Page C–5; item general: The contractor is liable "for environmental protection;" the problem here is that of enforcement.

Page C–9; item general: The burning restrictions appear to be adequate. Any type of burning in forest protection districts must be done under permit from state and federal government.

APPENDIX D. INTERFERENCE MITIGATION

This report has been read, but not critically reviewed, by this subcommittee.

NOTES AND COMMENTARY ON PROJECT SANGUINE, DRAFT ENVIRONMENTAL IMPACT STATEMENT, MARCH 1971

(Prepared by the Environmental Standards Subcommittee, Wisconsin Project Sanguine Committee, August 1971)

Comments are listed seriatim for the body of the Draft Environmental Impact Statement (DEIS; pp. 1–46). Annex A with Appendices A–D was analyzed at the time of publication; a copy of that report is included here to make complete our commentary on the entire DEIS. Reaction to Annexes B and C follow in turn. Annex D is not considered here.

Initially it is necessary to make very clear our strongest reservation. Throughout the DEIS and ECAP Status Report (Annex A), statements are made to the effect that a Project Sanguine design can be developed which would result in an operable system that would have no significant adverse environmental effects. In different contexts and at every opportunity this statement is reiterated. We, in turn, have repeatedly stated that this assertion has neither been proven nor disproven. The Navy has neither recognized nor publicly recorded our position. Repetition is not a substitute for verification. The latter will be required before an Environmental Impact Statement will be acceptable to the scientific community.

To the present, the pilot biological studies and ecological surveys have been aimed solely at acute effects. Results in virtually none of these experiments have been at all convincing. Our subcommittee is, thus, not at all assured, even concerning such short-term acute effects, at any EM level. We have, however, repeatedly stressed the need for long-term study of possible subtle effects, particularly concerning multiple or cross stresses, factors which are critical to survival in a free-living organism in the natural environment. The sooner such studies are initiated, the sooner it will be possible to realistically discuss the environmental impact of Project Sanguine. Without the inclusion of results from such studies, a final Environmental Impact Statement would be unacceptable to our subcommittee.

Sweeping statements are made throughout the DEIS that no adverse "impacts" have been found (a statement with which we have disagreed), but it must be made clear that these references deal primarily with v/m gradients at the antenna sites. Biotic effects at the ground terminals (10–14 v/m) have been virtually neglected. Even if the grounding sites occupy a relatively small area, the problems of adverse biotic effects must be identified and investigated.

The effort to assure that natural resources would be protected in the event that Project Sanguine is installed is commendable. It is also necessary, however, to give assurances that if the system were constructed, provisions would be made through federal funding to facilitate appropriate state action for detecting and preventing specification violations.

Page ii; item par. 2, lines 8–9: The sentence beginning "It should be . . ." stating that conclusions made in Annex A are not included in the DEIS is generally accurate. However, the context throughout the DEIS in which statements are made relating to Annex A give them a conclusive connotation.

Pages ii–iii: Inclusion of Annex D as an illustration of degree and kind of public interest was a matter of choice. It should be pointed out that other reports, some irresponsible but others highly responsible and qualified have been made public by various persons and groups. Thus Annex D should not be construed as being inclusive of all responsible public reaction.

Page 2; item lines 14–17: The statement ("Significant biological . . ." etc.) has not been proven, since such research has not yet been reported.

Page 3; item lines 5–9: The positive statement that "in every case. . . ." etc. is contrary to the pilot research findings which indicate that EM fields particularly in the immediate vicinity of terminal groundings will not assure "environmental compatibility." Furthermore, we do not concede that assurance has been demonstrated even at antenna levels on the basis of research reported to the present date.

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*Pressman, A. S. 1970. Electromagnetic fields and life. Plenum Press. New York, NY. 336 p.

Page 3; item lines 9–11: Not just "additional study to develop design guidelines" is required; rather, new research is necessary to determine that adverse effects do or do not occur. It is stated that these studies are being conducted. What are they? Who is doing them? What external input is possible in the design of these studies?

Page 3; item lines 12–15: Ecological studies have not demonstrated that low-level ELF radiation is an unlikely environmental stress (see comments on Annex B.) No experiments have yet been carried out, or even thoroughly planned that would provide such assurance, as far as is presently, publicly known.

Page 3; item last par.: Concern as to effects is never unwarranted. On the basis of present ecological research, such concern is more than ever required.

Pages 7 and 9; item figs. 2, 4: Captions should read "Comparison with. . . ." instead of "Comparison of. . . ." This wording would be less likely to convey the wrong impression regarding the Sanguine fields.

Page 10; item lines 23–25: The last sentence is a sweeping generalization. Power system fields are typically quite variable in time and in general any direct advance impact of the higher magnitude fields associated with power system exposure is unlikely for people or animals since one would not normally expect them to remain in the vicinity of ground terminals for long periods. Thus, the lower amplitude fields represented in figures 2 and 4 are more realistic long term exposure values and these are considerably lower than proposed Sanguine levels.

Page 10; item lines 29–31: This statement is not true. In fact, faulty procedures and facilities prevented the determination of the magnitude of EM fields to which the test organisms were subjected in several of the HLI studies.

Pages 11–12; item par. a–i: It is apparent from these summaries that virtually none of the suggestions made in the appraisals either by the Navy's selected reviewers or those made by the Environmental Standards Subcommittee of the Wisconsin Project Sanguine Committee have been accepted. Therefore, we emphasize that the summary statements are as misleading in the DEIS as they were in the ECAP report (Annex A, with appendices).

Page 11; item par. 2.4: In all studies reported verbally at meetings attended by Wisconsin representatives, the objectives cited for such experimentation were to determine acute effects. Hence this statement should be qualified accordingly.

Page 12; item par. 2.5: The first paragraph does not accurately describe the entire results of the studies reported as Annex B; it relates only to that section on species composition, the results of which are equivocal (see criticism of Annex B). The faulty pinebud mortality results are not mentioned here at all. The "no apparent effect" statement is misleading.

Page 14; item par. 1: The magnitude of gradient near the ground terminals does not appear to be specified in this report. The figure 10 v/m has been used in discussion; this is far higher than the "range of gradients measured near 60 hz power line grounds private and commercial dwellings in the area." These data exist for the Clam Lake grounds and should be included somewhere in the DEIS.

Page 14; item par. 4: This paragraph ("No evidence of biological. . . ." etc.) is very misleading, as if systematic measurements now permit such assurance statement. The U.S. Forest Service observations upon which the statement rests were at best casual. See comments on Annex C, wherein is found the following: "These observations are not intended to yield scientific conclusions concerning environmental effects."

Page 15; item last sentence: The statement that "Stream crossings of reasonable extent probably can be made environmentally and economically acceptable" is not sufficient assurance.

Pages 16–17; item general: Good assurance against immoderate physical disruption.

Page 18; item first sentence: The possibility of someone digging down to the buried antenna is very real, when buried at a depth permitted by vibratory plowing. What are the consequences of such contact?

Pages 18–21; item general: Appears to be reasonably good assurance.

Page 21; item paragraph 3: "Other disturbed areas. . . ." While it would be very desirable to cover a disturbed area with humus or forest litter, the practical aspects of such activity renders it virtually impossible.

Pages 21–25; item general: The assurance is good, but inspectors with real authority and consultants would have to be on the installation sites at all times.

Pages 25–28; item general: We agree that "A realistic economic impact on a given area . . . would depend on actual system design factors . . ." (P. 25, section 2.7, par. 1.). However, it is necessary to make an economic impact evaluation using a simulation model, since the general characteristics of the area are obvious. Awaiting final design specifications would imply a decision to build, thus having ignored potential economic factors.

Page 26; item paragraph c.: This statement is much too casual. There are many very serious ramifications of ground terminal installation in marshes (wetlands). These sites where wildlife heavily concentrates frequently inclose impounded water and are often transected by streams. Since the surface v/m gradient at ground terminals will probably exceed biotic tolerance, the problems here are evident.

Pages 28–29; item general: Data summarized in Table 2 are not referenced. Wisconsin Upper Michigan Systems reports, Mid-Continent Area Power Planners Reports and the EEI 1969 Year End summary give power production figures for Wisconsin as 6,007 MW, and for the U.S., 310,000 MW, in this case significant differences. These figures should be resolved.

Page 30; item paragraph 2.9, general: Comments on this summary should be made by the Interference Mitigation Subcommittee of the Wisconsin Project Sanguine Committee.

Page 30; item par. h.: We all have continuing concern with respect to the use of medical electronic devices in a Sanguine environment by birdwatchers, hunters, or others not completely informed of potential danger. We stress the need for careful documentation of assurances here by the Interference Mitigation Subcommittee.

Page 31; items 2.10.1 and 2.10.2: In our comments on the ECAP report (Annex A and appendices) we have stressed the inadequacy of formally-reported biological experimentation to provide assurance or, in several cases, even reasonable planning guidance. We have not yet seen the proposals for "further research" which have been accepted for funding by the Navy. We trust that the objectives and experimental design of such projects will be released soon so that, unlike the HLI situation, external suggestions for design modification could at least be discussed with principal investigators. Furthermore, we must emphasize again that, unless future studies are conducted on subtle and long-range effects (particularly using multiple stresses) the biological-ecological questions of environmental compatibility will remain. Without such research, assurance will not be acceptable to our subcommittee.

Pages 32–33; item 2.11: Improvement of poor telephone and power distribution systems does not appear to qualify as an "environmental benefit." Indeed, the title of this section should properly be changed. To argue that additional access roads and forest clearing is environmentally beneficial will raise questions among many ecologists, who see too many roads and excess forest clearing already. The wording of the last two sentences is meaningless and the reasoning scientifically unsound.

Page 33; item 2.11: For the first time to our knowledge, the construction specifications call for spanning of rock outcrops or extensive (?) bogs by an overhead antenna. This raises questions with respect to effects on airborne wildlife, as well as stressing the attendant need for perpetual clearing of foliage along the right-of-way. Additional clarification by the Navy is required in this matter.

Pages 34–35; item Section 3: We take strong exception to the intent and wording of this entire section, most especially to the first paragraph, page 34. How could long-term adverse environmental effects be identified or deemed nonexistent when no such studies were conducted? There have not been "four years of environmental research" having to do with biological or ecological compatibility. There are virtually no studies which have been reported to us in written form which provide biological or ecological assurance even on short-term basis. There are certainly none which provide long-term assurance. This has been a point of contention by the Environmental Standards Subcommittee of the Wisconsin Project Sanguine Committee throughout the period of study. We require the same rigor to be applied to assurance studies that has seemingly characterized the studies in communication engineering and interference mitigation. Section 3 in its entirety is a gloss over of nonexistent or shoddy investigation of biological and ecological problems and cannot be allowed to stand unchallenged.

Page 37; items 4.2, par. 1: We commend the statement that "any . . . system would be required to satisfy all guidelines for ensuring biological and ecological compatibility . . .". Such statement is not, however, compatible with the frequent statements found throughout pages 1–47, that no significant adverse environmental effects have been found.

Pages 40–41; item general: Apparently the alternative sites were only very tentatively considered, with the Wisconsin site being the only one given serious consideration. We had the impression that all alternative sites had been carefully analyzed and truly qualified for consideration.

Pages 41–43; item general: Emphasis on using low conductivity sites for transmitters and high conductivity sites for antenna installation is either a new consideration or we have missed it in previously issued reports. It should be noted that the potential biological impact of a given electric field depends strongly on the conductivity of the medium in which the field exists. High ground conductivity should be expected to produce greater biological impact for a given field strength.

Pages 44–45; item Section 5: From the text of this section we do not understand what is meant by short-term uses and long-term productivity. The language is garbled and is not, therefore, informative. The intent of the entire section is unclear. The second paragraph reiterates the unsupportable statement that "field levels associated with Sanguine should produce no unusual or harmful environmental effects." *Again*, we record our unwillingness to accept the statement.

Page 46; item Section 6: The title of this section refers to "resources" which literally encompasses the totality of physical and biological components of the environment. Page 46 deals only with some physical components, totally ignoring equally important biological, or aesthetic) resources.

ANNEX B. PILOT ECOLOGICAL FIELD SURVEYS TECHNICAL MEMORANDUM NO. 1, IITRI PROJECT E6159, FEBRUARY 1971

This report describes work undertaken to demonstrate the effect of Sanguine test electromagnetic fields on species composition of mixed hardwood-deciduous forest and potential deleterious effects as measured by pine bud mortality. While introducing certain valid quantitative techniques to the Sanguine research program, no assurance value is gained from the study for the following reasons:

1. In neither Site Alpha or Clam Lake studies was pretreatment evaluation of pine bud mortality or composition undertaken. (It is understood that such studies had not been envisioned in 1962 at Site Alpha nor as late as 1969 at Clam Lake, but this does not obviate their necessity.)

2. There is no measure of exposure to EM fields at either site. At the Alpha site the antenna was energized in 1962. How long it was energized, intermittency, and pertinent energy levels are not discussed, nor is even the time of deactivation noted. The Clam Lake antenna is said to have been energized intermittently for six months (of a two year existence). These statements of treatment are useless in permitting independent evaluation of exposure. Likewise, power levels in transmission lines used as part of the control study have not been recorded. Use (or omission) of herbicides and pesticides along the control roadways was not ascertained.

3. While it is possible that adequate statistical processing was done, it is not described in the paper. Furthermore, there is no indication of specific meaning of the term "significant". The independent evaluator is not given confidence by the data presented on page 7, where the means of sample are incorrectly calculated (% dead = dead/living, rather than % dead = dead/total). These incorrect results are then presented in the summary table, page 3. Data tables on both pages should be changed.

4. Whether or not the data presented in this paper truly represent "no effect" seems still a matter of interpretation. For example, the percentage of dead red pine buds 0 meters from the Clam Lake antenna is 1.9 times the equivalent value at the road cut. At a distance of 100 meters from the antenna, the percentage dead is 3.7 times the equivalent measure 100 m. from the road cut. These data indicate to the authors of the report nothing more than a general boundary effect at the forest edge. Their statement of conclusion states that "No significant effect can be attributed to electromagnetic influences." They may be proven correct at some time, but such conclusion, we feel, on the basis of data presented here, is totally unwarranted.

5. The study on forest composition does not provide assurance of safety, but perhaps the data can be used as a baseline for future studies. In addition to criticisms presented above, it must be stated that the parameters studies, *i.e.*, density, frequency, and dominance in a forest community, may well require very long exposure to EM (or other) treatment to demonstrate measurable effect by the methods here used.

Herbs would be expected to show population effects sooner than trees, yet no quantitative data were obtained for herbs (or, indeed, tree seedlings) though a simple listing of species has been included for one site. No comparison is made with trees from non-Sanguine sites, making impossible the discrimination of possible EM effects from those due to general properties of gradients near clearings.

The authors' statements that "In all three cases forest composition is characteristic for the particular region and age of the forest" and "No species were observed which were not expected and no species which were expected were missing" are apparently drawn from personal experience, but are neither referenced nor otherwise documented in the report.

ANNEX C. FIELD OBSERVATIONS AT THE PROJECT SANGUINE, WISCONSIN TEST FACILITY, REPORTED BY U.S. FOREST SERVICE, U.S.D.A.

(Annex prepared by IIT Research Institute, January 4, 1971)

This brief inclusion of miscellaneous observations by personnel of the United States Forest Service is entirely out of place in the DEIS. In no scientific journal would such simple, unquantified and unsynthesized observations be accepted. On the surface of it, the presence of these four pages seems harmless enough. However, there is the definite impression that U.S.F.S. personnel (well qualified with University training) are making systematic observations on what is termed "animal behavior". This is misleading; the recorded observations are no more than sightings or observations of spoor. Amplified enormously and using quantitative methods of observation (e.g., sightings or tracks per 10 minutes of snow transect walked regularly by a skilled observer), indications of population level and fluctuation in selected large vertebrate species might be discerned. There is, however, no order to these published observations. Furthermore, if even desultory reporting by a single man observing the presence of vertebrates on 14 days, turns up only such list of sightings, the vertebrate populations in the Chequamegon National Forest are in serious trouble. This is clearly not the case.

It is pointed out that the forest is complex and is subject to manifold influences. This is true. It is naive, however, to assume that even well-intentioned, well-educated field observers could ascertain the subtle effects that might be expected from electromagnetic treatment. Assurance of no effect, or measurement of positive effect, can come only from well controlled, quantified field experiments.

On page 2, the following statement appears: "These observations are not intended to yield scientific conclusions concerning environmental effects. Instead, it (*sic*) is expected to provide a basis for determining if factors related to the test facility cause any discernible changes." The latter sentence clearly implies environmental effects related to the presence of the test facility.

The willingness of the employees of the U.S. Forest Service to provide their field notes for examination is laudatory. To make them responsible for any tentative conclusion drawn from those notes is, however, grossly unfair. Such personnel should be of real help in advising future researchers on the design of suitable census methods for use at the site.

Thus, in summary, we consider these field observations to make no contribution to the question of environmental compatibility of Project Sanguine.

Mr. NELSON. Mr. President, I ask unanimous consent to have printed in the RECORD a background statement on members of the Environmental Standards Subcommittee of the Wisconsin Project Sanguine Committee.

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

BACKGROUND STATEMENT

The following constitutes a brief background on the members of the Environmental Standards Subcommittee of the Wisconsin Project Sanguine Committee and consultants:

MEMBERS *

Dr. William Reeder—Professor of Zoology, an ecologist with expertise on animal species distribution and factors affecting them. University of Wisconsin, Madison.

Dr. William Schmitz—Associate Professor of Botany and Zoology, a limnologist who has studied the effect of lake management practices on fisheries.

Dr. Donald Novotny—Professor in Electrical Engineering, who has conducted special research on the effects of electrical fields on several fish species. University of Wisconsin, Madison.

Dr. Arthur Peterson—Professor of Soils, who has conducted research in crop production and erosion control. University of Wisconsin, Madison.

Mr. James Rogers—Assistant Attorney General, Department of Justice, Wisconsin.

Mr. William Eich—Formerly Assistant Attorney General, Department of Justice, now Chairman of the Public Service Commission of Wisconsin.

Mr. Cyril Kabat—Acting Director, Bureau of Research, Wisconsin Department of Natural Resources, with over 25 years of experience in natural resources research and administration.

CONSULTANTS *

Dr. K. T. Crabtree—Associate Professor of Botany and Zoology, a bacteriologist with expertise in the field of bacterial mutagenesis.

Dr. Koby Clausen—Professor of Botany and Zoology, a plant ecologist who specializes in factors affecting plant growth, formerly an associate professor at the University of Wisconsin, Wausau.

Dr. Fred Rickson—Assistant Professor of Botany, specializing in plant morphology, anatomy and histochemistry, formerly of the University of Wisconsin, Madison, now at the University of Oregon.

Dr. Seymour Abrahamson—Professor of Zoology and Chairman of the Zoology Department and Genetics. An expert in radiation biology and a member of the United Nations scientific committee on effects of radiation, and also the Subcommittee of the National Academy on Genetic Effects of Radiation. University of Wisconsin, Madison.

Dr. R. K. Meyer—Professor of Zoology and an internationally known endocrinologist. University of Wisconsin, Madison.

Dr. Theodore W. Tibbitts—Associate Professor in Horticulture and a specialist in the field of environmental physiology of crop plants. University of Wisconsin, Madison.

Dr. Ray King—Professor in Electrical Engineering and a specialist in the electromagnetic fields and waves with research on VLF, mixed-path ground wave propagation.

Dr. John Lussenhoff—Former graduate student. His expertise is in microbiology. University of Wisconsin, Madison.

Mr. STENNIS. Mr. President, I want to recognize the Senator from New Hampshire in a few minutes. The Senator from Alabama is here on a preliminary matter, and I yield him 3 minutes.

Mr. ALLEN. I thank the distinguished Senator from Mississippi.

Mr. President, the distinguished Senator from Wisconsin (Mr. NELSON) has, in support of the pending amendment, presented and inserted in the RECORD, a newspaper account of the granting of a preliminary injunction against proceeding with the initial construction phase of

*All of the professors currently or formerly at the University of Wisconsin have more than ten years of experience in their special field of research.

the Tennessee-Tombigbee Waterway. I am greatly disappointed over this ruling by the Federal court in Washington, which is just a further delay in starting construction of the Tennessee-Tombigbee Waterway. In this proceeding before a single Federal district judge, and not on the basis of testimony, but on the basis of a preliminary showing, a temporary injunction has been granted. It is temporary in nature. A decision has not been made on the merits. It will not be made permanent unless clear and convincing proof, which has not yet been offered, is adduced.

Mr. President, I do hope that, on a full and complete hearing in this matter, on the offering of testimony by both sides, the preliminary injunction will be dissolved and that the work will be allowed to proceed.

Environmental quality is of concern to all of us and, in this particular instance, it should be noted that the Tennessee-Tombigbee Waterway will be the first major navigation project built under Congressional environmental guidelines.

I have always felt that our waterways program, when carried out in a wise and orderly fashion, is an ecological plus, and I believe that it is important to note that the Council on Environmental Quality has never stated to the Congress that the environmental impact of the Tennessee-Tombigbee Waterway would be a bar to its construction.

The Tennessee-Tombigbee Canal will be built in a manner least destructive of our natural values. River navigation is perhaps the oldest form of utilization of natural resources by man, and has produced benefits in the areas of recreation and preservation of fish and wildlife resources.

It is most ironic to me that at the very time that the legislative and executive branches are making a concerted and all-out effort to revive and expand our sagging economy and to reduce unemployment, this project—which will mean so much to the economic growth of our Nation—is being stifled by the Federal judiciary. I am confident, however, that after all the relevant information is made known to the court, the Tennessee-Tombigbee project will be resumed.

I thank the distinguished Senator from Mississippi (Mr. STENNIS) for yielding time to me.

Mr. STENNIS. Mr. President, the distinguished Senator from New Hampshire wishes some time. I yield 20 minutes to the Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized for 20 minutes.

Mr. McINTYRE. Mr. President, the proposed amendment No. 426 contains two separate provisions which involve the Navy Project Sanguine but, as I will explain later, one of these has implications which are so far reaching that it could undermine and obstruct the orderly prosecution of most of the Department of Defense total research and development program. The first part of the amendment states:

Notwithstanding any other provision of law, none of the funds authorized to be appropriated by this act may be obligated or expended in connection with the Navy's project Sanguine until after a final environmental impact statement has been made with respect to such project pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 and such statement has been reviewed by the President's Council on Environmental Quality.

This language, Mr. President, is identical with the language contained in amendment No. 418 involving the Navy F–14 aircraft and the Air Force F–15 and B–1 aircraft programs. That amendment was debated by the Senate on September 13, 1971, and was overwhelmingly defeated by a vote of 55 to 21. It is unfortunate, Mr. President, that this issue, having been argued previously and having been disposed of so positively, must again be rehashed. However, to refresh the memories of my colleagues, let me repeat the major arguments which I made before. I would refer my colleagues to the CONGRESSIONAL RECORD of September 13, 1971, commencing on page 31486, which treated the history of the National Environmental Policy Act of 1969, commonly referred to as NEPA, in great detail. It traces from the time of its enactment on January 1, 1970, through the various actions which have been taken by the responsible agencies of the Government who are charged with its implementation, and as it affects the Department of Defense.

First let me emphasize, Mr. President, that the Department of Defense has complied with the intent of NEPA as interpreted by the Council on Environmental Quality, and with the guidance published by the Office of Management and Budget. Specifically, a draft environmental impact statement on Sanguine was submitted, as required, to the Council on Environmental Quality on May 14, 1971. This document contains almost 550 single-spaced pages. Although my distinguished colleague from Wisconsin previously claimed credit for the very comprehensive treatment which the Navy gave the environmental implications of this program, the work required nevertheless has been done satisfactorily and with great thoroughness.

Second, the procedures which have been established to implement the law are consistent with the intent of that law.

Third, there is no danger that any program proposed by the Department of Defense which could adversely affect the environment would be authorized.

Fourth, this is an ongoing program which has been actively pursued by the Navy since 1958 when it was essentially a research project. Because it is an ongoing program, the Navy has already obligated or placed on contract $4,419,000 of the total of $5,557,000 included in the fiscal 1972 program. These funds were obligated under the continuing authority provided by Public Law 92–71, signed August 9, 1971. Therefore, even if the amendment were adopted, it could not affect retroactive actions and would apply only to the $1,138,000 which remains unobligated. At this point, Mr. President, I ask unanimous consent that a detailed listing of various tasks which are included in the fiscal 1972 program be printed in the RECORD.

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

FISCAL YEAR 1972 OBLIGATIONS FOR SANGUINE

Task	Obligated	Amount
Systems engineering and technology support (MITRE Corp.)	Aug. 2, 1971	$600,000
Test facility operation and maintenance (Nav Elex Mid West Division)	July 20, 1971	300,000
Design support for ELF receivers and natural parameters (Naval Research Laboratory)	July 19, 1971	80,000
General R. & D. work in natural parameters, receivers, receiving antennas, and general submarine support (Naval Underwater Systems Center)	Aug. 3, 1971	870,000
Environmental program support and research (IIT Research Institute)	Aug. 25, 1971	415,000
Site selection evaluation and criteria, measurement of conductivity (GTE/Sylvania)	Sept. 9, 1971	165,000
Program management support, systems engineering studies (Computer Sciences Corp.)	Aug. 25, 1971	191,000
Facilities design and research including survivable components and power generation (Office of Naval Research)	July 27, 1971	698,000
Biological/ecological research (Office of Naval Research)	Sept. 17, 1971	300,000
Design consultation, receiver design, field measurements, and other theoretical studies (MIT/LL)	Sept. 8, 1971	800,000
Total		4,419,000

FISCAL YEAR 1972 BALANCE OF PLANNED OBLIGATIONS FOR SANGUINE

Task	Committed	Planned obligation (1971)	Amount
Propagation research (Naval Research Laboratory)	Yes	September	$25,000
Nuclear effects studies (Office of Naval Research)	Yes	November	100,000
ELF measurement equipment (National Bureau of Standards)	Yes	September	20,000
Receiving antenna research (contractor)	In process	October	300,000
Sanguine studies on multisite locations and concepts (contractor)	do	November	117,000
Cable research, land use planning, engineering support and general project studies (various contractors and Navy laboratories)	No	October–December	576,000
Total			1,138,00

Mr. McINTYRE. One document shows 10 tasks for which the $4,419,000 already has been obligated. The second document shows six additional tasks which total $1,138,000 with the planned dates for obligation.

My distinguished colleague may not be aware of the significance of a research and development program which is in the concept formulation phase. The purpose of concept formulation is not to design, develop, and test a set of hardware. Rather, it is largely a wide range of closely interrelated studies with a minimum of hardware fabrication and laboratory testing to prove out a new idea for a program which has important military promise. When a program such as this is in its conceptual phase, in order for the environmental implications to be fully identified and evaluated, the work which must be done during concept formula-

tion has to be completed. Otherwise, there is no basis upon which environmental implications can be considerd. It is somewhat analogous to putting the cart before the horse or building a house from the roof down. Let me state this another way and more directly. If the work which is planned to be accomplished with the funds requested for fiscal 1972 is not done, then an environmental impact statement cannot be prepared because all of the information needed for the statement will not be available.

I would like to clarify a technical point which it is important to understand. The language proposed in the amendment requires that a final environmental impact statement be made before any fiscal 1972 funds may be obligated. The draft statement submitted on May 14, 1971, in fact was a preliminary draft statement, because a final draft statement could not be prepared until the concept formulation is completed. The completion of that statement is largely dependent upon contracts which were let last Friday with nine separate universities engaged in this research. That effort will take 1 year to complete, which means that the results of their studies will be available a year from now. After the final draft statement is completed, under existing procedures it will be circulated again for comments by the various Federal and State agencies concerned. A period of 30 days is allowed for comments following which, unless there are major environmental issues raised, the filing of the final report, including such comments, will be accomplished. This means that it will be approximately the end of 1972 before the actions which the proposed amendment requires to be taken can be accomplished. If this program is to be subjected to such a delay, the disruption which would be caused would be tantamount to killing the program. The numerous teams of highly competent contractor and Government personnel who are involved in the various separate tasks which comprise this program would be idled or lost to this program. In a real sense, the investment of some 50-odd millions of dollars which the Government has made in this program will have gone down the drain and the program will have been seriously set back if not finally disposed of. I, for one, Mr. President, would not wish to have on my conscience the responsibility for having decimated a program which promises to play a critical role in our strategic nuclear deterrent capability. Reliable communications may well spell the difference in deterring our enemies from launching the first strike.

The second part of the proposed amendment, Mr. President, states that none of the funds may be obligated or expended until after a technical feasibility review of such project has been completed by the National Academy of Sciences and the National Academy of Engineering. This provision must be viewed in much broader context than Project Sanguine. It proposes, by law, to superimpose upon the Department of Defense, outside organizations which are private, nonprofit corporations with the unique responsibility for determining the technical feasibility of a Department of Defense program. This is interference of the highest order. The Department of Defense is charged with the responsibility for developing all of the weapons systems with which we arm our military forces. In the fulfillment of this responsibility the Department of Defense maintains a highly competent organization of military personnel and civil service employees in every field of science and technology. These people are supported by highly competent organizations in private industry, in our universities and institutions when in the opinion of the Department of Defense this outside assistance is needed. The imposition of such outside organizations as proposed by the amendment upon the Department of Defense should not be a matter of law but rather a determination to be made solely by that Department. The language proposed by this amendment could set a dangerous precedent which might upset the proper balance between authority and responsibility which is vested in a department of the Government. Focusing now on Project Sanguine, it should be noted that the National Academy of Sciences and the National Academy of Engineering are conducting a technical feasibility review of Project Sanguine, but at the specific request of the Department of the Navy. This review will be completed by the end of October 1971. The Navy advises that it is confident that the review will confirm the technical feasibility of Project Sanguine. Although this review will be completed by October of 1971 and will satisfy one part of the proposed amendment, it will be completely out of phase with the effect of the other part of the proposed amendment, because the final impact statement which that requires cannot be made until approximately 14 months later. This points up a complete lack of appreciation for the need to pursue this program in an orderly manner without disruption. Moreover, since the technical feasibility review by the two national academies is underway and will be completed shortly, there is no reason why what is already happening should be required as a matter of law.

For the reasons which I have described, Mr. President, I am convinced that the amendment proposed by the Senator is not justified, is not needed, and would paralyze this critically important Navy program which promises to fill such a vital need in our No. 1 national priority, strategic deterrence.

To provide further detail on Project Sanguine, Mr. President, I request unanimous consent that a series of documents be printed in the RECORD. One is a press release dated September 10, 1971, No. 71–110, which was made by the distinguished junior Senator from Wisconsin, which criticizes Project Sanguine. The other document was prepared by the Navy in response to each of the points that were made in the press release.

There being no objection, a series of documents were ordered to be printed in the RECORD, as follows:

SENATOR GAYLORD NELSON'S CHARGES ON SANGUINE

WASHINGTON, D.C.—Sen. Gaylord Nelson announced Friday he will introduce legislation and call a Senate vote to hold up funds for Project Sanguine in Wisconsin pending completion of environmental impact studies and a high-level technical review.

The Nelson move tentatively set for early next week is the latest in his Senate fight to get the Federal government to comply with the environmental review and protection requirements of the National Environmental Policy Act.

Project Sanguine is a Navy scheme to bury an immense antenna network under northern Wisconsin to communicate with submerged submarines. Nelson has argued against going ahead on the vast project until the serious questions scientists have raised about its environmental dangers and whether the project will work have been resolved.

The Navy's latest request for Sanguine money—$5.5 million for continued research and development in fiscal year 1972—is in the Military Procurement Authorization Bill tentatively set for Senate Floor action early next week.

The Wisconsin Democrat has notified the Senate Armed Services Committee and alerted all Senators that when the Military Procurement Bill comes to the Floor, he will introduce his amendment to hold up the Sanguine money pending the environmental and technical review.

"After several years of development and expenditure of $50 million in tax dollars on Project Sanguine, we still do not have detailed information on how the environment would be affected by construction and operation of this system," Nelson said.

The National Environmental Policy Act of 1970 requires the filing of final environmental statements on all major Federal programs and proposals for action. A final statement has not been prepared for Sanguine.

Nelson also said a technical review of Sanguine by the National Academy of Sciences and the National Academy of Engineering is some months from completion.

The technical review was begun at Nelson's request after reports by scientists at the University of Wisconsin and the University of Kansas concluded it would take such a long period of time to send messages via Sanguine that jamming would be a relatively simple task.

"With the Santa Barbaras, and the Everglades dams and the SSTs as environmentally tragic precedents, Sanguine is in danger of becoming another classic case of leaping before we look," the former Wisconsin Governor said.

He expressed special concern about the $2.14 million in the Sanguine budget to start investigating an entirely new approach of burying the project in a network of tunnels several thousand feet below ground instead of in a shallow network on the surface.

"In view of the fact that the Navy has not demonstrated the value of Sanguine or whether it will even work," Nelson said, "there is little need at this point to embark on a costly additional research program to bury Sanguine until these questions have been answered."

Nelson said if necessary, he would introduce a second Sanguine amendment next week and have a separate roll call vote on the deep underground funds alone.

Project Sanguine would consist of a network of criss-crossing cables forming an antenna grid to send extremely low frequency messages to submerged submarines armed with nuclear missiles.

Originally, the grid was to cover about 26 counties of northern Wisconsin with the cables trenched about six feet deep. The Navy says that technological discoveries would enable reduction of the antenna size to about 25 percent of the original. Nevertheless, cost of installing the network would run over $1 billion, and likely very much more if it would be buried deep underground in the tunnel network.

The Navy maintains that the work on Sanguine to date has been in the concept formulation phase. The next phase, contract definition, would precede actual construction.

However, included in the budget request for the current fiscal year is a proposed $1.2 million contract with the Mitre Corporation of Bedford, Massachusetts. This contract would be to develop the overall systems engineering to enable advancement to the contract definition phase.

The contract with the Mitre Corporation would not be funded under the legislation introduced by Nelson.

In addition to his Sanguine legislation, Nelson will also introduce to the Military Procurement bill next week an amendment to require five other Department of Defense projects in the bill to be brought into compliance with the National Environmental Policy Act before they are funded. The Projects are the Navy's new F–14 fighter aircraft; the Air Force's B–1 strategic bomber, F–15 fighter, and high energy laser program; and the Army's Safeguard ABM program. Although draft environmental impact statements have been prepared on the five, none have final impact statement.

This will be the third Senate measure to which Senator Nelson has introduced amendments to require Federal compliance with the environmental policy act. Pointing out that the law specifically requires Federal preparation of the environmental impact statements on projects and legislative proposals, Nelson said he will continue introducing amendments and having roll call votes on bills coming to the Senate floor with projects not in compliance.

WRITTEN RESPONSE TO SENATOR NELSON'S CHARGES ON SANGUINE AS THEY APPEARED IN HIS PRESS RELEASE

Comments will be keyed to paragraphs as numbered in attached press release:

Paragraph 1: A Draft Environmental Impact Statement on Sanguine has been prepared and submitted to the Council on Environmental Quality on 14 May 1971. This Draft Statement contains results of environmental R&D since 1967. Project Sanguine is still in early stages of development (Concept Formulation). Environmental considerations have been and will continue to be an important part of the planning and development process of the project. However, to be most effective requires concurrent studies and decision making to balance environment factors with system design parameters. The Sanguine FY 1972 budget contains funds for continuing environmental studies. Additional environmental information is attached including dollars and funds expended for environmental R&D.

Paragraph 2: No comment.

Paragraph 3: a. Project Sanguine is not a Navy "scheme", but rather an approved program for providing essential survivable communications with our strategic FBM submarine forces.

b. All environmental studies to date indicate no environmental "dangers" from Sanguine electromagnetic fields. Many consultants and advisory groups which have reviewed Sanguine have indicated no major impact or proposed any potential adverse impact.

The environment created by SANGUINE operation is similar to that of our commercial electric power systems which have existed for many years without effect. A list of consultants, advisory groups and other agencies which have participated in some manner in the review of SANGUINE is attached with comments as appropriate:

ERMAC.
Bio/Eco Subcommittee.
AIBS.
Wisconsin Leg Resolution.
Wisconsin Ad Hoc Committee.
List of Consultants.

Paragraph 4: No Comment.

Paragraph 5: No Comment.

Paragraph 6: a. The fact that approximately $50 million has been expended since 1958 should not be the criteria for judgment but rather the fact that Sanguine will provide our military forces with a vital command and control communication link. An effective, survivable communications system is a necessary part of any strategic force in its primary role of deterrence.

b. Project Sanguine is now in Concept Formulation. A decision has not yet been made when to build a Sanguine system. The proposed Extremely Low Frequency (ELF) communications system (Sanguine) is a new area of technology. Sanguine has required a broad and diverse R&D program to fully document all aspects including feasibility tests of the communications concept. Considerable information has been developed and is available. Much of this information is included in the Draft Environmental Impact Statement.

Paragraph 7: The National Environmental Policy Act of 1969 refers only to a detailed statement. The concept of draft and final statement was introduced by the Council on Environmental Quality (CEQ). The CEQ latest guidelines state the following:

"With respect to recommendations or reports on proposals for legislation to which section 102(2)(C) applies, the final text of the environmental statement and comments thereon should be available to the Congress and to the public in support of the proposed legislation or report. In cases where the scheduling of congressional hearings on recommendations or reports on proposals for legislation which the Federal agency has forwarded to the Congress does not allow adequate time for the completion of a final text of an environmental statement (together with comments), a draft environmental statement may be furnished to the Congress and made available to the public pending transmittal of the comments as received and the final text."

Sanguine is still in the early Research and Development stages. Until a final design and site are selected, in addition to completion of current Research and Development efforts, some questions of environment impact cannot be fully addressed.

However, the major areas of potential concern have been carefully investigated with no adverse effects found for Sanguine type fields.

Paragraph 8: The review by the National Academies of Science and Engineering is now in progress. Preliminary indications are that the study will be complete in 1–2 months.

Paragraph 9: a. The reports in question have been carefully reviewed by the Navy and several scientists at other laboratories and research centers. The reports noted by Senator Nelson have some serious technical errors which lead to invalid conclusions concerning Sanguine feasibility to jamming, and transmission time.

b. During 1967 a thorough technical review was conducted on Sanguine. At that time, the Secretary of Defense convened a special task force of the Defense Science Board on Command and Control Communications to review the Sanguine concept. Membership on this board included several outstanding scientists among them Professors H. G. Booker, R. A. Helliwell, O. G. Villard and K. Watson; and Dr. C. Longmire. Over a period of several months, the Board conducted a thorough technical review in such areas as ELF theory, propagation, atmospheric noise, transmitters, modulation techniques and antenna systems. Also considered were various alternatives to a Sanguine system. The Board concluded that ELF and the proposed Sanguine system concepts were technically sound. Their report was classified.

c. To resolve this matter the Sanguine project office has sought comments from Dr. Biggs on the Navy evaluation of his September 1970 report, and requested that he visit with the Navy technical team to discuss it. Dr. Biggs has to date not taken issue with our evaluation, nor has he taken the opportunity to meet with our technical team.

d. In addition to the DSB review, two professors from the Electrical Engineering Department of the University of Wisconsin, Professors King and Birkemeier, have made two reports dated 28 May 1971 on the reports in question pointing out the errors and showing the basic theoretical feasibility of Sanguine.

e. The final verification of any theoretical model is an experiment to measure the actual performance. Field tests and measurements by the Navy and associated contractors and laboratories since 1963 to date have verified the feasibility of the Sanguine concept. These tests are continuing to gather additional data for statistical validation.

Paragraph 10: A marked distinction between Sanguine and the other projects noted by Senator Nelson is that 8–10 years of research on environmental factors will precede any construction of a Sanguine system. In addition a Sanguine system would make a significant contribution to our strategic deterrence by providing a reliable and survivable communication link to our strategic forces. Sanguine would contribute to a more flexible posture for the nuclear submarine force by insuring necessary communications and removing operational constraints imposed by present communication systems.

Paragraph 11: The original FY 1972 Sanguine program planned research tasks for deep underground concepts. However, ongoing studies during FY 1971 and early FY 1972 have shown certain problems and risks involved which are in no way environmentally related. Therefore, the decision was made not to proceed with the original R&D tasks for underground systems. Instead these funds have been reallocated to other urgent tasks involving receiving antennas and natural parameters. In addition environmental studies planned for FY 1972 will cost more than originally estimated.

Paragraph 12: The value of an ELF communications system has been stated previously in testimony to several Congressional committees. The Navy demonstrated the feasibility of the ELF concept by conducting a communications experiment in 1963. This experiment proved that communications could be established with a submarine at 2500 miles distance in the Atlantic Ocean at significant depth with less than one (1) watt of radiated power. Therefore, it cannot be stated that the value of Sanguine has not been demonstrated.

The value of a communications system which provides the following advantages is rather easy to appreciate:

a. Permits greater freedom in submarine operation as to depth and speed with resultant improvement in any possible enemy ASW detection.

b. Location of transmitter in Continental United States with no overseas relay required.

c. A survivable communication system which would assure control of U.S. strategic forces even after receiving a first strike would support the strategic deterrence policy.

d. Less susceptible than any other system to natural or man-made disturbances.

Paragraph 13: No Comment.

Paragraph 14: True.

Paragraph 15: True, except cost estimates for present conceptual design systems meeting operational requirements cost significantly less than $1 billion. Original baseline concept in 1968 was estimated at $1.2 billion. However, results from Research and Development on noise, coding and natural parameters led to a 20db reduction (100 times less) in required radiated power and thus greatly reduced estimated costs to a function of the original cost estimate.

Paragraph 16: True.

Paragraph 17: The Sanguine program for FY 1972 does not provide for the Validation phase of development. This industry competitive phase would require a major systems engineering and technical support effort for the project office. The budget includes $600K for Mitre Corporation to initiate this preparatory work. Mitre is now conducting system studies and preparing for eventual entry into Validation when and if approved.

Paragraph 18: No Comment.

Paragraph 19: No Comment.

Paragraph 20: No Comment.

SANGUINE ENVIRONMENTAL CHRONOLOGY AND PROGRAM

1. The Project Sanguine environmental program commenced originally in 1965 when potential interference to telephone and power was identified. These efforts were as part of the normal R&D program. The Navy was concerned that the efforts be taken to insure full consideration of all environmental issues.

a. 1967—Interference Technical Advisory Group established

R&D program started on environmental effects.

Started literature review of biological effects from ELF.

1968—A R&D test facility was started in Northern Wisconsin to investigate environmental effects. Specific Congressional interest developed as a result of the Navy announcement on 1 July 1968.

Contract efforts started on interference mitigation research.

Advertised for biological effects research.

1969—Wisconsin Test Facility completed.

Pilot biological studies started.

Extensive interference mitigation research conducted.

Established a Biological/Ecological and Medical Advisory Committee to assist project office. Representation from many outside DOD agencies (Public Health Service, Department of Interior, etc.)

Considerable public interest expressed. The National Environmental Policy Act was being considered by Congress. It is to be noted that the Navy's program was started two (2) years prior to this.

1970—Field ecological studies started.

Additional research recommended by Biological/Ecological Advisory Committee.

State of Wisconsin Ad Hoc Committee established to review Sanguine 1971—On May 14, 1971 the Preliminary Draft Environmental Impact Statement was filed with the CEQ. Copies were distributed to all interested Federal and State agencies.

Comments on Preliminary Draft due in mid-September. As of 10 September only one comment received (HEW). No major exceptions.

b. Project Sanguine is currently in the concept formulation stage and all questions cannot be answered in detail until a final system design and site have been selected. Basic research is continuing to fully document any possible environmental effects. As additional information becomes available and prior to requesting legislative action on constructing a Sanguine system, all research results will be compiled in a final Environmental Impact Statement (EIS). No decision has yet been made on proceeding with Sanguine development. When approved for further development a decision will be made on the final EIS.

2. Agencies outside of DOD involved in review and coordination process.

Department of Agriculture:

a. Rural Electrification Administration.

b. Forest Service.

c. Soils Conservation Service.

Department of Defense:

a. Army Corps of Engineers.

b. Navy Bureau of Medicine and Surgery.

c. Office of Naval Research (Code 441).

Department of the Interior:

a. Bureau of Sport Fisheries and Wildlife.

b. Bureau of Outdoor Recreation.

c. Bureau of Indian Affairs.

d. Bureau of Land Management.

e. National Park Service.

f. Office of Secretary for Policy Planning and Research.

g. U. S. Geological Survey.

Department of Transportation:

a. Federal Aviation Agency (Frequency Management Division).

Department of Health, Education, and Welfare:

a. Public Health Service (Bureau of Radiological Health).

Environmental Protection Agency:

a. Water Quality Office.

Federal Power Commission, State of Wisconsin:

a. Governor's Ad Hoc Committee to Study SANGUINE (Bock Committee).

3. Effort expended on SANGUINE Environmental program. This includes R&D in interference mitigation, biological/ecological research, and construction/operation efforts.

[In thousands of dollars]

	Fiscal year—					
	1967	1968	1969	1970	1971	1972
(1) Interference mitigation	500	800	1,000	1,600	900	300
(2) Test facility (for environmental research)		2,900	6,750	1,000	520	300
(3) Biological/ecological		25	220	255	400	450
Total	500	3,725	7,970	2,855	1,820	1,050
Grand total, $17,900,000						

b. The Environmental Impact Statement includes the results of the R&D shown above.

c. Personnel involved in these areas vary from about 15 in 1967 to about 50 at the present ranging from full time researchers to part time advisors and consultants.

5. Comments by other agencies on Draft report.

a. Only one agency has replied to date on the Draft Statement. Comments received from HEW were generally as follows:

(1) Include in the Draft report other work which has been done at ELF by the Sanguine project but not originally included because the research was still in progress.

(2) Increase population of the small animal experiments.

b. The Wisconsin Ad Hoc Committee on Sanguine has commented on the original pilot studies conducted and noted many deficiencies. These are now being corrected by new experiments conducted at nine (9) universities around the country. The new experiments were reviewed by a special American Institute of Biological Sciences (AIBS) panel and the Advisory Committee.

c. Many other Federal and State committees, Advisory groups, and regulatory bodies have reviewed Sanguine since 1967. The Electromagnetic Radiation Management Advisory Council in 1969 commented favorably on the large program to answer environmental questions for Sanguine.

6. Environmental Implications and results to date.

a. The R&D to date has indicated that an environmentally compatible Sanguine system can be built and operated.

b. The electromagnetic fields from a Sanguine system are similar in nature and magnitude to those from commercial power systems world wide. No effects have been noted from such power systems.

c. The test facility in Northern Wisconsin, operated since 1969, has demonstrated that potential interference can be mitigated. No adverse biological or ecological effects have been identified.

d. Construction of a Sanguine system would have some short term impact, but proper land use planning, design, and strict construction inspection can make this minimal.

FOLLOWING GROUPS AND COMMITTEES HAVE REVIEWED THE SANGUINE ENVIRONMENTAL COMPATIBILITY PROGRAM AT THE TIMES INDICATED

SANGUINE BIOLOGICAL RESEARCH SUBCOMMITTEE

The subcommittee reviews all aspects of the program involving biological research on a bimonthly basis as a minimum. The review includes critiques of ongoing research, and evaluation of research proposals and Sanguine program plans.

The following organizations are represented on the Committee:

Sanguine Division.

Office of Naval Research.

Bureau of Medicine and Surgery.

Naval Medical Research Institute (Bethesda).

Naval Aerospace Medical Research Laboratory (Pensacola).

Naval Air Development Center (Johnsville).

Environmental Protection Agency.

Department of Health, Education and Welfare (Bureau of Radiological Health).

Department of Interior (Bureau of Sports Fisheries and Wildlife).

State of Wisconsin (Governor's Committee to Study Sanguine).

Biological Research Contractors.

SANGUINE ENVIRONMENTAL COMPATIBILITY ADVISORY GROUP—ECAG

This group meets periodically to review and advise on all matters pertaining to the Environmental Compatibility Program. In addition to the representatives from the Biological Research Subcommittee the following organizations are represented:

U.S. Naval Underwater Systems Center (New London Laboratories).

U.S. Department of Agriculture (Rural Electric Administration).

U.S. Naval Facilities Engineering Command.

MIT/Lincoln Laboratories.

Mitre Corporation.

Computer Sciences Corporation.

Bell Telephone Laboratories.

IIT Research Institute.

Battelle Memorial Institute.

ELECTROMAGNETIC RADIATION MANAGEMENT ADVISORY COUNCIL—EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF TELECOMMUNICATIONS POLICY

The council reviewed the Sanguine Environmental Compatibility Program in June 1969, and another review is pending at this time. Following the 1969 review, the Council commented to the Sanguine Division as follows:

"The council was impressed with the proposed effort and the extent to which it is designed to answer the kinds of questions that are likely to arise."

"The Navy has decided correctly to attempt to understand all environmental aspects of this program before the system goes into operation and, by so doing, is establishing significant precedent. The environmental problems associated with many technical innovations often have not been approached in as rational and systematic a manner, but have been evaluated on a crash basis after problems arise."

THE PRESIDENT'S SCIENCE ADVISORY COUNCIL—EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF SCIENCE AND TECHNOLOGY

The Council reviewed all aspects of the Sanguine Program, including environmental compatibility, in September 1969.

AMERICAN INSTITUTE OF BIOLOGICAL SCIENCES—AIBS—AD HOC CONSULTANT GROUP ON EXTREMELY LOW FREQUENCY ELECTROMAGNETIC BIOLOGICAL RADIATION EFFECTS

The Ad Hoc Consultant Group reviewed all aspects of Sanguine biological and ecological research in March, 1969. The group evaluated all Sanguine biological research proposals (submitted to the Office of Naval Research between November 1970 and February 1971) in May 1971. The group participated in a review and workshop on September 15–16, 1971 with the Sanguine Biological Research Subcommittee, the Environmental Compatibility Advisory Group, and the Management/Technical Advisory Committee.

The Ad Hoc Consultant Group consists of the following:

Dr. Otto H. Schmitt, Chairman, University of Minnesota.

Dr. Ralph Baker, Colorado State University.

Dr. Frank A. Brown, Jr., Northwestern University.

Dr. William D. Fisher, Oak Ridge National Laboratory.

Dr. X. Joseph Musacchia, University of Missouri.

Dr. Joseph C. Sharp, Walter Reed Army Institute of Research.

Dr. George Sprugel, Illinois Natural History Survey.

Dr. Robert W. Touchberry, University of Minnesota.

Dr. John W. Trank, University of Kansas Medical Center.

Dr. Schmitt, Chairman of the Ad Hoc Consultant Group, reported the following to the AIBS in August, 1971:

"The Consultant Group finds that the present widespread interest in the Navy Project Sanguine and the public concern with possible biological side-effects of the fields involved in this type of communication, constitute both an opportunity and an obligation to study these effects carefully and promptly. Because there is in presently available data no suggestion of severe hazard to human individuals or to biological populations of plants, animals or microorganisms in the weak fields involved in project Sanguine, it is our position that research studies should be undertaken on a safety assurance rather than an imminent hazard basis. It thus becomes our obligation to advise ONR how, in terms of biological topical areas and research project formulation, it can best utilize available funds to establish beyond reasonable doubt that ELF fields are basically harmless under all ordinary and even relatively rare "fault" conditions and to pinpoint any special circumstances that are discovered that could lead to substantial individual risk or a significant population effect."

"There is additional reason to research the ELF class of biological effects because our population is already exposed to essentially identical fields from ordinary electric power and lighting generation, utilization and distribution systems which are much more widely distributed. It is our hope that in this study, biologically interesting effects of such fields will be discovered; perhaps harmless indicators of biological sensing of such fields; a topic of much interest in basic science."

"Biological effects of ELF fields, if any are ever conclusively demonstrated, will almost certainly be associated with the simple near-fields produced by the passage of alternating currents of several hundred amperes under several hundreds or thousands of volts of driving emf through a system of electronic and ionic conductors. The true electromagnetic radiation fields of Maxwell's equations with their mutually orthogonal electric and magnetic exchanging fields wil. at ELF frequencies be extremely weak compared even with ever-present ambient environmental fields. Their detection even by specially devised receivers is no trivial technological feat. We therefore consider these true electromagnetic fields an unlikely source of biological effects."

STATE OF WISCONSIN—GOVERNOR'S COMMITTEE TO STUDY SANGUINE

In addition to routine exchange of information between the members of the Governor's Committee (chaired by Dr. Robert Bock, Dean of the Graduate School of the University of Wisconsin) and members of the Sanguine research community, the Committee was provided with two in-depth reviews of all aspects of the Sanguine program. These reviews were provided in February 1970 and March 1971.

The following researchers from the noted universities are providing consultation (including pilot field and laboratory experimentation) to the Sanguine Environmental Compatibility Program:

Dr. Frank McCormick, University of North Carolina (Chapel Hill). Areas of Activity: Effects of ELF Radiation on Forest Species Composition and Terminal Bud Mortality.

Dr. Gershen Rosenthal, University of Chicago. Areas of Activity: Effects of ELF Electric and Magnetic Fields on Soil Microorganisms and on Plant Germination and Growth.

Dr. Bernard Greenberg, University of Illinois (Circle Campus). Areas of Activity: Effects of ELF Electromagnetic Fields on Soil Organisms and Selected Plant Growth.

Dr. Thomas Bender, University of Notre Dame. Areas of Activity: Effects of ELF Electric and Magnetic Fields on Insert Genetics.

Dr. Keith Stanik, University of West Virginia. Areas of Activity: Inductive Coordination for Public Utilities.

Mr. Merlin Lebakken, Wisconsin Utilities Cooperatives Association, Madison, Wisconsin. Areas of Activity: Effects of ELF Mitigation Techniques on the Reliability and Maintainability of Electric Power Distribution Systems.

The following researchers at the noted universities and colleges are being funded to perform biological research during FY 72:

Dr. M. Jackson Marr, Dr. A. L. Sheppard, Georgia Institute of Technology. Program: The Effect of Low Energy Extremely Low Frequency (ELF) Electromagnetic Radiation on Operant Behavior of the Pigeon and the Rat.

Dr. Morton W. Miller, University of Rochester. Program: The Effect of Extremely Low Frequency Electromagnetic Radiation on Chromosomes (Bean Root Tip Cells).

Dr. Wayne K. Durfee, University of Rhode Island. Program: Influence of Extremely Low Frequency Electric and Magnetic Fields Upon Growth, Development and Behavior in Domestic Birds.

Dr. James McCleave, Dr. Sentiel Rommel, University of Maine. Program: Weak Magnetic and Electric Field Sensitivity Thresholds and Effects on Biological Clocks of Migratory Fishes.

Dr. Eugene Goodman, Dr. Ben Greenebaum, Dr. Michael Marron, University of Wisconsin (Parkside). Program: A Physiological and Biochemical Study of the Effects of Extremely Low Frequency Electromagnetic Fields on *Physarum Polycephalum* (Slime Molds).

Dr. Wilford Gardner, Dr. Champ Tanner, Dr. Robin Harris, University of Wisconsin (Madison). Program: Response of Plants and Soil Microorganisms to Extremely Low Frequency Electric Fields.

Dr. Franz Halberg, Dr. Walter Runge, University of Minnesota. Program: Temperature and Other Biological Rhythm Evaluation in the Search for Biological Effects from Medium Intensity Slowly Alternating Magnetic Fields (Rats, Mice, Flour Beetle, Silk Tree).

Dr. Sidney Mittler, Northern Illinois University. Program: Low Frequency Electromagnetic Radiation and Genetic Aberrations (Genetics of the Fruit Fly).

Dr. W. R. Adey, Dr. R. J. Gavalas, University of California at Los Angeles. Program: An Evaluation of Possible Effects of 45 Hz and 75 Hz Electric Fields on Neurophysiology and Behavior of Monkeys.

Mr. McINTYRE. Mr. President, I ask unanimous consent to have printed in the RECORD a copy of a letter from the Wisconsin Legislature to the Secretary of the Navy dated February 6, 1970, and the text of the State of Wisconsin in senate joint resolution 106 on Project Sanguine which was adopted by both houses of the legislature.

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

WISCONSIN LEGISLATURE,
SENATE CHAMBER,
Madison, Wis., February 6, 1970.

Hon. JOHN H. CHAFEE, *Secretary,*
U.S. Department of the Navy, Pentagon Building, Washington, D.C.

DEAR SECRETARY CHAFEE: Upon instruction of the Wisconsin Legislature I am transmitting a copy of Senate Joint Resolution 106, relating to the continuation of Project Sanguine.

This Resolution was adopted by both houses of the Wisconsin Legislature.

Respectfully yours,
WILLIAM P. NUGENT,
Chief Clerk, Senate.

ENROLLED JOINT RESOLUTION RELATING TO THE CONTINUATION OF PROJECT SANGUINE

Whereas, recent news reports indicate no less than 4 states have expressed an interest in having Sanguine located within their boundaries; and

Whereas, the potential economic benefits accruing to Wisconsin from a completed Sanguine system are of considerable magnitude; and

Whereas, the best interests of the state would best be served by fostering a calm and reasoned inquiry into the merits of Sanguine, an inquiry free of the unsubstantiated claims and irresponsible arguments some now make; and

Whereas, the U.S. Navy and the independent organizations employed by the defense department presently investigating the Sanguine situation are best qualified and able to evaluate Sanguine; now, therefore, be it

Resolved by the senate, the assembly con-

curring, that the Navy be urged to continue its search for methods to implement a safe, effective Sanguine system; and, be it further

Resolved, That if Wisconsin is the most economical and feasible site for such a safe, effective system as determined by competent private, state and federal research agencies that it then be constructed in Wisconsin.

Mr. McINTYRE. I will quote several significant parts of the resolution and comment on them briefly.

Whereas, the best interests of the state would best be served by fostering a calm and reasoned inquiry into the merits of Sanguine, an inquiry free of the unsubstantiated claims and irresponsible arguments some now make; . . .

The Navy has acted in complete accord with this statement and continues to do so. It is a matter of interest that the charges which this statement implies were directed, not against the Department of Defense, but against certain parties in the State of Wisconsin who were organized specifically to oppose Project Sanguine. In all fairness, I should state that my esteemed colleague was not a member of that opposing group.

Whereas, the U.S. Navy and the independent organizations employed by the defense department presently investigating the Sanguine situation are best qualified and able to evaluate Sanguine; . . .

It is significant that the State legislature recognized that the Department of Defense and its supporting organizations are the best qualified and able to evaluate Project Sanguine. The distinguished Senator from Wisconsin apparently does not agree with the views of his own constituency since his proposed amendment would establish a legal requirement that the technical feasibility review being conducted by the National Academy of Science and the National Academy of Engineering must be completed as a prerequisite to the use of fiscal 1972 funds.

Resolved by the senate, the assembly concurring, That the Navy be urged to continue its search for methods to implement a safe, effective Sanguine system; . . .

The Department of Defense is proceeding precisely in the manner urged by this statement.

Resolved, That if Wisconsin is the most economical and feasible site for such a safe, effective system as determined by competent private, state and federal research agencies that it then be constructed in Wisconsin.

Here, again, the program is being prosecuted in accordance with this resolution, and that resolution still stands on the books.

In summary, Mr. President, I am impressed with the foresight and timeliness of a joint resolution adopted by the Wisconsin legislature over a year and a half ago which, in every respect, is in accord with the manner in which Project Sanguine is being pursued. In my view, the Navy as well as the Department of Defense is to be commended upon its strict adherence to this resolution.

Mr. President, one statement which I made on September 13 also bears repeating: I again suggest that if, in the future, the distinguished Senator from Wisconsin feels that there is a need to change the language of NEPA to clarify or refine its provisions, since this act affects about every agency of the Government and a large number of authorization and appropriation acts, he propose such actions as amendments to the basic Environmental Act, Public Law 91–190. This would bring the matter before the appropriate committees of the House and the Senate which are charged with the responsibility for legislation dealing with the environment. Their considerations would include the important broader implications of such actions as they would apply uniformly throughout the Government.

I will conclude now, Mr. President, by reminding my distinguished colleague that I share his views on the environmental problems of this Nation. However, these problems can best be solved by permitting the provisions of NEPA to be implemented in an orderly and effective manner, as rapidly as all other essential considerations will permit; but let us not sink ourselves in the process.

I urge all of my colleagues to join me in voting against this amendment.

The PRESIDING OFFICER. Who yields time?

Mr NELSON. Mr. President, how much time does the Senator from Wisconsin have remaining?

The PRESIDING OFFICER. Twenty minutes.

Mr. NELSON. Mr. President, with respect to the environmental studies thus far done by the Navy, I have a memorandum here in which the Wisconsin Governor's Ad Hoc Committee responds to some specific comments of the environmental impact statement that was made by the Navy in December. I ask unanimous consent to have it printed in the RECORD.

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

PROJECT SANGUINE

1. In December, 1970, the Navy issued an Environmental Compatibility Assurance Program (ECAP) status report on Project Sanguine. The abstract of the report concluded:

"The results of research presented in this report show that a Sanguine system compatible with the environment can be designed. Research will continue to provide further documentation and to assure that a system can be installed and operated without affecting the present environment."

II. In May, 1971, the Wisconsin Governor's Ad Hoc Committee on Project Sanguine, consisting of several environmental experts with the University of Wisconsin and the state's Department of Natural Resources, commented:

"Such a statement (quoted above) is supported neither by experiment nor by documented review of previous research of other organizations. The question of biological compatibility, especially with chronic exposure to Sanguine fields, is still completely open."

(The Navy has neither acknowledged nor attempted to refute the Committee's comment.)

III. In March, 1971, the Navy issued a *draft* (and the Navy insists it is only a draft) Environmental Impact Statement on Project Sanguine. One part of the report said:

"During the approximately four years of environmental research that has been conducted under the Project Sanguine ECAP (Environmental Compatibility Assurance Program), and the recently-completed Sanguine System Design Studies as well, no permanent or long-term adverse environmental effects which cannot be avoided have been identified."

IV. In August, 1971, the Wisconsin Governor's Ad Hoc Committee of scientific experts on Project Sanguine, commented:

"We take strong exception to the intent and wording of this entire section, most especially to the first paragraph (quoted above.) How could long-term adverse environmental effects be identified or deemed nonexistent when no such studies were conducted? There have not been 'four years of environmental research' having to do with biological or ecological compatibility. There are virtually no studies which have been reported to us in written form which provide biological or ecological assurance even on short-term basis. There are certainly none which provide long-term assurance. This has been a point of contention by the Environmental Standards Subcommittee of the Wisconsin Project Sanguine Committee throughout the period of study. . . . (this entire section) is a gloss-over of nonexistent or shoddy investigation of biological and ecological problems and cannot be allowed to stand unchallenged."

V. Even a research organization under contract by the Navy recommended further environmental studies on Project Sanguine. In November of 1970, the Hazleton Laboratories, Inc. of Falls Church, Virginia, issued a report to the Navy summarizing results of its short-term laboratory experiments on the biological effects of electro-magnetic fields. Some pertinent conclusions of the Hazleton study:

"Possible but inconsistent blood pressure and rectal temperature elevations in dogs; possible increase in the dominant *lethal* mutation rate in the fruit fly (normally used in mutation studies); possible growth inhibition in one of three plant species used in studies; some avoidance reaction to electrical fields by turtles and fish; declines in populations of four major classifications of soil arthropods at both test and control sites."

The Hazleton report recommended to the Navy:

"Additional studies to determine safety limits for the extremely low frequency electrical and magnetic fields, including investigations of effects on other species of plant seeds and the effects on several other aquatic animals; the fruit fly mutagenesis study be expanded and carried out immediately—'The implications of these results are too important to be neglected;' careful studies on how the blood pressure and body temperature of dogs exposed to electrical fields is affected: 'finally, because aquatic organisms are so intimately in contact with voltage gradient appearing in water, it would be important to investigate possible reproductive effects in the aquatic animal.'"

(It is important to note that the northern Wisconsin area is generally forested, with abundant streams and lakes.)

VI. In addition to environmental questions about Project Sanguine that are outstanding, there are several serious questions about the basic technology that will be used in the system. The Navy contends that transmission of extremely low frequency radio waves is the best technology.

In February of 1971, however, the Defense Marketing Survey (DMS), a private organization which monitors defense programs and contracts, issued a short report on the status of Project Sanguine. It concluded with these remarks:

"A year ago DMS forecast that LF (low frequency) and VLF (very low frequency) would eventually replace ELF (extremely low frequency, which is Project Sanguine) in the

survivable communications concept. We see no reason to change that projection."

The next enclosure goes into further detail on the technical problems associated with Project Sanguine. It is a Congressional Record reprint in which Senator Nelson discusses the conclusions of two scientific reports that Project Sanguine will not work.

After these important reports were published last spring, Senator Nelson asked the Navy to seek an independent technical review to determine the feasibility of Project Sanguine. On May 14 of this year, the Navy notified Senator Nelson that the National Academy of Sciences and the National Academy of Engineering had been asked to undertake such a review. The review panel is being assembled at the present time, but its work is far from complete.

Mr. NELSON. Mr. President, the distinguished Senator from New Hampshire read a resolution from the Legislature of the State of Wisconsin, and he said that apparently I did not agree with my constituency.

First, let me say to the Senator from New Hampshire that I have never made my decisions based upon what I thought the legislature wanted me to do. During the 10 years I served in our State legislature, I was in disagreement with the majority most of the time. During the 4 years I was Governor of the State of Wisconsin, I was in disagreement with a majority of the legislature most of the time. Perhaps I still am in disagreement with them.

I am not here representing the members of that legislature, though all of them are constituents of mine, and many of them are very fine legislators.

I simply point out that one should not make decisions here based upon an automatic reflection of what his constituency may believe. For several years I had a position contrary to the position of my constituency, in that I was voting against appropriations for the war in Vietnam; and my mail was running 50 to 1 against my position.

On the floor of the Senate, a few weeks ago, when we were considering the conquest of cancer bill, I had 6,000 letters from my constituents asking me to vote for the bill, and I voted against it, in a vote of 79 to 1.

If that has anything to do with this debate, I want to point out to the Senate that I do not think we should be making decisions on important matters based upon some kind of Harris or Gallup poll of what the constituency might think today. I think elected political officials have an important function of education and leadership on important issues in this country, and that is what I have been attempting to do about the question of Sanguine from the very beginning.

I want to say, as a preliminary, that not enough people are listening to the debate to influence anybody. I know how the Senator is going to vote. He knows how I am going to vote.

I repeat that the next time that Project Sanguine is before this body with any money in it and the environmental statement has not been filed—I want to be fair with the chairman of the Committee on Armed Services—we will spend a long, long time—2, 3, 4 days, if necessary—on this issue. I think it is an important issue, and the Senate is not addressing itself to it. I do not want the majority whip to say, "Senator, I hope you don't take too much time. We're busy." Next year we are going to be very busy on Sanguine. I want everybody to remember that I gave 1 years advance notice.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. NELSON. I yield to the distinguished assistant majority leader.

Mr. BYRD of West Virginia. The distinguished Senator from Wisconsin is always most cooperative and courteous when he is approached by members of the leadership, and fully understand the position he has taken. I have been put on notice. I will confess, however, that I am very sanguine about the chances for working out some agreement with the Senator next year when the time comes.

Mr. NELSON. I thank the Senator.

Mr. President, I think every argument has been covered here. I just want to say to the Senator from New Hampshire that I have a high regard for the members of our armed services, for the leadership of the military forces; but they are wrong every so often.

Respecting Project Sanguine, let me tell the Senator a little story.

About 3 or 4 years ago, I asked the Navy to come over and give me a briefing on Project Sanguine so that I could understand what it was they proposed. At that time, I had asked them to do the environmental study.

While I was visiting them about this, and we had a very nice visit, it was a fine group of Navy men who came over, they had been briefing the people in northern Wisconsin about the project. That is in my old home district, up in the North.

I mentioned to them that I would like to have clippings of the news articles written about the public briefings up there in various parts of the northern part of Wisconsin and they said they would be very glad to send them to me. They sent me a sheaf of clippings from the newspapers, from Rhinelander, Eagle River, Wausau, and other lovely cities up there.

Every clipping sent me was stamped classified. Here was the Navy sending me clippings which had been printed in newspapers up there, stamping them classified so that I could not show them to anyone without violating the law. I had a discussion with the Navy about it and, after considerable thought, they decided they could declassify them, which they did.

Thus, Mr. President, we see that some pretty foolish stuff has transpired with respect to project Sanguine.

Perhaps the Senator from New Hampshire would be prepared to explain something to me. When the project passed the House and it came over here, it had $2,140,000 in it for a deep underground system. That is, they wanted money to bore holes in the rock in northern Wisconsin known as the Laurentian Shield. They were going to dig down a mile to see if they could not create a deep underground grid a mile under the ground in that rock.

When I objected to that, and served notice that I was going to move with an amendment to knock that $2 million out of their budget proposal, suddenly, a few days later, they took the $2 million out. They must have gone to the Senator's committee and said, "We do not want that $2 million this year."

But, what did they do?

They added it to the $3 million they had for a shallow underground program.

Can the Senator explain to me why this $2 million, which they decided they did not need for the underground system, was not returned to the Treasury, and why did the committee add the $2 million to the $3 million they were going to have for the design program well planned in advance. What happened?

What happened to make them decide they should not give that $2 million back to the Treasury but should spend it?

Can the Senator give me an explanation of that, on the Senator's time?

Mr. McINTYRE. I shall be glad to try to give an explanation to the Senator from Wisconsin.

It is my understanding that it is entirely within the discretion and disposition of the Department of Defense, within a project which would be labeled Sanguine, to move a $2 million item that might have been set aside, as the Senator suggests, for a deep 1-mile excavation, to another area, without having to consult with the Armed Services Committee. I believe it is all entirely within the discretion of the Navy services.

Mr. NELSON. I wonder whether the Senator—perhaps it is. As the——

Mr. McINTYRE. Within a project.

Mr. NELSON. Yes. What I do not understand is, they only needed $3 million plus for the various items in their program, their on-going program—that is all they needed. So they knew what they desired and what they projected as being needed. When it came to the House, it was only $3 million plus, but they had $2 million in there. Now when we got the $2 million removed, or when they decided to take it out, what happened to cause them to think that they should add $2 million to the $3 million they were not requesting 1 month ago?

Mr. McINTYRE. The best answer I could give my good friend from Wisconsin is based on my experience on R. & D. with the military budget that, undoubtedly, once they made the decision to foreclose the digging of the 1-mile excavation, they undoubtedly had any number of studies they probably had planned for fiscal '73 and fiscal '74; so all they did was simply bring these into the picture and probably have, undoubtedly, tried to, as I look over the various tasks, cover it with studies to the point where they can come up with a final, impact environmental statement. There is nothing unusual in that sort of maneuver.

Mr. NELSON. I agree. There is nothing unusual about that.

Mr. McINTYRE. No.

Mr. STENNIS. Mr. President, I yield to the Senator from New Hampshire such time as he may wish.

Did I understand that the Senator from New Hampshire wanted time?

The PRESIDING OFFICER (Mr.

ROTH). Does the Senator from New Hampshire want additional time now?

Mr. STENNIS. Mr. President, I think this matter has been discussed sufficiently. We all think so much of the Senator from Wisconsin (Mr. NELSON) on a personal basis. We all value his friendly work in the Senate so highly that I always feel uncomfortable when I am on the other side from him.

In this case, though, and on this identical subject matter, we have had almost the same question before us lately which was thoroughly presented by the Senator from Wisconsin. After hearing all the facts and all the arguments, and considering the amendment, the Senate rejected his proposal in connection with the other items, on September 13, 1971, by a vote of 55 to 21.

I very respectfully submit that this is almost the identical situation, with almost the identical facts, except it is a different project and a different objective is behind the project. This is all concerned with a communications system that is highly important. The communications system cannot all be put together. There are many other considerations that go into a communications system of this kind. We have had bills many times over the years, for the past 15 to 20 years, at least, where there are stops and starts of all kinds. So I do not believe there is anything unusual in that way.

Now, Mr. President, this is another illustration, on these environmental matters, where a project of this kind or any other kind almost, especially involving public works, flood control, rivers and harbors projects, powerplants, and all other kinds of construction of that kind, and many of the military installations, too, where there is just no way to get a full and final report as to what the implications of it will be.

If we have to do that, then we might as well get out of the business of having any public works projects at all, if everything has got to be determined in advance before any kind of construction work can begin. It has just taken an impractical view that is going to eliminate most of these projects.

Just a few moments ago we approved a conference report containing several billions of dollars worth of construction projects for all 50 of the States, I am sure. And this vehicle, the ultimate environmental impact, was tied up in many of those findings—far more than half, and I am sure three-fourths of them or more. It just shows that if we are really going to take everything literally here, as the Senator would wish, and wait for a final report on everything before we proceed, we would be destroying the projects. We might as well admit it and cancel out the projects.

As the Senator from New Hampshire pointed out, a draft environmental impact statement was submitted as required to the Council on Environmental Quality on May 14, 1971. The document contained almost 550 single-spaced pages. That is not a final report, of course. However, it is about as far as they can go and about as far as can be gone under the circumstances at this time. Rome was not built in a day. We just have to take these things one at a time.

The Senator is interested in another project. He had the Tennessee-Tombigbee project up before the Senate awhile ago. Based upon the proof there, that was really far more complete here than was the case before this single judge. And I think the Senate voted overwhelmingly against striking that project out of the bill on the ground that it had not been completed.

I do not think it is relevant. I do not think it has any bearing on this case. However, the Senator from Wisconsin is interested in it, and honestly so. He brought that up. So, I have to point out that this was merely a preliminary injunction passed on by one judge without the development of testimony that really goes into the heart of the matter.

The issue is heard on the "pleadings" as we lawyers call them. That means the statements filed by the litigants.

I have been advised since I mentioned this matter this afternoon that there was one witness present who testified for the engineers. I was told that the testimony concerned something about the way in which they went into this matter to get up the preliminary report that they had filed. Anyway, the testimony that went into the heart of the case and the real substance of the case has not even been taken. The witnesses pro and con have not been examined before the court or cross-examined by the other side. The judge merely said, as the Senator quoted him, that there is a likelihood. That does not mean a decision. That is not a conclusion. He just said that enough had been shown that there is a likelihood in his opinion that the U.S. Army Engineers have not fully complied with the requirements of the law. And each of those words has a meaning.

Mr. President, I have been able to get a copy of the judge's remarks. And that is the word used, "likelihood." He says:

> . . . the defendants have not fully complied with the requirements of the National Environmental Policy Act.

He cites this and does not say how they failed to comply or what the shortcomings are. It just states that there is a likelihood of that. The judge issued this preliminary injunction.

I am told that he had such evidence before him as the Senate debate on the Senator's amendment to strike out the Tennessee-Tombigbee project.

I am not going to discount the debate. However, if the judge had before him documentary proof such as that, it shows that he had not really gotten into the very heart of the case, the sworn testimony, the examination and cross-examination of witnesses.

I point out that is a large project. It is a very valuable project.

The Senator mentioned Alabama and Mississippi and the Tennessee River. However, there are some 8, 10, or 12 or maybe more States that are directly involved in this matter. For instance, this is going to put the whole Ohio Valley, or much of it, 400 miles or more nearer, shippingwise, to the intercoastal canal that goes around our Nation. It will save all of that mileage and all of that time for the untold millions of tons of cargo that originate up and down that Ohio Valley and on up, as I understand it, into the Pittsburgh area.

This is not a local project. Does the Senator know how much bond the judge required the plaintiffs who brought this suit to put up? He required a bond of $1. He granted a preliminary injunction on this multimillion-dollar project by requiring a bond of only $1. That certainly was purely preliminary.

The court doubtless had in mind that very soon thereafter he would go into the case on its merits, take the proof or take some other course, appeal or otherwise. There are other avenues that would be open. However, it is so clear that this is just a preliminary skirmish that they have had over this matter in court. It is like a football player coming out for the first practice and scrimmage long before the season starts. We get into the heart of the matter only after we go into the facts.

Mr. President, I submit this is not a precedent in any way, even if it were relevant to this case.

I think the situation is clear now with reference to this matter. I hope that the Senator's amendment is rejected this time. We are going to agree with him at a time, some time next year, to go into the matter. We will then run the gauntlet again.

Mr. President, I yield the floor.

Mr. NELSON. Mr. President, I wish to make special note of the fact that this debate is conducted on the floor of the Senate when only four or five Senators have been present at any one time. I think it should be made clear in terms of congressional intent that the outcome of the vote on this amendment or any other of the environmental impact amendments does not in any way relieve any Federal agency of its legal responsibility, whatever that responsibility is under the law, to carry out fully the requirements of the Environmental Policy Act or any other environmental act.

Mr. President, I yield the floor.

Mr. McINTYRE. Mr. President, will the Senator from Mississippi yield to me for 1 minute?

Mr. STENNIS. I yield.

Mr. McINTYRE. Mr. President, I ask unanimous consent to have printed in the RECORD the following items: Comments on Senator NELSON'S statement regarding the Sanguine environmental impact statement, a brief memorandum on why was Sanguine considered for Wisconsin, and a statement entitled "Realinement of Fiscal Year 1972 Sanguine Program and Deep Underground Systems Being Given Less Emphasis."

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

COMMENTS ON SENATOR NELSON'S STATEMENT REGARDING THE SANGUINE ENVIRONMENTAL IMPACT STATEMENT. PARAGRAPHS NUMBERED TO ATTACHED SHEET

I & II The statement of compatibility with the environment is based on many things such as:

(a) Sanguine operated a test facility in Southern Virginia and North Carolina from 1963 to 1970 without any adverse effects noted. Ecological studies were made with no effects found.

(b) We have lived in an electromagnetic environment from commercial power systems for over 50 years and no effects noted. Sanguine would create an environment no different.

(c) We have consulted with many recognized scientists who don't see any possible effects from such low electromagnetic fields.

(d) The system can be designed to even lower electromagnetic fields if ongoing research should determine any effects.

III & IV Possible long-term effects:

(a) Studies on the original test facility operation have shown no effects (1963–1970).

(b) 50 years of 60 Hertz commercial power operation have not indicated any such adverse effects.

(c) The nine (9) new research contracts with various universities will address the problem also.

(d) It is easy to talk about the "possible" long-term effects but no scientist has determined any way such effects might be caused. That is why the Navy has utilized so many scientific review groups to help resolve these questions.

(e) Many responsible scientists indicate you can measure possible long-term effects by using biological experiments which give many generations of reproduction in a short time frame. These have been done with no effects.

V Results of Hazelton Laboratory work:

(a) These effects were noted; however,

(1) Most scientific review groups consider the experiments were poorly designed. This is why nine (9) universities are doing follow-on work.

(2) New pilot studies to repeat Hazelton work have been done by scientists from Notre Dame, University of Illinois, and others which have *not* found the effects noted by Hazelton.

(3) The Hazelton experiments were conducted at electromagnetic fields 300 times greater than any operational SANGUINE system would create.

(4) When all the past, present and any future biological research is completed it will be reviewed by scientific review groups who do not have any vested interest.

VI Other questions on feasibility:

(a) The Defense Marketing Survey has not asked for or received any detailed information on SANGUINE. In fact the very purpose of SANGUINE is to provide highly survivable worldwide communications which VLF/LF do not provide.

(b) The two scientific reports noted have many errors and are dismissed in separate summaries. The major conclusion is that incorrect assumptions were made by the authors which led to erroneous conclusions. Many independent analyses and actual experiments with submarines have shown the feasibility of SANGUINE and its ability to meet Department of Defense needs. In fact two (2) highly qualified professors at the University of Wisconsin have shown this to be true.

PROJECT SANGUINE

I. In December, 1970, the Navy issued an Environmental Compatibility Assurance Program (ECAP) status report on Project Sanguine. The abstract of the report concluded:

"The results of research presented in this report show that a Sanguine system compatible with the environment can be designed. Research will continue to provide further documentation and to assure that a system can be installed and operated without affecting the present environment."

II. In May, 1971, the Wisconsin Governor's Ad Hoc Committee on Project Sanguine, consisting of several environmental experts with the University of Wisconsin and the state's Department of Natural Resources, commented:

"Such a statement (quoted above) is supported neither by experiment nor by documented review of previous research of other organizations. The question of biological compatibility, especially with chronic exposure to Sanguine fields, is still completely open."

(The Navy has neither acknowledged nor attempted to refute the Committee's comment.)

III. In March, 1971, the Navy issued a *draft* (and the Navy insists it is only a draft) Environmental Impact Statement on Project Sanguine. One part of the report said:

"During the approximately four years of environmental research that has been conducted under the Project Sanguine ECAP (Environmental Compatibility Assurance Program), and the recently-completed Sanguine System Design Studies as well, no permanent or long-term adverse environmental effects which cannot be avoided have been identified."

IV. In August, 1971, the Wisconsin Governor's Ad Hoc Committee of scientific experts on Project Sanguine, commented:

"We take strong exception to the intent and wording of this entire section, most especially to the first paragraph (quoted above). How could long-term adverse environmental effects be identified or deemed nonexistent when no such studies were conducted? There have not been 'four years of environmental research' having to do with biological or ecological compatibility. There are virtually no studies which have been reported to us in written form which provide biological or ecological assurance even on short-term basis. There are certainly none which provide long-term assurance. This has been a point of contention by the Environmental Standards Subcommittee of the Wisconsin Project Sanguine Committee throughout the period of study. . . . (this entire section) is a gloss-over of nonexistent or shoddy investigation of biological and ecological problems and cannot be allowed to stand unchallenged."

V. Even a research organization under contract by the Navy recommended further environmental studies on Project Sanguine. In November of 1970, the Hazleton Laboratories, Inc., of Falls Church, Virginia, issued a report to the Navy summarizing results of its short-term laboratory experiments on the biological effects of electro-magnetic fields. Some pertinent conclusions of the Hazleton study:

Possible but inconsistent blood pressure and rectal temperature elevations in dogs; possible increase in the dominant lethal mutation rate in the fruit fly (normally used in mutation studies); possible growth inhabition in one of three plant species used in studies; some avoidance reaction to electrical fields by turtles and fish; declines in populations of four major classifications of soil arthropods at both test and control sites.

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Additional studies to determine safety limits for the extremely low frequency electrical and magnetic fields, including investigations of effects on other species of plant seeds and the effects on several other aquatic animals; the fruit fly mutagenisis study be expanded and carried out immediately—"The implications of these results are too important to be neglected;" careful studies on how the blood pressure and body temperature of dogs exposed to electrical fields is affected; "finally, because aquatic organisms are so intimately in contact with voltage gradient appearing in water, it would be important to investigate possible reproductive effects in the aquatic animal."

(It is important to note that the northern Wisconsin area is generally forested, with abundant streams and lakes.)

VI. In addition to environmental questions about Project Sanguine that are outstanding, there are several serious questions about the basic technology that will be used in the system. The Navy contends that transmission of extremely low frequency radio waves is the best technology.

In February of 1971, however, the Defense Marketing Survey (DMS), a private organization which monitors defense programs and contracts, issued a short report on the status of Project Sanguine. It concluded with these remarks:

"A year ago DMS forecast that LF (low frequency) and VLF (very low frequency) would eventually replace ELF (extremely low frequency, which is Project Sanguine) in the survivable communications concept. We see no reason to change that projection."

The next enclosure goes into further detail on the technical problems associated with Project Sanguine. It is a Congressional Record reprint in which Senator Nelson discusses the conclusion of two scientific reports that Project Sanguine will not work.

After these important reports were published last spring, Senator Nelson asked the Navy to seek an independent technical review to determine the feasibility of Project Sanguine. On May 14 of this year, the Navy notified Senator Nelson that the National Academy of Sciences and the National Academy of Engineering had been asked to undertake such a review. The review panel is being assembled at the present time, but its work is far from complete.

SANGUINE

1. Why is Sanguine considered for Wisconsin?

a. The Sanguine Extremely Low Frequency (ELF) communications concept is based on an antenna which uses a deep earth return current path as part of the antenna. The efficiency of this antenna and therefore system costs is based on the depth of the return current path. This depth is determined by the conductivity of the underlying material (rock). Therefore, the lower the conductivity of the rock the more efficient is the antenna. The average current return path is 4 to 5 miles deep for rock in Wisconsin. There are only a few locations in the United States which have sufficient areas of such low conductivity. These include parts of Minnesota, New York, Texas, South Carolina/Georgia and Montana/Idaho in addition to Wisconsin. However, other factors also affect selection of the best site. These include surface terrain factors which influence construction costs, size and shape of low conductivity areas and density of population which indicates amount of mitigation required on utilities. Considering all factors Wisconsin is the best site, but other sites are available at some increase of costs (5–20%).

REALINEMENT OF FISCAL YEAR 1972 SANGUINE PROGRAM AND DEEP UNDERGROUND SYSTEMS BEING GIVEN LESS EMPHASIS

a. The original FY 72 Sanguine program planned research tasks for deep underground concepts. These tasks included funds for drilling a small deep hole to obtain rock samples at depth for determining actual physical properties of the rock. The total deep underground related efforts were planned for approximately $2 million. However, recent studies during FY 1971 and early FY 1972 have shown certain problems and risks involved with such deep underground concepts which are in no way environmentally related. In addition, a careful review of the value of just a few deep rock samples was considered of limited value for trying to describe such a large rock formation. Therefore, the decision was made not to proceed with the original R&D tasks for deep underground systems, but rather reallocate these funds to other higher pay off tasks in the FY 72 program.

Mr. THURMOND. Mr. President, it is easy to understand the concern of the distinguished Senator from Wisconsin (Mr. NELSON) with reference to the location of the Navy's Sanguine project in his State.

However, in considering his amendment it appears that no further funds could be expended on this project until all the environmental questions have been answered.

Thus, acceptance of this amendment would bring the Sanguine development program to a halt. It would result in the disruption of contracts already underway and delay other contracts.

The Senate must realize that this is a research and development program still in concept formulation. The large and costly facilities involved in this project are not now being built or proposed.

The Navy informs me that it would be 4 to 5 years before construction would begin. However, it is argued at the same time that because of the high priority of this program and its potential value to our national security, development should be allowed to continue.

The Navy also claims that nothing in the research and development studies to date indicate this project would not be compatible with the environment. This effort involves a new technology, and it would seem wise to proceed while at the same time measuring the environmental impact.

Last May the Navy filed with the Council on Environmental Quality a draft statement regarding this project and its relationship to the environment. Thus, the Navy is currently meeting its obligations under the law.

While the study proposals in this amendment are not objectionable, the denial of development funds for the project until environmental studies are complete would seriously damage this program.

This is an important program. It would establish a reliable and survivable communication system on our own soil which could talk with our missile launching submarines in all their operating areas. Such a system permits greater freedom of operation for our submarines. It would eliminate overseas relays. It would assure we can reach these subs even in the event of a nuclear first strike by some enemy force. It would be less susceptible to natural or manmade disturbances than any present system, and it would let the submarines operate at greater depths and speeds unconstrained by near surface antennas.

Mr. President, as I understand it, the Navy has not made a final decision to locate this system in Wisconsin. It could be located elsewhere although at a greater cost. These alternatives should be considered and explored with concerned parties.

The electromagnetic fields which this system would create are similar to those fields now caused by electric powerplants. Thus, some new and sinister force is not being loosed upon the public. It is true that underground structures and cables would have to be installed; however, telephone and power cables are being buried today because they are unsightly. In considering the environmental impact of this program the Congress must balance it off with the importance of our national security. A balance must be struck between the two.

Mr. President, I would like to see made any additional studies that responsible scientists might propose. However, I cannot support the pending amendment as there is insufficient evidence to support claims that continued development would be a threat to the environment.

ORDER OF BUSINESS

Mr. STENNIS. Mr. President, at his great urging, I am going to yield 3 short minutes to the distinguished Senator from New York.

Mr. JAVITS. I thank the Senator. I hope they will be full minutes.

The PRESIDING OFFICER. The Senator from New York is recognized.

UPCOMING INTERNATIONAL MONETARY FUND MEETINGS OFFER NEW OPPORTUNITY TO BUILD NEW INTERNATIONAL ECONOMIC SYSTEM

Mr. JAVITS. Mr. President, today I spoke before a businessman's symposium sponsored by Johns Hopkins University in Washington at the Dupont Plaza Hotel on an international economic matter. I ask unanimous consent that the text of my speech may be printed in the RECORD at the end of my remarks. Inadvertently, my remarks do respond to a suggestion made yesterday by a distinguished colleague that we should devalue the dollar now.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. JAVITS. Mr. President, in summation, what I said is that the time frame for working out an interim agreement which would result in taking off the 10-percent import surcharge was so narrow that we had to take action of a short-term character and I was convinced Congress would not change the gold clause within a short term. Therefore, some other way had to be found to bring about an interim agreement before the end of this year which would allow the United States to lift the surcharge before it became fixed in concrete. This interim agreement in my view would involve a satisfactory realinement of currencies including the acceptance of wider bands of currency fluctuations and an agreement to negotiate the issues not capable of a short-term solution such as the establishment of a permanent new international monetary system, an agreement of defense burden sharing and a reordering of the world's trading relationships. In turn, devaluation of the dollar which does require congressional authorization is a longer term consideration which could not be accomplished in the time frame necessary within which the surcharge must be lifted if economic catastrophe is to be avoided.

My additional interim suggestion which would partially meet the European demand for the devaluation of the dollar and which would positively indicate that the United States is in the ball game and is willing to make some concessions to create a new, viable international economic order, is for the IMF to use its authority to widen the points determining gold transactions to 5 percent on each side of $35.

It is my view that such action by an international agency would be acceptable and could be accomplished within the narrow timespan open to the nations of the world if a trade war and the return to economic nationalism is to be avoided.

I hope that is the course that will be followed by the administration to assure itself of success of its excellent August 14 initiative, provided they do not so persevere as to be counterproductive.

EXHIBIT 1

Because of the critical importance of the upcoming meeting of the International Monetary Fund in Washington, I ask the audience's indulgence if I diverge from the announced topic of my address, namely Prospects for Congressional Action for Stimulating East-West Trade and Investment—after some brief opening remarks.

As we all know, in the past 25 years the United States has applied one set of rules to trade with the market economies, and another set of rules to the non-market economies (except Yugoslavia). The special restrictions which have been applied to the countries of Eastern Europe, the Soviet Union and later to Mainland China, Cuba, North Korea and North Vietnam include export controls on strategic items, import restrictions, limitations on the financing of exports and shipping controls.

These policies have had their intended result. In 1970 total free world trade with the USSR and Eastern Europe amounted to some $18 billion of which the U.S. share was only $579 million. In turn, there has been negligible direct investment between the United States and the Soviet Union, the Peoples Republic of China and all other Eastern European countries.

Looking to the future, Senator Ribicoff has recently reported to the Senate that "it has been estimated that if appropriate modifications are made in present laws, U.S. trade with Eastern Europe could reach $2 billion by 1975, more than three times the 1970 level. Other estimates are even more optimistic running to a total of $5 billion by 1975."

In turn, the relaxation of the 20 year old trade embargo with China on April 14 is expected to result in only a modest trade between the United States and China. In a recent authoritative study, Professor F. Dernberger of the University of Michigan projected that by 1980, under favorable conditions, China might buy as much as $650 million annually in American minerals, industrial equipment, and machinery and sell $250 million annually in raw and processed agricultural products and other items to the United States. Professor Dernberger estimated that, at best, by 1980 sales to China would amount to no more than 1 to 2 percent of American exports. These projections must be viewed against the fact that in 1969 free world trade with China remained a minor fraction of the world's total with free world exports to China totalling only $1.4 billion and free world imports $1.7 billion.

It should be obvious that such increased sales by the U.S. to the non-market economies would be beneficial to our overall economy, to our deteriorating balance of payments and balance of trade position, and would create employment in the United States.

This raises the question of what the Congress is prepared to do to insure that the more optimistic projections will be met—and here the Congress has played a leadership role in the past. I refer to the recent Con-

gressional modification and liberalization of the Export Control Act over the Administration's objections; and this year's Congressional modification of the restrictive Fino amendment which prohibited any type of U.S. Export-Import Bank financing of exports to Eastern Europe again over the Administration's objections. In turn, in the case of the construction of a Mack Truck plant in the Soviet Union, I would surmise that the Congressional attitude would have been more liberal than that of the Administration—the Administration did not act positively on the export license request by the September 15 cut-off date.

Looking to the immediate future, I see Congressional forward movement in only one area; and this concerns an amendment I will be putting forward to the Foreign Aid bill in the Senate Foreign Relations Committee in the very near future. The amendment I will offer proposes to lift the existing legislative sanctions which prohibit Overseas Private Investment Corporation (OPIC) programs from operating in the non-market economies. My amendment would accord the President discretionary authority to allow OPIC to operate in these non-market economies. While my amendment is broadly drawn, its immediate specific purpose is to permit OPIC to operate its programs in Yugoslavia and Romania. I am pleased to be able to report to you that the Administration favors my amendment and is eager to see this legislation well advanced at the time of President Tito's state visit this fall.

I would now like to turn to the President's new economic program and to make some comments on the international aspects of this program.

When the President announced the international aspects of the New Economic Program on August 15, I viewed the imposition of a 10 percent surcharge as an absolutely necessary bargaining tactic to secure a long overdue realignment of major currencies against the dollar. The President had also followed the suggestion I made on May 12 and others had made, too, to close the U.S. gold window thereby dethroning gold as the centerpiece of the international monetary system. The President won a brilliant victory when Japan made the long overdue decision to float the yen, and press comments indicated that the upcoming IMF meetings may sympathetically consider the adoption of wider bands of permitted currency fluctuations which the U.S. also desires. Then European countries, including France, also have agreed to greatly strengthen the role of SDRs within the system which has been a long-standing U.S. policy aim.

So far, so good and it looked like, before the end of this year, additional negotiations would have settled the magnitude of the currency alignments that would take place and agreement would be reached to conduct additional negotiations on the problems not capable of short-term solution. Let me add that if the Japanese revalued their currency by 6 percent (a highly inadequate figure in itself) and if the West German mark appreciated by some 9 percent since May, it could be logically expected that the final revaluation figure would be in a range well over 10 percent in exchange for the lifting of the 10 percent import surcharge.

But as time passed and given the rather unsatisfactory conclusion of the Group of Ten meeting in London, my feelings of unease have increased. For subsequent statements of the Administration have indicated clearly that the Administration is after much more than a substantial realignment of currencies against the dollar—not that this is not an enormous and ambitious negotiating goal in itself—in exchange for the lifting of the surcharge.

The most authoritative statement to this effect was made by President Nixon in his news conference of September 17. In response to a question as to the duration of the surcharge, the President stated: "What we are seeking is a permanent solution and that is why the length of the surcharge will be somewhat longer, because we need to address ourselves not only to the matter of monetary policy and exchange rates, we have to address ourselves to burden sharing and we have to address ourselves also to trade restraints including monetary restraints."

At the same time, the United States has not put forward a negotiating package of any specificity—rather the United States has adopted a hands-off stance which suggests that resolution of the growing international economic crisis is a foreign problem for which the United States assumes no responsibility.

At the same time, the Administration also made clear to the Congress that it was its intent to tie the revocation of the Buy America clause of the Investment Tax Credit to the lifting of the surcharge.

But most important, the United States—and this may be the first time this has happened in at least 25 years—the United States has been isolated from its traditional long-standing friends and neighbors. I ask, therefore, whether United States policy has shifted from one of limited objectives in the international monetary system to a quest for unconditional surrender.

The overall situation is well stated by the Report to the President submitted by the Commission on International Trade and Investment Policy—which was made public on September 13—when it states:

"In 1970, when the U.S. basic balance of the long-term capital and current account showed a deficit of about $3 billion, we were actually running a surplus of $5 billion on private transactions (current and capital) with the rest of the world. What throws our overall balance into deficit are government transactions, of which the two principal categories are military expenditures abroad, amounting in 1970 to $4.8 billion, and foreign aid amounting to $3.5 billion. We do not wish to imply that our balance of payments deficit can be ascribed to foreign aid and military expenditures or to any other single cause. We wish, however, to call attention to the basic strength of the private U.S. economy, which has been carrying a burden of government payments abroad quite disproportionate to that of any other country in the world."

This sophisticated language translates into the recent complaint that was heard from the Latin American countries in Panama that: "the United States wants us to pay for the Vietnam war." The surcharge, according to an OAS study, would cost Latin America $400 million annually. It translates into a European gripe that the United States has badly mismanaged its economy since 1965 and is now asking Europe and other foreign nations to pay the piper. We know these complaints are heedless of the record of U.S. sacrifice since 1945, but there is enough of a grain of truth in them to give colorability to Latin American and Western European arguments.

Another vital factor is that other democratically elected governments will not make concessions that threaten their own political survival. This already is a consideration in Japan.

Let me set forth my concerns and then close with some suggestions:

(1) It is the Administration's wish that the lifting of the import surcharge and the repeal of the Buy American provision of the proposed investment tax credit be linked. This linkage will create enormous and growing political and economic pressures for the retention of the surcharge. Every week that passes will make it more difficult in terms of domestic political considerations to lift the surcharge. In turn, the longer the surcharge is in effect, the greater is the danger of retaliation against our exports which would hurt the more efficient sectors of the American economy and encourage "trade wars."

(2) Maintenance of the surcharge will make difficult the attainment of the currency realignments desired by the Administration. And again, the longer the surcharge is in effect, the more counterproductive it will be in securing the necessary currency realignments. Which nation will revalue in a 10–15 percent range so long as the surcharge forces an additional de facto revaluation of ten percent and while a discriminatory Buy America provision looms?

(3) If the Buy America principle is accepted by either house of the Congress, I have serious doubt whether the Congress will not also restrict the President's discretion to lift it and perhaps his discretionary authority to lift the surcharge. I recognize that the Committee on Ways and Means has voted to give the President such discretionary authority.

(4) The Wall Street Journal reported last Friday that new currency restrictions are proliferating as foreign nations tend to minimize the impact of the NEP on their own economies. The Journal reported:

"These restrictions fit into a world-wide proliferation of new measures to curb the inflow of foreign currencies, especially the U.S. dollar. The trend has accelerated in recent weeks and shows little sign of stopping. Indeed, many expect increased foreign pressure to make the U.S. cut back its capital outflows—a move that could seriously affect American multinational companies."

(5) Having initiated a 10 percent cut in foreign assistance, the Administration may not be able to restrain the enthusiasm of the Congress to go the President one better. Since the less developed world (and Latin America) already view themselves as innocent by-standers caught in a lethal crossfire of the great power of the free world, such additional aid cuts would further inflame nationalistic sentiments—the ramifications of which the American investor is already fully aware.

In this context it is important to recognize the important role of continued capital transfer to the developing nations in maintaining a steady flow of trade with them. The World Bank, its affiliate the International Development Association, the Inter-American Development Bank and other regional funds help sustain the credit worthiness of these nations and keep them integrated into the free world's economic system. This is an important consideration in our overall national security and as such in our self-interest to maintain. I hope that the President will hold to his well-defined position of leadership in supporting the various bills before the Congress as they make their way through the legislature this year.

(6) I find the fact that the present position of the United States has caused it to be threatened with being internationally isolated, deeply worrying. In turn, this isolation could increase isolationist sentiment at home in the U.S. which is already a serious danger.

Having outlined my concerns, here are my suggestions:

I feel that it is crucially important that the United States offer to negotiate, based on a set of proposals it puts forward to deal with the crucial international monetary situation. Over the short-term, I believe that it is imperative for our major trading partners to realign their currencies against the dollar; agree to widen permissible bands of currency fluctuations; and to agree to conduct negotiations on the basis of the highest priority looking toward a reordering of trading relationships and a more equitable sharing of defense costs.

I believe that it is imperative that the

United States differentiate between its viable short-term objectives which are on the point of being won, and longer-term objectives that will require further negotiations. I would classify longer-term objectives as a more equitable sharing of the defense burden and a reordering of the international trading system. I am concerned that if the import surcharge is maintained beyond the end of this year and if the import surcharge and the Buy America provision of the investment tax credit are the hostages to gain these longer-term U.S. objectives, there could be engendered conditions for a world economic catastrophe.

Now, a word about the European demand for the devaluation of the dollar which I read to mean a change in the dollar price of gold. In my view, this is not a viable short-term objective since the Bretton Woods Act of 1944 requires prior Congressional authorization for any change in the dollar-gold parity. While I do not rule out positive Congressional action in the context of a broad international agreement over the long-term, the mechanics of the situation argue against Congress acting over the short-term.

However, partially to meet the demand of the industrialized countries of the world that the burden of realignment of currencies should not fall solely on them, I put forward the following suggestion that could be acted on over the short-term. I offer this formula precisely because I am convinced the U.S. Congress would not change the dollar-gold parity and could not do so in the present state of prevailing opinion in the country, any more than Japan could *unilaterally* revalue its currency to the extent some spokesmen deem necessary—probably for the same reason.

Article IV:2 of the IMF Charter states that the Fund shall prescribe a margin above and below par value for gold transactions by members. At the present time, the Fund has set a margin of 1) 0.25 percent, plus certain services charges, or 2) one percent, which shall be taken to include all the service charges. There is no legal reason why the Fund cannot widen the points to, say, five percent on either side of $35. The five percent figure would allow the dollar to fall to the maximum dollar devaluation which the British, for one, believe should be accomplished. But by widening the points rather than by formally changing the price of gold, we would be warning speculators that the gold price could possibly fall back to $35, or even lower, when our payments position is restored.

Unlike a formal change in the gold price, widening the gold points would not require Congressional action, with the inevitable speculative activity that Congressional debate over the gold price would generate. It would not open the flood gates for further devaluation unless the U.S. was agreeable to same, since the official price would remain at $35. Since the action is one that the Fund takes, it could be taken relatively free from political pressures and compromises, and it represents an improvement over the present U.S. "stand firm" policy. The adoption of my suggestion could give the world sufficient breathing space until the day when an international reserve standard such as SDRs have been created in sufficient amounts to become the new cornerstone of the international monetary system and could thus open the way for comprehensive reform of this system while immediately strengthening the IMF's role in international currency management.

Mr. STENNIS. Mr. President, I suggest the absence of a quorum on my time.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. 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. STENNIS. Mr. President, I yield to the Senator from West Virginia such time as he may wish for the purpose of getting an agreement.

Mr. BYRD of West Virginia. I thank the Senator.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I have consulted with the distinguished assistant Republican leader and with the distinguished manager of the bill and with Senators who are sponsors of the following amendments, and, with the approval of the majority leader, I propound the following unanimous-consent request:

I ask unanimous consent that on tomorrow, immediately following the disposition of the amendment by Mr. McGEE, amendment No. 423, the Senate proceed to the consideration of amendment No. 429, an amendment by Mr. McGOVERN to provide for an alternative DOD budget for fiscal year 1973 of $60 billion, and that time on that amendment be limited to one and a half hours, to be equally divided between the mover of the amendment (Mr. McGOVERN) and the manager of the bill (Mr. STENNIS).

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD of West Virginia. With the further proviso, Mr. President, that time on any amendment to that amendment be limited to 30 minutes, the time to be equally divided between the mover of the amendment in the second degree and the manager of the bill (Mr. STENNIS).

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Having consulted with the assistant Republican leader and the manager of the bill, and other interested parties, I further ask unanimous consent, Mr. President, that on the amendment to be offered by Mr. HUMPHREY, Amendment No. 432—an amendment to provide for a special account for MIRV funds to be used only when the President and Congress jointly determine Russian MIRV activities necessitate further testing and equipment—time thereon be limited to 4 hours, to be equally divided between the mover of the amendment (Mr. HUMPHREY) and the manager of the bill (Mr. STENNIS); provided that time on any amendment to the amendment be limited to 1 hour, the time to be equally divided between the mover of the amendment in the second degree and the manager of the bill (Mr. STENNIS).

Mr. STENNIS. Mr. President, reserving the right to object—and I shall not object—the Senator contemplates, if this agreement is entered into, that this matter will be taken up on Friday of this week?

Mr. BYRD of West Virginia. Yes.

Mr. STENNIS. And contemplates that the Senate will convene on Friday in time to get the amendment probably by 10:30?

Mr. BYRD of West Virginia. Yes.

ORDER FOR ADJOURNMENT FROM THURSDAY UNTIL FRIDAY NEXT AT 10 A.M.

Mr. BYRD of West Virginia. In view of the question raised by the distinguished manager of the bill, I ask unanimous consent that when the Senate completes its business on tomorrow, it stand in adjournment until 10 o'clock a.m. on Friday.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS ON FRIDAY NEXT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that following the recognition of Senators under orders previously entered with respect to Friday, there be a period for the transaction of routine morning business for not to exceed 15 minutes, with statements therein limited to 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR CONSIDERATION OF AMENDMENT NO. 432 ON FRIDAY NEXT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on Friday, immediately following the transaction of routine morning business, the Senate then proceed to the pending question and—I having already cleared this with the distinguished majority leader—the pending question at that time be the amendment No. 432 by Mr. HUMPHREY.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STENNIS. Mr. President, I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT ON MAIN BATTLE TANK

Mr. BYRD of West Virginia. Mr. President, one further request:

I ask unanimous consent that, at such time as the amendment by Mr. EAGLETON, to delete funds for the main battle tank, is called up and made the pending business before the Senate, the time thereon be limited to 2 hours, the time to be equally divided between the mover of the amendment (Mr. EAGLETON) and the manager of the bill (Mr. STENNIS); provided, further, that time on any amendment to the amendment be limited to 1 hour, the time to be equally divided between the mover of the amendment in the second degree and the distinguished manager of the bill (Mr. STENNIS).

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STENNIS. Mr. President, I yield myself 2 minutes.

Mr. President, with respect to the amendment on the tank, another matter has been called to my attention. Can we increase that time by unanimous consent? We had only 1 hour to the side.

Mr. BYRD of West Virginia. Yes.

Mr. STENNIS. I think 1½ hours to the side would be better.

Mr. BYRD of West Virginia. On the amendment in the first degree?

Mr. STENNIS. Yes.

Mr. BYRD of West Virginia. Mr. President, I revise my request accordingly.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The unanimous-consent agreement is as follows:

UNANIMOUS-CONSENT AGREEMENT

Ordered further, That following the disposition of Amendment No. 423, Amendment No. 429, to be offered by the Senator from South Dakota (Mr. McGovern), become the pending business and debate thereon be limited to 1½ hours, to be equally divided and controlled by the Senator from South Dakota and the Senator from Mississippi (Mr. Stennis). Provided, that debate on any amendment to amendment No. 429 debate be limited to 30 minutes, thereon, to be equally divided between the mover and the Senator from Mississippi.

Ordered further, That effective at the close of the morning business on Friday, September 24, 1971, amendment No. 432, to be offered by the Senator from Minnesota (Mr. Humphrey), become the pending amendment and debate thereon be limited to 4 hours, to be equally divided and controlled by the Senator from Minnesota and the Senator from Mississippi (Mr. Stennis). Provided, that debate on any amendment to amendment No. 432 debate be limited to 1 hour thereto be equally divided between the mover and the Senator from Mississippi.

Ordered further, That when the amendment to be offered by the Senator from Missouri (Mr. Eagleton) concerning the Main Battle Tank is laid down debate thereon be limited to 3 hours, to be equally divided and controlled by the Senator from Missouri and the Senator from Mississippi (Mr. Stennis). Provided, That debate on any amendment to the amendment debate be limited to 1 hour, to be equally divided between the mover and the Senator from Mississippi (Mr. Stennis).

MILITARY PROCUREMENT AUTHORIZATIONS, 1972

The Senate continued with the consideration of the bill (H.R. 8687) to authorize appropriations during the fiscal year 1972 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

Mr. STENNIS. Mr. President, what is the pending order of business?

The PRESIDING OFFICER. The question is on agreeing to the Nelson amendment.

Mr. STENNIS. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. STENNIS. Mr. President, I yield back my time.

I understood that the Senator from Wisconsin was ready to yield back his time.

Mr. NELSON. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All the time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Wisconsin. The yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Indiana (Mr. BAYH), the Senator from Louisiana (Mr. ELLENDER), the Senator from North Carolina (Mr. ERVIN), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Washington (Mr. MAGNUSON), the Senator from Utah (Mr. Moss), the Senator from Maine (Mr. MUSKIE), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that the Senator from Rhode Island (Mr. PASTORE) are absent on official business.

On this vote, the Senator from Washington (Mr. MAGNUSON) is paired with the Senator from New Jersey (Mr. WILLIAMS).

If present and voting, the Senator from Washington would vote "nay" and the Senator from New Jersey would vote "yea."

On this vote, the Senator from North Carolina (Mr. ERVIN) is paired with the Senator from Indiana (Mr. HARTKE).

If present and voting, the Senator from North Carolina would vote "nay" and the Senator from Indiana would vote "yea."

On this vote, the Senator from Indiana (Mr. BAYH) is paired with the Senator from Louisiana (Mr. ELLENDER).

If present and voting, the Senator from Indiana would vote "yea" and the Senator from Louisiana would vote "nay."

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

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PASTORE) would vote "nay."

On this vote, the Senator from Utah (Mr. Moss) is paired with the Senator from West Virginia (Mr. RANDOLPH).

If present and voting, the Senator from Utah would vote "yea" and the Senator from West Virginia would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. DOMINICK) is absent on official business.

The Senator from Arizona (Mr. GOLDWATER), and the Senators from Ohio (Mr. TAFT and Mr. SAXBE), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Tennessee (Mr. BAKER) is detained on official business.

The result was announced—yeas 35, nays 45, as follows:

[No. 229 Leg.]

YEAS—35

Brock	Church	Gravel
Brooke	Cranston	Griffin
Burdick	Eagleton	Hart
Case	Fulbright	Hatfield
Hughes	Mathias	Proxmire
Humphrey	McGee	Schweiker
Inouye	McGovern	Spong
Jackson	Mondale	Stevens
Javits	Nelson	Stevenson
Jordan, Idaho	Packwood	Symington
Kennedy	Pell	Tunney
Mansfield	Percy	

NAYS—45

Aiken	Cooper	McIntyre
Allen	Cotton	Metcalf
Allott	Curtis	Miller
Beall	Dole	Montoya
Bellmon	Eastland	Pearson
Bennett	Fannin	Roth
Bentsen	Fong	Scott
Bible	Gambrell	Smith
Boggs	Gurney	Sparkman
Buckley	Hansen	Stafford
Byrd, Va.	Hollings	Stennis
Byrd, W. Va.	Hruska	Talmadge
Cannon	Jordan, N.C.	Thurmond
Chiles	Long	Tower
Cook	McClellan	Young

NOT VOTING—20

Anderson	Harris	Randolph
Baker	Hartke	Ribicoff
Bayh	Magnuson	Saxbe
Dominick	Moss	Taft
Ellender	Mundt	Weicker
Ervin	Muskie	Williams
Goldwater	Pastore	

So Mr. NELSON's amendment (No. 426) was rejected.

Mr. STENNIS. Mr. President, I ask unanimous consent to reconsider the vote by which the amendment was rejected.

Mr. COOK. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

APPOINTMENT OF SENATOR STEVENS AS RANKING MINORITY MEMBER ON THE COMMITTEE ON RULES AND ADMINISTRATION

Mr. SCOTT. Mr. President, the distinguished senior Senator from Alaska (Mr. STEVENS) has consented to serve on the Committee on Rules and Administration in the position of ranking minority member, in succession to our late beloved colleague from Vermont, Winston L. Prouty.

Those of us on the leadership felt that we needed someone who had the necessary skill, tact, and patience, as well as willingness, to attend to the rather multifarious duties of that committee.

I know that it was with considerable reluctance the Senator from Alaska (Mr. STEVENS) was persuaded to leave another committee in order to accommodate us. I cannot imagine anyone we could have obtained who would have been more useful to the committee's functions under the rules adopted by the Republican conference at the beginning of the year than the distinguished Senator from Alaska (Mr. STEVENS), when certain Senators are not eligible to be ranking members on committees and other Senators are not eligible to be recognized on more than one committee.

Therefore, we had to search for the man who could supply us with the kind of capacity and judgment which would enable us to handle all the problems that come before the Committee on Rules and Administration, which meets frequently and which, among other responsibilities, passes on requests for appropriations of funds of all of the other committees, or for approval of the budgets required in the funding of all the other committees.

The Committee on Rules and Administration is a most important committee, and we are delighted that the Senator from Alaska (Mr. STEVENS) has been persuaded to accept appointment to it. It is a wrench for him to leave his other committee for this one, but we are all personally very much gratified that, at our urging, he has agreed to do so.

Mr. President, I yield the floor.

MILITARY PROCUREMENT AUTHORIZATIONS, 1972

The Senate continued with the consideration of the bill (H.R. 8687) to authorize appropriations during the fiscal year 1972 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

Mr. STENNIS. Mr. President, on behalf of the Senator from Virginia (Mr. BYRD) I ask unanimous consent to have printed in the RECORD a telegram from Mr. William J. Hart, district director and member of the executive board of the United Steel Workers of America, fully endorsing section 503 of the military procurement bill, which as the Senate knows, will make possible the importation of chrome at much lower prices. That will be one of the pending matters tomorrow.

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

TARENTUM, PA., *Sept. 22, 1971.*

HON. HARRY F. BYRD, JR.
Old Senate Office Building
Washington, D.C.

I was in attendance on July 8, 1971, when Allegheny Ludlum Industries, Inc. vice president E. F. (Andy) Andrews appeared before the African Affairs subcommittee of the Foreign Relations Committee of the United States Senate in Washington, D.C. I fully endorse the position taken by Mr. Andrews. I am concerned with the black and white steelworkers in Pennsylvania maintaining their jobs in the special steel industry. As you know western Pennsylvania is the specialty steel capitol of the world and if the Pennsylvania specialty steel companies do not receive favorable disposition to the Byrd bill, section 503 of H.R. 8687 or S. 1404, there will be no specialty steel industry in Pennsylvania or the United States. As a member of the executive board of the United Steelworkers of America, I wish to be recorded as in favor of the Byrd bill, section 503 of H.R. 8687 or S. 1404 and I would appreciate any assistance you can render on this important subject.

Sincerely,

WILLIAM J. HART,
Director District 19,
United Steelworkers of America.

THE FEDERAL ELECTIONS CAMPAIGN ACT OF 1971

Mr. COOK. Mr. President, after long debate and much study, the Senate on August 5 passed S. 382, the Federal Elections Campaign Act of 1971. This bill is the most meaningful, realistic, and the strongest campaign reform measure ever passed by the Senate. I vigorously supported it, and I am glad to have played a role in its formation.

On August 10, 1971, there appeared in the New York Times, the Washington Evening Star, and other papers, an extremely misleading article by Warren Weaver, Jr. concerning an amendment that I sponsored to S. 382. Subsequently, on August 11, 1971, there appeared in the New York Times an editorial which once again grossly misrepresented not only its plain and clear language, but the intent of my cost-of-living amendment. I ask unanimous consent that both the article and editorial be printed in the RECORD.

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

SPENDING-CURB LOOPHOLE FOUND IN SENATE VOTE BILL

(By Warren Weaver, Jr.)

WASHINGTON.—The escalator clause in the campaign spending bill that the Senate approved last week is so generous that it would permit each party $2.8-million extra in spending in 1972 and might double expenditure ceilings by the next national election in 1976.

As originally written, the bill would restrict the Presidential candidates of each party to $13.9-million for media spending, based on 10 cents for each of 139 million voters eligible in 1972.

The escalator clause was inserted in committee, at the request of Senator Marlow W. Cook, Republican of Kentucky, in an ostensible effort to insure that the political spending limits would rise in future years as the cost of living did, rather than make candidates victims of inflation.

But the way the clause is worded, it insures that the over-all ceiling for national candidates will go up $2.8-million a year every year that the cost of living rises 1 per cent or more, beginning with the 1971 increase over 1970.

LINKED TO PRICE INDEX

The 10-cent-a-voter ceiling consists of a 5-cent limit on spending for radio and television and a 5-cent limit for newspapers, magazines and billboards. The escalator clause provides that these figures will go up the same per cent as the Consumer Price Index did the year before "rounded to the next highest cent."

As a result, if the price index for 1971 was only 2 per cent higher than the average in 1970—it is now running 4 per cent higher—that would be sufficient to produce an automatic increase in each of the ceilings to 6 cents a voter from 5.

Arithmetically, a 2 per cent increase in the price index would increase a 5-cent ceiling to 5.1 cents, but "rounded to the next highest cent" this becomes a 6-cent ceiling.

If the Consumer Price Index continued to rise at least 1 per cent a year for the next four years—which economists consider a conservative estimate—the campaign ceilings would rise 1 per cent each year, to 10 cents a voter for broadcast media and 10 cents for nonbroadcast, or a total of 20 cents for each eligible voter.

By 1976, however, the number of eligible voters will have increased also, to at least 150 million by very rough estimates. Thus, the campaign bill would result in a ceiling in 1976 of about $30-million for each national ticket.

Most supporters of reduced campaign spending would regard that as almost no ceiling at all. In the election in 1968, the Republicans spent $12.7-million and the Democrats $6.1-million for radio and television time. There are no reliable records of their other expenditures.

The only Senator who spotted the loophole on the floor was Edward M. Kennedy of Massachusetts, who explored the effect of the cost-of-living clause in a brief, unnoticed colloquy with Senator John O. Pastore of Rhode Island, the Democratic floor manager of the bill.

First, Senator Pastore maintained that he could not predict what effect the escalator clause would have on the ceilings in 1972. Then he conceded that Mr. Kennedy was correct in saying, that the figure would rise to 6 cents from 5 for each of the two limits. The Senators did not explore the effect of the clause on 1976.

SHIFTING OF FUNDS ALLOWED

The escalator clause also has the effect of lifting still higher the ceiling on radio and television spending. The bill provides that a candidate who uses up his 5-cent-a-voter electronic fund can then dip into unspent money in his print media fund up to 20 per cent, or 1 cent more.

The 5-cent formula alone would permit $6.95-million worth of radio and television spending for each Presidential candidate. Application of the escalator clause would increase this to $8.4-million for 1972. A candidate who took the full 20 per cent from his print media limit in addition could raise this figure to $10-million.

The campaign spending bill also limits political expenditures by Senate and House candidates, based on the same formula of 10 cents for each eligible voter in the state or district, with no limit lower than $60,000 over all, including $30,000 for radio and television and $30,000 for print media.

A campaign spending bill pending in the House Commerce Committee has a different escalator clause, based on an index of communications media prices wtih potential increases not rounded off to the next highest cent.

FATAL PHRASE

Overlooked in the Senate's last-minute scramble to pass a campaign finance bill was a loophole big enough to sink the most desperately needed of its proposed reforms. Just six words long, it can undo six months of hard legislative work.

No one committed to curbing rampant campaign expenditures for television and radio would deny that any limiting provision must include an escalator clause to allow to rising prices. But the clause slipped into this otherwise excellent bill by Senator Marlow W. Cook of Kentucky is more like a balloon than an escalator. It provides that the limit of ten cents per eligible voter which may be spent on all media in a national election may be increased by the same percentage as the Consumer Price Index has risen in the preceding year. Then, almost as an afterthought, come the fatal six words—"rounded to the next highest cent."

An annual rise in prices of 5 per cent would not mean that the maximum allowable expenditure for campaign broadcasting alone would rise 5 per cent year by year—from a current figure of 6 cents to 7.6 cents in 1976. It would mean instead a flat penny-a-year increase, bringing the allowance in 1976 up to 11 cents. With a potential 150 million eligible voters by then, the ceiling would not be roughly $11.4 million for electronic expenditures, which would be more than high enough even with allowance for inflation and population growth, but something like $16.5 million, which would be practically no ceiling at all.

Senator Cook, it seems, has emasculated the bill in a parenthesis. Either his six ill-chosen words will come out in conference, assuming the Houses passes a campaign-spending bill on its return, or the measure's most important provision will be all but worthless.

Mr. COOK. Mr. President, similar editorials appeared in the Star on August 18, and the Louisville Courier-Journal

on August 12. Both the article and the editorials ignored the clear meaning of section 105 of S. 382.

They apparently stem from a misleading colloquy during the debate between Senator KENNEDY and Senator PASTORE—see CONGRESSIONAL RECORD, August 5, page 30069. Unfortunately, I was not on the floor at the time and did not hear of the problem until well into the August recess.

Mr. President, the Senate Commerce Committee deliberated long and hard on this amendment. It was adopted unanimously by the committee. The intent was obvious. It provides for a cost-of-living increase in the expenditure limitation for the media covered by the bill. As prices go up, there will be a corresponding increase in campaign spending. As written, it is flexible legislation that will be as relevant in 1982 as in 1972. However, its intent and effect is by no means as drastic as Mr. Weaver's article stated. I ask unanimous consent that my letter of clarification to the New York Times be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER (Mr. STEVENSON). Without objection, it is so ordered.

(See exhibit 1.)

Mr. COOK. Mr. President, although the letter was not reprinted by the Times, similar letters were reprinted by the Evening Star and the Courier-Journal. However, the Times did print an editorial stating that:

Far from weakening the measure, the change sponsored by Senator Cook provides a realistic way to keep the bill from quickly becoming obsolete.

I ask unanimous consent that this editorial be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. COOK. Mr. President, I do hope that this clears up any fears or so-called ambiguities that many people were concerned with in regard to the Cook amendment to S. 382.

EXHIBIT 1

UNITED STATES SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C., August 23, 1971.

Mr. ARTHUR OCHS SULZBERGER,
President and Publisher,
New York Times
New York, N.Y.

DEAR MR. SULZBERGER: In the New York Times of Tuesday, August 10, 1971, there appeared an article by Mr. Warren Weaver, Jr., entitled, "Spending-Curb Loophole Found in Senate Vote Bill." On the following day, Wednesday, August 11, 1971, there appeared in the New York Times an editorial entitled, "Fatal Phrase."

Both the article and the editorial concerned an amendment which I offered to S. 382, the Federal Election Campaign Act of 1971, during its consideration by the Senate Committee on Commerce. It was adopted unanimously. The amendment provides for a cost-of-living increase in the expenditure limitation for the broadcast and nonbroadcast media. Both the article and the editorial grossly misrepresented not only the intent of this provision, but also its clear language. Both were based upon confusion created by a colloquy on the bill between the Chairman of our Communications Subcommittee, Senator Pastore, and Senator Kennedy, of Massachusetts. Parenthetically, I might note that Senator Kennedy chose not to offer any amendment whatsoever to this particular provision. I can only conclude that the Senator not only was satisfied with the provision, but with its application and possible interpretation as posed by his line of questioning.

Nevertheless, based upon this colloquy, both your article and editorial state that the cost-of-living increase based upon the Consumer Price Index is to be multiplied times the 5 cents factor in the expenditure limitation formula applicable to both the broadcast and the nonbroadcast media. Then, you state that this product is to be multipl'ed by the estimate of resident population of voting age for the particular elective office to determine the candidate's expenditure limitation for the respective media. Finally, you compound the increase by applying the limited interchangeability maximum of 20 per centum between the media as provided for in section 104 of S. 382. Such an interpretation of the cost-of-living increase provision is in gross error. A simple reading of the provision makes this abundantly clear.

The cost-of-living increase provision, section 105(b), reads as follows:

The amount computed under section 315 (c)(2)(A) of the Communications Act of 1934 (as added by section 102 of this Act) and under section 103(c)(1) of this Act shall be increased by such per centum difference (excluding any fraction of a per centum) and rounded to the next highest cent. [Emphasis added]

Section 315(c)(2)(A) of the Communications Act of 1934 (as added by section 102 of S. 382) and section 103(c)(1) of the same bill each provide a formula to determine the expenditure limitation for the respective media of 5 cents multiplied by the estimate of resident population of voting age for such office, as determined by the Bureau of Census in June of the year preceding the year in which the election is to be held.

Thus, it is the "amount computed" after using this formula to which the per centum increase in the Consumer Price Index is to be applied and not the fixed factor of 5 cents. In other words, Mr. Weaver's article stated inter alia that "Arithmetically, a 2 per cent increase in the price index would increase a 5 cent-ceiling to 5.1 cents, but 'rounded to the next highest cent' this becomes a 6 cent-ceiling." Then, using this 6 cent-ceiling figure multiplied times the estimate of resident population of voting age for the office of President, Mr. Weaver proceeds to state that such would result in an increase from $6.95 million to $8.4 million for 1972 or an increase of $1.45 million in the limitation on radio and television spending.

On the contrary, the correct increase using Mr. Weaver's assumptions would be but $139,000 since the computation should be made as follows:

(1) 5 cents times the estimate of resident population of voting age for President of 139 million which equals the $6.95 million; and

(2) Then 2 per cent times $6.95 million for an increase of $139,000 or a total of $7,089,000.

Any rounding "to the next highest cent" would be with respect to the product of the "amount computed" under the spending formula (i.e., 5 cents times the resident population of voting age) times the per centum increase in the Consumer Price Index so as to insure that the final product will be in whole cents and not mills. It would not affect or "round to the next highest cent" the 5 cents figure in the spending limitation formula.

Accordingly, both Mr. Weaver's article and your editorial are grossly in error based on a clear and simple reading of the provision in question which should prove to be controlling over any legislative history developed during the debate.

Certainly the American public is entitled to know about such an important legislative measure as S. 382. More importantly, however, it is entitled to know the truth and not, to quote your own editorial, "ill-chosen words" which misrepresent and mislead.

Sincerely yours,

MARLOW W. COOK,
U.S. Senator.

EXHIBIT 2

[From the New York Times, Sept. 17, 1971]

MYTHOLOGY OF A BILL

The effort to bring political campaign spending under reasonable control in this country has encountered so many difficulties that a bemused spectator could well fall back upon classical mythology to explain them.

Congress last year passed a limited but strong bill to restrict the amount of money spent by political candidates in buying television. President Nixon found several plausible if unconvincing reasons for vetoing the bill. Like Sisyphus rolling his stone back up the hill, Congress had to start the task all over again.

This summer, a more comprehensive bill reached the Senate floor. It included an amendment by Senator Marlow W. Cook, Republican of Kentucky, to keep the limits on spending correlated to rising living costs.

Misreading the Cook amendment led many critics, The Times among them, to label it as a trojan horse which would rapidly raise the limits so high that candidates could run wild on campaign spending. Subsequent clarifications of the amendment's somewhat murky language have made it plain that, far from weakening the measure, the change sponsored by Senator Cook provides a realistic way to keep the bill from quickly becoming obsolete. The result was Senate approval of spending curbs that would do much to keep money from being the decisive factor in elections.

The revised measure now has to proceed through the House on a tortuous route. Rival committee jurisdictions and the rules of the House have constructed a truly classical maze. An Interstate and Foreign Commerce Subcommittee has completed action on a bill to limit broadcast spending. The House Administration Committee has a companion bill to require more disclosure of campaign contributions. Only the Ways and Means Committee can consider projected tax credit for small contributors.

Will the various bills find their way through the maze to their common destination on the House floor and join up with the Senate bill? Will the members of congress heed the sirens of self-interest? Will Mr. Nixon again roll the stone back to the bottom of Capitol Hill? Perhaps only mighty Homer could properly tell this tale.

THE COAL MINE HEALTH AND SAFETY ACT

Mr. COOK. Mr. President, once again, cold hard facts are proving the unworkability of the 1969 Federal Coal Mine Health and Safety Act. The very worthy objective of the act remains unfulfilled. For 1971 in the State of Kentucky 37 coal miners have lost their lives thus far under this act. Yet, the year before its implementation only 33 miners suffered fatal injuries. Of course, any loss of lives is too many.

Instead of saving lives, it has added only additional financial burdens to the small mine operators. So-called permissible equipment required by the act is highly expensive and yet in most cases is

not really necessary in small, nongassy mines. Very unwisely, and on a wave of emotionalism, the Congress rejected an amendment offered by Senator COOPER and myself—in 1969 which would have preserved the realistic, gassy/nongassy distinction.

Furthermore, the act has substantially contributed to increased surface or strip mining operations. In 1 year, from 1970 to 1971, underground mines decreased from 952 to 848. During this same period strip and auger mining operations increased from 377 to 556.

The time has come for a change in the present law. But more importantly, the time has come for rational debate.

I ask all my colleagues to read the remarks of Louie B. Nunn, Governor of Kentucky, at a Department of Interior hearing in Lexington. I ask unanimous consent that the Governor's speech and a "Wave" editorial be printed in the RECORD.

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

TEXT OF ADDRESS BY GOV. LOUIE B. NUNN OF KENTUCKY

I am Louie B. Nunn, Governor of the Commonwealth of Kentucky. First allow me to thank you for this opportunity to testify in regard to the Federal Coal Mine Health and Safety Act of 1969.

I would not appear here today as an expert witness or attempt to offer any degree of personal expertise. But as Chief Executive I feel a responsibility to an industry which comprises a major portion of our economy and affects the safety and well-being of many of the citizens of this Commonwealth.

More importantly, however, there is a sense of personal responsibility and a sincere desire to aid and assist in the safety and security of our fellow men.

It is this concern for physical safety, economic well-being and environmental protection that compels me to say that the Federal Coal Mine Health and Safety Act of 1969 has failed to achieve the good intentions of those in Congress who supported its passage.

The Kentucky experience of the past 21 months since this law became effective has been that instead of helping to solve a serious problem, it has helped to compound the problem.

The law has become an administrative nightmare as well as an exercise in contradiction, confusion and futility.

There have been instances and no doubt testimony will be offered later today to prove that this legislation has seriously and unfairly jeopardized lives instead of saving lives.

It has jeopardized the economic stability of a segment of the mining industry.

And it has jeopardized the ecological grandeur of our state.

What appears to be the most glaring mistake of the law is the removal of the distinction between gassy and non-gaseous mines.

This portion of the Act has hit hardest and most inequitably at the small mines, particularly in Eastern Kentucky.

The new and highly expensive permissible machinery required by the new law simply is out of the financial reach of many small operators. And this requirement is even further beyond the understanding of these operators.

No one, either at the federal, state or local level, has yet been able to explain to these operators why they should have to sink huge sums of capital into equipment to be used in gassy mines when their mines contain no gas.

Many of the small mines in Appalachia have been forced to close because of inability to comply with the Act.

Many others have closed before being inspected out of fear of the high penalties provided by the new law.

It is ironic and most unfortunate that while we have finally realized an industrial breakthrough in Eastern Kentucky and in a period when nearly fifty new industries were located in that part of our state, many ablebodied men have been denied an opportunity to work becaue of a discriminatory law.

In 1970, 969 underground mines were in operation in Eastern Kentucky, employing 17,321 men.

Today the number of mines has dropped to 820 and nearly one thousand fewer men are employed.

It is tragic that many of those employed at these mines may have no other recourse than to leave payrolls and join the welfare rolls. Surely, this was not the intention of the authors of the law.

The burden is not limited to small mines only. Many large mines are suffering from a supervisory shortage brought about by the wholesale employing of federal mine inspectors. Those supervisory personnel who are left spend much of their time accompanying inspectors on the mine property and are otherwise deskbound by volumes and volumes of paper work.

Unless there is a reversal of the present trend, we may reach a point when there will be almost as many federal inspectors as there are coal mines to inspect.

Almost two years have passed since the law became effective and the most knowledgeable people in the Bureau of Mines and the industry are still trying to determine its full meaning.

Interpretations are still being attempted, but seemingly with little success.

It must be evident that if those responsible for implementing the law cannot agree, the coal operators could hardly be expected to understand how they are to comply.

In looking at Kentucky's mine safety record it shows that the Commonwealth covered a period of almost twenty-five years without a major disaster. The year before the Act went into effect (1969) the Commonwealth enjoyed its best year from a coal mine fatality standpoint. Thirty-three miners lost their lives in 1969 as compared to 37 to this date in 1971. This in itself shows that the Act is not working.

Almost as distressing as the adverse affect the new law has had on the safety of the coal miner is the devastating setback it has dealt to Kentucky's environment.

As more and more small mine operators have been forced to close, more and more strip mine operations have been started.

In 1968, there were 189 surface mining operations in Kentucky. Today, that number has increased more than three times. Now there are 556 strip mine operations.

Production figures reflect the same disturbing trend. In 1969, underground mines produced 64 million tons of coal in Kentucky, while surface mining operations yielded 44 million tons.

Last year, however, underground mines produced only 63 million tons, while the figure for surface operations skyrocketed to 62 million.

These statistics in human, economic and environmental damage vividly underscore the need for immediate remedial action by the Congress.

It should be obvious to all that if the Kentucky coal industry is to remain sound and is to provide safer, more rewarding employment for our people and is to flourish in compatibility with our environment, the Congress must take another look at the 1969 Act.

To show further why such action is needed, I have asked a team of five experts from Kentucky's nationally respected Department of Mines and Minerals to appear with me here today.

Together, these men represent almost a century and a half of mining experience.

They have experienced first hand the frustrations inherent in the Coal Mine Health and Safety Act.

They are: Commissioner Kirkpatrick; Assistant to the Commissioner, J. H. Mosgrove; Cecil Sherman of the Martin District; Everett Bartlett of the Hazard District; and James Thorp of the Western Kentucky District.

Mr. Kirkpatrick is from a mining family whose entire working career has been associated with underground coal mines in Muhlenberg County of Western Kentucky. Mr. Kirkpatrick has always had an interest in mine safety having worked with several safety organizations during his career.

Mr. Mosgrove has been associated with the mining industry of Kentucky over forty years, having started as a miner at a very young age in Letcher County. His career has included working as a mine laborer, supervisor, and he has been directly engaged in safety work for over 25 years.

Mr. Sherman started his career in 1931 as a mine laborer. He has advanced from that position through to the job he now holds as District Supervisor with the Department. Many years of Mr. Sherman's background have been directly connected with safety promotion.

Mr. Bartlett has been associated with mining in Kentucky for over forty years. His work experience ranges from mine laborer to mine superintendent. He has served with the Department of Mines and Minerals almost seventeen years.

Mr. Thorp, supervisor of the West Kentucky District, has worked in the West Kentucky coal fields for a number of years. He was very active in safety team work and has served as a mine laborer and supervisor.

All these men are well qualified by their experience as laborers, supervisors and safety inspectors and administrators.

They are here to help, not to hinder.

They are here to offer constructive criticism, not to obscure the facts.

We do not ask that changes be made at the expense of lives because we fully realize that productivity must be judged in human terms. But neither shall we be silent as unjustifiable and illogical obstacles are placed before productivity.

We ask only that necessary revisions be made in order that we might have legislation that can be readily understood both by those charged with its implementation and those who are required to comply . . . legislation that will effectively assist us in attaining a new high in the safety, economic and environmental standards of the coal industry.

(Wave Editorial)

THE MINE LAW EDITORIAL NUMBER 767

SEPTEMBER 14, 1971.

We think it's time to rewrite the federal Coal Mine Health and Safety Act. From all indications, the law as it now stands is unrealistic and actually is more punitive than beneficial.

A Courier-Journal story last week cited case after case in Eastern Kentucky where underground mines have been forced to close. The operators say they simply cannot afford the machinery and procedures called for in the safety law. Dozens of miners have been put out of work as a result. And there's no real proof that the law has done what it was supposed to do—make it safer to work in the mines underground.

The Mine Safety Act, because of its special provisions, has added more than 30% to the cost of deep mining coal. The smaller mines are the hardest hit. Many operators have switched to strip mining. In other words, the safety act has actually fostered strip mining, especially in Eastern Kentucky. This means, then, that this law has probably caused more problems than it solved.

Coal mining in both Kentucky and Indiana has been taking its lumps for a long time. It is one of the most controversial industries we have. Yet we can't do without it. And we totally agree with legislation to protect the environment against mining and to protect lives of the workers. However, none of these laws appears to be working well—either because they are not implemented or because they are bad laws in the first place. The federal Coal Mine Health and Safety Act may fit both categories.

The U.S. Bureau of Mines is conducting a series of hearings about safety. We hope it gets the message that the Health and Safety Act is not getting the job done and that it ought to be changed. Here is a case where results don't jibe with the objectives.

ORDER FOR RECOGNITION OF SENATORS JACKSON AND JAVITS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on tomorrow, following the 1 hour which is set aside for eulogies to our late colleague, Senator Winston L. Prouty, the distinguished Senator from Washington (Mr. JACKSON) be recognized for not to exceed 15 minutes, to be followed by the distinguished Senator from New York (Mr. JAVITS) for not to exceed 15 minutes, to be followed by a period for the transaction of routine morning business.

The PRESIDING OFFICER. Without objection, it is ordered.

PROGRAM

Mr. SCOTT. Mr. President, I rise to ask the distinguished acting majority leader, the Senator from West Virginia, if he can adumbrate the situation regarding the remainder of the week and thereafter, if he is so minded.

Mr. BYRD of West Virginia. Mr. President, in response to the inquiry of the distinguished minority leader, the Senate will convene tomorrow at 10 a.m. Immediately following the recognition of the two leaders under the standing order, there will be 1 hour set aside, under the control of the distinguished senior Senator from Vermont (Mr. AIKEN), for the purpose of eulogies for our late, departed colleague, Senator Winston L. Prouty.

Following the hour for eulogies, the following Senators will be recognized, each for not to exceed 15 minutes, and in the order stated: the Senator from Washington (Mr. JACKSON) and the Senator from New York (Mr. JAVITS).

There will then be a period for the transaction of routine morning business, not to exceed 15 minutes, with statements therein limited to 3 minutes.

At the conclusion of the routine morning business, the Chair will lay before the Senate the unfinished business, and the pending question at that time will be on agreeing to amendment No. 423, by Senator MCGEE, which deals with Rhodesian chrome ore. There is a time limitation of 2 hours on that amendment. If all the time is consumed, and if no amendments are offered thereto, a rollcall vote, which can be expected thereon, will occur at approximately 1:45 p.m.

Upon the disposition of amendment No. 423 by Senator MCGEE, the pending question will be amendment No. 429 by Senator MCGOVERN, to provide for an alternative military budget for fiscal year 1973 in the amount of $60 billion. A rollcall vote on that amendment is expected. There is a time limitation of 1½ hours on the amendment, to be equally divided.

So Senators may expect at least two rollcall votes tomorrow.

On Friday, the Senate will convene at 10 a.m. Immediately after the recognition of the two leaders, the following Senators will be recognized, each for not to exceed 15 minutes: The Senator from Georgia (Mr. TALMADGE) and the Senator from North Dakota (Mr. YOUNG). They will be in control of time for the purpose of extending congratulations to the distinguished President pro tempore of the Senate, the Senator from Louisiana (Mr. ELLENDER).

Following the recognition of the two Senators mentioned, there will be a period for the transaction of routine morning business, not to exceed 15 minutes, with a limitation on speeches of 3 minutes therein; following which the Senate will proceed to the consideration of amendment No. 432, the so-called MIRV amendment of the Senator from Minnesota (Mr. HUMPHREY). Time on that amendment will be limited to 4 hours. A rollcall vote will occur thereon. Thus, Senators may expect at least one rollcall vote on Friday.

Beyond Friday, I can only see through a glass darkly. I would not want to take a chance, as of now, on attempting to prognosticate as to what the situation will be for Monday next.

However, there will be no session this coming Saturday. The distinguished majority leader has indicated that the Senate may very well be in session on Saturdays, if necessary, with the exception of this coming Saturday.

Mr. President, I ask unanimous consent that it may be in order to order at any time and with one show of seconds, a rollcall vote on amendment No. 423 of the Senator from Wyoming (Mr. MCGEE), a rollcall vote on amendment No. 429 of the Senator from South Dakota (Mr. MCGOVERN), and a rollcall vote on amendment No. 432 of the Senator from Minnesota (Mr. HUMPHREY).

The PRESIDING OFFICER (Mr. STEVENSON). Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I ask for the yeas and nays on the three amendments.

The yeas and nays were ordered on the three amendments above named.

Mr. SCOTT. Mr. President, I thank the distinguished acting majority leader. I appreciate the rays of light which have illuminated our progress for the next few days. I hope that we can make progress as September wanes, October dawns, and Thanksgiving approaches. I hope that we will have good cause for celebrating same.

ADJOURNMENT TO 10 A.M.

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move in accordance with the previous order that the Senate stand in adjournment until 10 a.m. tomorrow.

The motion was agreed to; and (at 5 o'clock and 14 minutes p.m.) the Senate adjourned until tomorrow, Thursday, September 23, 1971, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate September 22, 1971:

SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

William D. Eberle, of Connecticut, to be Special Representative for Trade Negotiations, with the rank of Ambassador Extraordinary and Plenipotentiary, vice Carl J. Gilbert.

EXTENSIONS OF REMARKS

VICE ADM. BERNARD F. ROEDER, U.S. NAVY, RETIRED

HON. GOODLOE E. BYRON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 22, 1971

Mr. BYRON. Mr. Speaker, earlier this month Vice Adm. Bernard F. Roeder, one of the Nation's foremost proponents of seapower and probably the highest ranking native Cumberlander in any military force, died in Balboa Naval Hospital. Admiral Roeder retired 2 years ago while serving as Commander of the San Diego-based First Fleet. Before that he commanded the Pacific Fleet Amphibious Force headquartered at Coronado, Calif.

Admiral Roeder was a man of honor, integrity, and courage—a soldier in the best sense. Those who knew him and those who knew his reputation will miss him and the unique contribution he brought to the Nation and his community. His distinguished career was reviewed in a recent article in the Cumberland Sunday Times and I would like to share it with all of you.

ADMIRAL ROEDER

Adm. Roeder was only 16 years old when he graduated from Allegany High School and entered the Naval Academy in 1927.

During his next 42 years he saw the debut of nuclear power and jet aircraft into the U.S. fleet and the aircraft carrier replace the battleship as the backbone of Navy task forces.

In his retirement address, he warned that the U.S. shipbuilding program has been completely inadequate to provide for any degree of modernization or replacement of "tired veterans that have been our first line of defense. If we are to continue enjoyment of freedom of the seas, a proper substantial plan of naval shipbuilding must be instituted and supported without delay."